

IN THE SUPREME COURT OF THE STATE OF NEVADA

SALLY DORIAN VILLAVERDE,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-18-780041-W
Related Case 03C191012-2
Docket No: 85028

RECORD ON APPEAL VOLUME 2

ATTORNEY FOR APPELLANT
SALLY VILLAVERDE #81701,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

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

A-18-780041-W Sally Villaverde, Plaintiff(s) vs. Brian Williams Warden,
Defendant(s)

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1 Nevada Law Perpetration of a Felony Precludes instructions on Manslaughter, be-
2 cause "Express Malice Cannot Coexist with irresistible Passion;" one distinguish from
3 the other due to the absence of malice. The Presence or absence of this malice or
4 mental Condition marks the boundary which separates the Two crimes of murder
5 and manslaughter. See Stevenson V. United States 162 U.S 313, 320, 16 Sct 839, 842, 40
6 LEA 980 (1896). SALGADO V. State 38 Nev 64, 145 P 919 150 P 764 (1914).

7 III. WHETHER THE ADMISSION OF MATERIAL WITNESS TERESA GAMBOA'S TRANSCRIPT TESTI-
8 MONY VIOLATED VILLAVERDE'S RIGHTS UNDER THE FIFTH SIXTH AND FOURTEENTH AMEND-
9 MENTS TO THE UNITED STATES CONSTITUTION TO EFFECTIVE ASSISTANCE OF COUNSEL

10 In Drummond the Nevada Supreme Court stated:

11 "the right to Confrontation is basically a trial right. it include both the
12 opportunity to Cross-examine and the occasion for the jury to weigh

13 the demeanor of the witness" See Drummond v. State 86 Nev. 4, 462 P.2d. 1012 (1970)

14 in the Present Case, Villaverde is challenging the fact, that his trial Attorney
15 MR. Randall H. Pike did not had the opportunity to Cross-examine material wit-
16 ness above mentioned, teresa Gamboa, (Villaverde's ex-Girlfriend) whom, was
17 absent to testify at Villaverde's trial and the state introduced her Previous re-
18 dacted Transcript testimony from Pre-eliminary hearing held on March 21, 2004.

19 Villaverde Contend that although teresa Gamboa was Cross-examined at a Pre-eli-
20 minary hearing. This Cross-examination was Conducted by his Previous Counsel, then
21 Court appointed from the Public defender Office. ms. "Christina Wildevel", whom,
22 Cross-examination Performance at Pre-eliminary hearing of the material witness
23 Teresa Gamboa rendered ineffective, a claim that Villaverde raised Previously be-
24 fore trial, alerting the district Court through a motion to withdraw Counsel. that,
25 Public defender ms. Christina Wildevel and him had a Conflict of interest, whereas
26 Counsel was ineffective, Hence, Counsel was unreliable to Proceed with the Case.

27 as a result, On December 4, 2003. Public defender ms. Christina Wildevel Submitted a
28 motion to withdraw herself from representation due to "A Conflict of interest between her

1 VILLAVARDE". Her admission was made in open Court and formed part of the record. See
2 (Exhibit B attach at Court minutes dated 12/04/03).

3 On the same above date, the district Court appointed Counsel, MR. Randall H. Pike
4 whom became Villaverde's trial Counsel and appellate Counsel.

5 At the time of the pre-eliminary hearing "Material witness TERESA GAMBOA" was held
6 in custody at the Clark County detention Center CCDC, immediately, after her testimony
7 on behalf of the state at pre-eliminary hearing, she was given immunity, and released
8 from custody." by the Prosecutors, despite, the fact she was an admitted Co. Cons-
9 pirator by the state. Thus, Counsel Randall H. Pike was unable to cross-examine.

10 therefore, Villaverde further contend, the admission of Gamboa's Preliminary hearing
11 transcript also violated his rights to effective assistance of trial Counsel as guaranteed
12 by the fifth sixth and fourteenth Amendments to the United States Constitution
13 and Article 1, Section 5 of the Nevada state Constitution.

14 it is common practice by criminal defense attorneys to use their opportunity to cross-
15 examine witnesses at preliminary hearings in a completely different manner and for
16 completely different purposes than the cross-examination in jury trials, cross-examination
17 questions at preliminary hearings are essentially "open-ended" and designed to elicit ini-
18 tial discovery information of and through a witness. thus use of the "leading question", the
19 essential tool in the arsenal of the defense attorney at trial, is not only often inappro-
20 priate but also not feasible at preliminary hearings due to the lack of prior knowledge
21 that is afforded by subsequent discovery. A defense Attorney knowledgeable of the state's
22 evidence via complete discovery, is equipped and poised to present a completely different
23 style and form of cross-examination. In this case, the opportunity to more fully and
24 effectively discredit the state's "Principal witness". thus, trial Counsel did not have
25 the opportunity to consult with Villaverde prior to the preliminary hearing, review
26 the discovery materials or conduct any investigation, and was bound by answers to
27 questions not of his own choosing. these circumstances also forced trial Counsel
28 into the precarious position of being forced to make in-trial decisions that are

Subject to appeal in Post-Conviction Petitions containing allegations of ineffective assistance of Counsel. One Scenario would be that his failure to call Villaverde as a witness was, under the circumstances, ineffective assistance of Counsel. ultimately, MS. Wildevel, as the record show, admitted a conflict of interest between her and Villaverde. Hence, she opted to withdraw herself from the case. a relevant factor that the trial Court overlooked at the time of trial by admitting MS. Wildevel redacted ineffective cross-examination of absent material witness Teresa Gamboa. a clear abuse of discretion that was particularly detrimental to the outcome of Villaverde's case.

III(A) WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING THE TRANSCRIPT OF TERESA GAMBOA INTO EVIDENCE AND THEREBY ADMITTING CONFESSIONS BY NON-TESTIFYING ACCOMPLICES TO THE CRIMES INTO EVIDENCE IN VIOLATION OF DEFENDANT'S RIGHTS UNDER THE FIFTH SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE 1 SECTION 5 OF THE NEVADA STATE CONSTITUTION.

Co-defendant Confessions admitted into evidence against a Criminal Defendant violate the Confrontational Clause right provided by the Sixth Amendment to the United States Constitution. Crawford v. Washington

Also see Lilly v. Virginia 527 U.S. 116, 134 (1999), holding that "Accomplice's Confessions that inculcate a Criminal defendant are not within a firmly rooted exception to the hearsay rule" and therefore violate a Defendant's Confrontational Clause rights. Lee v. Illinois, 476 U.S. 530 (1986). Bruton v. United States 391 U.S. 123 (1968).

As previously stated at the Preliminary hearing of this case held on March 21, 2004, the State called Teresa Gamboa, Villaverde's girlfriend. Gamboa testified to matters involving the homicide. this was a joint Preliminary hearing where each defendants were present, Gamboa testified to numerous statements made by Codefendants Roberto Castro and Rene Gato. neither Co-defendants testified at the Preliminary hearing. the following are some excerpts from her Preliminary hearing testimony:

1 By Deputy District Attorney Robert Daskas:

2 Q. "What happened at the Motel 6?"

3 A. "We went into their room. They had already had a room there.

4 They started talking, and I had asked Robertico (Castro) who killed
5 him, and he said, he kind of looked off towards Gato and said,
6 we did."

7 Q. Were all three of the defendants present when that comment
8 was made?

9 A. Yes. Preliminary Hearing Transcript, (hereinafter P.H.T.) at 111.

10 Cross-examination by defense attorney David Schieck:

11 Q. So when you drove by the Capri and you saw all the police there on March
12 6th, did you stop and tell them what you knew about this case?

13 A. No. I Freaked.

14 Q. And then---

15 A. I just started crying, and we went home {and} Robertico said
16 he killed him, that they all killed him. (P.H.T. 138-139).

17 Cross-Examination by defense attorney Kristina Wildeveld:

18 Q. So, Sally didn't shoot him, and Sally didn't strangle him?

19 A. No. He didn't say he did either one, either?

20 Q. And Gato didn't say he did either one.²

21 A. Gato said he shot him.

22 Q. Gato shot--

23 A. Yes. In California he admitted that he did.

24 Q. Not Sally, Gato? I'm, we're getting confused when we keep using him
25 rather than the names.

26 So, Sally, Gato had shot him.
27 Robertico strangled him?

1 A. Yes.

2 Q. Sally didn't do either?

3 A. Sally tried to help him. (P.H.T. 154-155).

4 The record above, show statements and/or Confessions allegedly made by Code-
5 fendant(s) ROBERTO CASTRO and Rene Gato to The State Principal witness TERESA
6 GAMBOA. Statements that clearly implicated VILLAVERDE alleged Participation
7 in the crime, and was detrimental its Prejudicial effect caused The JURY
8 to convict VILLAVERDE under the alternative theories of Liability discussed and
9 instructed by the Prosecution during the different Phases of Villaverde's trial.
10 THE Redacted TRANSCRIPTS OF TERESA GAMBOA's testimony (ABSENT witness),
11 introduced by the State Prosecutors, simply, Violated VILLAVERDE's Consti-
12 tutional Rights under the Confrontation Clause. because, he was not able to cross
13 examine Co-defendant (s) ROBERTO CASTRO and Rene Gato. whom during the time
14 of the Join Preliminary hearing did not took the stand and testify to refute
15 or deny Teresa Gamboa's testimony. the admission of the entire transcripts
16 at trial including those Portions Containing Confessions to the crime by ROBERTO CAS-
17 TRO and Gato. THE STATE was able to introduce indirectly what it could not do
18 directly. accomplices Confessions that incriminated the Defendant, Bruton United
19 STATE. Now Prejudicial effect of these Confession is exarcebated by a Single Fact,
20 that after Villaverde's Conviction. THE STATE conceded that ROBERTO CASTRO Co-
21 mmitted Voluntary manslaughter "in the heat of Passion", a lesser offense. UPON
22 which CASTRO admitted Guilt and Confessed in Open Court. (see Sentencing
23 Hearing held on march 22, 2005).
24 Counsel for Villaverde tried to suppress the Portion of the redacted transcript by
25 filing a motion in Limine, but The TRIAL Court abused its discretion and allowed
26 the Non-testifying Co-defendant's Confessions to come in its entirety. therefore
27 VILLAVERDE allege that the trial Court's abuse of discretion Violated his Cons-

1 Constitutional rights under the sixth and fourteenth Amendment Clause and
2 Nevada Constitution.
3 Conclusion
4 WHEREFORE FOR THE REASONS STATED ABOVE, PETITIONER PRAY THAT THIS HO-
5 NORABLE COURT GRANT EVIDENTIARY HEARING and vacate villaverde's Con-
6 VICTIONS For a new trial.
7 Dated this 02 day OF September, 2021 Respectfully Submitted
8 Sally D. Villaverde #B1701
9 Petitioner Acting Pro,se
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CERTIFICATE OF SERVICE BY MAILING

I, SALLY D. VILLAVARDE, hereby certify, pursuant to NRCP 5(b), that on this 02
day of September, 2021, I mailed a true and correct copy of the foregoing, "PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

CLARK County DISTRICT ATTORNEYS OFFICE

200 Lewis Ave
LAS VEGAS NV 89155

CC:FILE

DATED: this 02 day of September, 2021.

Sally D. Villaverde # 81701
SALLY D. VILLAVARDE # 81701
PETITIONER/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

EXHIBITS A/B

TABLE OF EXHIBITS

EXHIBIT A

1- ROBERTO CASTRO'S ALFORD PLEA AND AMENDED INFORMATION.
FILED IN* OPEN COURT ON JANUARY 31, 2005.

2- CASE SUMMARY- DISPOSITION 2- USE OF A DEADLY WEAPON OR TEAR
GAS IN COMMISSION OF A CRIME Charges
Amended/dropped.

DISPOSITION 3- ROBBERY Charges Amended/dropped

3- EVIDENCE IMPOUND REPORT- ITEM #20 BLACK WALLET

FORENSIC LABORATORY REPORT- DW1 PKG 3861-10 ITEM 12 COCAINE 10.72g

ENRIQUE CAMINERO VILTIM'S CREDIT CARDS - Front /BACK

EXHIBIT B

1- COURT MINUTES OF VILLAVERDE'S motion to withdraw Counsel Kristina Wildeveld
on June 05, 2003 and August 19, 2003.

2- Kristina M. Wildeveld (Public defender) motion to withdraw herself from the case.

3- COURT APPOINTED Counsel- Randall H. Pike December 04, 2003.

EXHIBITS A/B

1 GMEM

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 J. TIMOTHY FATTIG
6 Deputy District Attorney
7 Nevada Bar #006639
8 200 South Third Street
9 Las Vegas, NV 89155-2212
10 (702) 455-4711
11 Attorney for Plaintiff

FILED IN OPEN COURT
JAN 31 2005

SHIRLEY B. PARRAGUIRRE, CLERK
BY *Lenny Kissel*
DEPUTY

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 ROBERT CASTRO, aka Robert Rance
13 Castromontalvo, #1161921

14 Defendant.

CASE NO: C191012C
DEPT NO: XVII

15 GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty, pursuant to North Carolina v. Alford, 400 U.S. 25
17 (1970), to: VOLUNTARY MANSLAUGHTER (Felony/Category B), as more fully alleged
18 in the charging document attached hereto as Exhibit "1".

19 My decision to plead guilty by way of the Alford decision is based upon the plea
20 agreement in this case which is as follows:

21 The State retains the right to argue.

22 CONSEQUENCES OF THE PLEA

23 By pleading guilty pursuant to the Alford decision, it is my desire to avoid the
24 possibility of being convicted of more offenses or of a greater offense if I were to proceed to
25 trial on the original charge(s) and of also receiving a greater penalty. I understand that my
26 decision to plead guilty by way of the Alford decision does not require me to admit guilt, but
27 is based upon my belief that the State would present sufficient evidence at trial that a jury
28 would return a verdict of guilty of a greater offense or of more offenses than that to which I

am pleading guilty to.

JAN 31 2005

COUNTY CLERK

PAWPDOCS\NF302\302357405.doc

1 I understand that as a consequence of my plea of guilty by way of the Alford decision
2 the Court must sentence me to imprisonment in the Nevada Department of Corrections for a
3 minimum term of not less than one year and a maximum term of not more than ten years.
4 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum
5 term of imprisonment. I understand that I may also be fined up to \$10,000.00. I understand
6 that the law requires me to pay an Administrative Assessment Fee.

7 I understand that, if appropriate, I will be ordered to make restitution to the victim of
8 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
9 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
10 reimburse the State of Nevada for any expenses related to my extradition, if any.

11 I understand that I am eligible for probation for the offense to which I am pleading
12 guilty. I understand that, except as otherwise provided by statute, the question of whether I
13 receive probation is in the discretion of the sentencing judge.

14 I understand that if more than one sentence of imprisonment is imposed and I am
15 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
16 the sentences served concurrently or consecutively.

17 I also understand that information regarding charges not filed, dismissed charges, or
18 charges to be dismissed pursuant to this agreement may be considered by the judge at
19 sentencing.

20 I have not been promised or guaranteed any particular sentence by anyone. I know
21 that my sentence is to be determined by the Court within the limits prescribed by statute.

22 I understand that if my attorney or the State of Nevada or both recommend any
23 specific punishment to the Court, the Court is not obligated to accept the recommendation.

24 I understand that if the State of Nevada has agreed to recommend or stipulate a
25 particular sentence or has agreed not to present argument regarding the sentence, or agreed
26 not to oppose a particular sentence, or has agreed to disposition as a gross misdemeanor
27 when the offense could have been treated as a felony, such agreement is contingent upon my
28 appearance in court on the initial sentencing date (and any subsequent dates if the sentencing

1 is continued). I understand that if I fail to appear for the scheduled sentencing date or I
2 commit a new criminal offense prior to sentencing the State of Nevada would regain the full
3 right to argue for any lawful sentence.

4 I understand if the offense(s) to which I am pleading guilty to was committed while I
5 was incarcerated on another charge or while I was on probation or parole that I am not
6 eligible for credit for time served toward the instant offense(s).

7 I understand that as a consequence of my plea of guilty, if I am not a citizen of the
8 United States, I may, in addition to other consequences provided for by federal law, be
9 removed, deported, excluded from entry into the United States or denied naturalization.

10 I understand that the Division of Parole and Probation will prepare a report for the
11 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
12 sentencing, including my criminal history. This report may contain hearsay information
13 regarding my background and criminal history. My attorney and I will each have the
14 opportunity to comment on the information contained in the report at the time of sentencing.
15 Unless the District Attorney has specifically agreed otherwise, then the District Attorney
16 may also comment on this report.

17 WAIVER OF RIGHTS

18 By entering my plea of guilty, I understand that I am waiving and forever giving up
19 the following rights and privileges:

20 1. The constitutional privilege against self-incrimination, including the right to refuse
21 to testify at trial, in which event the prosecution would not be allowed to comment to the
22 jury about my refusal to testify.

23 2. The constitutional right to a speedy and public trial by an impartial jury, free of
24 excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the
25 assistance of an attorney, either appointed or retained. At trial the State would bear the
26 burden of proving beyond a reasonable doubt each element of the offense charged.

27 3. The constitutional right to confront and cross-examine any witnesses who would
28 testify against me.

- 1 4. The constitutional right to subpoena witnesses to testify on my behalf.
2 5. The constitutional right to testify in my own defense.
3 6. The right to appeal the conviction, with the assistance of an attorney, either
4 appointed or retained, unless the appeal is based upon reasonable constitutional jurisdictional
5 or other grounds that challenge the legality of the proceedings and except as otherwise
6 provided in subsection 3 of NRS 174.035.

7 VOLUNTARINESS OF PLEA

8 I have discussed the elements of all of the original charge(s) against me with my
9 attorney and I understand the nature of the charge(s) against me.

10 I understand that the State would have to prove each element of the charge(s) against
11 me at trial.

12 I have discussed with my attorney any possible defenses, defense strategies and
13 circumstances which might be in my favor.

14 All of the foregoing elements, consequences, rights, and waiver of rights have been
15 thoroughly explained to me by my attorney.

16 I believe that pleading guilty and accepting this plea bargain is in my best interest,
17 and that a trial would be contrary to my best interest.

18 I am signing this agreement voluntarily, after consultation with my attorney, and I am
19 not acting under duress or coercion or by virtue of any promises of leniency, except for those
20 set forth in this agreement.

21 I am not now under the influence of any intoxicating liquor, a controlled substance or
22 other drug which would in any manner impair my ability to comprehend or understand this
23 agreement or the proceedings surrounding my entry of this plea.

24 //

25 //

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28 //

1 My attorney has answered all my questions regarding this guilty plea agreement and
2 its consequences to my satisfaction and I am satisfied with the services provided by my
3 attorney.

4 DATED this 31st day of January, 2005.

5 

6 ROBERT CASTRO, AKA ROBERT
7 RANCE CASTROMONTALVO
Defendant

8 AGREED TO BY:

9 

10 J. TIMOTHY FATTIG
11 Deputy District Attorney
12 Nevada Bar #006639
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1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of
3 the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the charge(s)
5 to which Alford pleas are being entered.

6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.

8 3. All pleas of Alford offered by the Defendant pursuant to this agreement are
9 consistent with the facts known to me and are made with my advice to the Defendant.

10 4. To the best of my knowledge and belief, the Defendant:

11 a. Is competent and understands the charges and the consequences of pleading
12 Alford as provided in this agreement.

13 b. Executed this agreement and will enter all Alford pleas pursuant hereto
14 voluntarily.

15 c. Was not under the influence of intoxicating liquor, a controlled substance or
16 other drug at the time I consulted with the Defendant as certified in paragraphs
17 1 and 2 above.

18 Dated: This 31st day of January, 2005.

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20 ATTORNEY FOR DEFENDANT
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ORIGINAL

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JOCP
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
200 South Third Street
Las Vegas, Nevada 89155-2212
(702) 455-4711
Attorney for Plaintiff

FILED

2005 MAR 29 P 2: 28

DISTRICT COURT
CLARK COUNTY, NEVADA

Spencer S. Hagan
CLERK

THE STATE OF NEVADA,

Plaintiff,

-vs-

ROBERT CASTRO, aka
Robert Ranch Castromontalvo,
#1161921

Defendant.

Case No: C191012C

Dept.No: XVII

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime(s) of VOLUNTARY MANSLAUGHTER (Category B Felony), in violation of NRS 200.040, 200.050, 200.080; thereafter, on the 22nd day of March, 2005, the Defendant was present in court for sentencing with his counsel, STANLEY A. WALTON, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, COURT ORDERED: in addition to the \$25.00 Administrative Assessment Fee, the Defendant is SENTENCED to a MAXIMUM term of ONE HUNDRED TWENTY (120) MONTHS with

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RECEIVED

MAR 24 2005

COUNTY CLERK

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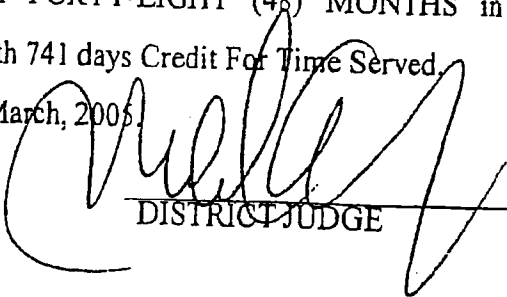
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MAR 29 2005

COUNTY CLERK

me

1 a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS in the Nevada
2 Department of Corrections (NDC) with 741 days Credit For Time Served.
3 DATED this 28 day of March, 2005.


DISTRICT JUDGE

28 jr

1 INFO
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 J. TIMOTHY FATTIG
6 Deputy District Attorney
7 Nevada Bar #006639
8 200 South Third Street.
9 Las Vegas, Nevada 89155-2211
10 (702) 455-4711
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 ROBERT CASTRO, aka Robert Rance
14 Castromontalvo, ID #1161921

15 Defendant.

Case No: C191012C
Dept No: XVII

AMENDED
INFORMATION

16 STATE OF NEVADA }
17 COUNTY OF CLARK } ss.

18 DAVID ROGER, District Attorney within and for the County of Clark, State of
19 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

20 That ROBERT CASTRO, Robert Rance Castromontalvo, the Defendant above
21 named, having committed the crime of VOLUNTARY MANSLAUGHTER (Felony -
22 NRS 200.040, 200.050, 200.080), on or about the 6th day of March, 2002, within the County
23 of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases
24 made and provided, and against the peace and dignity of the State of Nevada, did, together
25 with SALLY VILLAVERDE and/or RENE GATO, then and there without authority of
26 law, wilfully, unlawfully, and feloniously, without malice and without deliberation kill
27 ENRIQUE CAMINERO, JR., a human being, by manual strangulation and/or by inflicting
28 multiple blunt force trauma upon his body, said defendant being liable under one or more of

EXHIBIT 1

PAWPDOCSUNF002\30235704.DOC

1 the following principles of criminal liability, to-wit: (1) by Defendant and/or SALLY
2 VILLAVERDE and/or RENE GATO directly committing the acts constituting the offense;
3 and/or (2) by said Defendant and/or SALLY VILLAVERDE and/or RENE GATO aiding or
4 abetting each other in its commission by directly or indirectly counseling, encouraging,
5 commanding or procuring the other to commit the offense, as evidenced by the conduct of
6 the Defendant and/or SALLY VILLAVERDE and/or RENE GATO before, during and after
7 the offense and/or (3) by conspiring with SALLY VILLAVERDE and/or RENE GATO to
8 commit the offense of robbery and/or murder whereby each is vicariously liable for the
9 foreseeable acts of the other made in furtherance of the conspiracy.

10 DAVID ROGER
11 DISTRICT ATTORNEY
12 Nevada Bar #002781

13 BY


14 J. TIMOTHY FATTIG
15 Deputy District Attorney
16 Nevada Bar #006639
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26 DA#03F02357c/lg
27 LVMPD EV#0203060996;0208312148;
28 0008180061;009082352
VOL MANSLTR- F
(TK1)

ORIGINAL

7

JOC
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
200 South Third Street
Las Vegas, Nevada 89155-2212
(702) 455-4711
Attorney for Plaintiff

FILED

2005 MAR 29 P 2:28

DISTRICT COURT
CLARK COUNTY, NEVADA

Spiller, E. Spiller
CLERK

THE STATE OF NEVADA,

Plaintiff,

-vs-

ROBERT CASTRO, aka
Robert Ranch Castromontalvo,
#1161921

Defendant.

Case No: C191012C

Dept No: XVII

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime(s) of VOLUNTARY MANSLAUGHTER (Category B Felony), in violation of NRS 200.040, 200.050, 200.080; thereafter, on the 22nd day of March, 2005, the Defendant was present in court for sentencing with his counsel, STANLEY A. WALTON, ESQ., and good cause appearing.

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, COURT ORDERED: in addition to the \$25.00 Administrative Assessment Fee, the Defendant is SENTENCED to a MAXIMUM term of ONE HUNDRED TWENTY (120) MONTHS with

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MAR 29 2005

COUNTY CLERK

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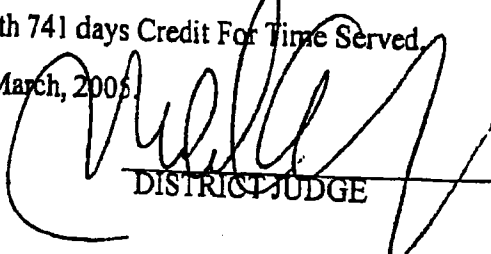
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MAR 29 2005

COUNTY CLERK

1 a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS in the Nevada
2 Department of Corrections (NDC) with 741 days Credit For Time Served

3 DATED this 28 day of March, 2005.

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5 
6 DISTRICT JUDGE
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Highlighted Portion (Disposition 2, 3) Document #3
DEPARTMENT 3

CASE SUMMARY

CASE NO. 03C191012-3

CALENDAR CALL Heard By: Michael Cherry

01/27/2005	Calendar Call (8:30 AM) CALENDAR CALL	
01/28/2005	☒ Writ WRIT OF HABEAS CORPUS AD TESTIFICANDUM	03C191012-30228.tif pages
01/31/2005	Jury Trial (1:30 PM) TRIAL BY JURY Court Clerk: Penny Wisner Reporter/Recorder: Janie Olsen Court Interpreter: JEFFREY HANKS Heard By: Cherry, Michael A	
01/31/2005	Jury Trial (1:30 PM) TRIAL BY JURY Court Clerk: Penny Wisner Reporter/Recorder: Janie Olsen Court Interpreter: JEFFREY HANKS Heard By: Michael Cherry	
01/31/2005	Conversion Case Event Type SENTENCING	03C191012-30227.tif pages
01/31/2005	☒ Expert Witness List NOTICE OF WITNESSES - RELATED PARTYID: 03C191012_0001	03C191012-30230.tif pages
01/31/2005	☒ Information AMENDED INFORMATION	03C191012-30231.tif pages
01/31/2005	☒ Memorandum GUILTY PLEA MEMORANDUM/AGREEMENT	03C191012-30232.tif pages
01/31/2005	☒ Information AMENDED INFORMATION	03C191012-30234.tif pages
01/31/2005	Disposition (Judicial Officer: User, Conversion) 2. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Charges Amended/Dropped PCN: Sequence:	
01/31/2005	Disposition (Judicial Officer: User, Conversion) 3. ROBBERY Charges Amended/Dropped PCN: Sequence:	
01/31/2005	Disposition (Judicial Officer: User, Conversion) 3. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Charges Amended/Dropped PCN: Sequence:	
02/01/2005	Jury Trial (10:00 AM) TRIAL BY JURY Court Clerk: Penny Wisner Reporter/Recorder: Janie Olsen Court Interpreter: Maria Peralta De Gomez Heard By: Cherry, Michael A	
02/02/2005	Jury Trial (10:30 AM) TRIAL BY JURY Court Clerk: Penny Wisner Reporter/Recorder: Janie Olsen Court Interpreter: ALEXANDRA ANDRADE Heard By: Cherry, Michael A	

Highlighted portion (TRANSCRIPTS) Document #2

03C191012-2

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

March 22, 2005

03C191012-2

The State of Nevada vs Sally Villaverde

March 22, 2005

8:30 AM

Sentencing

SENTENCING

Court Clerk: Penny
Wisner

Reporter/Recorder:
Janie Olsen Court

Interpreter: Anita

D'Angelo Heard By:
Michael Cherry

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Mitchell, Scott S.

Attorney

JOURNAL ENTRIES

- DEFT. CASTRO ADJUDGED GUILTY OF VOLUNTARY MANSLAUGHTER (F); Argument by the State; Statement by the Deft.; Argument by Mr. Walton. COURT ORDERED, in addition to the \$25 Administrative Assessment Fee, the Deft. is SENTENCED to a MAXIMUM term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS in the Nevada Department of Corrections (NDC) with 741 days Credit For Time Served.

PRINT DATE: 11/15/2017

Page 164 of 205

Minutes Date: April 08, 2003

EVIDENCE	LOCATION RECOVERED
----------	--------------------

EXHIBIT A

Item # 10 - Cotton tip swab containing apparent blood.

Linoleum of bathroom, associated to Item #23 footwear A, received from the hands of J. Matvay #1883.

Item # 11 - Cotton tip swab containing apparent blood.

Floor of bathroom between toilet and tub, received from the hands of J. Matvay #1883.

Item # 12 - Cotton tip swab containing apparent blood.

Front of sink counter, received from the hands of J. Matvay #1883.

Item # 13 - Cotton tip swab containing apparent blood.

Top of toilet lid, received from the hands of J. Matvay #1883.

Item # 14 - Cotton tip swab containing apparent blood.

Inside north side of bathtub, received from the hands of J. Matvay #1883.

Item # 15 - Cotton tip swab containing apparent blood.

Cold faucet in bathtub, received from the hands of J. Matvay #1883.

Item #16 - piece of cut white cloth bearing apparent blood.

"Jubilee" pillow on north end of bed.

Item #17 - Hairlike fiber/strand.

Bathroom sink, received from the hands of J. Matvay #1883.

Item #18 - Hairs.

Floor of the bathroom, received from the hands of J. Matvay #1883.

Package #4792/6

Item #19 - \$0.10 U.S. coin currency (one dime).

On floor north of bed in sleeping area, beneath the listed victim.

Package #4792/7

Item #20 - Black wallet bearing apparent blood containing miscellaneous cards to include a Visa gold card in the name of Enrique L. Caminero #4479 4817 0065 1371, (note a NV DL in the victim name was recovered from wallet and given to C.S.A D. Holstein for transport to the Corner's office).

Right rear pocket of the listed victim.

****Copies Attached****

Crime Scene Analyst Supervisor	<i>[Signature]</i>	P#	1883	Crime Scene Analyst II	Jenny Carr	P#	4792
--------------------------------	--------------------	----	------	------------------------	------------	----	------

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY REPORT OF EXAMINATION

NAME: CAMINERO, Enrique (Victim)

CASE: 02 0306-0996

AGENCY: LVMPD

DATE: May 24, 2002

INCIDENT: Homicide

BOOKED BY: D3861H

REQUESTED BY: Mikolainis - Homicide
Narcotics

I, DAVID F. WITKOWSKI, do hereby declare:

JUN 04 2002

That I am a Criminalist employed by the Las Vegas Metropolitan Police Department;

That on January 3, 2001, I first qualified in the Eight Judicial Court of Clark County, Nevada, as an expert witness, to testify regarding the identity of a controlled substance.

That I received evidence in the above case from the LVMPD Evidence Vault, I examined the evidence, and identified:

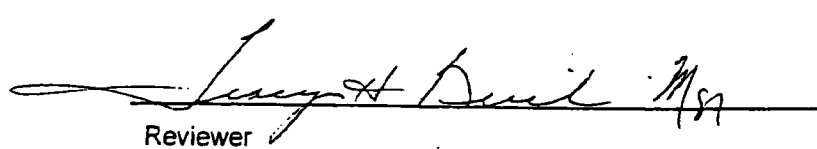
PACKAGE	SUBSTANCE	NET WEIGHT UNLESS NOTED
DW1 PKG 3861-10 ITEM 12	COCAINE	10.72g

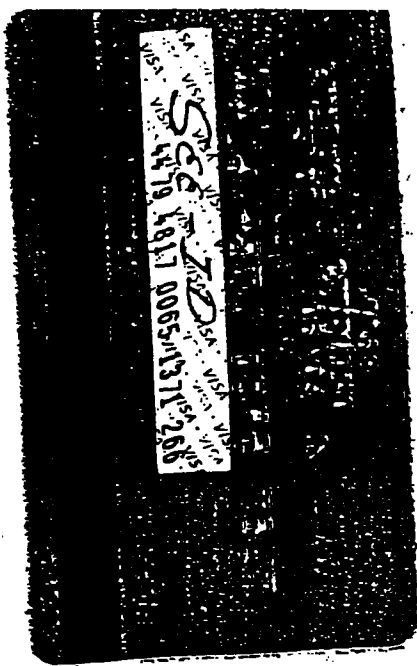
I transferred the evidence to the LVMPD Evidence Vault.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on:

May 29, 2002


DAVID F. WITKOWSKI, #5715
CRIMINALIST II
Reviewer



To enjoy all of the products and services of the Fresh Values Card, please use this card every time you shop. By using this card the holder agrees to all the terms of the Fresh Values Card program in effect from time to time.



Smith's Food & Drug Centers, Inc.
P.O. Box 30550 • Salt Lake City, Utah 84130

policy to rate all players wagering \$25 a hand or more.

For reservations and information please call toll free 1-800-456-4564.

This is your Stratosphere Players Card and it entitles you to special benefits and privileges. Insert this card into all 5¢ and higher slot, keno and video poker machines. Present this card to the dealer when playing table games (you must bet a minimum of \$10.00 per hand to be rated). By using this card, the cardholder agrees to the terms under which it was issued and by which it operates. Management reserves the right to change or cancel any portion, or all aspects of this program at any time. You must be 21 years of age or older.

For reservations and information call 1-800-WIN-7771. Complete rules and conditions may be obtained at the STRATOSPHERE PLAYERS CLUB.

© CPICA 27916

This One Club card must be used in compliance with the official rules of The One Club program. This card is the property of the company and must be returned upon request. Members must be 21 years of age. To receive accurate gaming ratings, please present your One Club card to a pit supervisor, or insert the card properly into designated slot machines. Inactivity (no rated play or comp dollars/points redeemed) for an 18 month period will result in forfeiture of your comp dollar and/or point balance. One Club comp dollars and points are awarded at the sole discretion of the company, which reserves the right to cancel or modify The One Club or its rules at any time.

For information or reservations, please call:
Mandalay Bay: 1-877-632-7500
Luxor: 1-800-956-0289
Excalibur: 1-800-677-4837

Circus Circus: 1-877-224-0287
Colorado Belle: 1-800-477-4837
Edgewater: 1-877-224-7287
Monte Carlo: 1-888-529-4828



Authorized user of this card sign above.

For customer service, call the BLOCKBUSTER Rewards Member Service Center toll-free at 1-800-406-6843. Good only at participating BLOCKBUSTER stores. Blockbuster is a registered trademark of Blockbuster Inc. © 1999 Blockbuster Inc. All rights reserved.

www.blockbuster.com

KOCKA & BOLTON, P.C.
ATTORNEYS AT LAW

248-3430
Frank Kocka, Esq.

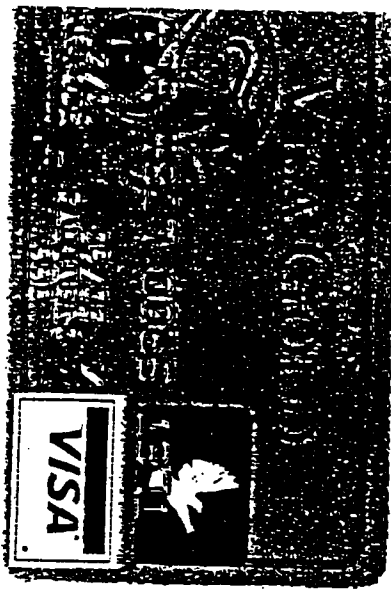
600 South 8th Street
Las Vegas, NV 89101

Cell 498-3
Tel: (702) 383-87
Fax: (702) 383-6

383-8700

020306-0996
03.06.02
J472C

BACK



020306-0996
03-06-02
J4792C

FRONT

KOCKA & BOLTON, P.C.
ATTORNEYS AT LAW

208-34136
Frank Kocka, Esq.

600 South 8th Street
Las Vegas, NV 89101

208-448-
Tel: (702) 383
Fax: (702) 383
383-870

CRIMINAL COURT MINUTES

03-C-191012-C STATE OF NEVADA vs Villaverde, Sally

04/08/03 09:00 AM 00 INITIAL ARRAIGNMENT

HEARD BY: Michael A Cherry, Judge; Dept. 17

OFFICERS: Penny Wisner, Court Clerk
 Janie Olsen, Reporter/Recorder
 ## CODE NOT ON FILE ##, Court Interpreter

PARTIES:	STATE OF NEVADA	Y
004963	Daskas, Robert J.	Y
0001 D1	Gato, Rene	Y
000824	Schieck, David M.	Y
0002 D	Villaverde, Sally	Y
004784	Walton, Stanley A.	Y
0003 D	Castro, Robert	Y
005825	Wildeveld, Kristina M.	Y

See MINUTES for Defendant 001: Gato, Rene

06/05/03 09:00 AM 00 ALL PENDING MOTIONS 6-05-03

HEARD BY: Michael A Cherry, Judge; Dept. 17

OFFICERS: Penny Wisner, Court Clerk
 Dick Kangas, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
005398	Lalli, Christopher J.	Y
0002 D	Villaverde, Sally	Y
005825	Wildeveld, Kristina M.	Y
0003 D	Castro, Robert	Y
004784	Walton, Stanley A.	Y

PETITION FOR WRIT OF HABEAS CORPUS (CASTRO)...DEFT'S PRO PER MOTION TO
 DISMISS COUNSEL/APPOINT COUNSEL (VILLAVERDE)

* COURT ORDERED, Villaverde's motion to dismiss counsel is DENIED.

Mr. Walton presented argument on the writ of habeas corpus stating the key issue was whether or not Teresa Gamboa was an accomplice in this case and went over Ms. Gamboa's participation in the incident. Mr. Walton concluded the State had chosen not to charge Ms. Gamboa because they wanted to use her as a witness to prosecute this case. Mr. Lalli objected to some of Mr. Walton's representations as they were not contained in the preliminary hearing transcript. Further argument by Mr. Walton. Mr. Lalli responded

CONTINUED ON PAGE: 002

CRIMINAL COURT MINUTES

03-C-191012-C STATE OF NEVADA vs Villaverde, Sally
CONTINUED FROM PAGE: 003

08/19/03 09:00 AM 00 DEFT'S PRO PER MTN TO DISMISS COUNSEL &
APPOINTMENT OF ALTERNATE COUNSEL/08

HEARD BY: Michael A Cherry, Judge; Dept. 17

OFFICERS: Penny Wisner, Court Clerk
Janie Olsen, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004963	Daskas, Robert J.	Y
0002 D	Villaverde, Sally	Y
005825	Wildeveld, Kristina M.	Y

* COURT ORDERED, motion DENIED. Court informed the Deft. his present counsel was a very able and competent attorney and he was fortunate to have her as his attorney.

CUSTODY

10/21/03 09:00 AM 00 ALL PENDING MOTIONS 10-21-03

HEARD BY: Michael A Cherry, Judge; Dept. 17

OFFICERS: Penny Wisner, Court Clerk
Janie Olsen, Reporter/Recorder
CODE NOT ON FILE ##, Court Interpreter

PARTIES:	STATE OF NEVADA	Y
006639	Fattig, John T	Y
000346	Mitchell, Scott S.	Y
0001 D1	Gato, Rene	Y
000824	Schieck, David M.	Y
0002 D	Villaverde, Sally	Y
005825	Wildeveld, Kristina M.	Y
0003 D	Castro, Robert	Y
004784	Walton, Stanley A.	Y

See MINUTES for Defendant 001: Gato, Rene

CRIMINAL COURT MINUTES

03-C-191012-C STATE OF NEVADA

vs Villaverde, Sally

CONTINUED FROM PAGE: 004

12/04/03 09:00 AM 00 KOHN'S MTN TO WITHDRAW AS COUNSEL /22

HEARD BY: Michael A Cherry, Judge; Dept. 17

OFFICERS: April Watkins, Relief Clerk
Janie Olsen, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
005984	Hart, Marty	Y
0002 D	Villaverde, Sally	Y
005825	Wildeveld, Kristina M.	Y

* Statement by counsel. COURT ORDERED, motion GRANTED and Randall Pike, Esq.
APPOINTED. FURTHER ORDERED, matter set for confirmation of counsel.

CUSTODY

12/11/03 9:00 AM CONFIRMATION OF COUNSEL (PIKE)

CLERK'S NOTE: Mr. Pike appeared and was advised of the next court date. aw

12/11/03 09:00 AM 00 CONFIRMATION OF COUNSEL (PIKE)

HEARD BY: Michael A Cherry, Judge; Dept. 17

OFFICERS: Penny Wisner, Court Clerk
Janie Olsen, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
006056	Bauer, Elizabeth B.	Y
0002 D	Villaverde, Sally	Y
001940	Pike, Randall H.	Y

Mr. Pike CONFIRMED AS COUNSEL for the Deft. and stated he was aware of all
future dates.

CONTINUED ON PAGE: 006

SALLY D. VILLABERDE #81701
SDCC PO BOX 208
INDIAN SPRINGS, NV 89070



81500611601
UNIVERSITY MICROFILMS

TO: CLERK OF THE COURT

200 LEWIS AVE, 3RD FLOOR
LAS VEGAS, NV 89155-1160

1 SALLY D. VILLAVARDE #81701
2 Defendant / In Propria Personam
3 SDDC, Post Office Box-208
4 Indian Springs, Nevada-89070-0208.

FILED
OCT 04 2021

[Signature]
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA ,)
8 Plaintiff,)
9 Vs.)
10 SALLY D. VILLAVARDE ,)
11 Defendant.)

Case No. **A-18-780041-W**
Dept.No. **Dept. 10**
Docket N

MOTION TO APPOINT COUNSEL
Date Of Hearing: _____
Time Of Hearing: _____

17 COMES NOW the Defendant SALLY D. VILLAVARDE in proper person and
18 hereby moves this Honorable Court for an ORDER granting him Counsel in the herein
19 proceeding action.

20 This Motion is made and based upon all papers and pleadings on File herein
21 and attached Points and Authorities.

23 Dated: This 02 Day Of September, 2021.

Respectfully Submitted,

26 BY: Sally D. Villavarde #81701
27 SALLY D. VILLAVARDE #81701
28 Defendant, In Forma Pauperis:

POINTS AND AUTHORITIES

NRS.34.750 Appointment of Counsel for indigents;pleading supplemental to
petition;response to dismiss:

"If the Court is satisfied that the allegation of indigency is True and the
petition is Not dismissed summarily,the Court may appoint counsel to represent
the-"petitioner/defendant."

NRS.171.188 Procedure for appointment of attorney for indigent defendant:

"Any defendant charged with a public offense who is an indigent may, by oral
statement to the District Judge,justice of the peace,municipal judge or master,
request the appointment of an attorney to represent him."

NRS 178.397 Assignment of counsel;

"Every defendant accused of a gross misdemeanor or felony who is financially
unable to obtain counsel is entitled to have counsel assigned to represent him at
every stage of the proceedings from his initial appearance before a magistrate or
the court through appeal,unless he waives such appointment."

WHEREFORE ,petitioner/defendant,prays this Honorable Court will grant his
motion for the appointment of counsel to allow him the assistance that is needed
to insure that justice is served.

Dated:This 02 Day Of September ,2021 .

Respectfully Submitted,

BY: Sally D. Villaverde #81701
SALLY D. VILLAYERDE # 81701
Defendant, In Forma Pauperis:

////

////

////

ADDITIONAL FACTS OF THE CASE:

1 Defendant Villaverde further inform this honorable court should take in Consi-
2 deration that defendant's first language is SPANISH, as an unlearned foreign
3 Litigant the language Barrier and familiarity with Legal Procedures Could be an
4 issue by trying to Litigate this murder Case on his own.

5 (2)- THE record show that in the Past he was represented by different Counsels inclu-
6 ding Direct Appeal, Post-Conviction, etc.

7 (3)- This Case allege Complex issues which involved Constitutional violations occurred
8 during trial, Post-trial/Sentencing.

9 (4) If this Court grant evidentiary hearing, a Competent attorney will Provide a
10 better meaningful Litigation of the Petition. See MORGAN V. STATE at Case NO. 76887-
11 Court of Appeals of the state of Nevada (September 10, 2019).

12 THE NEVADA SUPREME COURT has stressed "that the decision whether to appoint Counsel
13 under NRS 34.750(1) is not necessarily dependent upon whether a Prose Petito-
14 ner has raised claims that clearly have merit or would warrant an evidentiary
15 hearing "Renteria-Norrea V. STATE 833 Nev 75, 77, 391 P3d 760, 762 (2017).

AFFIDAVIT OF: SALLY D. VILLAVERDE #81701

STATE OF NEVADA)
COUNTY OF CLARK)

ss:

TO WHOM IT MAY CONCERN:

I, SALLY D. Villaverde the undersigned, do hereby swear that all statements, facts and events within my foregoing Affidavit are true and correct of my own knowledge, information and belief, and as to those, I believe them to be True and Correct. Signed under the penalty of perjury, pursuant to, NRS. 29.010; 53.045; 208.165, and state the following:

THAT defendant is an unlearned foreign litigant, incapable to represent himself if this Court grant evidentiary hearing. that english is his second language, that Legal Terms and Appellate Procedures will be difficult to understand / or Comprehend. that this case is a murder case which involved complex issues litigated during defendant's trial and Post-trial. Where only an Attorney will be able to argue and litigate better. that an attorney will provide a better assistance and chance to prevail on defendant Constitutional issues and that defendant has been previously represented during the different Phases of his case which included Trial, Direct appeal, State Post-Conviction and federal Habeas Corpus Post-Conviction,

FURTHER YOUR AFFIANT SAYETH NAUGHT.

EXECUTED At: Indian Springs, Nevada, this 02 Day of September

2021.

BY: Sally D. Villaverde #81701

SALLY D. VILLAVERDE # 81701
Post Office Box-203 (SDCC)
Indian Springs, Nevada 89070.
Affiant, In Propria Personam:

CERTIFICATE OF SERVICE BY MAILING

I, SALLY D. VILLAVARDE, hereby certify, pursuant to NRCP 5(b), that on this 02
day of September, 2021, I mailed a true and correct copy of the foregoing, "MOTION FOR
APPOINTMENT OF COUNSEL."
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

CLARK County District Attorney Office
200 Lewis Ave
LAS VEGAS, NV 89155

CC:FILE

DATED: this 02 day of September, 2021.

Sally D. Villaverde #01701
SALLY D. VILLAVARDE #01701
defendant /In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

MOTION FOR APPOINTMENT OF COUNSEL
(Title of Document)

filed in District Court Case number 0321910128

☒ 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.

Sally D. Villaverde #81701
Signature

9/02/2021
Date

SALLY D. VILLAVARDE #81701
Print Name

Defendant.
Title

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
280 - 283
WILL FOLLOW VIA
U.S. MAIL**

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
284 - 286
WILL FOLLOW VIA
U.S. MAIL**

Heather L. Smith
CLERK OF THE COURT

PPOW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Sally D Villaverde,

Petitioner,

vs.

Brian Williams Warden,

Respondent,

Case No: A-18-780041-W
Department 10

**ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS**

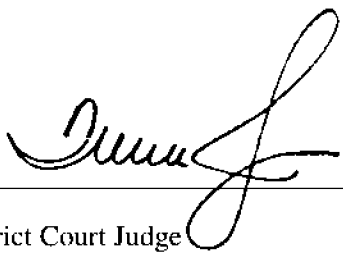
Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on October 04, 2021. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's Calendar on the 6th day of December, 2021, at the hour of

8:30 a.m. o'clock for further proceedings.

Dated this 5th day of October, 2021


District Court Judge

**03B 748 94B7 F123
Tierra Jones
District Court Judge**

1 **CSERV**

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

5
6 Sally Villaverde, Plaintiff(s)

CASE NO: A-18-780041-W

7 vs.

DEPT. NO. Department 10

8 Brian Williams Warden,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 Electronic service was attempted through the Eighth Judicial District Court's
13 electronic filing system, but there were no registered users on the case.

14 If indicated below, a copy of the above mentioned filings were also served by mail
15 via United States Postal Service, postage prepaid, to the parties listed below at their last
16 known addresses on 10/6/2021

17 Sally Villaverde

HDSP PO Box 650
Indian Springs, NV, 89070

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
10/6/2021 9:56 AM
Steven D. Grierson
CLERK OF THE COURT



Sally Villaverde, Plaintiff(s)
vs.

Brian Williams Warden, Defendant(s)

Case No.: A-18-780041-W

Department 10

NOTICE OF HEARING

Please be advised that the Plaintiffs Motion for Appointment of Counsel in the above-entitled matter is set for hearing as follows:

Date: December 06, 2021

Time: 8:30 AM

Location: RJC Courtroom 14B
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

11/12/2021

Heather S. Smith

CLERK OF THE COURT

1 SALLY D. VILLAVERDE # 81701

2 Southern Desert Correctional Center

3 Post Office Box 208

4 Indian Springs, Nevada 89070

5
6 IN THE EIGHT JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA7 IN AND FOR THE COUNTY OF CLARK8 SALLY D. VILLAVERDE,

9 Petitioner,

10 Vs.

11 WILLIAM HUTCHING (WARDEN)

12 Respondent(s).

Case No. # A-18-780041-WDept. No. # 10

Docket No. # _____

13
14
15
16 MOTION FOR TRANSCRIPTS AT STATE EXPENSE

17 Date of Hearing: _____

18 Time of Hearing: _____

19 "ORAL ARGUMENT REQUESTED: Yes ___ No ✓"20
21 COMES NOW, Petitioner SALLY D. VILLAVERDE, proceeding in proper
22 person, and hereby moves this Honorable Court for an Order for the production of all
23 transcripts, papers, and pleadings, also any other document in regards to the above-
24 entitled action.25 This Motion is made and based upon all papers and pleadings on file with the
26 Clerk of the Court, which are hereby incorporated by this reference, the Memorandum
27 of Points and Authorities herein, and attached Affidavit of Petitioner.
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Only with proper review of those transcribed material(s) and documents will petitioner be able to adequately prepare a post-conviction petition or a direct appeal that would allege all issues, and the grounds for relief that he is seeking. Moreover, Petitioner would be prejudiced absent the Court's granting of this motion. See: Peterson v. Warden, 87 Nev. 134, 483 P.2d 204 (1971), holds that:

"... does not contemplate that a record will be furnished at state expense upon mere unsupported request of a petitioner who is unable to pay for them ... so he must satisfy the points raise that have merit and such merit will be supported by the record ..."

WHEREFORE, Petitioner, SALLY D. VILLAVARDE, prays that this Honorable Court enter an Order directing the reporter to prepare the foregoing requested ... transcripts', also refer to the case of: George v. State, 122 Nev. 1, 127 P.3d 1055 (2006), (defendant was entitled to transcripts and trial evidence to prosecute direct appeal). Also see: **NRS 177.325; 177.335; and 177.345.**

DATED this 13 day of October, 2021

Sally D. Villaverde # 81701
SALLY D. Villaverde # 81701
Affiant, In Forma Pauperis

CC: File

CASE NO. A-18-780041-W

DEPT. NO. 10

SALLY D. VILLAVARDE

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
REQUEST FOR TRANSCRIPTS AT
STATE EXPENSE

The Petitioner respectfully request that this Court order the production of the transcripts, papers, pleadings, and any other documents with regard to the above-entitled case. That these documents are to be furnished to the petitioner at State Expense, due to his proverty.

That only with proper review of those documents of the above-entitled case will the petitioner be able to adequately prepare a post-conviction petition, or a discrec appeal, that would allege all issues and grounds for relief that he is seeking. PETERSON vs. WARDEN, 87 Nev. 134, 483 P.2d 204 (1971), holds that:

" . . . does not contemplate that a record will be furnished at State Expense upon mere unsupported request of a petitioner who is unable to pay for them. . . . must he satisfy the

1 points raise merit and such merit
2 will be supported by review of the
record. . . "

3 Moreover, the petitioner would be prejudiced absent the Court's
4 granting of the within motion. Petitioner would not have means
5 necessary to file a proper person petition for writ of habeas
6 corpus, post-conviction or direct appeal to the Nevada Supreme
7 Court, that would allow the petitioner to allege all available
8 issues.

9 WHEREFORE, Petitioner, SALLY D. VILLAVERRA prays that this Court
10 enter an order directing the reporter to prepare the foregoing
11 requested transcripts.

12 DATED this 13 day of October, 2021.

13 Sally D. Villaverde #81701
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ADDITIONAL FACTS OF THE CASE:

1 Comes Now, Petitioner herein named Sally D. Villaverde Acting Pro.se
2 and move this honorable Court to Grant the Motion For Transcripts
3 at state EXPENSE based in the following:

4 1-) That Petitioner had recently filed a Petition for writ of habeas Corpus
5 (Post Conviction) on October 04, 2021. with this Court at Case NO. A-18-78
6 0041-W. Where this Petition allege facts that happened after Petitioner's
7 convictions and sentences, which, included his Co-defendant Roberto
8 CASTRO's statements provided on record during Plea Colloquy, at Plea-
9 arrangement hearing held on January 31, 2005 and Sentencing hearing held
10 on March 22, 2005.

11 2-) That Petitioner is acting Pro.se in this litigation and do not have the means as
12 an Attorney would to obtain this transcripts personally. Specifically, Petitioner is
13 currently incarcerated at Southern desert Correctional Center (SDCC). therefore, he cannot
14 personally go to the Court house and purchase this transcripts from the Clerk.

15 3-) That previously, he has attempted to pay in full for this transcripts, but the Clerk of
16 the Court sent only the Court minutes, explaining the following:

17 "Your request was for 1. Transcript of hearing 01/31/2005. 2. transcript of hearing
18 03/22/05 and 3. Disposition. the transcript for both hearings was not filed into the case
19 and is not available from records. You need to contact the judicial department
20 directly to place an order for any transcripts of the hearings." See Exh. A attach.

21 4-) As previously mentioned above, The statement /or Confession of the crime
22 of Voluntary Manslaughter made by Petitioner's Codefendant Roberto Castro is essen-
23 tial and material information to support Petitioner's Claims at his habeas Corpus
24 filed with this Court on the date above mentioned.

25 therefore, Petitioner pray that this Court Grant this motion, for the Purpose of fair
26 Litigation as Justice, so required.

27 Respectfully Submitted

Sally D. Villaverde #81701

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AFFIDAVIT OF: SALLY D. VILLAVERDE # 81701

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

TO WHOM IT MAY CONCERN:

I, SALLY D. VILLAVERDE the undersigned, do hereby swear that all statements, facts and events within my foregoing Affidavit are true and correct of my own knowledge, information and belief, and as to those, I believe them to be True and Correct. Signed under the penalty of perjury, pursuant to, NRS. 29.010; 53.045; 208.165, and state the following:

That petitioner above is acting Pro se which is to say he is representing him self. that transcripts will only be use for the purpose of litigation on Case NO. A-18-7800 41-W; that access to diligently obtain this documentation personally, is barred by the single fact that affiant is currently incarcerated at SDCC, that affiant have attempted to obtain this transcripts in the past. but, the clerk of the court has implied that transcripts are not available from the record. to contact the judicial department directly.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

EXECUTED At: Indian Springs, Nevada, this 13 Day OF October, 2021.

20

BY: Sally d. Villaverde # 81701
SALLY D. VILLAVERDE # 81701
Post Office Box-208 (SDCC)
Indian Springs, Nevada. 89070. /
Affiant, In Propria Personam:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION to

Obtain transcripts at STATE EXPENSES.

(Title of Document)

filed in District Court Case number _____

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

-OR-

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

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

(State specific law)

-or-

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

Sally D. Villaverde #81701
Signature

10/13/2021

Date

SALLY D. VILLVERDE #81701
Print Name

Petitioner.
Title

CERTIFICATE OF SERVICE BY MAILING

I, SALLY D. VILLAUVERDE, hereby certify, pursuant to NRCP 5(b), that on this 13
day of October, 2021, I mailed a true and correct copy of the foregoing, "Motion for trans-
cripts to State expenses."
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

Clark County District Attorney Office
200 Lewis Ave
LAS Vegas, NV 89155

CC:FILE

DATED: this 13 day of October, 2021.

Sally D. Villaverde #81701
SALLY D. VILLAUVERDE # 81701

/In Propria Personam

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

CLARK COUNTY COURTS
EIGHTH JUDICIAL DISTRICT COURT
LAS VEGAS TOWNSHIP JUSTICE COURT

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FLOOR
LAS VEGAS, NEVADA 89101

Steven D. Grierson
Clerk of the Court

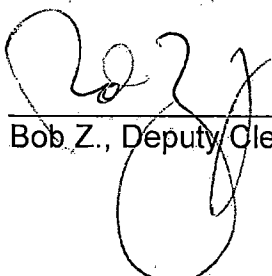
May 4, 2018

Sally D. Villaverde, ID# 0081701
HDSP
P.O.Box 650
Indian Springs, NV 89070

Dear Sir or Madam:

Your copy request cannot be completed for the following reason(s):

- ☐ Case file is not available at this time.
- ☐ Incorrect case number was provided.
- ☐ Copy requests must be paid for in advance. See attached price list.
- ☐ Document(s) requested are not available.
- ☐ Request is not legible.
- ☐ Insufficient information was provided.
- ☒ Other: Your request was for 1. Transcript of hearing 01/31/05, 2. Transcript of hearing 03/22/05 and 3. Disposition. The transcript for both hearings was not filed into the case and is not available from Records. You need to contact the Judicial department directly to place an order for any transcripts of the hearings. The disposition was provided to you as the Information, GPA and JOC. The charge was \$8.00. Since you now say you do not want the disposition, we will refund your money as a one time courtesy.



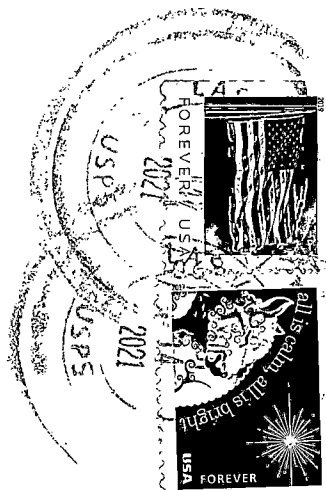
Bob Z., Deputy Clerk

SALLY D. VILLARDE #81701
SDCC PO BOX 208
Indian Springs, NV 89070

LEGAL MAIL
Confidential

Southern Desert
Correctional Center
OCT 14 2021
OUTGOING MAIL

TO: CLERK OF EIGHT JUDICIAL DISTRICT COURT
200 Lewis Ave, 3rd Floor
Las Vegas, NV 89155



1 IN THE EIGHT JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

2 IN AND FOR THE COUNTY OF CLARK

3 SALLY D. VILLAYERDE,)

4)
5 Petitioner,)

Case No. # A-18-780041-W

6 Vs.)

Dept. No. # 10

7 WILLIAM HUTCHING (Warden),)

Docket No. # _____

8)
9 Respondent(s).)
10 _____)

11 ORDER

12 Upon reading the motion of Petitioner, SALLY D. VILLAYERDE, requesting
13 transcripts at state expense, and having determined that the Movant has demonstrated
14 good cause pursuant to Peterson v. Warden, 87 Nev. 134, 483 P.2d 204 (1971);

15 IT IS HEREBY ORDERED that the Petitioner's motion for transcripts at state
16 expense is granted.

17
18 IT IS HEREBY FURTHER ORDERED, that the records be transcribed in the
19 case of ROBERTO CASTRO, Case No. # 03C191012-3, for the rates of
20 _____

21
22 IT IS HEREBY FURTHER ORDERED, the Clerk of the Court is to prepare all of
23 the transcripts, pleadings, papers, and any other documents in regard to the above-
24 entitled action, and forward said papers to Petitioner.

25 DATED This _____ day of _____, 20 _____

26 CC: File
27

28 _____
DISTRICT JUDGE

1 IN THE EIGHTH JUDICIAL DISTRICT AND FOR THE COUNTY
2 OF CLARK
3
4

5 SALLY D. VILLAYERDE)

6 Plaintiff,)

7 -vs-)

8 WILLIAM HUTCHING (WARDEN))

9 Respondent)
10

Case No. A-18-780041-W

Dept. No. 10

Calendared: _____

File: _____

11 ORDER TO TRANSCRIBE RECORDS

12 IT IS HEREBY ORDERED, that the Clerk OR Court Recorder
13 transcribe the records on ROBERTO CASTRO, Case No.
14 03C19102-3, for the dates of 01/31/05 and 03/22/05.

15 DATED this ___ day of _____, 2020
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18 BY: _____
19 DISTRICT COURT JUDGE
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Heather S. Smith
CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT AND FOR THE COUNTY
OF CLARK

SALLY D. VILLAVARDE

Plaintiff,

-vs-

WILLIAM HUTCHINGS (WARDEN)

Respondent

Case No. A-18-780041-W

Dept. No. 10 21

Calendared: _____

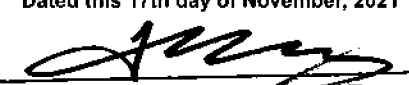
File: _____

ORDER TO TRANSCRIBE RECORDS

IT IS HEREBY ORDERED, that the Clerk OR Court Recorder
transcribe the records on ROBERTO CASTRO, Case No.
03C19102-3, for the dates of 01/31/05 and 03/22/05.

DATED this ___ day of _____, 2020

Dated this 17th day of November, 2021

BY: 

DISTRICT COURT JUDGE

989 F5C D283 F17A
Tara Clark Newberry
District Court Judge

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1 **CSERV**

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

5
6 Sally Villaverde, Plaintiff(s)

CASE NO: A-18-780041-W

7 vs.

DEPT. NO. Department 10

8 Brian Williams Warden,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 Electronic service was attempted through the Eighth Judicial District Court's
13 electronic filing system, but there were no registered users on the case.

14 If indicated below, a copy of the above mentioned filings were also served by mail
15 via United States Postal Service, postage prepaid, to the parties listed below at their last
16 known addresses on 11/18/2021

17 Sally Villaverde

#81701
HDSP PO Box 650
Indian Springs, NV, 89070



RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #05734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

SALLY VILLAVERDE,
#1433466

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondents

CASE NO: A-18-780041-W
03C191012-2

DEPT NO: X

**STATE'S RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION) AND MOTION TO APPOINT COUNSEL**

DATE OF HEARING: DECEMBER 6, 2021
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Petitioner's Petition for Writ Of Habeas Corpus (Post-Conviction) and Motion to Appoint Counsel.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On March 23, 2003, Sally Villaverde ("Petitioner") and Co-Defendants Rene Gato and
4 Robert Castro were charged by way of Amended Criminal Complaint with Burglary (Felony
5 - NRS 205.060), Murder With Use of a Deadly Weapon (Open Murder) (Felony - NRS
6 200.010, 200.030, 193.165) and Robbery With Use of a Deadly Weapon (Felony - NRS
7 200.380, 193.165). On March 21, 2003, a preliminary hearing was held, after which the district
8 court held all three (3) defendants to answer to the charges in district court.

9 On March 25, 2003, Petitioner and the Co-Defendants were charged by way of
10 Information with Burglary (Felony - NRS 205.060), Murder With Use of a Deadly Weapon
11 (Open Murder) (Felony - NRS 200.010, 200.030, 193.165), and Robbery With Use of a Deadly
12 Weapon (Felony - NRS 200.380, 193.165). An Amended Information, charging only
13 Petitioner, was filed on March 29, 2004, following the district court's granting of Petitioner's
14 Motion to Sever Trials filed on January 27, 2004.

15 On March 31, 2004, a jury trial commenced. On April 8, 2004, the jury found Petitioner
16 guilty on all counts, including First Degree Murder With Use of a Deadly Weapon.

17 On June 3, 2004, the District Court sentenced Petitioner as follows: Count 1 - to a
18 maximum of ninety-six (96) months with a minimum of twenty-two (22) months in the Nevada
19 Department of Corrections ("NDC"); Count 2 - to a term of Life imprisonment without the
20 possibility of parole in the NDC, plus an equal and consecutive term for the Use of a Deadly
21 Weapon; Count 3 - to a maximum on one hundred fifty-six (156) months and a minimum of
22 thirty-five (35) months in the NDC, plus an equal and consecutive term for the Use of a Deadly
23 Weapon, Count 3 consecutive to Count 2. Credit for time served does not appear to have been
24 awarded according to the Court Minutes. On June 10, 2004, the District Court fielded The
25 Judgment of Conviction.

26 On June 10, 2004, Petitioner filed a direct appeal. On February 15, 2006, The Nevada
27 Supreme Court affirmed Petitioner's convictions. On March 14, 2006, the Nevada Supreme
28 Court issued Remittitur.

1 On April 3, 2006, Petitioner filed his first Petition for Writ of Habeas Corpus (Post-
2 Conviction) ("First Petition"). On April 20, 2006, Petitioner filed a Motion to Withdraw his
3 Petition Without Prejudice. On April 25, 2006, the State filed its Response. On May 3, 2006,
4 Petitioner filed a Reply. On May 31, 2006, Petitioner filed a Supplemental Petition for Writ of
5 Habeas Corpus, Memorandum of Points and Authorities in Support of the Petition, and
6 Appendix of Exhibits.

7 On April 12, 2007, the District Court appointed counsel. On August 27, 2007, appointed
8 counsel filed a Supplement to Petitioner's Petition for Writ of Habeas Corpus. On November
9 6, 2007, the State filed its Response to the Supplemental Petition. On January 10, 2008, the
10 District Court held an evidentiary hearing on Petitioner's ineffective assistance of counsel
11 claims. Following the evidentiary hearing, the Court denied the petition on the merits. On
12 February 26, 2008, the District Court filed The Findings of Facts, Conclusions of Law, and
13 Order.

14 On January 28, 2008, Petitioner filed a Notice of Appeal. On May 10, 2010, The Nevada
15 Supreme Court affirmed the District Court's denial of Petitioner's Petition. On June 4, 2010,
16 Nevada Supreme court issued Remittitur.

17 On August 28, 2018, Petitioner filed a second Petition for Writ of Habeas Corpus (Post-
18 Conviction) ("Second Petition") and Motion for Appointment of Counsel. On October 29,
19 2018, The State filed its Response. On November 1, 2018, the District Court held a hearing
20 and denied the Petition and the Motion. On December 5, 2018, the District Court filed its
21 Findings of Fact, Conclusions of Law, and Order was filed.

22 On November 26, 2018, Petitioner filed a Notice of Appeal. On October 30, 2019, the
23 Nevada Court of Appeals entered an Order of Affirmance. On November 20, 2019, Petitioner
24 submitted a Petition for Rehearing. On January 22, 2020, the Nevada Court of Appeals granted
25 rehearing and affirmed the district court's judgment. On May 18, 2020, the Court issued
26 Remittitur.

27 On March 26, 2019, Petitioner filed a Motion for Modification of Sentence. The State
28 filed an Opposition on April 17, 2019. On April 23, 2019, the district court denied the motion.

1 On May 7, 2019, The Order Denying Petitioner's Motion for Modification of Sentence was
2 filed. On May 1, 2019, Petitioner filed a Notice of Appeal. On March 12, 2020, the Nevada
3 Court of Appeals affirmed the judgment of the district court. On June 1, 2020, the Court issued
4 Remittitur. On June 14, 2021, the District Court filed an Amended Judgment of Conviction,
5 granting Petitioner four hundred sixty-nine (469) days credit for time served.

6 On October 4, 2021, Petitioner filed his third Petition for Writ of Habeas Corpus (Post-
7 Conviction) ("Third Petition") and a Motion to Appoint Counsel ("Motion"). The State's
8 Response now follows.

9 **STATEMENT OF FACTS**

10 In 1998, Leonel Garcia ("Garcia") met the Petitioner and Enrique Caminero
11 ("Caminero"). Mr. Garcia indicated that he was good friends with Caminero. Garcia knew that
12 Caminero was a very successful drug dealer.

13 In February of 2002, just weeks before the murder of Caminero, Rene Gato ("Gato"),
14 Roberto Castro ("Castro"), and Francisco Terrazon (Fanciquito) approached Garcia requesting
15 his assistance in kidnapping Caminero. They asked Garcia to assist in setting up a meeting
16 with Caminero in a hotel room. Once Caminero arrived at the hotel, the plan was to kidnap
17 him, tie him up and torture him until he revealed where his money was and who supplied him
18 with the drugs he sold.

19 Garcia was to approach Caminero because he knew Caminero trusted him. However,
20 Garcia warned Caminero. Garcia then contacted Caminero's mother and the police after
21 hearing of Caminero's death.

22 Teresa Gamboa ("Gamboa") was the Petitioner's girlfriend. She testified at a
23 preliminary hearing regarding her involvement in the death of Caminero. Gamboa testified
24 that she was living with the Petitioner in March of 2002. She was also acquainted with Gato,
25 Castro. Petitioner asked Gamboa to rent a room for him on March 5, 2002, using a false ID.
26 In return, she and Petitioner were to receive money.

27 On March 5, 2002, using Gato's car, they drove to the Capri Motel. While traveling,
28 Gato asked the Petitioner how much Gamboa knew. Petitioner replied that she knew some

1 things but not everything. Gamboa testified that Gato had a large chrome gun. Upon arrival,
2 Gamboa rented a room in the back, as instructed, and returned to Gato's car. Then Gamboa,
3 Petitioner, and his two Co-Defendants entered the room. Gamboa stayed for about five
4 minutes, and they returned her home around 5:30 PM.

5 After, Petitioner took a taser gun, and all three left Gamboa. Petitioner returned home
6 around 10:30 PM. Gamboa described Petitioner as being "freaked out" and pacing the room.
7 She also noticed that Petitioner had blood on his pants and shirt. Petitioner was saying, "he's
8 dead," "No, no, I gave him mouth-to-mouth resuscitation," and "He was still – he was still
9 breathing."

10 On March 6, 2002, Petitioner and Gamboa drove to California and stayed at a Motel 6,
11 along with Gato and Castro. At the motel, Gamboa overheard Petitioner admit to using a belt
12 to strangle the victim, as well as using the taser gun.

13 Moreover, law enforcement recovered a palm print at the crime scene during the
14 investigation, preserved in diluted blood. The palm print was recovered near the area where
15 Caminero's body was found. The palm print matched with Petitioner. Two other fingerprints
16 from the bathroom also matched with Petitioner.

17 On February 18, 2003, a warrant was issued for Petitioner's arrest. Las Vegas
18 Metropolitan Police Department officers arrested Petitioner shortly after at Alfredo Martinez's
19 place of residence. While in custody and after being Mirandized, Petitioner admitted being in
20 the hotel room when Caminero arrived there. Once Caminero arrived, a struggle ensued. They
21 tried to gag Caminero and bind his legs and hands. However, Gato ended up shooting
22 Caminero. Castro then strangled Caminero causing a gurgling sound.

23 Gato then instructed Petitioner and Castro to clean the room for fingerprints. Petitioner
24 tried wiping down most of the room. Also, Petitioner took Caminero's SUV and other
25 belongings. Gamboa noticed Petitioner had 400 dollars in cash as well as several small gold
26 chains or bracelets. Gamboa indicated that Petitioner took the jewelry to a Super Pawn.

27 Also, Degna Ortega ("Ortega"), Caminero's mother, testified that Caminero always
28 wore or had on his person the pawned jewelry. Abdirazaq Mohamed, a manager at a pawn

1 store, testified that Petitioner pawned several items of jewelry, described as gold chains,
2 shortly after the murder.

3 ARGUMENT

4 **I. THE INSTANT PETITION IS PROCEDURALLY BARRED**

5
6 Petitioner's Third Petition is procedurally barred for various reasons, as argued *infra*.
7 The Nevada Supreme Court has held that the district court has a *duty* to consider whether a
8 defendant's post-conviction petition claims are procedurally barred. State v. Eighth Judicial
9 Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found
10 that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions
11 is mandatory," noting:

12
13 Habeas corpus petitions that are filed many years after conviction
14 are an unreasonable burden on the criminal justice system. The
15 necessity for a workable system dictates that there must exist a
time when a criminal conviction is final.

16 Id. Additionally, procedural bars "cannot be ignored [by the district court] when properly
17 raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court has granted no
18 discretion to the district courts regarding whether to apply the statutory procedural bars; the
19 rules *must* be applied. Id.

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

27 //

28 //

1 **A. THE INSTANT PETITION IS TIME-BARRED**

2 Petitioner's Third Petition is time-bar. NRS 34.726(1) states:

3
4 Unless there is good cause shown for delay, a petition that
5 challenges the validity of a judgment or sentence must be filed
6 within 1 year of the entry of the judgment of conviction or, if an
7 appeal has been taken from the judgment, within 1 year after the
8 Supreme Court issues its remittitur. For the purposes of this
9 subsection, good cause for delay exists if the petitioner
10 demonstrates to the satisfaction of the court:

- 11 (a) That the delay is not the fault of the petitioner; and
12 (b) That dismissal of the petition as untimely will unduly
13 prejudice the petitioner.

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

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

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

1 Here, the District Court filed the *original* Judgment of Conviction on June 10, 2004.
2 On March 14, 2006, the Nevada Supreme Court issued Remittitur. Thus, Petitioner had until
3 March 14, 2007, to file a timely petition. However, Petitioner filed the Third Petition on
4 October 5, 2021, fourteen (14) years, six (6) months, and twenty-one (21) days late.
5 Additionally, Petitioner fails to provide good cause as to why his Third Petition is untimely.
6 Therefore, Petitioner's Third Petition is time-barred and must be denied.

7 **B. THE INSTANT PETITION IS BARRED AS SUCCESSIVE**

8 Petitioner's Third Petition is barred because it is successive. NRS 34.810(2) states:

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

14 (emphasis added). Application of NRS 34.810(2) is mandatory. *See State v. Eight*
15 *Judicial Dist. Crt. ex el. County of Clark (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074-75
16 (2005).

17 Successive petitions are petitions that either fails to allege new or different grounds for
18 relief of which the grounds have already been decided on the merits or petitions that allege
19 new or different grounds, but a judge or justice finds that the petitioner's failure to assert those
20 grounds in a prior petition would constitute an abuse of the writ. *See Lozada v. State*, 110 Nev.
21 349, 352-53, 871 P.2d 944, 950 (1994) (overruled on other grounds by *Rippo v. State*, 134
22 nev. 411, 423 P.3d 1084 (2018); *Hart v. State*, 116 Nev. 558, 563–64, 1 P.3d 969, 972 (2000)
23 (overruled on other grounds by *Harris v. State*, 130 Nev. 435, 329 P.3d 619 (2014) (holding
24 that “where a defendant previously has sought relief from the judgment, the defendant’s failure
25 to identify all grounds for relief in the first instance should weigh against consideration of the
26 successive motion.”). Successive petitions will only be decided on the merits if the petitioner
27 can show good cause and prejudice. *See* NRS 34.810(3).

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

11 Here, the District Court presided over an evidentiary hearing on January 10, 2008,
12 regarding Petitioner's First Petition. After which, the District Court denied the petition on the
13 merits. Petitioner went on to file a Second Petition, which the District Court also denied, on
14 November 1, 2018. The instant Petition is Petitioner’s third, in which Petitioner’s allegations
15 are no different from his prior petitions.

16 In any event, the claims raised in the Third Petition were available to Petitioner since
17 2004. As such, any new claims Petitioner does assert would be an abuse of writ because
18 Petitioner fails to show good cause as to why he is now asserting these claims more than a
19 decade after his conviction when such claims were always available to Petitioner. Therefore,
20 the Third Petition is successive and must be denied.

21 C. THE STATE AFFIRMATIVELY PLEADS LACHES

22 The State Affirmatively pleads laches. Certain limitations exist on how long a petitioner
23 may wait to assert a post-conviction request for relief. There is a rebuttable presumption of
24 prejudice to the State if “[a] period exceeding five years [elapses] between the filing of a
25 judgment of conviction, an order imposing a sentence of imprisonment or a decision on direct
26 appeal of a judgment of conviction and the filing of a petition challenging the validity of a
27 judgment of conviction” NRS 34.800. The reason for this is that “petitions that are filed many
28 years after conviction are an unreasonable burden on the criminal justice system. The necessity

1 for a workable system dictates that there must exist a time when a criminal conviction is final.”
2 Groesbeck v. Warden, 100 Nev. 259, 679 P.2d 1268 (1984). However, to invoke the
3 presumption, the State must plead laches. *See* NRS 34.800(2).

4 Consideration of the equitable doctrine of laches is necessary for determining whether
5 a defendant has shown 'manifest injustice' that would permit a modification of a sentence. *See*
6 Hart, 116 Nev. at 563–64, 1 P.3d at 972 (overruled on other grounds by Harris v. State, 130
7 Nev. 435, 329 P.3d 619 (2014)). Moreover, “[a]pplication of the doctrine to an individual case
8 may require consideration of several factors, including: (1) whether there was an inexcusable
9 delay in seeking relief; (2) whether an implied waiver has arisen from the defendant's knowing
10 acquiescence in existing conditions; and (3) whether circumstances exist that prejudice the
11 State.” *Id.* (citing Buckholt v. District Court, 94 Nev. 631, 633, 584 P.2d 672, 673–74 (1978)).

12 In this case, the State affirmatively pleads laches. The District Court filed the Judgment
13 of Conviction on June 10, 2004. Petitioner pursued a direct appeal, wherein the Nevada
14 Supreme Court affirmed all of Petitioner's convictions and issued Remittitur on March 14,
15 2006. More than seventeen (17) years have passed since the Judgment of Conviction was filed,
16 and more than fourteen (14) years have passed since Remittitur.

17 This time-lapse is almost four (4) times longer than the statutory period of five (5) years.
18 As such, the State is prejudiced in its ability to respond to the merits of Petitioner’s claims and,
19 should relief be granted, to retry the case. Moreover, Petitioner fails to rebut this presumption.
20 Therefore, Petitioner's Third Petition is barred by laches and must be denied.

21 **D. PETITIONER’S CLAIMS ARE WAIVED**

22 Petitioner claims trial counsel provided ineffective assistance of counsel by failing to
23 object to the State’s comments during closing and failing to object to Jury Instructions three
24 (3), thirty-four (34), and thirty-seven (37). *See Third Petition*, at 6. However, Petitioner’s claim
25 is waived.

26 Under NRS 34.810(1)(b)(2), “[t]he court shall dismiss a petition if the court determines
27 that [the] *conviction was the result of a trial and the grounds for the petition could have been*
28 *... [r]aised in a direct appeal.*” A petitioner may only escape these procedural bars if he meets

1 the burden of establishing good cause and prejudice. *See* NRS 34.810(3). Where a petitioner
2 does not show good cause for failure to raise claims of error upon direct appeal, the district
3 court is not obliged to consider them in post-conviction proceedings. *See Jones v. State*, 91
4 Nev. 416, 536 P.2d 1025 (1975).

5 Additionally, “challenges to the validity of a guilty plea and claims of ineffective
6 assistance of trial and appellate counsel must first be pursued in post-conviction
7 proceedings.... [A]ll other claims that are appropriate for a direct appeal must be pursued on
8 direct appeal, or they will be considered waived in subsequent proceedings.” *Franklin v. State*,
9 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other
10 grounds by *Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999)). Moreover, “[a] court *must*
11 *dismiss* a habeas petition if it presents *claims that either were or could have been presented in*
12 *an earlier proceeding*, unless the court finds both cause for failing to present the claims earlier
13 or for raising them again and actual prejudice to the petitioner.” *Evans v. State*, 117 Nev. 609,
14 646-47, 29 P.3d 498, 523 (2001).

15 Here, Petitioner’s ineffective assistance of counsel claim is waived. *See* NRS 34.810;
16 *McCoy v. Louisiana*, 138 S. Ct. 1500, 1510-11, 200 L. Ed. 2d 821 (2018). Moreover, Petitioner
17 failed to address good cause to overcome the mandatory procedural bars. Petitioner cannot do
18 so since the applicable law and facts were all available at his appeal or First Petition.
19 Additionally, Petitioner failed to show that an impediment external to the defense prevented
20 him from raising these claims in an earlier proceeding.

21 Petitioner offers no excuse for his failure to raise said issues there. Petitioner cannot
22 show good cause to overcome the procedural bars. Thus, this Court need not consider
23 prejudice. Therefore, Petitioner’s claim should be denied.

24 **II. PETITIONER FAILS TO DEMONSTRATE GOOD CAUSE OR PREJUDICE** 25 **TO OVERCOME THE PROCEDURAL BARS**

26 To avoid procedural default under NRS 34.726 and NRS 34.810, the petitioner has the
27 burden of pleading and proving specific facts that demonstrate good cause for his failure to
28 present his claim in an earlier proceeding or to otherwise comply with the statutory

1 requirements, and that the petitioner will be unduly prejudiced if the petition is dismissed. *See*
2 Hogan v. Warden, 109 Nev. 952, 959-60, 860 P.2d 710, 715-16 (1993); Phelps v. Nevada
3 Dep't of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). "A court *must* dismiss a
4 habeas petition if it presents claims that either were or could have been presented in an earlier
5 proceeding, unless the court finds both cause for failing to present the claims earlier or for
6 raising them again and actual prejudice to the petitioner." Evans, 117 Nev. at 646-47, 29 P.3d
7 at 523 (2001) (emphasis added).

8 Moreover, "to establish good cause, [petitioners] must show that an impediment
9 external to the defense prevented their compliance with the applicable procedural rule." Clem
10 v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); *See also* Hathaway v.
11 State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537.
12 "A qualifying impediment might be shown where the factual or legal basis for a claim was not
13 reasonably available at the time of default." Clem, 119 Nev. at 621, 81 P.3d at 525. The Court
14 continued, petitioners "cannot attempt to manufacture good cause." Id. at 621, 81 P.3d at 526.
15 Examples of good cause include interference by State officials and the previous unavailability
16 of a legal or factual basis. *See* State v. Huebler, 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012).
17 Any delay in the filing of the petition must not be the fault of the petitioner. *See* NRS
18 34.726(1)(a).

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

27 To establish prejudice, a Petitioner must show "not merely that the errors of [the
28 proceedings] created [the] possibility of prejudice, but that they worked to his actual and

1 substantial disadvantage, in affecting the State's proceedings with [an] error of constitutional
2 dimensions.'" Hogan, 109 Nev. at 960, 860 P.2d at 716 (quoting United States v. Frady, 456
3 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). Bare and naked allegations are insufficient to
4 warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v.
5 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "A claim is 'belied' when it is contradicted
6 or proven to be false by the record as it existed at the time the claim was made." Mann v. State,
7 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

8 Additionally, for a petitioner to demonstrate prejudice, he or she must show "not merely
9 that the errors of [the proceeding] created possibility of prejudice, but that they worked to his
10 actual and substantial disadvantage, in affecting the state proceedings with error of
11 constitutional dimensions." Hogan v. Warden, 109 Nev. at 960, 860 P.2d at 716 (internal
12 quotation omitted), Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545 (2001).

13 Here, Petitioner failed even to address good cause to overcome the mandatory
14 procedural bars. Indeed, Petitioner cannot since the applicable law and facts were all available
15 to Petitioner before his direct appeal in 2004. Additionally, Petitioner failed to show that an
16 impediment external to the defense prevented him from raising these claims in an earlier
17 proceeding and offers no excuse for his failure to raise said issues there.

18 Moreover, because there is no good cause, this Court need not consider prejudice. If
19 this Court chooses to examine Petitioner's claims further, he cannot demonstrate prejudice
20 because his underlying claims are waived or precluded. As such, Petitioner cannot show good
21 cause to overcome the procedural bars, and this Court should deny Petitioner's Third Petition.

22 **III. PETITIONER'S CLAIMS ARE BARRED UNDER THE LAW OF CASE** 23 **DOCTRINE**

24 Petitioner raises multiple claims alleging that (1) he is not guilty of first-degree murder
25 because Castro plead guilty to voluntary manslaughter; thus, co-conspirator liability should be
26 limited to voluntary manslaughter, and (2) the District Court violated Petitioner's right of
27 confrontation by allowing Gamboa's preliminary transcript to be read into the record. *See*
28

1 Third Petition, at 11-16. However, Petitioner's claims are barred under the Law of the Case
2 Doctrine.

3 The doctrine of the law of the case or "the law of a first appeal is law of the case on all
4 subsequent appeals in which the facts are substantially the same." Hall v. State, 91 Nev. 314,
5 315, 535 P.2d 797, 798 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38
6 (1969)). Under the law of the case doctrine, issues previously decided on direct appeal may
7 not be reargued. *See* Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing
8 McNelson v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). A petitioner cannot
9 avoid "the doctrine of the law of the case" by raising "a more detailed and precisely focused
10 argument . . . after reflection upon the previous proceedings." Id. at 316, 535 P.2d at 799.
11 Accordingly, by simply continuing to file motions with the same arguments, his motion is
12 barred by the doctrines of the law of the case and res judicata. *See* Hall, 91 Nev. at 316, 535
13 P.2d at 799.

14 Moreover, parties are precluded "from relitigating a cause of action or an issue which
15 has been finally determined by a court of competent jurisdiction." Horvath v. Gladstone, 97
16 Nev. 594, 597, 637 P.2d 531, 533 (1981); *See* University of Nevada v. Tarkanian, 110 Nev.
17 581, 598, 879 P.2d 1180, 1191 (1994) (The Court distinguishes between issue preclusion and
18 claim preclusion, although they are both under the doctrine of res judicata). For issue
19 preclusion to apply, there must be:

20
21 (1) the issue decided in the prior litigation must be identical to the
22 issue presented in the current action; (2) the initial ruling must
23 have been on the merits and have become final; ... (3) the party
24 against whom the judgment is asserted must have been a party or
in privity with a party to the prior litigation and (4) the issue was
actually and necessarily litigated

25 Five Star Capital Corp. v. Rudy, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008)¹ (citing
26 University of Nevada v. Tarkanian, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994)); *See also*
27

28 ¹ In Five Star Capital Corp. v. Rudy, 124 Nev. 1048, 194 P.3d 709 (2008), the Court adopted "the terms of claim
preclusion and issue preclusion as the proper terminology in referring to these doctrines," instead of Res Judicata.

1 Gonzales v. Dist. Ct., 129 Nev. 215, 218, 298 P.3d 448, 450 (2013) (The Court suggesting that
2 the issue-preclusion analysis is applicable in the criminal context.); *See also* Bradley v. State,
3 494 P.3d 907 (Table), 2021 WL 4167112 (Nev. Ct. of App. 2021) (unpublished) (The Court
4 cites to Five Star Capital Corp's, four-factor test for issue preclusion in a criminal context).

5 **A. PETITIONER'S CLAIM HE IS NOT GUILTY OF FIRST-DEGREE MURDER IS**
6 **BARRED**

7 Petitioner's claim is barred. Petitioner claimed in his Second Petition that he was
8 innocent of First-Degree Murder based upon Castro's Guilty Plea Agreement. *See* Second
9 Petition, at 27-29. Specifically, Petitioner argued:

10
11 [B]ecause Roberto Castro pleaded Guilty of Voluntary
12 Manslaughter and served 4 [] to 10 [years] [in] high desert state
13 prison. Show[s] once again that the [S]tates THEORY OF FIRST
14 DEGREE MURDER WAS UNRELIABLE beyond a reasonable
15 doubt.

16 *See* Second Petition, at 28.

17 In the Third Petition, Petitioner again argues he is innocent of First-Degree Murder
18 based upon Castro's Guilty Plea Agreement. *See* Third Petition, at 11-13. Specifically,
19 Petitioner argues that:

20 The Prejudice involved in the case is that[] the Jury found
21 [Petitioner] Guilty and convicted [Petitioner] on [t]hories [that are]
22 inconsistent with the theories alleged by the State [regarding]
23 Castro's charging document or information.

24 . . .

25 [I]f the State conceded in open court, that [Castro's] name
26 thereto on the above amended information committed voluntary
27 manslaughter while "in the heat of passion." Then by operation of
28 State and Federal law, [Petitioner's] conviction for first-degree
murder must be vacated.

1 Third Petition, at 13. As shown above, Petitioner is raising the same issue he raised in his
2 Second Petition. However, Petitioner does word his argument differently, but the issue remains
3 the same.

4 Moreover, the Nevada Supreme Court has already ruled on the merits of this issue. *See*
5 Sally Villaverde v. State, Docket No. 77563 (Order of Affirmance, May 21, 2020).
6 Specifically, the Nevada Court of Appeals held that:

7
8 Villaverde claim[s] his co-defendant's guilty plea was new
9 evidence, not presented at trial, that showed that he could not have
10 committed first-degree murder with the use of a deadly weapon,
robbery with the use of a deadly weapon, and burglary.

11 . . .

12 [However,] Villaverde fail[s] to demonstrate he was
13 actually innocent. Villaverde's co-defendant's *Alford* plea to lesser
14 charges did not demonstrate Villaverde was factually innocent of
15 the charges he was convicted of. Accordingly, because Villaverde
16 failed to demonstrate it was more likely than not that no reasonable
jury would find him guilty beyond a reasonable doubt based on his
co-defendant's plea, we conclude the district court did not err by
denying this claim without first holding an evidentiary hearing.

17 *See Sally Villaverde v. State*, Docket No. 77563-COA (Order of Affirmance, May 21, 2020).
18 As shown above, Petitioner's claim is precluded for rehearing as the Nevada Court of Appeals
19 has already made a final ruling on the merits regarding the instant issue. Therefore, Petitioner's
20 claim is barred under the Law of the Case Doctrine.

21 **B. PETITIONER'S CLAIM THAT THE DISTRICT COURT VIOLATED PETITIONER'S**
22 **RIGHT TO CONFRONT GAMBOA BY ADMITTING GAMBOA'S PRELIMINARY**
HEARING TESTIMONY IS BARRED²

23 Petitioner's claim is barred. On direct appeal, Petitioner claimed the District Court erred
24 by allowing Gamboa's testimony at trial. *See Sally Villaverde v. State*, Docket No. 43443
25 (Opening Brief, January 12, 2005). Specifically, Petitioner argued:

26
27
28 ² In Petitioner's third claim, he colors his claim as an ineffective assistance of counsel claim. However, Petitioner is alleging
a violation of his right to confront Gamboa via the confrontation clause. *See Third Petition*, at 15.

1 The admission of Gamboa's testimony violated Defendant's rights
2 under the Fifth, Sixth and Fourteenth Amendments to the United
3 States Constitution and Article 1 Section 1 of the Nevada State
4 Constitution to confront and cross-examine witnesses against
5 Defendant at trial and effective assistance of trial counsel.

6 . . .
7 The prejudicial effect of allowing Gamboa's testimony without her
8 actual presence at trial clearly outweighs the relevance of her
9 testimony. That being the case, this Court must return to the status
10 of the law prior to the Funches decision and follow the previous
11 holdings in Lemberes and Lapena, and find that it was reversible
12 error for the lower court to have admitted Gamboa's preliminary
13 hearing testimony into evidence.

14 Id. at 1-6.

15 In the Third Petition, Petitioner again argues that the District Court erred in admitting
16 Gamboa's testimony at trial. *See Third Petition*, at 14-16, 18. Specifically, Petitioner argues
17 that:

18 Counsel . . . was unable to cross-examine [Gamboa].
19 Therefore . . . the admission of Gamboa's Preliminary hearing
20 transcript [] violated his right to effective assistance of trial
21 counsel.

22 . . .
23 The redacted transcripts of Teresa Gamboa's testimony . . .
24 introduced by the State . . . Simply violated [Petitioner's]
25 constitutional rights under the confrontation clause because he was
26 not able to cross-examine his co-defendants [Gato and Castro].

27 Third Petition, at 15, 18. As shown above, Petitioner is raising the same issue he raised in his
28 direct appeal. Although Petitioner's argument is not as clear as before, the issue remains the
same.

Moreover, The Nevada Supreme Court has already ruled on the merits of this issue. *See*
Sally Villaverde v. State, Docket No. 43443 (Order of Affirmance, February 15, 2006).
Specifically, the Nevada Supreme Court held that:

[T]he district court properly admitted Gamboa's preliminary
hearing testimony. The transcript of a witness's preliminary

1 hearing testimony is admissible non-hearsay if the defendant was
2 represented by counsel at the hearing, counsel cross-examined the
3 witness, and the witness is shown to be unavailable at the time of
4 trial.”

5 . . .
6 The confrontation element is satisfied because Villaverde
7 had the ability to cross-examine Gamboa at the preliminary
8 hearing and, in fact, did so.

9 Id. at 2. The Nevada Supreme Court continued, regarding Gato and Castro, holding that:

10 [T]he district court properly admitted that portion of Gamboa's
11 testimony concerning Gato and Castro's out-of-court statements.
12 Statements of co-conspirators are not considered hearsay if the
13 statements are made "during the course and in furtherance of the
14 conspiracy" and are being offered against the party . . . Gato and
15 Castro's statements, both before and after the incident, were
16 properly considered non-hearsay, because they were made before
17 the commission of the crime and after the incident in an attempt to
18 conceal the parties' involvement.

19 . . .
20 we conclude that the out-of-court statements to which Gamboa
21 testified to were not testimonial in nature . . . Because the
22 statements were not testimonial, cross-examination of Gato and
23 Castro was not constitutionally mandated.

24 Id. at 3.

25 Moreover, the Nevada Supreme Court held that because Petitioner “was not tried with
26 Castro or Gato, Bruton is not applicable.” Id. at 4. As shown above, Petitioner’s claim is
27 precluded for rehearing as the Nevada Supreme Court has already made a final ruling on the
28 merits regarding the instant issue. Therefore, Petitioner’s claim is barred under the Law of the
Case Doctrine.

29 **IV. THE STATE PRESENTED SUFFICIENT EVIDENCE OF FIRST-DEGREE 30 MURDER**

31 Petitioner claims that he is innocent of the First-Degree Murder charge, via Felony
32 Murder, because he was not the person who committed the physical act of “killing the victim”
33 and because there is inadequate evidence to prove the charges of Robbery and Burglary. *See*
34 Third Petition, at 7-8. However, the State provided a sufficient amount of evidence to show

1 Petitioner conspired with his Co-Defendants to rob and burglarize Caminero, and in the
2 commission of these acts, they murdered Caminero.

3 When reviewing a sufficiency of the evidence claim, the relevant inquiry is not whether
4 the court is convinced of the petitioner's guilt beyond a reasonable doubt. Wilkins v. State, 96
5 Nev. 367, 374, 609 P.2d 309, 313 (1980). Rather, when the jury has already found the
6 petitioner guilty, the limited inquiry is "whether, after viewing the evidence in the light most
7 favorable to the prosecution, *any* rational trier of fact could have found the essential elements
8 of the crime beyond a reasonable doubt." Milton v. State, 111 Nev. 1487, 1491, 908 P.2d 684,
9 686–87 (1995) (internal quotation and citation omitted).

10 Indeed, "it is the jury's function, not that of the court, to assess the weight of the
11 evidence and determine the credibility of the witnesses." Origel-Candido v. State, 114 Nev.
12 378, 381, 956 P.2d 1378, 1380 (1998) (quoting McNair v. State, 108 Nev. 53, 56, 825 P.2d
13 571, 573 (1992)). It is further the jury's role "[to fairly] resolve conflicts in the testimony, to
14 weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts."
15 Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). Moreover, in rendering
16 its verdict, a jury is free to rely on circumstantial evidence. Wilkins, 96 Nev. at 374, 609 P.2d
17 at 313. In fact, "circumstantial evidence alone may support a conviction." and the Nevada
18 Supreme Court has previously, and consistently upheld convictions based solely on
19 circumstantial evidence. See Hernandez v. State, 118 Nev. 513, 531, 50 P.3d 1100, 1112
20 (2002); Crawford v. State, 92 Nev. 456, 456, 552 P.2d 1378, 1378 (1976). The district court
21 can only acquit the defendant where the State fails to produce a minimum threshold of
22 evidence upon which a conviction may be based. Id. (citing State v. Purcell, 110 Nev. 1389,
23 1394, 887 P.2d 276, 279 (1994)).

24 Moreover, a conspiracy is "an agreement between two or more persons for an unlawful
25 purpose." Doyle v. State, 112 Nev. 879, 894, 921 P.2d 901, 911 (1996) (citing Peterson v.
26 Sheriff, 95 Nev. 522, 598 P.2d 623 (1979)). A charge of conspiracy is usually established by
27 inference from the conduct of the parties. A conspiracy "may be supported by a 'coordinated
28

1 series of acts' in furtherance of the underlying offense sufficient to infer the existence of an
2 agreement." Doyle, 112 Nev. at 879, 921 P.2d at 911.

3 Knowledge of the conspiracy may be demonstrated by circumstantial evidence. *See*
4 United States v. Aron, 463 F.2d 779 (9th Cir. 1972); Windsor v. United States, 384 F.2d 535,
5 536 (9th Cir. 1967). Moreover, "conspiracy is seldom susceptible of direct proof and is usually
6 established by inference from the conduct of the parties. In particular, a conspiracy conviction
7 may be supported by a coordinated series of acts in furtherance of the underlying offense
8 sufficient to infer the existence of an agreement." Doyle v. State, 112 Nev. 879, 894, 921 P.2d
9 901, 911 (1996) (internal citations omitted) (overruled on other grounds by Kaczmarek v.
10 State, 120 Nev. 314, 91 P.3d 16 (2004)).

11 Additionally, for general intent crimes, such as battery and robbery, "aiders and abettors
12 are criminally *responsible for all harms that are a natural, probable, and foreseeable result*
13 *of their actions.*" Mitchell v. State, 114 Nev. 1417, 1427, 971 P.3d 813, 820 (1998) (overruled
14 on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002)). Further, "so long as
15 the partnership in crime continues, the partners act for each other in carrying it forward; an
16 overt act of one partner may be the act of all without a new agreement specifically directed to
17 that act." State v. Wilcox, 105 Nev. 434, 436, 776 P.2d 549, 550 (1989).

18 Additionally, a petitioner must support his or her claims with specific factual
19 allegations, which would entitle the petitioner to relief if true. *See* Hargrove v. State, 100 Nev.
20 498, 502, 686 P.2d 222, 225 (1984). Moreover, bare and naked allegations are insufficient, as
21 are those belied and repelled by the record. *Id.* "A claim is 'belied' when it is contradicted or
22 proven to be false by the record as it existed at the time the claim was made." Mann v. State,
23 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

24 Here, Petitioner seems not to understand that in a criminal conspiracy, all co-
25 conspirators are equally liable. *See* Third Petition, at 8. Nor does Petitioner assert any facts
26 that would absolve Petitioner of First-Degree Murder. In any event, Petitioner argues that he
27 was not the one to commit the murder directly, but that his Co-Defendant Castro committed
28 the murder. *See* Third Petition, at 8. However, the State charged Petitioner with murder both

1 as the direct perpetrator and under vicarious liability theories of aiding, abetting, and
2 conspiracy. *See* Information (March 25, 2003), at 2.

3 Also, as Petitioner's charged conduct occurred in 1998, the State needed only show
4 "the natural, probable, and foreseeable result" to find Petitioner guilty under an aiding and
5 abetting theory. *Mitchell*, 114 Nev. at 1427, 971 P.3d at 820 (1998). Even so, the State
6 presented a sufficient amount of evidence showing Petitioner possessed specific intent for the
7 charge of First-Degree Murder. *See Sharma*, 118 Nev. at 655 P.3d at 872 (holding that "To be
8 held accountable for the specific intent crime of another under an aiding or abetting theory of
9 principal liability, aider or abettor must have knowingly aided the other person with the intent
10 that the other person commit the charged crime").

11 Here, Petitioner asked Gamboa to rent a room for Petitioner, Gato, and Castro for March
12 5, 2002, and in doing so, Petitioner and Gamboa would make a thousand dollars. Trial
13 Transcript Day 7, at 18-19. The purpose of renting the room was to lure Caminero into a fake
14 narcotics transaction so that Petitioner and his Co-Defendants could kidnap Caminero, obtain
15 his money, and find out who supplied narcotics to Caminero. Trial Transcript Day 5, at 16-17.
16 Additionally, on the way to renting the room, Gamboa noticed Gato was carrying a gun. *Id.* at
17 77

18 More importantly, Petitioner admitted to being at the hotel room and helped bind
19 Caminero's arms and legs. *Id.* at 88. Petitioner also admitted that he helped cover up
20 Caminero's murder. *Id.* at 88-89. Dr. Worrell testified that a cord was used to strangle the
21 victim to death. Trial Transcript Day 6, at 97-140. Also, the day following the murder,
22 Petitioner and his two co-conspirators discussed using a belt to strangle Caminero. Trial
23 Transcript Day 5, at 94-96.

24 Common sense dictates that it is probable and foreseeable that wrapping a belt around
25 someone's neck and continuing to tighten it would result in his or her death. It is also
26 foreseeable that bringing a firearm while committing a violent felony would leave someone
27 dead or severely injured. Firearms, by their nature, increase the likelihood of a lethal outcome;
28 that is what they are designed to do. Petitioner cannot, in good faith, argue that utilizing a

1 firearm, either by him or his Co-Conspirators or wrapping a cord around someone's neck
2 during the commission of a violent felony does not create a probable and foreseeable result
3 that the victim would be killed or severely injured. In any event, Caminero died by way of
4 strangulation. Id. at 124-125.

5 Moreover, the State presented sufficient evidence to support findings of Robbery and
6 Burglary with the Deadly Weapon enhancement. The State presented evidence that Caminero
7 was always seen with multiple pieces of jewelry on his person. The victim's body had no
8 jewelry on it. Id. at 144-146. Moreover, Petitioner pawned several items of jewelry shortly
9 after the murder. *See* Trial Transcript Day 6, at 75-91. Three (3) days after police contacted
10 Gamboa, Petitioner redeemed the jewelry. Id. at 84-86. After coming home from the motel,
11 Petitioner had four hundred (400) dollars in cash and several small gold chains or bracelets.
12 *See* Trial Transcript Day 5, at 90-91, 97. Shortly after, Petitioner took the jewelry to a pawn
13 shop. Id.

14 Here, the reasonable inference is that Petitioner stole the jewelry and money from
15 Caminero. Therefore, this Court should deny Petitioner's claim, as there was sufficient
16 evidence for the jury to find the Petitioner guilty of the above charges.

17 **V. THE DISTRICT COURT DID NOT ERROR IN ADMITTING GAMBOA'S**
18 **PRELIMINARY HEARING TESTIMONY**

19 Petitioner claims that the admission of Gamboa's preliminary hearing testimony
20 violated his right to confrontation. Third Petition, at 14-16, 18. However, the admission of
21 Gamboa's testimony was properly admitted under NRS 171.198(6)(b) and Drummond v. State,
22 86 Nev. 4, 462 P.2d 1012 (1970).

23 NRS 171.198(6)(b) codifies the former testimony exception to the hearsay rule. It
24 provides that preliminary hearing testimony may be used:

25
26 By the state if the defendant was represented by counsel or
27 affirmatively waived his right to counsel, upon the trial of the
28 cause, and in all proceedings therein, when the witness is sick, out
of the state, dead, or persistent in refusing to testify despite an
order of the judge to do so, or when his personal attendance cannot
be had in court.

1 NRS 171.198(6)(b); *See also Funches v. State*, 113 Nev. 916, 920, 944 P.2d 775, 777 (1997).

2 Although NRS 171.198(6)(b) does not impose a cross-examination requirement for the
3 admissibility of such testimony at a criminal trial, the Nevada Supreme Court imposed the
4 requirement in *Drummond v. State*, 86 Nev. 4, 7, 462 P.2d 1012, 1014 (1970), when it reasoned
5 that:

6 [T]he transcript of the Testimony of a material witness given at the
7 preliminary examination may be received in evidence at the trial
8 if three preconditions exist: first, that the defendant was
9 represented by counsel at the preliminary hearing; second, that
counsel cross-examined the witness; third, that the witness is
shown to be actually unavailable at the time of trial.

10
11 *Drummond v. State*, 86 Nev. 4, 7, 462 P.2d 1012, 1014 (1970); *See also Aesoph v. State*, 102
12 Nev. 316, 319-320, 721 P.2d 379, 381-382 (1986) (holding that preliminary hearing testimony
13 of a physician who conducted an autopsy on the victim was admissible where the physician
14 was unavailable at the time of trial).

15 Consequently, there are three elements necessary before a witness's preliminary hearing
16 testimony may be admitted as evidence at trial: (1) the defendant must have had counsel
17 represent him at the preliminary hearing; (2) the defendant's counsel must have cross-
18 examined the witness who is later unavailable for trial; and (3) the witness is actually
19 "unavailable" at trial. *Funches v. State*, 113 Nev. 916, 920, 944 P.2d 775, 777-78 (1997); *see*
20 *also Drummond*, 86 Nev. at 7, 462 P.2d at 1014.

21 Further, the United States Supreme Court reached a similar ruling in *Crawford v.*
22 *Washington*, 541 U.S. 36, 124 S.Ct. 1354 (2004): "Where testimonial evidence is at issue,
23 however, the Sixth Amendment demands what the common law required: unavailability and a
24 prior opportunity for cross-examination. We leave for another day any effort to spell out a
25 comprehensive definition of 'testimonial.' Whatever else the term covers, it applies at a
26 minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial;
27 and to police interrogations." 541 U.S. at 68 (footnote omitted).

1 The United States Supreme Court has held that the ultimate question in determining
2 "unavailability" for Confrontation Clause purposes is whether the witness is unavailable
3 despite good-faith efforts undertaken by the prosecution, prior to trial, to locate and present
4 that witness. *See Ohio v. Roberts*, 448 U.S. 56, 74, 100 S.Ct. 2531, 2543 (1980) (overruled on
5 other grounds by *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354 (2004). "What
6 constitutes a good-faith effort is a question of reasonableness." *Quillen v. State*, 112 Nev.
7 1369, 1375, 929 P.2d 893, 897 (1996).

8 Additionally, the Nevada Supreme Court specifically addressed the unavailability of
9 the witness requirement:

10 A witness may be unavailable if he or she is "[a]bsent from the
11 hearing and beyond the jurisdiction of the court to compel
12 appearance and the proponent of his [or her] statement has
13 exercised reasonable diligence but has been unable to procure his
14 [or her] attendance." We have interpreted the requirement that the
State "exercise reasonable diligence" to mean that the State must
make reasonable efforts to procure a witness's attendance at trial
before that witness may be declared unavailable.

15 *Hernandez v. State*, 124 Nev. 639, 188 P.3d 1126, 1130-1131 (2008) (abrogated on other
16 grounds by *State v. Eighth Judicial Dist. Court (Baker)*, 134 Nev. 104, 107, 412 P.3d 18, 22
17 (2018)).

18 In determining what constitutes *reasonable efforts* to procure a witness, the Nevada
19 Supreme Court adopted a totality of the circumstances approach:

20 What constitutes reasonable efforts to procure a witness's
21 attendance must be determined upon considering the totality of the
22 circumstances. In the analogous circumstance of determining
23 whether a prosecutor has good cause for continuing a preliminary
24 hearing due to the absence of witnesses, this court rejected a
25 bright-line rule requiring a service of a subpoena on an out-of-state
26 witness, noting "[t]here may be circumstances where a prosecutor
27 can demonstrate 'good cause' for a continuance based upon an
28 absent witness even though it did not subpoena the witness.
Conversely, there may be circumstances where a prosecutor has
subpoenaed witnesses, yet cannot demonstrate 'good cause' for
their absence." In determining whether the proponent of
preliminary hearing testimony has met its burden of proving that a
witness is constitutionally unavailable, the touchstone of the
analysis is the reasonableness of the efforts.

1 Hernandez, 124 Nev. 649-650, 188 P.3d at 1134 (citations omitted).

2 Moreover, in Quillen, two victims previously testified that the defendant assaulted them
3 with a firearm. Quillen, 112 Nev. at 1373-74, 929 P.2d at 896. Both witnesses moved and
4 changed jobs after the preliminary hearing and prior to trial, leaving no forwarding address to
5 their new place of residence or employment. Id. at 1374-1375. The State's investigator
6 assigned to the case visited possible places of employment where the witnesses may have
7 moved to, ran a SCOPE check, and contacted the Department of Motor Vehicles, all to no
8 avail. Id. at 1375. However, cross-examination revealed that the investigator neither spoke to
9 any of the witness' neighbors nor did he try to find out if the men had relatives in town. Id.
10 Furthermore, it was also revealed that the investigator failed to contact any utilities or the post
11 office. Id. at 1376. There, the Court held, the efforts taken by the State to locate the witness
12 were reasonable. Id.

13 Here, Petitioner was not jointly tried with Gato and Castro. Thus Bruton does not apply.
14 See Third Petition, at 16. See Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620 (1968).
15 Moreover, Gato and Castro's statements are not testimonial in nature as they are statements of
16 co-conspirators. See Crawford, 541 U.S. at 56 ("most of the hearsay exceptions covered
17 statements that by their nature were not testimonial – for example, business records, or
18 statements in furtherance of a conspiracy.") Thus, Gato and Castro's statements were
19 admissible as statements of co-conspirators.

20 Also, Gamboa was never charged with the commission of a crime. As such, the State
21 committed no wrongdoing in releasing Gamboa. In any event, the State did all that it could to
22 ensure that Gamboa would be present in court. Specifically, the State's investigator spent eight
23 (8) days attempting to contact Gamboa. Here, like in Quillen, the State's investigator searched
24 all known addresses and prior work contacts. Here, unlike in Quillen, the State's investigator
25 went a step further and contacted Gamboa's mother. However, like in Quillen, the State was
26 ultimately unsuccessful in finding Gamboa.

27 //

28 //

1 As indicated above, Petitioner's right to confrontation was not violated, and the State
2 used every reasonable means to locate Gamboa for trial. Therefore, the District Court did not
3 err in allowing Gamboa's preliminary hearing testimony into evidence.

4 **VI. PETITIONER IS NOT ENTITLED TO APPOINTED COUNSEL**

5 Petitioner requests the appointment of counsel. *See* Motion, at 2(a). However, Petitioner
6 is not entitled to appointed counsel.

7 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
8 conviction proceedings. *See Coleman v. Thompson*, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
9 (1991). The Nevada Supreme Court similarly observed that "[t]he Nevada Constitution...does
10 not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada
11 Constitution's right to counsel provision as being coextensive with the Sixth Amendment to
12 the United States Constitution." *McKague v. Warden*, 112 Nev. 159, 163, 912 P.2d 255, 258
13 (1996). *McKague* specifically held that with the exception of NRS 34.820(1)(a) (entitling
14 appointed counsel when petitioner is under a sentence of death), one does not have "any
15 constitutional or statutory right to counsel at all" in post-conviction proceedings. *Id.* at 164,
16 912 P.2d at 258.

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

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

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

26 (emphasis added). Accordingly, under NRS 34.750, it is clear that the Court has discretion in
27 determining whether to appoint counsel.
28

1 More recently, the Nevada Supreme Court examined whether a district court
2 appropriately denied a defendant's request for appointment of counsel based upon the factors
3 listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-
4 Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75,
5 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the defendant
6 filed a pro se post-conviction petition for writ of habeas corpus and requested counsel be
7 appointed. Id. The district court ultimately denied the petitioner's petition and his appointment
8 of counsel request. Id.

9 However, in reviewing the district court's decision, the Nevada Supreme Court
10 examined the statutory factors listed under NRS 34.750 and concluded that the district court's
11 decision should be reversed and remanded. Id. The Court explained that the petitioner was
12 indigent, his petition could not be summarily dismissed, and he had, in fact, satisfied the
13 statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor, the Court concluded that
14 because the petitioner had represented, he had issues with understanding the English language,
15 which was corroborated by his use of an interpreter at his trial, that was enough to indicate that
16 the petitioner could not comprehend the proceedings. Id. Moreover, the petitioner had
17 demonstrated that the consequences he faced—a minimum eighty-five (85) year sentence—
18 were severe and his petition may have been the only vehicle for which he could raise his
19 claims. Id. at 76-77, 391 P.3d at 761-62. Finally, his ineffective assistance of counsel claims
20 may have required additional discovery and investigation beyond the record. Id.

21 Here, Petitioner has not demonstrated that counsel should be appointed pursuant to NRS
22 34.750. As a preliminary matter, Petitioner's request is suitable only for summary denial as
23 he has failed to provide any specific facts to support his bare and naked request. See Hargrove
24 v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Similarly, unlike in Renteria-Novoa,
25 Petitioner's Third Petition should be summarily denied for several reasons, including, but not
26 limited to, his Petition being time-barred, successive, barred by laches, and his claim being
27 barred under the Law of the Case Doctrine.

1 Notwithstanding summary denial, Petitioner's request should still be denied as he has
2 failed to meet any of the additional statutory factors under NRS 34.750. The issues Petitioner
3 raises are not complex or difficult. Petitioner can comprehend the proceedings because
4 Petitioner filed several petitions for writ of habeas corpus, cites to the proper authority for the
5 issues he claims, and has filed several pre-trial motions. Additionally, there is no discovery
6 needed to resolve the issues raised in the Third Petition as they deal with issues recorded in
7 the trial transcripts, the transcripts before and after trial.

8 Finally, there has been no indication that Petitioner is unable to comprehend the
9 proceedings. Unlike the petitioner in Renteria-Novoa, who faced difficulties understanding the
10 English language, here Petitioner has failed to demonstrate any inability to understand these
11 proceedings. Therefore, Petitioner's request should be denied.

12 **VII. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

13 Petitioner requests an evidentiary hearing. *See* Third Petition, at 19. However,
14 Petitioner is not entitled to an evidentiary hearing.

15 Under NRS 34.770, a petitioner is entitled to an evidentiary hearing when a judge
16 reviews all supporting documents filed and determines that a hearing is necessary to explore
17 the specific facts alleged in the petition. An evidentiary hearing is unnecessary if a petition can
18 be resolved without expanding the record. *See* Marshall v. State, 110 Nev. 1328, 885 P.2d 603
19 (1994); *See also* Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A petitioner is
20 entitled to an evidentiary hearing if his petition is supported by specific factual allegations,
21 which, if true, would entitle him to relief unless the factual allegations are repelled by the
22 record. *See* Marshall, 110 Nev. at 1331, 885 P.2d at 605; *See also* Hargrove, 100 Nev. at 503,
23 686 P.2d at 225 (holding that "[a] defendant seeking post-conviction relief is not entitled to an
24 evidentiary hearing on factual allegations belied or repelled by the record"). It is improper to
25 hold an evidentiary hearing simply to make a complete record. *See* State v. Eighth Judicial
26 Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) ("The district court considered
27 itself the 'equivalent of . . . the trial judge' and consequently wanted 'to make as complete a
28 record as possible.' This is an incorrect basis for an evidentiary hearing.").

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

11 Here, Petitioner is not entitled to an evidentiary hearing. Petitioner's claims are time-
12 barred, successive, barred by laches, and barred under the law of the case doctrine or capable
13 of being addressed by the current record. There is no need to expand the record, and an
14 evidentiary hearing is not warranted in the instant case.

15 Additionally, Petitioner presents no law or argument as to why he is entitled to an
16 evidentiary hearing. Thus, Petitioner's request is bare and naked, and an evidentiary hearing is
17 not warranted in the instant case. Therefore, Petitioner's request should be denied.

18 CONCLUSION

19 For the foregoing reasons, the State respectfully requests this Court DENY Petitioner's
20 Third Petition for Writ of Habeas Corpus (Post-Conviction).

21 DATED this 18th day of November, 2021.

22 Respectfully submitted,

23 STEVEN B. WOLFSON
24 Clark County District Attorney
Nevada Bar #1565

25 BY /s/ Taleen Pandukht
26 TALEEN PANDUKHT
27 Chief Deputy District Attorney
28 Nevada Bar #05734

1 CERTIFICATE OF MAILING

2 I hereby certify that service of the above and foregoing was made this 18th day of
3 November, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

4 SALLY VILLAYERDE, #81701
5 HIGH DESERT STATE PRISON
6 PO BOX 650
7 INDIAN SPRINGS, NV 89018

8 BY /s/ E. Del Padre
9 E. DEL PADRE
10 Secretary for the District Attorney's Office
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Heather H. H. H.
CLERK OF THE COURT

SALLY D. VILLAVARDE ID NO. 81701
SDCC P.O. BOX 208
Indian Spring, NV 89070

DISTRICT COURT

CLARK COUNTY, NEVADA

SALLY D. VILLAVARDE
Petitioner

CASE NO. A-18-780041 W

VS

DEPT NO. 10

WILLIAM HUTCHING (WARDEN)
Respondent

JUDICIAL NOTICE

Comes now SALLY D. VILLAVARDE, Petitioner above mention and
move this honorable Court to acknowledge and grant the above
titled Judicial notice on behalf of Petitioner whom is hereby
notifying for the record, Respondent's Failure to Comply with this
Court order Filed on October 05, 2021. Whereas, respondent shall
within 45 days after the date of this order answer or otherwise
respond to the Petition and file a return in accordance with the
Provisions of NRS 34.360 to 34.830 inclusive.

this Judicial Notice is made Pursuant NRAP 31(d) and based in
all the documents, Filings, Pleadings and memorandum of Points
authorities stated herein.

Dated this 29 day of November 2021

Respectfully Submitted

Sally D. Villaverde #81701
SALLY D. VILLAVARDE #81701
Petitioner acting Pro Se

RECEIVED

NOV 29 2021

1 STATEMENT OF THE CASE

2 On MAY 19, 2021 VILLAVERDE Petitioner here in filed a motion for Amendment Judgment
3 of Conviction, to include Jail time Credits. This Court granted the unopposed motion and
4 on June 14, 2021 an amended Judgment of Conviction was filed awarding Petitioner
5 469 days credit for time served.

6 On October 04, 2021 THE CLERK OF the Court filed Villaverde's Petition for writ of
7 Habeas Corpus (Post Conviction).

8 On October 05, 2021 This Court issued an Order stating that Respondent shall within
9 45 days after the date of this Order "answer or otherwise respond to the Petition.

10 Now Petitioner is Submitting the instant Judicial Notice.

11 LEGAL ARGUMENTS

12 Petitioner is hereby informing this honorable Court that Respondent failed to answer
13 the Petition, and this failure should be noted on record and considered a violation
14 of NRAP 31(d) which states, in pertinent part.

15 "If a respondent fails to file an answering brief respondent will not be heard
16 at oral argument except by permission of the Court, the failure of respondent
17 to file a brief may be treated by the Court as a confession of error and
18 appropriate disposition of the appeal thereafter made."

19 Here VILLAVERDE is further notifying that the 45 days deadline set by this Court
20 expired that 50 days elapsed already and respondent has not complied with
21 the Court's Order, hence, in violation of the Above NRAP 31(d). Petitioner has not
22 received any copy of respondent's answering brief, nor any documentation show-
23 ing Cause to excuse respondent's unnecessary delay.

24 THE NEVADA SUPREME COURT has routinely invoked its discretion and enforced NRAP
25 31(d) when no answering brief has been filed. See County Commr's V. Las Vegas
26 Discount Golf 110 Nev 567, 569-70, 875 P.2d 1045, 1046 (1994). STATE OF Rhode Island V.
27 Prins 96 Nev 565, 566, 613 P.2d 408, 409 (1980). Confession of error occurred when a respon-
28 dent has inexcusably disregarded applicable appellate Procedure or Court Orders. See
WalPort v. WalPort 98 Nev. 301, 302, 646 P.2d 1215 (1982).

Villaverde also contend that it's clear Respondent is taking advantage of the fact, he is a Prisoner Acting Pro Se litigant. Whereas most Prisoners acting Pro Se are constantly prejudiced by respondents' unethical Practices of filing late answers to Prisoners litigants' Petition. Which affect and hinder Pro Se litigants the ability to reply their Answer on Time. Such Practices should be noted and dealt accordingly, because always put litigants Acting Pro Se in great and unfair disadvantages. Prosecutors and/or State representative should not be above the law, they should not be exempt to follow Rules and Procedures, the State should be held accountable as much as many Prisoners litigants are bound to follow Rules and Procedures in our legal System. Thus, this Court should not give the Respondent any Leeway, without respondent showing Cause to excuse their actions and Practices.

VILLAVERDE'S Petition allege Complex issues of Constitutional magnitude, His Case involved a wrongful Conviction for murder, a Serious Offense that Caused Petitioner nearly 19 Years of incarceration. Hence, shall not be taken lightly, this Court set a hearing date for December 06, 2021, well, today November 25, 2021 almost 11 days left to the above hearing date, and Petitioner has not heard from respondent, nor received any copy or documentation filed by respondent in this action. Therefore, Respondents' Silent in this matter and/or failure to comply with this Court Order on time Violate requirements set forth at NRAP 31 (d). See *Blk v. State* 233 P3d 357 (2010)

Conclusion

WHEREFORE, for the above reasons Villaverde PRAY that this Honorable Court take this Judicial Notice in Consideration and hold that respondents' disregard and Contempt of not following Procedures or Court Orders, is a Confession of error to Villaverde's Constitutional claims in his Petition. For writ of habeas Corpus (Post Conviction).

dated this 25 day of November, 2021

Respectfully Submitted

Sally D Villaverde # 81701

SALLY D. VILLAVERDE # 81701

Petitioner Acting Pro Se

CERTIFICATE OF SERVICE BY MAILING

I SALLY D. VILLAYERDE hereby Certify Pursuant to NRCP 5(h), that on this 25
day of November, 2021, I mailed a true and correct copy of the foregoing. " Judicial
NOTICE by Placing document in a Sealed Pre-Postage Paid envelope and de
posited said envelope in the United STATE mail addressed to the following:

CLARK County DISTRICT Attorney Office
200 Lewis Ave.
LAS VEGAS, NV 89155

Dated: this 25 day of November 2021

Sally D. Villaverde # 81701
SALLY D. VILLAYERDE # 81701
Petitioner / in Pro Persona
P.O. Box 208
Indian Spring, NV 89018



LAS VEGAS NV 890
23 NOV 2021 PM 4 L

TO: CLERK OF THE COURT

200 Lewis Ave. 3rd floor.
LAS VEGAS, NV 89155

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

SALLY VILLAVERDE,
#1433466

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondents

CASE NO: A-18-780041-W
03C191012-2
DEPT NO: X

FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER

DATE OF HEARING: DECEMBER 6, 2021
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable TIERRA JONES, District Judge, on the 6th day of December 2021, Petitioner not being present or represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, District Attorney, by and through LAURA GOODMAN, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, the testimony of witnesses, and/or documents on file herein, now, therefore, the Court makes the following findings of fact, conclusions of law and order.

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1 **PROCEDURAL HISTORY**

2 On March 23, 2003, Sally Villaverde ("Petitioner") and Co-Defendants Rene Gato and
3 Robert Castro were charged by way of Amended Criminal Complaint with Burglary (Felony
4 - NRS 205.060), Murder With Use of a Deadly Weapon (Open Murder) (Felony - NRS
5 200.010, 200.030, 193.165) and Robbery With Use of a Deadly Weapon (Felony - NRS
6 200.380, 193.165). On March 21, 2003, a preliminary hearing was held, after which the district
7 court held all three (3) defendants to answer to the charges in district court.

8 On March 25, 2003, Petitioner and the Co-Defendants were charged by way of
9 Information with Burglary (Felony - NRS 205.060), Murder With Use of a Deadly Weapon
10 (Open Murder) (Felony - NRS 200.010, 200.030, 193.165), and Robbery With Use of a Deadly
11 Weapon (Felony - NRS 200.380, 193.165). An Amended Information, charging only
12 Petitioner, was filed on March 29, 2004, following the district court's granting of Petitioner's
13 Motion to Sever Trials filed on January 27, 2004.

14 On March 31, 2004, a jury trial commenced. On April 8, 2004, the jury found Petitioner
15 guilty on all counts, including First Degree Murder With Use of a Deadly Weapon.

16 On June 3, 2004, the District Court sentenced Petitioner as follows: Count 1 - to a
17 maximum of ninety-six (96) months with a minimum of twenty-two (22) months in the Nevada
18 Department of Corrections ("NDC"); Count 2 - to a term of Life imprisonment without the
19 possibility of parole in the NDC, plus an equal and consecutive term for the Use of a Deadly
20 Weapon; Count 3 - to a maximum on one hundred fifty-six (156) months and a minimum of
21 thirty-five (35) months in the NDC, plus an equal and consecutive term for the Use of a Deadly
22 Weapon, Count 3 consecutive to Count 2. Credit for time served does not appear to have been
23 awarded according to the Court Minutes. On June 10, 2004, the District Court fielded The
24 Judgment of Conviction.

25 On June 10, 2004, Petitioner filed a direct appeal. On February 15, 2006, The Nevada
26 Supreme Court affirmed Petitioner's convictions. On March 14, 2006, the Nevada Supreme
27 Court issued Remittitur.
28

1 On April 3, 2006, Petitioner filed his first Petition for Writ of Habeas Corpus (Post-
2 Conviction) ("First Petition"). On April 20, 2006, Petitioner filed a Motion to Withdraw his
3 Petition Without Prejudice. On April 25, 2006, the State filed its Response. On May 3, 2006,
4 Petitioner filed a Reply. On May 31, 2006, Petitioner filed a Supplemental Petition for Writ of
5 Habeas Corpus, Memorandum of Points and Authorities in Support of the Petition, and
6 Appendix of Exhibits.

7 On April 12, 2007, the District Court appointed counsel. On August 27, 2007, appointed
8 counsel filed a Supplement to Petitioner's Petition for Writ of Habeas Corpus. On November
9 6, 2007, the State filed its Response to the Supplemental Petition. On January 10, 2008, the
10 District Court held an evidentiary hearing on Petitioner's ineffective assistance of counsel
11 claims. Following the evidentiary hearing, the Court denied the petition on the merits. On
12 February 26, 2008, the District Court filed The Findings of Facts, Conclusions of Law, and
13 Order.

14 On January 28, 2008, Petitioner filed a Notice of Appeal. On May 10, 2010, The Nevada
15 Supreme Court affirmed the District Court's denial of Petitioner's Petition. On June 4, 2010,
16 Nevada Supreme court issued Remittitur.

17 On August 28, 2018, Petitioner filed a second Petition for Writ of Habeas Corpus (Post-
18 Conviction) ("Second Petition") and Motion for Appointment of Counsel. On October 29,
19 2018, The State filed its Response. On November 1, 2018, the District Court held a hearing
20 and denied the Petition and the Motion. On December 5, 2018, the District Court filed its
21 Findings of Fact, Conclusions of Law, and Order was filed.

22 On November 26, 2018, Petitioner filed a Notice of Appeal. On October 30, 2019, the
23 Nevada Court of Appeals entered an Order of Affirmance. On November 20, 2019, Petitioner
24 submitted a Petition for Rehearing. On January 22, 2020, the Nevada Court of Appeals granted
25 rehearing and affirmed the district court's judgment. On May 18, 2020, the Court issued
26 Remittitur.

27 On March 26, 2019, Petitioner filed a Motion for Modification of Sentence. The State
28 filed an Opposition on April 17, 2019. On April 23, 2019, the district court denied the motion.

1 On May 7, 2019, The Order Denying Petitioner's Motion for Modification of Sentence was
2 filed. On May 1, 2019, Petitioner filed a Notice of Appeal. On March 12, 2020, the Nevada
3 Court of Appeals affirmed the judgment of the district court. On June 1, 2020, the Court issued
4 Remittitur. On June 14, 2021, the District Court filed an Amended Judgment of Conviction,
5 granting Petitioner four hundred sixty-nine (469) days credit for time served.

6 On October 4, 2021, Petitioner filed his third Petition for Writ of Habeas Corpus (Post-
7 Conviction) ("Third Petition") and a Motion to Appoint Counsel ("Motion"). On November
8 11, 2018, the State filed their Response. On December 6, 2021, this Court held a hearing,
9 wherein this Court denied Petitioner's Third Petition and Motion to Appoint Counsel

10 **FACTUAL BACKGROUND**

11 In 1998, Leonel Garcia ("Garcia") met the Petitioner and Enrique Caminero
12 ("Caminero"). Mr. Garcia indicated that he was good friends with Caminero. Garcia knew that
13 Caminero was a very successful drug dealer.

14 In February of 2002, just weeks before the murder of Caminero, Rene Gato ("Gato"),
15 Roberto Castro ("Castro"), and Francisco Terrazon (Fanciquito) approached Garcia requesting
16 his assistance in kidnapping Caminero. They asked Garcia to assist in setting up a meeting
17 with Caminero in a hotel room. Once Caminero arrived at the hotel, the plan was to kidnap
18 him, tie him up and torture him until he revealed where his money was and who supplied him
19 with the drugs he sold.

20 Garcia was to approach Caminero because he knew Caminero trusted him. However,
21 Garcia warned Caminero. Garcia then contacted Caminero's mother and the police after
22 hearing of Caminero's death.

23 Teresa Gamboa ("Gamboa") was the Petitioner's girlfriend. She testified at a
24 preliminary hearing regarding her involvement in the death of Caminero. Gamboa testified
25 that she was living with the Petitioner in March of 2002. She was also acquainted with Gato,
26 Castro. Petitioner asked Gamboa to rent a room for him on March 5, 2002, using a false ID.
27 In return, she and Petitioner were to receive money.
28

1 On March 5, 2002, using Gato's car, they drove to the Capri Motel. While traveling,
2 Gato asked the Petitioner how much Gamboa knew. Petitioner replied that she knew some
3 things but not everything. Gamboa testified that Gato had a large chrome gun. Upon arrival,
4 Gamboa rented a room in the back, as instructed, and returned to Gato's car. Then Gamboa,
5 Petitioner, and his two Co-Defendants entered the room. Gamboa stayed for about five
6 minutes, and they returned her home around 5:30 PM.

7 After, Petitioner took a taser gun, and all three left Gamboa. Petitioner returned home
8 around 10:30 PM. Gamboa described Petitioner as being "freaked out" and pacing the room.
9 She also noticed that Petitioner had blood on his pants and shirt. Petitioner was saying, "he's
10 dead," "No, no, I gave him mouth-to-mouth resuscitation," and "He was still – he was still
11 breathing."

12 On March 6, 2002, Petitioner and Gamboa drove to California and stayed at a Motel 6,
13 along with Gato and Castro. At the motel, Gamboa overheard Petitioner admit to using a belt
14 to strangle the victim, as well as using the taser gun.

15 Moreover, law enforcement recovered a palm print at the crime scene during the
16 investigation, preserved in diluted blood. The palm print was recovered near the area where
17 Caminero's body was found. The palm print matched with Petitioner. Two other fingerprints
18 from the bathroom also matched with Petitioner.

19 On February 18, 2003, a warrant was issued for Petitioner's arrest. Las Vegas
20 Metropolitan Police Department officers arrested Petitioner shortly after at Alfredo Martinez's
21 place of residence. While in custody and after being Mirandized, Petitioner admitted being in
22 the hotel room when Caminero arrived there. Once Caminero arrived, a struggle ensued. They
23 tried to gag Caminero and bind his legs and hands. However, Gato ended up shooting
24 Caminero. Castro then strangled Caminero causing a gurgling sound.

25 Gato then instructed Petitioner and Castro to clean the room for fingerprints. Petitioner
26 tried wiping down most of the room. Also, Petitioner took Caminero's SUV and other
27 belongings. Gamboa noticed Petitioner had 400 dollars in cash as well as several small gold
28 chains or bracelets. Gamboa indicated that Petitioner took the jewelry to a Super Pawn.

1 Also, Degna Ortega (“Ortega”), Caminero’s mother, testified that Caminero always
2 wore or had on his person the pawned jewelry. Abdirazaq Mohamed, a manager at a pawn
3 store, testified that Petitioner pawned several items of jewelry, described as gold chains,
4 shortly after the murder.

5 **I. THE INSTANT PETITION IS PROCEDURALLY BARRED**

6 This Court denies Petitioner's Third Petition as procedurally barred. The Nevada
7 Supreme Court has held that the district court has a *duty* to consider whether a defendant’s
8 post-conviction petition claims are procedurally barred. State v. Eighth Judicial Dist. Court
9 (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found that
10 “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is
11 mandatory,” noting:

12
13 Habeas corpus petitions that are filed many years after conviction
14 are an unreasonable burden on the criminal justice system. The
15 necessity for a workable system dictates that there must exist a
time when a criminal conviction is final.

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

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

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1 **A. THE INSTANT PETITION IS TIME-BARRED**

2 This Court denies Petitioner's Third Petition as time-bared under NRS 34.726(1). NRS
3 34.726(1) states:

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

- 12 (a) That the delay is not the fault of the petitioner; and
13 (b) That dismissal of the petition as untimely will unduly
14 prejudice the petitioner.
15

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

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

26 This is not a case wherein the Judgment of Conviction was, for example, not final. *See*,
27 *e.g., Johnson v. State*, 133 Nev. 571, 402 P.3d 1266 (2017) (holding that the defendant's
28 judgment of conviction was not final until the district court entered a new judgment of
conviction on counts that the district court had vacated); *Whitehead v. State*, 128 Nev. 259,
285 P.3d 1053 (2012) (holding that a judgment of conviction that imposes restitution in an
unspecified amount is not final and therefore does not trigger the one-year period for filing a

1 habeas petition). Nor is there any other legal basis for running the one-year time limit from the
2 filing of the Amended Judgment of Conviction.

3 Here, the District Court filed the *original* Judgment of Conviction on June 10, 2004.
4 On March 14, 2006, the Nevada Supreme Court issued Remittitur. Thus, Petitioner had until
5 March 14, 2007, to file a timely petition. Petitioner filed the Third Petition on October 5, 2021.
6 This Court finds, Petitioner is fourteen (14) years, six (6) months, and twenty-one (21) days
7 late. Additionally, Petitioner fails to provide good cause as to why his Third Petition is
8 untimely. Therefore, Petitioner's Third Petition is time-barred and is denied.

9 **B. THE INSTANT PETITION IS BARRED AS SUCCESSIVE**

10 This Court denies Petitioner's Third Petition as successive under NRS 34.810(2). NRS
11 34.810(2) states:

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

17 As such, application of NRS 34.810(2) is mandatory. *See State v. Eight Judicial Dist. Ct. ex*
18 *el. County of Clark (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074-75 (2005).

19 Successive petitions are petitions that either fails to allege new or different grounds for
20 relief of which the grounds have already been decided on the merits or petitions that allege
21 new or different grounds, but a judge or justice finds that the petitioner's failure to assert those
22 grounds in a prior petition would constitute an abuse of the writ. *See Lozada v. State*, 110 Nev.
23 349, 352-53, 871 P.2d 944, 950 (1994) (overruled on other grounds by *Rippo v. State*, 134
24 nev. 411, 423 P.3d 1084 (2018); *Hart v. State*, 116 Nev. 558, 563-64, 1 P.3d 969, 972 (2000)
25 (overruled on other grounds by *Harris v. State*, 130 Nev. 435, 329 P.3d 619 (2014) (holding
26 that “where a defendant previously has sought relief from the judgment, the defendant’s failure
27 to identify all grounds for relief in the first instance should weigh against consideration of the
28

1 successive motion.”). Successive petitions will only be decided on the merits if the petitioner
2 can show good cause and prejudice. *See* NRS 34.810(3).

3 The Nevada Supreme Court has stated: “Without such limitations on the availability of
4 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
5 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
6 system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at 950.
7 The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly require
8 a careful review of the record, successive petitions may be dismissed based solely on the face
9 of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,
10 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
11 the writ to wait to assert it in a later petition. *See* McClesky v. Zant, 499 U.S. 467, 497–98
12 (1991).

13 Here, the District Court presided over an evidentiary hearing on January 10, 2008,
14 regarding Petitioner's First Petition. After which, the District Court denied the petition on the
15 merits. Petitioner went on to file a Second Petition, which the District Court also denied, on
16 November 1, 2018. The instant Petition is Petitioner's third, in which Petitioner's allegations
17 are no different from his prior petitions.

18 This Court finds, the claims raised in the Third Petition were available to Petitioner
19 since 2004. As such, any new claims Petitioner does assert would be an abuse of writ because
20 Petitioner fails to show good cause as to why he is now asserting these claims more than a
21 decade after his conviction when such claims were always available to Petitioner. Therefore,
22 the Third Petition is successive and is denied.

23 **C. THE PETITION IS BARRED BY LACHES**

24 This Court denies Petitioner's Third Petition as barred by laches. Certain limitations
25 exist on how long a petitioner may wait to assert a post-conviction request for relief. There is
26 a rebuttable presumption of prejudice to the State if “[a] period exceeding five years [elapses]
27 between the filing of a judgment of conviction, an order imposing a sentence of imprisonment
28 or a decision on direct appeal of a judgment of conviction and the filing of a petition

1 challenging the validity of a judgment of conviction” NRS 34.800. The reason for this is that
2 “petitions that are filed many years after conviction are an unreasonable burden on the criminal
3 justice system. The necessity for a workable system dictates that there must exist a time when
4 a criminal conviction is final.” Groesbeck v. Warden, 100 Nev. 259, 679 P.2d 1268 (1984).
5 However, to invoke the presumption, the State must plead laches. *See* NRS 34.800(2).

6 Consideration of the equitable doctrine of laches is necessary for determining whether
7 a defendant has shown 'manifest injustice' that would permit a modification of a sentence. *See*
8 Hart, 116 Nev. at 563–64, 1 P.3d at 972 (overruled on other grounds by Harris v. State, 130
9 Nev. 435, 329 P.3d 619 (2014)). Moreover, “[a]pplication of the doctrine to an individual case
10 may require consideration of several factors, including: (1) whether there was an inexcusable
11 delay in seeking relief; (2) whether an implied waiver has arisen from the defendant's knowing
12 acquiescence in existing conditions; and (3) whether circumstances exist that prejudice the
13 State.” *Id.* (citing Buckholt v. District Court, 94 Nev. 631, 633, 584 P.2d 672, 673–74 (1978)).

14 In this case, the State affirmatively pled laches. The District Court filed the Judgment
15 of Conviction on June 10, 2004. Petitioner pursued a direct appeal, wherein the Nevada
16 Supreme Court affirmed all of Petitioner's convictions and issued Remittitur on March 14,
17 2006. More than seventeen (17) years have passed since the Judgment of Conviction was filed,
18 and more than fourteen (14) years have passed since Remittitur.

19 This time-lapse is almost four (4) times longer than the statutory period of five (5) years.
20 This Court finds, the State is prejudiced in its ability to respond to the merits of Petitioner's
21 claims and, should relief be granted, to retry the case. Moreover, Petitioner fails to rebut this
22 presumption. Therefore, Petitioner's Third Petition is barred by laches and is denied.

23 **D. PETITIONER'S CLAIMS ARE WAIVED**

24 This Court denies Petitioner claims of ineffective assistance of counsel as waived. *See*
25 NRS 34.810; McCoy v. Louisiana, 138 S. Ct. 1500, 1510-11, 200 L. Ed. 2d 821 (2018).

26 Under NRS 34.810(1)(b)(2), “[t]he court shall dismiss a petition if the court determines
27 that [the] *conviction was the result of a trial and the grounds for the petition could have been*
28 *... [r]aised in a direct appeal.*” A petitioner may only escape these procedural bars if he meets

1 the burden of establishing good cause and prejudice. *See* NRS 34.810(3). Where a petitioner
2 does not show good cause for failure to raise claims of error upon direct appeal, the district
3 court is not obliged to consider them in post-conviction proceedings. *See Jones v. State*, 91
4 Nev. 416, 536 P.2d 1025 (1975).

5 Additionally, “challenges to the validity of a guilty plea and claims of ineffective
6 assistance of trial and appellate counsel must first be pursued in post-conviction
7 proceedings.... [A]ll other claims that are appropriate for a direct appeal must be pursued on
8 direct appeal, or they will be considered waived in subsequent proceedings.” *Franklin v. State*,
9 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other
10 grounds by *Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999)). Moreover, “[a] court *must*
11 *dismiss* a habeas petition if it presents *claims that either were or could have been presented in*
12 *an earlier proceeding*, unless the court finds both cause for failing to present the claims earlier
13 or for raising them again and actual prejudice to the petitioner.” *Evans v. State*, 117 Nev. 609,
14 646-47, 29 P.3d 498, 523 (2001).

15 This Court finds, Petitioner failed to object to the State’s comments during closing and
16 failed to object to Jury Instructions three (3), thirty-four (34), and thirty-seven (37). *See Third*
17 *Petition*, at 6. Petitioner also failed to address good cause to overcome the mandatory
18 procedural bars. Additionally, Petitioner failed to show that an impediment external to the
19 defense prevented him from raising these claims in an earlier proceeding.

20 Petitioner offers no excuse for his failure to raise said issues there. Thus, this Court
21 need not consider prejudice. Therefore, Petitioner’s claims are denied.

22 **II. PETITIONER FAILS TO DEMONSTRATE GOOD CAUSE OR PREJUDICE** 23 **TO OVERCOME THE PROCEDURAL BARS**

24 This Court finds that Petitioner does not demonstrate good cause or prejudice to
25 overcome the procedural bars. To avoid procedural default under NRS 34.726 and NRS
26 34.810, the petitioner has the burden of pleading and proving specific facts that demonstrate
27 good cause for his failure to present his claim in an earlier proceeding or to otherwise comply
28 with the statutory requirements, and that the petitioner will be unduly prejudiced if the petition

1 is dismissed. *See Hogan v. Warden*, 109 Nev. 952, 959-60, 860 P.2d 710, 715-16 (1993);
2 *Phelps v. Nevada Dep't of Prisons*, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). "A court
3 *must* dismiss a habeas petition if it presents claims that either were or could have been
4 presented in an earlier proceeding, unless the court finds both cause for failing to present the
5 claims earlier or for raising them again and actual prejudice to the petitioner." *Evans*, 117 Nev.
6 at 646-47, 29 P.3d at 523 (2001) (emphasis added).

7 Moreover, "to establish good cause, [petitioners] must show that an impediment
8 external to the defense prevented their compliance with the applicable procedural rule." *Clem*
9 *v. State*, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); *See also Hathaway v.*
10 *State*, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003); *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537.
11 "A qualifying impediment might be shown where the factual or legal basis for a claim was not
12 reasonably available at the time of default." *Clem*, 119 Nev. at 621, 81 P.3d at 525. The Court
13 continued, petitioners "cannot attempt to manufacture good cause." *Id.* at 621, 81 P.3d at 526.
14 Examples of good cause include interference by State officials and the previous unavailability
15 of a legal or factual basis. *See State v. Huebler*, 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012).
16 Any delay in the filing of the petition must not be the fault of the petitioner. *See NRS*
17 *34.726(1)(a)*.

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

26 To establish prejudice, a Petitioner must show "not merely that the errors of [the
27 proceedings] created [the] possibility of prejudice, but that they worked to his actual and
28 substantial disadvantage, in affecting the State's proceedings with [an] error of constitutional

1 dimensions.” Hogan, 109 Nev. at 960, 860 P.2d at 716 (quoting United States v. Frady, 456
2 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). Bare and naked allegations are insufficient to
3 warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v.
4 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it is contradicted
5 or proven to be false by the record as it existed at the time the claim was made.” Mann v. State,
6 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

7 Additionally, for a petitioner to demonstrate prejudice, he or she must show “not merely
8 that the errors of [the proceeding] created possibility of prejudice, but that they worked to his
9 actual and substantial disadvantage, in affecting the state proceedings with error of
10 constitutional dimensions.” Hogan v. Warden, 109 Nev. at 960, 860 P.2d at 716 (internal
11 quotation omitted), Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545 (2001).

12 This Court finds, Petitioner failed to address good cause to overcome the mandatory
13 procedural bars. Additionally, Petitioner failed to show that an impediment external to the
14 defense prevented him from raising these claims in an earlier proceeding and offers no excuse
15 for his failure to raise said issues there. Moreover, because there is no good cause, this Court
16 need not consider prejudice. Therefore, the Third Petition is denied.

17 **III. PETITIONER’S CLAIMS ARE BARRED UNDER THE LAW OF CASE** 18 **DOCTRINE**

19 This Court finds that Petitioner’s claims that (1) he is not guilty of first-degree murder
20 because Castro plead guilty to voluntary manslaughter; thus, co-conspirator liability should be
21 limited to voluntary manslaughter, and (2) the District Court violated Petitioner’s right of
22 confrontation by allowing Gamboa’s preliminary transcript to be read into the record are
23 barred under the Law of the Case Doctrine. *See* Third Petition, at 11-16.

24 The doctrine of the law of the case or “the law of a first appeal is law of the case on all
25 subsequent appeals in which the facts are substantially the same.” Hall v. State, 91 Nev. 314,
26 315, 535 P.2d 797, 798 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38
27 (1969)). Under the law of the case doctrine, issues previously decided on direct appeal may
28 not be reargued. *See* Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing

1 McNelson v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). A petitioner cannot
2 avoid “the doctrine of the law of the case” by raising “a more detailed and precisely focused
3 argument . . . after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at 799.
4 Accordingly, by simply continuing to file motions with the same arguments, his motion is
5 barred by the doctrines of the law of the case and res judicata. See Hall, 91 Nev. at 316, 535
6 P.2d at 799.

7 Moreover, parties are precluded “from relitigating a cause of action or an issue which
8 has been finally determined by a court of competent jurisdiction.” Horvath v. Gladstone, 97
9 Nev. 594, 597, 637 P.2d 531, 533 (1981); See University of Nevada v. Tarkanian, 110 Nev.
10 581, 598, 879 P.2d 1180, 1191 (1994) (The Court distinguishes between issue preclusion and
11 claim preclusion, although they are both under the doctrine of res judicata). For issue
12 preclusion to apply, there must be:

13 (1) the issue decided in the prior litigation must be identical to the
14 issue presented in the current action; (2) the initial ruling must
15 have been on the merits and have become final; ... (3) the party
16 against whom the judgment is asserted must have been a party or
17 in privity with a party to the prior litigation and (4) the issue was
18 actually and necessarily litigated

19 Five Star Capital Corp. v. Rudy, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008)¹ (citing
20 University of Nevada v. Tarkanian, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994)); *See also*
21 Gonzales v. Dist. Ct., 129 Nev. 215, 218, 298 P.3d 448, 450 (2013) (The Court suggesting that
22 the issue-preclusion analysis is applicable in the criminal context.); *See also Bradley v. State*,
23 494 P.3d 907 (Table), 2021 WL 4167112 (Nev. Ct. of App. 2021) (unpublished) (The Court
24 cites to Five Star Capital Corp.’s, four-factor test for issue preclusion in a criminal context).

25 //

26 //

27 //

28 ¹ In Five Star Capital Corp. v. Rudy, 124 Nev. 1048, 194 P.3d 709 (2008), the Court adopted “the terms of claim preclusion
and issue preclusion as the proper terminology in referring to these doctrines,” instead of Res Judicata.

1 **A. PETITIONER’S CLAIM HE IS NOT GUILTY OF FIRST-DEGREE MURDER IS**
2 **BARRED**

3 Petitioner claimed in his Second Petition that he was innocent of First-Degree Murder
4 based upon Castro’s Guilty Plea Agreement. *See Second Petition*, at 27-29. Specifically,
5 Petitioner argued:

6 [B]ecause Roberto Castro pleaded Guilty of Voluntary
7 Manslaughter and served 4 [] to 10 [years] [in] high desert state
8 prison. Show[s] once again that the [S]tates THEORY OF FIRST
9 DEGREE MURDER WAS UNRELIABLE beyond a reasonable
10 doubt.

11 *See Second Petition*, at 28.

12 In the Third Petition, Petitioner again argues he is innocent of First-Degree Murder
13 based upon Castro’s Guilty Plea Agreement. *See Third Petition*, at 11-13. Specifically,
14 Petitioner argues that:

15 The Prejudice involved in the case is that[] the Jury found
16 [Petitioner] Guilty and convicted [Petitioner] on [t]hories [that are]
17 inconsistent with the theories alleged by the State [regarding]
18 Castro’s charging document or information.

19 ...
20 [I]f the State conceded in open court, that [Castro’s] name
21 thereto on the above amended information committed voluntary
22 manslaughter while “in the heat of passion.” Then by operation of
23 State and Federal law, [Petitioner’s] conviction for first-degree
24 murder must be vacated.

25 *Third Petition*, at 13. As shown above, Petitioner is raising the same issue he raised in his
26 Second Petition. However, Petitioner does word his argument differently, but the issue remains
27 the same.

28 Moreover, the Nevada Supreme Court has already ruled on the merits of this issue. *See*
29 *Sally Villaverde v. State*, Docket No. 77563 (Order of Affirmance, May 21, 2020).
30 Specifically, the Nevada Court of Appeals held that:

Villaverde claim[s] his co-defendant's guilty plea was new evidence, not presented at trial, that showed that he could not have committed first-degree murder with the use of a deadly weapon, robbery with the use of a deadly weapon, and burglary.

... [However,] Villaverde fail[s] to demonstrate he was actually innocent. Villaverde's co-defendant's *Alford* plea to lesser charges did not demonstrate Villaverde was factually innocent of the charges he was convicted of. Accordingly, because Villaverde failed to demonstrate it was more likely than not that no reasonable jury would find him guilty beyond a reasonable doubt based on his co-defendant's plea, we conclude the district court did not err by denying this claim without first holding an evidentiary hearing.

See Sally Villaverde v. State, Docket No. 77563-COA (Order of Affirmance, May 21, 2020). This Court finds, Petitioner's claim is precluded from rehearing as the Nevada Court of Appeals has already made a final ruling on the merits regarding the instant issue. Therefore, Petitioner's claim is denied.

B. PETITIONER'S CLAIM THAT THE DISTRICT COURT VIOLATED PETITIONER'S RIGHT TO CONFRONT GAMBOA BY ADMITTING GAMBOA'S PRELIMINARY HEARING TESTIMONY IS BARRED²

On direct appeal, Petitioner claimed the District Court erred by allowing Gamboa's testimony at trial. *See Sally Villaverde v. State*, Docket No. 43443 (Opening Brief, January 12, 2005). Specifically, Petitioner argued:

The admission of Gamboa's testimony violated Defendant's rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article 1 Section 1 of the Nevada State Constitution to confront and cross-examine witnesses against Defendant at trial and effective assistance of trial counsel.

... The prejudicial effect of allowing Gamboa's testimony without her actual presence at trial clearly outweighs the relevance of her testimony. That being the case, this Court must return to the status of the law prior to the Funches decision and follow the previous holdings in *Lemberes* and *Lapena*, and find that it was reversible

² In Petitioner's third claim, he colors his claim as an ineffective assistance of counsel claim. However, Petitioner is alleging a violation of his right to confront Gamboa via the confrontation clause. *See Third Petition*, at 15.

1 error for the lower court to have admitted Gamboa's preliminary
2 hearing testimony into evidence.

3 Id. at 1-6.

4 In the Third Petition, Petitioner again argues that the District Court erred in admitting
5 Gamboa's testimony at trial. *See Third Petition*, at 14-16, 18. Specifically, Petitioner argues
6 that:

7 Counsel . . . was unable to cross-examine [Gamboa].
8 Therefore . . . the admission of Gamboa's Preliminary hearing
9 transcript [] violated his right to effective assistance of trial
10 counsel.

11 . . . The redacted transcripts of Teresa Gamboa's testimony . . .
12 introduced by the State . . . Simply violated [Petitioner's]
13 constitutional rights under the confrontation clause because he was
14 not able to cross-examine his co-defendants [Gato and Castro].

15 Third Petition, at 15, 18. As such Petitioner is raising the same issue he raised in his direct
16 appeal.

17 Moreover, The Nevada Supreme Court has already ruled on the merits of this issue. *See*
18 Sally Villaverde v. State, Docket No. 43443 (Order of Affirmance, February 15, 2006).
19 Specifically, the Nevada Supreme Court held that:

20 [T]he district court properly admitted Gamboa's preliminary
21 hearing testimony. The transcript of a witness's preliminary
22 hearing testimony is admissible non-hearsay if the defendant was
23 represented by counsel at the hearing, counsel cross-examined the
24 witness, and the witness is shown to be unavailable at the time of
25 trial."

26 . . . The confrontation element is satisfied because Villaverde
27 had the ability to cross-examine Gamboa at the preliminary
28 hearing and, in fact, did so.

Id. at 2. The Nevada Supreme Court continued, regarding Gato and Castro, holding that:

1 [T]he district court properly admitted that portion of Gamboa's
2 testimony concerning Gato and Castro's out-of-court statements.
3 Statements of co-conspirators are not considered hearsay if the
4 statements are made "during the course and in furtherance of the
5 conspiracy" and are being offered against the party . . . Gato and
6 Castro's statements, both before and after the incident, were
7 properly considered non-hearsay, because they were made before
8 the commission of the crime and after the incident in an attempt to
9 conceal the parties' involvement.

10 . . .
11 we conclude that the out-of-court statements to which Gamboa
12 testified to were not testimonial in nature . . . Because the
13 statements were not testimonial, cross-examination of Gato and
14 Castro was not constitutionally mandated.

15 Id. at 3.

16 The Nevada Supreme Court held that because Petitioner "was not tried with Castro or
17 Gato, Bruton is not applicable." Id. at 4. This Court finds, Petitioner's claim is precluded for
18 rehearing as the Nevada Supreme Court has already made a final ruling on the merits regarding
19 the instant issue. Therefore, Petitioner's claim is denied.

20 **IV. THE STATE PRESENTED SUFFICIENT EVIDENCE OF FIRST-DEGREE** 21 **MURDER**

22 Petitioner claims that he is innocent of the First-Degree Murder charge, via Felony
23 Murder, because he was not the person who committed the physical act of "killing the victim"
24 and because there is inadequate evidence to prove the charges of Robbery and Burglary. *See*
25 Third Petition, at 7-8. This Court finds that , the State provided a sufficient amount of evidence
26 to show Petitioner conspired with his Co-Defendants to rob and burglarize Caminero, and in
27 the commission of these acts, they murdered Caminero.

28 When reviewing a sufficiency of the evidence claim, the relevant inquiry is not whether
the court is convinced of the petitioner's guilt beyond a reasonable doubt. Wilkins v. State, 96
Nev. 367, 374, 609 P.2d 309, 313 (1980). Rather, when the jury has already found the
petitioner guilty, the limited inquiry is "whether, after viewing the evidence in the light most
favorable to the prosecution, *any* rational trier of fact could have found the essential elements

1 of the crime beyond a reasonable doubt.” Milton v. State, 111 Nev. 1487, 1491, 908 P.2d 684,
2 686–87 (1995) (internal quotation and citation omitted).

3 Indeed, “it is the jury’s function, not that of the court, to assess the weight of the
4 evidence and determine the credibility of the witnesses.” Origel-Candido v. State, 114 Nev.
5 378, 381, 956 P.2d 1378, 1380 (1998) (quoting McNair v. State, 108 Nev. 53, 56, 825 P.2d
6 571, 573 (1992)). It is further the jury’s role “[to fairly] resolve conflicts in the testimony, to
7 weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.”
8 Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). Moreover, in rendering
9 its verdict, a jury is free to rely on circumstantial evidence. Wilkins, 96 Nev. at 374, 609 P.2d
10 at 313. In fact, “circumstantial evidence alone may support a conviction.” and the Nevada
11 Supreme Court has previously and consistently upheld convictions based solely on
12 circumstantial evidence. *See* Hernandez v. State, 118 Nev. 513, 531, 50 P.3d 1100, 1112
13 (2002); Crawford v. State, 92 Nev. 456, 456, 552 P.2d 1378, 1378 (1976). The district court
14 can only acquit the defendant where the State fails to produce a minimum threshold of
15 evidence upon which a conviction may be based. *Id.* (citing State v. Purcell, 110 Nev. 1389,
16 1394, 887 P.2d 276, 279 (1994)).

17 Moreover, a conspiracy is “an agreement between two or more persons for an unlawful
18 purpose.” Doyle v. State, 112 Nev. 879, 894, 921 P.2d 901, 911 (1996) (citing Peterson v.
19 Sheriff, 95 Nev. 522, 598 P.2d 623 (1979)). A charge of conspiracy is usually established by
20 inference from the conduct of the parties. A conspiracy “may be supported by a ‘coordinated
21 series of acts’ in furtherance of the underlying offense sufficient to infer the existence of an
22 agreement.” Doyle, 112 Nev. at 879, 921 P.2d at 911.

23 Knowledge of the conspiracy may be demonstrated by circumstantial evidence. *See*
24 United States v. Aron, 463 F.2d 779 (9th Cir. 1972); Windsor v. United States, 384 F.2d 535,
25 536 (9th Cir. 1967). Moreover, “conspiracy is seldom susceptible of direct proof and is usually
26 established by inference from the conduct of the parties. In particular, a conspiracy conviction
27 may be supported by a coordinated series of acts in furtherance of the underlying offense
28 sufficient to infer the existence of an agreement.” Doyle v. State, 112 Nev. 879, 894, 921 P.2d

1 901, 911 (1996) (internal citations omitted) (overruled on other grounds by Kaczmarek v.
2 State, 120 Nev. 314, 91 P.3d 16 (2004)).

3 Additionally, for general intent crimes, such as battery and robbery, “aiders and abettors
4 are criminally *responsible for all harms that are a natural, probable, and foreseeable result*
5 *of their actions.*” Mitchell v. State, 114 Nev. 1417, 1427, 971 P.3d 813, 820 (1998) (overruled
6 on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002)). Further, “so long as
7 the partnership in crime continues, the partners act for each other in carrying it forward; an
8 overt act of one partner may be the act of all without a new agreement specifically directed to
9 that act.” State v. Wilcox, 105 Nev. 434, 436, 776 P.2d 549, 550 (1989).

10 Additionally, a petitioner must support his or her claims with specific factual
11 allegations, which would entitle the petitioner to relief if true. See Hargrove v. State, 100 Nev.
12 498, 502, 686 P.2d 222, 225 (1984). Moreover, bare and naked allegations are insufficient, as
13 are those belied and repelled by the record. Id. “A claim is ‘belied’ when it is contradicted or
14 proven to be false by the record as it existed at the time the claim was made.” Mann v. State,
15 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

16 Here, Petitioner does not assert any facts that would absolve Petitioner of First-Degree
17 Murder. In any event, Petitioner argues that he was not the one to commit the murder directly,
18 but that his Co-Defendant Castro committed the murder. See Third Petition, at 8. However,
19 the State charged Petitioner with murder both as the direct perpetrator and under vicarious
20 liability theories of aiding, abetting, and conspiracy. See Information (March 25, 2003), at 2.

21 Also, as Petitioner’s charged conduct occurred in 1998, the State needed only show
22 “the natural, probable, and foreseeable result” to find Petitioner guilty under an aiding and
23 abetting theory. Mitchell, 114 Nev. at 1427, 971 P.3d at 820 (1998). As such, this Court finds,
24 the State presented a sufficient amount of evidence showing Petitioner possessed specific
25 intent for the charge of First-Degree Murder. See Sharma, 118 Nev. at 655 P.3d at 872 (holding
26 that “To be held accountable for the specific intent crime of another under an aiding or abetting
27 theory of principal liability, aider or abettor must have knowingly aided the other person with
28 the intent that the other person commit the charged crime”).

1 Here, Petitioner asked Gamboa to rent a room for Petitioner, Gato, and Castro for March
2 5, 2002, and in doing so, Petitioner and Gamboa would make a thousand dollars. Trial
3 Transcript Day 7, at 18-19. The purpose of renting the room was to lure Caminero into a fake
4 narcotics transaction so that Petitioner and his Co-Defendants could kidnap Caminero, obtain
5 his money, and find out who supplied narcotics to Caminero. Trial Transcript Day 5, at 16-17.
6 Additionally, on the way to renting the room, Gamboa noticed Gato was carrying a gun. Id. at
7 77

8 More importantly, Petitioner admitted to being at the hotel room and helped bind
9 Caminero's arms and legs. Id. at 88. Petitioner also admitted that he helped cover up
10 Caminero's murder. Id. at 88-89. Dr. Worrell testified that a cord was used to strangle the
11 victim to death. Trial Transcript Day 6, at 97-140. Also, the day following the murder,
12 Petitioner and his two co-conspirators discussed using a belt to strangle Caminero. Trial
13 Transcript Day 5, at 94-96.

14 It is probable and foreseeable that wrapping a belt around someone's neck and
15 continuing to tighten it would result in his or her death. It is also foreseeable that bringing a
16 firearm while committing a violent felony would leave someone dead or severely injured.
17 Firearms, by their nature, increase the likelihood of a lethal outcome; that is what they are
18 designed to do. Petitioner cannot, in good faith, argue that utilizing a firearm, either by him or
19 his Co-Conspirators or wrapping a cord around someone's neck during the commission of a
20 violent felony does not create a probable and foreseeable result that the victim would be killed
21 or severely injured. In any event, Caminero died by way of strangulation. Id. at 124-125.

22 Additionally, this Court finds, the State presented sufficient evidence to support
23 findings of Robbery and Burglary with the Deadly Weapon enhancement. The State presented
24 evidence that Caminero was always seen with multiple pieces of jewelry on his person. The
25 victim's body had no jewelry on it. Id. at 144-146. Moreover, Petitioner pawned several items
26 of jewelry shortly after the murder. *See* Trial Transcript Day 6, at 75-91. Three (3) days after
27 police contacted Gamboa, Petitioner redeemed the jewelry. Id. at 84-86. After coming home
28 from the motel, Petitioner had four hundred (400) dollars in cash and several small gold chains

1 or bracelets. *See* Trial Transcript Day 5, at 90-91, 97. Shortly after, Petitioner took the jewelry
2 to a pawn shop. *Id.*

3 Here, the reasonable inference is that Petitioner stole the jewelry and money from
4 Caminero. Therefore, Petitioner's claim is denied.

5 **V. THE DISTRICT COURT DID NOT ERR IN ADMITTING GAMBOA'S**
6 **PRELIMINARY HEARING TESTIMONY**

7 Petitioner claims that the admission of Gamboa's preliminary hearing testimony
8 violated his right to confrontation. Third Petition, at 14-16, 18. This Court finds that, the
9 admission of Gamboa's testimony was properly admitted under NRS 171.198(6)(b) and
10 Drummond v. State, 86 Nev. 4, 462 P.2d 1012 (1970).

11 NRS 171.198(6)(b) codifies the former testimony exception to the hearsay rule. It
12 provides that preliminary hearing testimony may be used:

13
14 By the state if the defendant was represented by counsel or
15 affirmatively waived his right to counsel, upon the trial of the
16 cause, and in all proceedings therein, when the witness is sick, out
17 of the state, dead, or persistent in refusing to testify despite an
18 order of the judge to do so, or when his personal attendance cannot
19 be had in court.

20 NRS 171.198(6)(b); *See also* Funches v. State, 113 Nev. 916, 920, 944 P.2d 775, 777 (1997).

21 Although NRS 171.198(6)(b) does not impose a cross-examination requirement for the
22 admissibility of such testimony at a criminal trial, the Nevada Supreme Court imposed the
23 requirement in Drummond v. State, 86 Nev. 4, 7, 462 P.2d 1012, 1014 (1970), when it reasoned
24 that:

25 [T]he transcript of the Testimony of a material witness given at the
26 preliminary examination may be received in evidence at the trial
27 if three preconditions exist: first, that the defendant was
28 represented by counsel at the preliminary hearing; second, that
counsel cross-examined the witness; third, that the witness is
shown to be actually unavailable at the time of trial.

29 Drummond v. State, 86 Nev. 4, 7, 462 P.2d 1012, 1014 (1970); *See also* Aesoph v. State, 102
30 Nev. 316, 319-320, 721 P.2d 379, 381-382 (1986) (holding that preliminary hearing testimony

1 of a physician who conducted an autopsy on the victim was admissible where the physician
2 was unavailable at the time of trial).

3 Consequently, there are three elements necessary before a witness's preliminary hearing
4 testimony may be admitted as evidence at trial: (1) the defendant must have had counsel
5 represent him at the preliminary hearing; (2) the defendant's counsel must have cross-
6 examined the witness who is later unavailable for trial; and (3) the witness is actually
7 "unavailable" at trial. Funches v. State, 113 Nev. 916, 920, 944 P.2d 775, 777-78 (1997); *see*
8 *also Drummond*, 86 Nev. at 7, 462 P.2d at 1014.

9 Further, the United States Supreme Court reached a similar ruling in Crawford v.
10 Washington, 541 U.S. 36, 124 S.Ct. 1354 (2004): "Where testimonial evidence is at issue,
11 however, the Sixth Amendment demands what the common law required: unavailability and a
12 prior opportunity for cross-examination. We leave for another day any effort to spell out a
13 comprehensive definition of 'testimonial.' Whatever else the term covers, it applies at a
14 minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial;
15 and to police interrogations." 541 U.S. at 68 (footnote omitted).

16 The United States Supreme Court has held that the ultimate question in determining
17 "unavailability" for Confrontation Clause purposes is whether the witness is unavailable
18 despite good-faith efforts undertaken by the prosecution, prior to trial, to locate and present
19 that witness. *See Ohio v. Roberts*, 448 U.S. 56, 74, 100 S.Ct. 2531, 2543 (1980) (overruled on
20 other grounds by Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354 (2004). "What
21 constitutes a good-faith effort is a question of reasonableness." Quillen v. State, 112 Nev.
22 1369, 1375, 929 P.2d 893, 897 (1996).

23 Additionally, the Nevada Supreme Court specifically addressed the unavailability of
24 the witness requirement:

25
26 A witness may be unavailable if he or she is "[a]bsent from the
27 hearing and beyond the jurisdiction of the court to compel
28 appearance and the proponent of his [or her] statement has
exercised reasonable diligence but has been unable to procure his
[or her] attendance." We have interpreted the requirement that the
State "exercise reasonable diligence" to mean that the State must

1 *make reasonable efforts* to procure a witness's attendance at trial
2 before that witness may be declared unavailable.

3 Hernandez v. State, 124 Nev. 639, 188 P.3d 1126, 1130-1131 (2008) (abrogated on other
4 grounds by State v. Eighth Judicial Dist. Court (Baker), 134 Nev. 104, 107, 412 P.3d 18, 22
5 (2018)).

6 In determining what constitutes *reasonable efforts* to procure a witness, the Nevada
7 Supreme Court adopted a totality of the circumstances approach:

8 What constitutes reasonable efforts to procure a witness's
9 attendance must be determined upon considering the totality of the
10 circumstances. In the analogous circumstance of determining
11 whether a prosecutor has good cause for continuing a preliminary
12 hearing due to the absence of witnesses, this court rejected a
13 bright-line rule requiring a service of a subpoena on an out-of-state
14 witness, noting "[t]here may be circumstances where a prosecutor
15 can demonstrate 'good cause' for a continuance based upon an
16 absent witness even though it did not subpoena the witness.
17 Conversely, there may be circumstances where a prosecutor has
18 subpoenaed witnesses, yet cannot demonstrate 'good cause' for
19 their absence." In determining whether the proponent of
20 preliminary hearing testimony has met its burden of proving that a
21 witness is constitutionally unavailable, the touchstone of the
22 analysis is the reasonableness of the efforts.

23 Hernandez, 124 Nev. 649-650, 188 P.3d at 1134 (citations omitted).

24 Moreover, in Quillen, two victims previously testified that the defendant assaulted them
25 with a firearm. Quillen, 112 Nev. at 1373-74, 929 P.2d at 896. Both witnesses moved and
26 changed jobs after the preliminary hearing and prior to trial, leaving no forwarding address to
27 their new place of residence or employment. Id. at 1374-1375. The State's investigator
28 assigned to the case visited possible places of employment where the witnesses may have
 moved to, ran a SCOPE check, and contacted the Department of Motor Vehicles, all to no
 avail. Id. at 1375. However, cross-examination revealed that the investigator neither spoke to
 any of the witness' neighbors nor did he try to find out if the men had relatives in town. Id.
 Furthermore, it was also revealed that the investigator failed to contact any utilities or the post
 office. Id. at 1376. There, the Court held, the efforts taken by the State to locate the witness
 were reasonable. Id.

1 Here, Petitioner was not jointly tried with Gato and Castro. Thus, this Court FINDS
2 Bruton does not apply. See Third Petition, at 16. See Bruton v. United States, 391 U.S. 123,
3 88 S.Ct. 1620 (1968). Moreover, Gato and Castro's statements are not testimonial in nature as
4 they are statements of co-conspirators. See Crawford, 541 U.S. at 56 ("most of the hearsay
5 exceptions covered statements that by their nature were not testimonial – for example, business
6 records, or statements in furtherance of a conspiracy.") Thus, this Court finds Gato and
7 Castro's statements are admissible as statements of co-conspirators.

8 Gamboa was never charged with the commission of a crime. As such, the State
9 committed no wrongdoing in releasing Gamboa. In any event, the State did all that it could to
10 ensure that Gamboa would be present in court. Specifically, the State's investigator spent eight
11 (8) days attempting to contact Gamboa. Here, like in Quillen, the State's investigator searched
12 all known addresses and prior work contacts. Here, unlike in Quillen, the State's investigator
13 went a step further and contacted Gamboa's mother. However, like in Quillen, the State was
14 ultimately unsuccessful in finding Gamboa.

15 This Court finds, Petitioner's right to confrontation was not violated, and the State used
16 every reasonable means to locate Gamboa for trial. Therefore, Petitioner's claim is denied.

17 **VI. PETITIONER IS NOT ENTITLED TO APPOINTED COUNSEL**

18 Petitioner requests the appointment of counsel. See Motion, at 2(a). This Court finds
19 that, Petitioner is not entitled to appointed counsel.

20 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
21 conviction proceedings. See Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
22 (1991). The Nevada Supreme Court similarly observed that "[t]he Nevada Constitution...does
23 not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada
24 Constitution's right to counsel provision as being coextensive with the Sixth Amendment to
25 the United States Constitution." McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258
26 (1996). McKague specifically held that with the exception of NRS 34.820(1)(a) (entitling
27 appointed counsel when petitioner is under a sentence of death), one does not have "any
28

1 constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at 164,
2 912 P.2d at 258.

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

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

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

12 (emphasis added). Accordingly, under NRS 34.750, it is clear that the Court has discretion in
13 determining whether to appoint counsel.

14 More recently, the Nevada Supreme Court examined whether a district court
15 appropriately denied a defendant’s request for appointment of counsel based upon the factors
16 listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-
17 Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75,
18 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the defendant
19 filed a pro se post-conviction petition for writ of habeas corpus and requested counsel be
20 appointed. Id. The district court ultimately denied the petitioner’s petition and his appointment
21 of counsel request. Id.

22 However, in reviewing the district court’s decision, the Nevada Supreme Court
23 examined the statutory factors listed under NRS 34.750 and concluded that the district court’s
24 decision should be reversed and remanded. Id. The Court explained that the petitioner was
25 indigent, his petition could not be summarily dismissed, and he had, in fact, satisfied the
26 statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor, the Court concluded that
27 because the petitioner had represented, he had issues with understanding the English language,
28 which was corroborated by his use of an interpreter at his trial, that was enough to indicate that

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

6 This Court finds that, Petitioner has not demonstrated that counsel should be appointed
7 pursuant to NRS 34.750. As a preliminary matter, Petitioner's request is suitable only for
8 summary denial as he has failed to provide any specific facts to support his bare and naked
9 request. *See Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Similarly, unlike
10 in Renteria-Novoa, Petitioner's Third Petition should be summarily denied for several reasons,
11 including, but not limited to, his Petition being time-barred, successive, barred by laches, and
12 his claim being barred under the Law of the Case Doctrine.

13 Petitioner failed to meet any of the additional statutory factors under NRS 34.750. The
14 issues Petitioner raises are not complex or difficult. Petitioner can comprehend the proceedings
15 because Petitioner filed several petitions for writ of habeas corpus, cites to the proper authority
16 for the issues he claims, and has filed several pre-trial motions. Additionally, there is no
17 discovery needed to resolve the issues raised in the Third Petition as they deal with issues
18 recorded in the trial transcripts, the transcripts before and after trial.

19 Finally, there has been no indication that Petitioner is unable to comprehend the
20 proceedings. Unlike the petitioner in Renteria-Novoa, who faced difficulties understanding the
21 English language. Thus, this Court finds Petitioner has failed to demonstrate any inability to
22 understand these proceedings. Therefore, Petitioner's request is denied.

23 **VII. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

24 Petitioner requests an evidentiary hearing. *See Third Petition*, at 19. This Court finds
25 that, Petitioner is not entitled to an evidentiary hearing.

26 Under NRS 34.770, a petitioner is entitled to an evidentiary hearing when a judge
27 reviews all supporting documents filed and determines that a hearing is necessary to explore
28 the specific facts alleged in the petition. An evidentiary hearing is unnecessary if a petition can

1 be resolved without expanding the record. *See Marshall v. State*, 110 Nev. 1328, 885 P.2d 603
2 (1994); *See also Mann v. State*, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A petitioner is
3 entitled to an evidentiary hearing if his petition is supported by specific factual allegations,
4 which, if true, would entitle him to relief unless the factual allegations are repelled by the
5 record. *See Marshall*, 110 Nev. at 1331, 885 P.2d at 605; *See also Hargrove*, 100 Nev. at 503,
6 686 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not entitled to an
7 evidentiary hearing on factual allegations belied or repelled by the record”). It is improper to
8 hold an evidentiary hearing simply to make a complete record. *See State v. Eighth Judicial*
9 *Dist. Court*, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered
10 itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a
11 record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

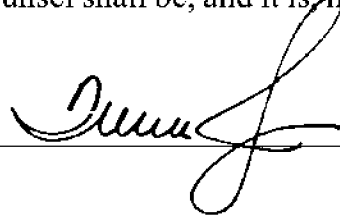
12 Further, the United States Supreme Court has held that an evidentiary hearing is not
13 required simply because counsel’s actions are challenged as being unreasonable strategic
14 decisions. *See Harrington v. Richter*, 562, U.S. 86, 105, 131 S. Ct. 770, 788 (2011). Although
15 courts may not indulge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

22 This Court finds, Petitioner’s claims are time-barred, successive, barred by laches, and
23 barred under the law of the case doctrine or capable of being addressed by the current record.
24 There is no need to expand the record, and an evidentiary hearing is not warranted in the instant
25 case.

26 Additionally, Petitioner presents no law or argument as to why he is entitled to an
27 evidentiary hearing. Thus, Petitioner’s request is bare and naked, and an evidentiary hearing is
28 not warranted in the instant case. Therefore, Petitioner’s request is denied.

1 **CONCLUSION**

2 Therefore, it is HEREBY ORDERED that Petitioner's Petition for Writ of Habeas
3 **Dated this 21st day of December, 2021**
Corpus (Post-Convection) and Motion to Appoint Counsel shall be, and it is hereby DENIED.

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6

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

E39 B14 F913 F1FF
Tierra Jones
District Court Judge

9
10 BY /s/ Taleen Pandukht
11 TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #005734
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1 **CSERV**

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

5
6 Sally Villaverde, Plaintiff(s)

CASE NO: A-18-780041-W

7 vs.

DEPT. NO. Department 10

8 Brian Williams Warden,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 12/21/2021

16 Dept Law Clerk

dept10lc@clarkcountycourts.us



1 NEFF

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 SALLY VILLAVERDE,

6 Petitioner,

Case No: A-18-780041-W

Dept No: X

7 vs.

8 BRIAN WILLIAMS WARDEN,

9 Respondent,

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

11 PLEASE TAKE NOTICE that on December 21, 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 23, 2021.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

17 Amanda Hampton, Deputy Clerk

18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 23 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 Sally Villaverde # 81701
P.O. Box 208
26 Indian Springs, NV 89070

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

FOFCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #05734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SALLY VILLAVERDE,
#1433466

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondents

CASE NO: A-18-780041-W
03C191012-2
DEPT NO: X

FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER

DATE OF HEARING: DECEMBER 6, 2021
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable TIERRA JONES, District Judge, on the 6th day of December 2021, Petitioner not being present or represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, District Attorney, by and through LAURA GOODMAN, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, the testimony of witnesses, and/or documents on file herein, now, therefore, the Court makes the following findings of fact, conclusions of law and order.

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1 **PROCEDURAL HISTORY**

2 On March 23, 2003, Sally Villaverde ("Petitioner") and Co-Defendants Rene Gato and
3 Robert Castro were charged by way of Amended Criminal Complaint with Burglary (Felony
4 - NRS 205.060), Murder With Use of a Deadly Weapon (Open Murder) (Felony - NRS
5 200.010, 200.030, 193.165) and Robbery With Use of a Deadly Weapon (Felony - NRS
6 200.380, 193.165). On March 21, 2003, a preliminary hearing was held, after which the district
7 court held all three (3) defendants to answer to the charges in district court.

8 On March 25, 2003, Petitioner and the Co-Defendants were charged by way of
9 Information with Burglary (Felony - NRS 205.060), Murder With Use of a Deadly Weapon
10 (Open Murder) (Felony - NRS 200.010, 200.030, 193.165), and Robbery With Use of a Deadly
11 Weapon (Felony - NRS 200.380, 193.165). An Amended Information, charging only
12 Petitioner, was filed on March 29, 2004, following the district court's granting of Petitioner's
13 Motion to Sever Trials filed on January 27, 2004.

14 On March 31, 2004, a jury trial commenced. On April 8, 2004, the jury found Petitioner
15 guilty on all counts, including First Degree Murder With Use of a Deadly Weapon.

16 On June 3, 2004, the District Court sentenced Petitioner as follows: Count 1 - to a
17 maximum of ninety-six (96) months with a minimum of twenty-two (22) months in the Nevada
18 Department of Corrections ("NDC"); Count 2 - to a term of Life imprisonment without the
19 possibility of parole in the NDC, plus an equal and consecutive term for the Use of a Deadly
20 Weapon; Count 3 - to a maximum on one hundred fifty-six (156) months and a minimum of
21 thirty-five (35) months in the NDC, plus an equal and consecutive term for the Use of a Deadly
22 Weapon, Count 3 consecutive to Count 2. Credit for time served does not appear to have been
23 awarded according to the Court Minutes. On June 10, 2004, the District Court fielded The
24 Judgment of Conviction.

25 On June 10, 2004, Petitioner filed a direct appeal. On February 15, 2006, The Nevada
26 Supreme Court affirmed Petitioner's convictions. On March 14, 2006, the Nevada Supreme
27 Court issued Remittitur.
28

1 On April 3, 2006, Petitioner filed his first Petition for Writ of Habeas Corpus (Post-
2 Conviction) ("First Petition"). On April 20, 2006, Petitioner filed a Motion to Withdraw his
3 Petition Without Prejudice. On April 25, 2006, the State filed its Response. On May 3, 2006,
4 Petitioner filed a Reply. On May 31, 2006, Petitioner filed a Supplemental Petition for Writ of
5 Habeas Corpus, Memorandum of Points and Authorities in Support of the Petition, and
6 Appendix of Exhibits.

7 On April 12, 2007, the District Court appointed counsel. On August 27, 2007, appointed
8 counsel filed a Supplement to Petitioner's Petition for Writ of Habeas Corpus. On November
9 6, 2007, the State filed its Response to the Supplemental Petition. On January 10, 2008, the
10 District Court held an evidentiary hearing on Petitioner's ineffective assistance of counsel
11 claims. Following the evidentiary hearing, the Court denied the petition on the merits. On
12 February 26, 2008, the District Court filed The Findings of Facts, Conclusions of Law, and
13 Order.

14 On January 28, 2008, Petitioner filed a Notice of Appeal. On May 10, 2010, The Nevada
15 Supreme Court affirmed the District Court's denial of Petitioner's Petition. On June 4, 2010,
16 Nevada Supreme court issued Remittitur.

17 On August 28, 2018, Petitioner filed a second Petition for Writ of Habeas Corpus (Post-
18 Conviction) ("Second Petition") and Motion for Appointment of Counsel. On October 29,
19 2018, The State filed its Response. On November 1, 2018, the District Court held a hearing
20 and denied the Petition and the Motion. On December 5, 2018, the District Court filed its
21 Findings of Fact, Conclusions of Law, and Order was filed.

22 On November 26, 2018, Petitioner filed a Notice of Appeal. On October 30, 2019, the
23 Nevada Court of Appeals entered an Order of Affirmance. On November 20, 2019, Petitioner
24 submitted a Petition for Rehearing. On January 22, 2020, the Nevada Court of Appeals granted
25 rehearing and affirmed the district court's judgment. On May 18, 2020, the Court issued
26 Remittitur.

27 On March 26, 2019, Petitioner filed a Motion for Modification of Sentence. The State
28 filed an Opposition on April 17, 2019. On April 23, 2019, the district court denied the motion.

1 On May 7, 2019, The Order Denying Petitioner's Motion for Modification of Sentence was
2 filed. On May 1, 2019, Petitioner filed a Notice of Appeal. On March 12, 2020, the Nevada
3 Court of Appeals affirmed the judgment of the district court. On June 1, 2020, the Court issued
4 Remittitur. On June 14, 2021, the District Court filed an Amended Judgment of Conviction,
5 granting Petitioner four hundred sixty-nine (469) days credit for time served.

6 On October 4, 2021, Petitioner filed his third Petition for Writ of Habeas Corpus (Post-
7 Conviction) ("Third Petition") and a Motion to Appoint Counsel ("Motion"). On November
8 11, 2018, the State filed their Response. On December 6, 2021, this Court held a hearing,
9 wherein this Court denied Petitioner's Third Petition and Motion to Appoint Counsel

10 **FACTUAL BACKGROUND**

11 In 1998, Leonel Garcia ("Garcia") met the Petitioner and Enrique Caminero
12 ("Caminero"). Mr. Garcia indicated that he was good friends with Caminero. Garcia knew that
13 Caminero was a very successful drug dealer.

14 In February of 2002, just weeks before the murder of Caminero, Rene Gato ("Gato"),
15 Roberto Castro ("Castro"), and Francisco Terrazon (Fanciquito) approached Garcia requesting
16 his assistance in kidnapping Caminero. They asked Garcia to assist in setting up a meeting
17 with Caminero in a hotel room. Once Caminero arrived at the hotel, the plan was to kidnap
18 him, tie him up and torture him until he revealed where his money was and who supplied him
19 with the drugs he sold.

20 Garcia was to approach Caminero because he knew Caminero trusted him. However,
21 Garcia warned Caminero. Garcia then contacted Caminero's mother and the police after
22 hearing of Caminero's death.

23 Teresa Gamboa ("Gamboa") was the Petitioner's girlfriend. She testified at a
24 preliminary hearing regarding her involvement in the death of Caminero. Gamboa testified
25 that she was living with the Petitioner in March of 2002. She was also acquainted with Gato,
26 Castro. Petitioner asked Gamboa to rent a room for him on March 5, 2002, using a false ID.
27 In return, she and Petitioner were to receive money.
28

1 On March 5, 2002, using Gato's car, they drove to the Capri Motel. While traveling,
2 Gato asked the Petitioner how much Gamboa knew. Petitioner replied that she knew some
3 things but not everything. Gamboa testified that Gato had a large chrome gun. Upon arrival,
4 Gamboa rented a room in the back, as instructed, and returned to Gato's car. Then Gamboa,
5 Petitioner, and his two Co-Defendants entered the room. Gamboa stayed for about five
6 minutes, and they returned her home around 5:30 PM.

7 After, Petitioner took a taser gun, and all three left Gamboa. Petitioner returned home
8 around 10:30 PM. Gamboa described Petitioner as being "freaked out" and pacing the room.
9 She also noticed that Petitioner had blood on his pants and shirt. Petitioner was saying, "he's
10 dead," "No, no, I gave him mouth-to-mouth resuscitation," and "He was still – he was still
11 breathing."

12 On March 6, 2002, Petitioner and Gamboa drove to California and stayed at a Motel 6,
13 along with Gato and Castro. At the motel, Gamboa overheard Petitioner admit to using a belt
14 to strangle the victim, as well as using the taser gun.

15 Moreover, law enforcement recovered a palm print at the crime scene during the
16 investigation, preserved in diluted blood. The palm print was recovered near the area where
17 Caminero's body was found. The palm print matched with Petitioner. Two other fingerprints
18 from the bathroom also matched with Petitioner.

19 On February 18, 2003, a warrant was issued for Petitioner's arrest. Las Vegas
20 Metropolitan Police Department officers arrested Petitioner shortly after at Alfredo Martinez's
21 place of residence. While in custody and after being Mirandized, Petitioner admitted being in
22 the hotel room when Caminero arrived there. Once Caminero arrived, a struggle ensued. They
23 tried to gag Caminero and bind his legs and hands. However, Gato ended up shooting
24 Caminero. Castro then strangled Caminero causing a gurgling sound.

25 Gato then instructed Petitioner and Castro to clean the room for fingerprints. Petitioner
26 tried wiping down most of the room. Also, Petitioner took Caminero's SUV and other
27 belongings. Gamboa noticed Petitioner had 400 dollars in cash as well as several small gold
28 chains or bracelets. Gamboa indicated that Petitioner took the jewelry to a Super Pawn.

1 Also, Degna Ortega (“Ortega”), Caminero’s mother, testified that Caminero always
2 wore or had on his person the pawned jewelry. Abdirazaq Mohamed, a manager at a pawn
3 store, testified that Petitioner pawned several items of jewelry, described as gold chains,
4 shortly after the murder.

5 **I. THE INSTANT PETITION IS PROCEDURALLY BARRED**

6 This Court denies Petitioner's Third Petition as procedurally barred. The Nevada
7 Supreme Court has held that the district court has a *duty* to consider whether a defendant’s
8 post-conviction petition claims are procedurally barred. State v. Eighth Judicial Dist. Court
9 (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found that
10 “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is
11 mandatory,” noting:

12
13 Habeas corpus petitions that are filed many years after conviction
14 are an unreasonable burden on the criminal justice system. The
15 necessity for a workable system dictates that there must exist a
time when a criminal conviction is final.

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

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

27 //

28 //

1 **A. THE INSTANT PETITION IS TIME-BARRED**

2 This Court denies Petitioner's Third Petition as time-bared under NRS 34.726(1). NRS
3 34.726(1) states:

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

- 12 (a) That the delay is not the fault of the petitioner; and
13 (b) That dismissal of the petition as untimely will unduly
14 prejudice the petitioner.
15

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

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

26 This is not a case wherein the Judgment of Conviction was, for example, not final. *See*,
27 *e.g.*, *Johnson v. State*, 133 Nev. 571, 402 P.3d 1266 (2017) (holding that the defendant's
28 judgment of conviction was not final until the district court entered a new judgment of
conviction on counts that the district court had vacated); *Whitehead v. State*, 128 Nev. 259,
285 P.3d 1053 (2012) (holding that a judgment of conviction that imposes restitution in an
unspecified amount is not final and therefore does not trigger the one-year period for filing a

1 habeas petition). Nor is there any other legal basis for running the one-year time limit from the
2 filing of the Amended Judgment of Conviction.

3 Here, the District Court filed the *original* Judgment of Conviction on June 10, 2004.
4 On March 14, 2006, the Nevada Supreme Court issued Remittitur. Thus, Petitioner had until
5 March 14, 2007, to file a timely petition. Petitioner filed the Third Petition on October 5, 2021.
6 This Court finds, Petitioner is fourteen (14) years, six (6) months, and twenty-one (21) days
7 late. Additionally, Petitioner fails to provide good cause as to why his Third Petition is
8 untimely. Therefore, Petitioner's Third Petition is time-barred and is denied.

9 **B. THE INSTANT PETITION IS BARRED AS SUCCESSIVE**

10 This Court denies Petitioner's Third Petition as successive under NRS 34.810(2). NRS
11 34.810(2) states:

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

17 As such, application of NRS 34.810(2) is mandatory. *See State v. Eight Judicial Dist. Ct. ex*
18 *el. County of Clark (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074-75 (2005).

19 Successive petitions are petitions that either fails to allege new or different grounds for
20 relief of which the grounds have already been decided on the merits or petitions that allege
21 new or different grounds, but a judge or justice finds that the petitioner's failure to assert those
22 grounds in a prior petition would constitute an abuse of the writ. *See Lozada v. State*, 110 Nev.
23 349, 352-53, 871 P.2d 944, 950 (1994) (overruled on other grounds by *Rippo v. State*, 134
24 nev. 411, 423 P.3d 1084 (2018); *Hart v. State*, 116 Nev. 558, 563-64, 1 P.3d 969, 972 (2000)
25 (overruled on other grounds by *Harris v. State*, 130 Nev. 435, 329 P.3d 619 (2014) (holding
26 that “where a defendant previously has sought relief from the judgment, the defendant’s failure
27 to identify all grounds for relief in the first instance should weigh against consideration of the
28

1 successive motion.”). Successive petitions will only be decided on the merits if the petitioner
2 can show good cause and prejudice. *See* NRS 34.810(3).

3 The Nevada Supreme Court has stated: “Without such limitations on the availability of
4 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
5 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
6 system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at 950.
7 The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly require
8 a careful review of the record, successive petitions may be dismissed based solely on the face
9 of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,
10 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
11 the writ to wait to assert it in a later petition. *See* McClesky v. Zant, 499 U.S. 467, 497–98
12 (1991).

13 Here, the District Court presided over an evidentiary hearing on January 10, 2008,
14 regarding Petitioner's First Petition. After which, the District Court denied the petition on the
15 merits. Petitioner went on to file a Second Petition, which the District Court also denied, on
16 November 1, 2018. The instant Petition is Petitioner's third, in which Petitioner's allegations
17 are no different from his prior petitions.

18 This Court finds, the claims raised in the Third Petition were available to Petitioner
19 since 2004. As such, any new claims Petitioner does assert would be an abuse of writ because
20 Petitioner fails to show good cause as to why he is now asserting these claims more than a
21 decade after his conviction when such claims were always available to Petitioner. Therefore,
22 the Third Petition is successive and is denied.

23 **C. THE PETITION IS BARRED BY LACHES**

24 This Court denies Petitioner's Third Petition as barred by laches. Certain limitations
25 exist on how long a petitioner may wait to assert a post-conviction request for relief. There is
26 a rebuttable presumption of prejudice to the State if “[a] period exceeding five years [elapses]
27 between the filing of a judgment of conviction, an order imposing a sentence of imprisonment
28 or a decision on direct appeal of a judgment of conviction and the filing of a petition

1 challenging the validity of a judgment of conviction” NRS 34.800. The reason for this is that
2 “petitions that are filed many years after conviction are an unreasonable burden on the criminal
3 justice system. The necessity for a workable system dictates that there must exist a time when
4 a criminal conviction is final.” Groesbeck v. Warden, 100 Nev. 259, 679 P.2d 1268 (1984).
5 However, to invoke the presumption, the State must plead laches. *See* NRS 34.800(2).

6 Consideration of the equitable doctrine of laches is necessary for determining whether
7 a defendant has shown 'manifest injustice' that would permit a modification of a sentence. *See*
8 Hart, 116 Nev. at 563–64, 1 P.3d at 972 (overruled on other grounds by Harris v. State, 130
9 Nev. 435, 329 P.3d 619 (2014)). Moreover, “[a]pplication of the doctrine to an individual case
10 may require consideration of several factors, including: (1) whether there was an inexcusable
11 delay in seeking relief; (2) whether an implied waiver has arisen from the defendant's knowing
12 acquiescence in existing conditions; and (3) whether circumstances exist that prejudice the
13 State.” *Id.* (citing Buckholt v. District Court, 94 Nev. 631, 633, 584 P.2d 672, 673–74 (1978)).

14 In this case, the State affirmatively pled laches. The District Court filed the Judgment
15 of Conviction on June 10, 2004. Petitioner pursued a direct appeal, wherein the Nevada
16 Supreme Court affirmed all of Petitioner's convictions and issued Remittitur on March 14,
17 2006. More than seventeen (17) years have passed since the Judgment of Conviction was filed,
18 and more than fourteen (14) years have passed since Remittitur.

19 This time-lapse is almost four (4) times longer than the statutory period of five (5) years.
20 This Court finds, the State is prejudiced in its ability to respond to the merits of Petitioner's
21 claims and, should relief be granted, to retry the case. Moreover, Petitioner fails to rebut this
22 presumption. Therefore, Petitioner's Third Petition is barred by laches and is denied.

23 **D. PETITIONER'S CLAIMS ARE WAIVED**

24 This Court denies Petitioner claims of ineffective assistance of counsel as waived. *See*
25 NRS 34.810; McCoy v. Louisiana, 138 S. Ct. 1500, 1510-11, 200 L. Ed. 2d 821 (2018).

26 Under NRS 34.810(1)(b)(2), “[t]he court shall dismiss a petition if the court determines
27 that [the] *conviction was the result of a trial and the grounds for the petition could have been*
28 *... [r]aised in a direct appeal.*” A petitioner may only escape these procedural bars if he meets

1 the burden of establishing good cause and prejudice. *See* NRS 34.810(3). Where a petitioner
2 does not show good cause for failure to raise claims of error upon direct appeal, the district
3 court is not obliged to consider them in post-conviction proceedings. *See Jones v. State*, 91
4 Nev. 416, 536 P.2d 1025 (1975).

5 Additionally, “challenges to the validity of a guilty plea and claims of ineffective
6 assistance of trial and appellate counsel must first be pursued in post-conviction
7 proceedings.... [A]ll other claims that are appropriate for a direct appeal must be pursued on
8 direct appeal, or they will be considered waived in subsequent proceedings.” *Franklin v. State*,
9 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other
10 grounds by *Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999)). Moreover, “[a] court *must*
11 *dismiss* a habeas petition if it presents *claims that either were or could have been presented in*
12 *an earlier proceeding*, unless the court finds both cause for failing to present the claims earlier
13 or for raising them again and actual prejudice to the petitioner.” *Evans v. State*, 117 Nev. 609,
14 646-47, 29 P.3d 498, 523 (2001).

15 This Court finds, Petitioner failed to object to the State’s comments during closing and
16 failed to object to Jury Instructions three (3), thirty-four (34), and thirty-seven (37). *See Third*
17 *Petition*, at 6. Petitioner also failed to address good cause to overcome the mandatory
18 procedural bars. Additionally, Petitioner failed to show that an impediment external to the
19 defense prevented him from raising these claims in an earlier proceeding.

20 Petitioner offers no excuse for his failure to raise said issues there. Thus, this Court
21 need not consider prejudice. Therefore, Petitioner’s claims are denied.

22 **II. PETITIONER FAILS TO DEMONSTRATE GOOD CAUSE OR PREJUDICE** 23 **TO OVERCOME THE PROCEDURAL BARS**

24 This Court finds that Petitioner does not demonstrate good cause or prejudice to
25 overcome the procedural bars. To avoid procedural default under NRS 34.726 and NRS
26 34.810, the petitioner has the burden of pleading and proving specific facts that demonstrate
27 good cause for his failure to present his claim in an earlier proceeding or to otherwise comply
28 with the statutory requirements, and that the petitioner will be unduly prejudiced if the petition

1 is dismissed. *See Hogan v. Warden*, 109 Nev. 952, 959-60, 860 P.2d 710, 715-16 (1993);
2 *Phelps v. Nevada Dep't of Prisons*, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). "A court
3 *must* dismiss a habeas petition if it presents claims that either were or could have been
4 presented in an earlier proceeding, unless the court finds both cause for failing to present the
5 claims earlier or for raising them again and actual prejudice to the petitioner." *Evans*, 117 Nev.
6 at 646-47, 29 P.3d at 523 (2001) (emphasis added).

7 Moreover, "to establish good cause, [petitioners] must show that an impediment
8 external to the defense prevented their compliance with the applicable procedural rule." *Clem*
9 *v. State*, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); *See also Hathaway v.*
10 *State*, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003); *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537.
11 "A qualifying impediment might be shown where the factual or legal basis for a claim was not
12 reasonably available at the time of default." *Clem*, 119 Nev. at 621, 81 P.3d at 525. The Court
13 continued, petitioners "cannot attempt to manufacture good cause." *Id.* at 621, 81 P.3d at 526.
14 Examples of good cause include interference by State officials and the previous unavailability
15 of a legal or factual basis. *See State v. Huebler*, 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012).
16 Any delay in the filing of the petition must not be the fault of the petitioner. *See NRS*
17 *34.726(1)(a)*.

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

26 To establish prejudice, a Petitioner must show "not merely that the errors of [the
27 proceedings] created [the] possibility of prejudice, but that they worked to his actual and
28 substantial disadvantage, in affecting the State's proceedings with [an] error of constitutional

1 dimensions.” Hogan, 109 Nev. at 960, 860 P.2d at 716 (quoting United States v. Frady, 456
2 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). Bare and naked allegations are insufficient to
3 warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v.
4 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it is contradicted
5 or proven to be false by the record as it existed at the time the claim was made.” Mann v. State,
6 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

7 Additionally, for a petitioner to demonstrate prejudice, he or she must show “not merely
8 that the errors of [the proceeding] created possibility of prejudice, but that they worked to his
9 actual and substantial disadvantage, in affecting the state proceedings with error of
10 constitutional dimensions.” Hogan v. Warden, 109 Nev. at 960, 860 P.2d at 716 (internal
11 quotation omitted), Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545 (2001).

12 This Court finds, Petitioner failed to address good cause to overcome the mandatory
13 procedural bars. Additionally, Petitioner failed to show that an impediment external to the
14 defense prevented him from raising these claims in an earlier proceeding and offers no excuse
15 for his failure to raise said issues there. Moreover, because there is no good cause, this Court
16 need not consider prejudice. Therefore, the Third Petition is denied.

17 **III. PETITIONER’S CLAIMS ARE BARRED UNDER THE LAW OF CASE** 18 **DOCTRINE**

19 This Court finds that Petitioner’s claims that (1) he is not guilty of first-degree murder
20 because Castro plead guilty to voluntary manslaughter; thus, co-conspirator liability should be
21 limited to voluntary manslaughter, and (2) the District Court violated Petitioner’s right of
22 confrontation by allowing Gamboa’s preliminary transcript to be read into the record are
23 barred under the Law of the Case Doctrine. *See Third Petition*, at 11-16.

24 The doctrine of the law of the case or “the law of a first appeal is law of the case on all
25 subsequent appeals in which the facts are substantially the same.” Hall v. State, 91 Nev. 314,
26 315, 535 P.2d 797, 798 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38
27 (1969)). Under the law of the case doctrine, issues previously decided on direct appeal may
28 not be reargued. *See Pellegrini v. State*, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing

1 McNelson v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). A petitioner cannot
2 avoid “the doctrine of the law of the case” by raising “a more detailed and precisely focused
3 argument . . . after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at 799.
4 Accordingly, by simply continuing to file motions with the same arguments, his motion is
5 barred by the doctrines of the law of the case and res judicata. See Hall, 91 Nev. at 316, 535
6 P.2d at 799.

7 Moreover, parties are precluded “from relitigating a cause of action or an issue which
8 has been finally determined by a court of competent jurisdiction.” Horvath v. Gladstone, 97
9 Nev. 594, 597, 637 P.2d 531, 533 (1981); See University of Nevada v. Tarkanian, 110 Nev.
10 581, 598, 879 P.2d 1180, 1191 (1994) (The Court distinguishes between issue preclusion and
11 claim preclusion, although they are both under the doctrine of res judicata). For issue
12 preclusion to apply, there must be:

13 (1) the issue decided in the prior litigation must be identical to the
14 issue presented in the current action; (2) the initial ruling must
15 have been on the merits and have become final; ... (3) the party
16 against whom the judgment is asserted must have been a party or
17 in privity with a party to the prior litigation and (4) the issue was
18 actually and necessarily litigated

19 Five Star Capital Corp. v. Rudy, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008)¹ (citing
20 University of Nevada v. Tarkanian, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994)); *See also*
21 Gonzales v. Dist. Ct., 129 Nev. 215, 218, 298 P.3d 448, 450 (2013) (The Court suggesting that
22 the issue-preclusion analysis is applicable in the criminal context.); *See also Bradley v. State*,
23 494 P.3d 907 (Table), 2021 WL 4167112 (Nev. Ct. of App. 2021) (unpublished) (The Court
24 cites to Five Star Capital Corp.’s, four-factor test for issue preclusion in a criminal context).

25 //

26 //

27 //

28 ¹ In Five Star Capital Corp. v. Rudy, 124 Nev. 1048, 194 P.3d 709 (2008), the Court adopted “the terms of claim preclusion
and issue preclusion as the proper terminology in referring to these doctrines,” instead of Res Judicata.

1 **A. PETITIONER’S CLAIM HE IS NOT GUILTY OF FIRST-DEGREE MURDER IS**
2 **BARRED**

3 Petitioner claimed in his Second Petition that he was innocent of First-Degree Murder
4 based upon Castro’s Guilty Plea Agreement. *See Second Petition*, at 27-29. Specifically,
5 Petitioner argued:

6 [B]ecause Roberto Castro pleaded Guilty of Voluntary
7 Manslaughter and served 4 [] to 10 [years] [in] high desert state
8 prison. Show[s] once again that the [S]tates THEORY OF FIRST
9 DEGREE MURDER WAS UNRELIABLE beyond a reasonable
10 doubt.

11 *See Second Petition*, at 28.

12 In the Third Petition, Petitioner again argues he is innocent of First-Degree Murder
13 based upon Castro’s Guilty Plea Agreement. *See Third Petition*, at 11-13. Specifically,
14 Petitioner argues that:

15 The Prejudice involved in the case is that[] the Jury found
16 [Petitioner] Guilty and convicted [Petitioner] on [t]hories [that are]
17 inconsistent with the theories alleged by the State [regarding]
18 Castro’s charging document or information.

19 ...
20 [I]f the State conceded in open court, that [Castro’s] name
21 thereto on the above amended information committed voluntary
22 manslaughter while “in the heat of passion.” Then by operation of
23 State and Federal law, [Petitioner’s] conviction for first-degree
24 murder must be vacated.

25 *Third Petition*, at 13. As shown above, Petitioner is raising the same issue he raised in his
26 Second Petition. However, Petitioner does word his argument differently, but the issue remains
27 the same.

28 Moreover, the Nevada Supreme Court has already ruled on the merits of this issue. *See*
29 *Sally Villaverde v. State*, Docket No. 77563 (Order of Affirmance, May 21, 2020).
30 Specifically, the Nevada Court of Appeals held that:

1 Villaverde claim[s] his co-defendant's guilty plea was new
2 evidence, not presented at trial, that showed that he could not have
3 committed first-degree murder with the use of a deadly weapon,
robbery with the use of a deadly weapon, and burglary.

4 . . .
5 [However,] Villaverde fail[s] to demonstrate he was
6 actually innocent. Villaverde's co-defendant's *Alford* plea to lesser
7 charges did not demonstrate Villaverde was factually innocent of
8 the charges he was convicted of. Accordingly, because Villaverde
9 failed to demonstrate it was more likely than not that no reasonable
10 jury would find him guilty beyond a reasonable doubt based on his
11 co-defendant's plea, we conclude the district court did not err by
12 denying this claim without first holding an evidentiary hearing.

13
14 *See Sally Villaverde v. State*, Docket No. 77563-COA (Order of Affirmance, May 21, 2020).
15 This Court finds, Petitioner's claim is precluded from rehearing as the Nevada Court of
16 Appeals has already made a final ruling on the merits regarding the instant issue. Therefore,
17 Petitioner's claim is denied.

18
19 **B. PETITIONER'S CLAIM THAT THE DISTRICT COURT VIOLATED PETITIONER'S
20 RIGHT TO CONFRONT GAMBOA BY ADMITTING GAMBOA'S PRELIMINARY
21 HEARING TESTIMONY IS BARRED²**

22 On direct appeal, Petitioner claimed the District Court erred by allowing Gamboa's
23 testimony at trial. *See Sally Villaverde v. State*, Docket No. 43443 (Opening Brief, January
24 12, 2005). Specifically, Petitioner argued:

25 The admission of Gamboa's testimony violated Defendant's rights
26 under the Fifth, Sixth and Fourteenth Amendments to the United
27 States Constitution and Article 1 Section 1 of the Nevada State
Constitution to confront and cross-examine witnesses against
Defendant at trial and effective assistance of trial counsel.

28 . . .
The prejudicial effect of allowing Gamboa's testimony without her
actual presence at trial clearly outweighs the relevance of her
testimony. That being the case, this Court must return to the status
of the law prior to the Funches decision and follow the previous
holdings in *Lemberes* and *Lapena*, and find that it was reversible

² In Petitioner's third claim, he colors his claim as an ineffective assistance of counsel claim. However, Petitioner is alleging a violation of his right to confront Gamboa via the confrontation clause. *See Third Petition*, at 15.

1 error for the lower court to have admitted Gamboa's preliminary
2 hearing testimony into evidence.

3 Id. at 1-6.

4 In the Third Petition, Petitioner again argues that the District Court erred in admitting
5 Gamboa's testimony at trial. *See Third Petition*, at 14-16, 18. Specifically, Petitioner argues
6 that:

7 Counsel . . . was unable to cross-examine [Gamboa].
8 Therefore . . . the admission of Gamboa's Preliminary hearing
9 transcript [] violated his right to effective assistance of trial
10 counsel.

11 . . . The redacted transcripts of Teresa Gamboa's testimony . . .
12 introduced by the State . . . Simply violated [Petitioner's]
13 constitutional rights under the confrontation clause because he was
14 not able to cross-examine his co-defendants [Gato and Castro].

15 Third Petition, at 15, 18. As such Petitioner is raising the same issue he raised in his direct
16 appeal.

17 Moreover, The Nevada Supreme Court has already ruled on the merits of this issue. *See*
18 Sally Villaverde v. State, Docket No. 43443 (Order of Affirmance, February 15, 2006).
19 Specifically, the Nevada Supreme Court held that:

20 [T]he district court properly admitted Gamboa's preliminary
21 hearing testimony. The transcript of a witness's preliminary
22 hearing testimony is admissible non-hearsay if the defendant was
23 represented by counsel at the hearing, counsel cross-examined the
24 witness, and the witness is shown to be unavailable at the time of
25 trial."

26 . . . The confrontation element is satisfied because Villaverde
27 had the ability to cross-examine Gamboa at the preliminary
28 hearing and, in fact, did so.

Id. at 2. The Nevada Supreme Court continued, regarding Gato and Castro, holding that:

1 [T]he district court properly admitted that portion of Gamboa's
2 testimony concerning Gato and Castro's out-of-court statements.
3 Statements of co-conspirators are not considered hearsay if the
4 statements are made "during the course and in furtherance of the
5 conspiracy" and are being offered against the party . . . Gato and
6 Castro's statements, both before and after the incident, were
7 properly considered non-hearsay, because they were made before
8 the commission of the crime and after the incident in an attempt to
9 conceal the parties' involvement.

10 . . .
11 we conclude that the out-of-court statements to which Gamboa
12 testified to were not testimonial in nature . . . Because the
13 statements were not testimonial, cross-examination of Gato and
14 Castro was not constitutionally mandated.

15 Id. at 3.

16 The Nevada Supreme Court held that because Petitioner "was not tried with Castro or
17 Gato, Bruton is not applicable." Id. at 4. This Court finds, Petitioner's claim is precluded for
18 rehearing as the Nevada Supreme Court has already made a final ruling on the merits regarding
19 the instant issue. Therefore, Petitioner's claim is denied.

20 **IV. THE STATE PRESENTED SUFFICIENT EVIDENCE OF FIRST-DEGREE** 21 **MURDER**

22 Petitioner claims that he is innocent of the First-Degree Murder charge, via Felony
23 Murder, because he was not the person who committed the physical act of "killing the victim"
24 and because there is inadequate evidence to prove the charges of Robbery and Burglary. *See*
25 Third Petition, at 7-8. This Court finds that , the State provided a sufficient amount of evidence
26 to show Petitioner conspired with his Co-Defendants to rob and burglarize Caminero, and in
27 the commission of these acts, they murdered Caminero.

28 When reviewing a sufficiency of the evidence claim, the relevant inquiry is not whether
the court is convinced of the petitioner's guilt beyond a reasonable doubt. Wilkins v. State, 96
Nev. 367, 374, 609 P.2d 309, 313 (1980). Rather, when the jury has already found the
petitioner guilty, the limited inquiry is "whether, after viewing the evidence in the light most
favorable to the prosecution, *any* rational trier of fact could have found the essential elements

1 of the crime beyond a reasonable doubt.” Milton v. State, 111 Nev. 1487, 1491, 908 P.2d 684,
2 686–87 (1995) (internal quotation and citation omitted).

3 Indeed, “it is the jury’s function, not that of the court, to assess the weight of the
4 evidence and determine the credibility of the witnesses.” Origel-Candido v. State, 114 Nev.
5 378, 381, 956 P.2d 1378, 1380 (1998) (quoting McNair v. State, 108 Nev. 53, 56, 825 P.2d
6 571, 573 (1992)). It is further the jury’s role “[to fairly] resolve conflicts in the testimony, to
7 weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.”
8 Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). Moreover, in rendering
9 its verdict, a jury is free to rely on circumstantial evidence. Wilkins, 96 Nev. at 374, 609 P.2d
10 at 313. In fact, “circumstantial evidence alone may support a conviction.” and the Nevada
11 Supreme Court has previously and consistently upheld convictions based solely on
12 circumstantial evidence. *See* Hernandez v. State, 118 Nev. 513, 531, 50 P.3d 1100, 1112
13 (2002); Crawford v. State, 92 Nev. 456, 456, 552 P.2d 1378, 1378 (1976). The district court
14 can only acquit the defendant where the State fails to produce a minimum threshold of
15 evidence upon which a conviction may be based. *Id.* (citing State v. Purcell, 110 Nev. 1389,
16 1394, 887 P.2d 276, 279 (1994)).

17 Moreover, a conspiracy is “an agreement between two or more persons for an unlawful
18 purpose.” Doyle v. State, 112 Nev. 879, 894, 921 P.2d 901, 911 (1996) (citing Peterson v.
19 Sheriff, 95 Nev. 522, 598 P.2d 623 (1979)). A charge of conspiracy is usually established by
20 inference from the conduct of the parties. A conspiracy “may be supported by a ‘coordinated
21 series of acts’ in furtherance of the underlying offense sufficient to infer the existence of an
22 agreement.” Doyle, 112 Nev. at 879, 921 P.2d at 911.

23 Knowledge of the conspiracy may be demonstrated by circumstantial evidence. *See*
24 United States v. Aron, 463 F.2d 779 (9th Cir. 1972); Windsor v. United States, 384 F.2d 535,
25 536 (9th Cir. 1967). Moreover, “conspiracy is seldom susceptible of direct proof and is usually
26 established by inference from the conduct of the parties. In particular, a conspiracy conviction
27 may be supported by a coordinated series of acts in furtherance of the underlying offense
28 sufficient to infer the existence of an agreement.” Doyle v. State, 112 Nev. 879, 894, 921 P.2d

1 901, 911 (1996) (internal citations omitted) (overruled on other grounds by Kaczmarek v.
2 State, 120 Nev. 314, 91 P.3d 16 (2004)).

3 Additionally, for general intent crimes, such as battery and robbery, “aiders and abettors
4 are criminally *responsible for all harms that are a natural, probable, and foreseeable result*
5 *of their actions.*” Mitchell v. State, 114 Nev. 1417, 1427, 971 P.3d 813, 820 (1998) (overruled
6 on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002)). Further, “so long as
7 the partnership in crime continues, the partners act for each other in carrying it forward; an
8 overt act of one partner may be the act of all without a new agreement specifically directed to
9 that act.” State v. Wilcox, 105 Nev. 434, 436, 776 P.2d 549, 550 (1989).

10 Additionally, a petitioner must support his or her claims with specific factual
11 allegations, which would entitle the petitioner to relief if true. See Hargrove v. State, 100 Nev.
12 498, 502, 686 P.2d 222, 225 (1984). Moreover, bare and naked allegations are insufficient, as
13 are those belied and repelled by the record. Id. “A claim is ‘belied’ when it is contradicted or
14 proven to be false by the record as it existed at the time the claim was made.” Mann v. State,
15 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

16 Here, Petitioner does not assert any facts that would absolve Petitioner of First-Degree
17 Murder. In any event, Petitioner argues that he was not the one to commit the murder directly,
18 but that his Co-Defendant Castro committed the murder. See Third Petition, at 8. However,
19 the State charged Petitioner with murder both as the direct perpetrator and under vicarious
20 liability theories of aiding, abetting, and conspiracy. See Information (March 25, 2003), at 2.

21 Also, as Petitioner’s charged conduct occurred in 1998, the State needed only show
22 “the natural, probable, and foreseeable result” to find Petitioner guilty under an aiding and
23 abetting theory. Mitchell, 114 Nev. at 1427, 971 P.3d at 820 (1998). As such, this Court finds,
24 the State presented a sufficient amount of evidence showing Petitioner possessed specific
25 intent for the charge of First-Degree Murder. See Sharma, 118 Nev. at 655 P.3d at 872 (holding
26 that “To be held accountable for the specific intent crime of another under an aiding or abetting
27 theory of principal liability, aider or abettor must have knowingly aided the other person with
28 the intent that the other person commit the charged crime”).

1 Here, Petitioner asked Gamboa to rent a room for Petitioner, Gato, and Castro for March
2 5, 2002, and in doing so, Petitioner and Gamboa would make a thousand dollars. Trial
3 Transcript Day 7, at 18-19. The purpose of renting the room was to lure Caminero into a fake
4 narcotics transaction so that Petitioner and his Co-Defendants could kidnap Caminero, obtain
5 his money, and find out who supplied narcotics to Caminero. Trial Transcript Day 5, at 16-17.
6 Additionally, on the way to renting the room, Gamboa noticed Gato was carrying a gun. Id. at
7 77

8 More importantly, Petitioner admitted to being at the hotel room and helped bind
9 Caminero's arms and legs. Id. at 88. Petitioner also admitted that he helped cover up
10 Caminero's murder. Id. at 88-89. Dr. Worrell testified that a cord was used to strangle the
11 victim to death. Trial Transcript Day 6, at 97-140. Also, the day following the murder,
12 Petitioner and his two co-conspirators discussed using a belt to strangle Caminero. Trial
13 Transcript Day 5, at 94-96.

14 It is probable and foreseeable that wrapping a belt around someone's neck and
15 continuing to tighten it would result in his or her death. It is also foreseeable that bringing a
16 firearm while committing a violent felony would leave someone dead or severely injured.
17 Firearms, by their nature, increase the likelihood of a lethal outcome; that is what they are
18 designed to do. Petitioner cannot, in good faith, argue that utilizing a firearm, either by him or
19 his Co-Conspirators or wrapping a cord around someone's neck during the commission of a
20 violent felony does not create a probable and foreseeable result that the victim would be killed
21 or severely injured. In any event, Caminero died by way of strangulation. Id. at 124-125.

22 Additionally, this Court finds, the State presented sufficient evidence to support
23 findings of Robbery and Burglary with the Deadly Weapon enhancement. The State presented
24 evidence that Caminero was always seen with multiple pieces of jewelry on his person. The
25 victim's body had no jewelry on it. Id. at 144-146. Moreover, Petitioner pawned several items
26 of jewelry shortly after the murder. *See* Trial Transcript Day 6, at 75-91. Three (3) days after
27 police contacted Gamboa, Petitioner redeemed the jewelry. Id. at 84-86. After coming home
28 from the motel, Petitioner had four hundred (400) dollars in cash and several small gold chains

1 or bracelets. *See* Trial Transcript Day 5, at 90-91, 97. Shortly after, Petitioner took the jewelry
2 to a pawn shop. *Id.*

3 Here, the reasonable inference is that Petitioner stole the jewelry and money from
4 Caminero. Therefore, Petitioner's claim is denied.

5 **V. THE DISTRICT COURT DID NOT ERR IN ADMITTING GAMBOA'S**
6 **PRELIMINARY HEARING TESTIMONY**

7 Petitioner claims that the admission of Gamboa's preliminary hearing testimony
8 violated his right to confrontation. Third Petition, at 14-16, 18. This Court finds that, the
9 admission of Gamboa's testimony was properly admitted under NRS 171.198(6)(b) and
10 Drummond v. State, 86 Nev. 4, 462 P.2d 1012 (1970).

11 NRS 171.198(6)(b) codifies the former testimony exception to the hearsay rule. It
12 provides that preliminary hearing testimony may be used:

13
14 By the state if the defendant was represented by counsel or
15 affirmatively waived his right to counsel, upon the trial of the
16 cause, and in all proceedings therein, when the witness is sick, out
17 of the state, dead, or persistent in refusing to testify despite an
18 order of the judge to do so, or when his personal attendance cannot
19 be had in court.

20 NRS 171.198(6)(b); *See also* Funches v. State, 113 Nev. 916, 920, 944 P.2d 775, 777 (1997).

21 Although NRS 171.198(6)(b) does not impose a cross-examination requirement for the
22 admissibility of such testimony at a criminal trial, the Nevada Supreme Court imposed the
23 requirement in Drummond v. State, 86 Nev. 4, 7, 462 P.2d 1012, 1014 (1970), when it reasoned
24 that:

25 [T]he transcript of the Testimony of a material witness given at the
26 preliminary examination may be received in evidence at the trial
27 if three preconditions exist: first, that the defendant was
28 represented by counsel at the preliminary hearing; second, that
counsel cross-examined the witness; third, that the witness is
shown to be actually unavailable at the time of trial.

29 Drummond v. State, 86 Nev. 4, 7, 462 P.2d 1012, 1014 (1970); *See also* Aesoph v. State, 102
30 Nev. 316, 319-320, 721 P.2d 379, 381-382 (1986) (holding that preliminary hearing testimony

1 of a physician who conducted an autopsy on the victim was admissible where the physician
2 was unavailable at the time of trial).

3 Consequently, there are three elements necessary before a witness's preliminary hearing
4 testimony may be admitted as evidence at trial: (1) the defendant must have had counsel
5 represent him at the preliminary hearing; (2) the defendant's counsel must have cross-
6 examined the witness who is later unavailable for trial; and (3) the witness is actually
7 "unavailable" at trial. Funches v. State, 113 Nev. 916, 920, 944 P.2d 775, 777-78 (1997); *see*
8 *also Drummond*, 86 Nev. at 7, 462 P.2d at 1014.

9 Further, the United States Supreme Court reached a similar ruling in Crawford v.
10 Washington, 541 U.S. 36, 124 S.Ct. 1354 (2004): "Where testimonial evidence is at issue,
11 however, the Sixth Amendment demands what the common law required: unavailability and a
12 prior opportunity for cross-examination. We leave for another day any effort to spell out a
13 comprehensive definition of 'testimonial.' Whatever else the term covers, it applies at a
14 minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial;
15 and to police interrogations." 541 U.S. at 68 (footnote omitted).

16 The United States Supreme Court has held that the ultimate question in determining
17 "unavailability" for Confrontation Clause purposes is whether the witness is unavailable
18 despite good-faith efforts undertaken by the prosecution, prior to trial, to locate and present
19 that witness. *See Ohio v. Roberts*, 448 U.S. 56, 74, 100 S.Ct. 2531, 2543 (1980) (overruled on
20 other grounds by Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354 (2004). "What
21 constitutes a good-faith effort is a question of reasonableness." Quillen v. State, 112 Nev.
22 1369, 1375, 929 P.2d 893, 897 (1996).

23 Additionally, the Nevada Supreme Court specifically addressed the unavailability of
24 the witness requirement:

25
26 A witness may be unavailable if he or she is "[a]bsent from the
27 hearing and beyond the jurisdiction of the court to compel
28 appearance and the proponent of his [or her] statement has
exercised reasonable diligence but has been unable to procure his
[or her] attendance." We have interpreted the requirement that the
State "exercise reasonable diligence" to mean that the State must

1 *make reasonable efforts* to procure a witness's attendance at trial
2 before that witness may be declared unavailable.

3 Hernandez v. State, 124 Nev. 639, 188 P.3d 1126, 1130-1131 (2008) (abrogated on other
4 grounds by State v. Eighth Judicial Dist. Court (Baker), 134 Nev. 104, 107, 412 P.3d 18, 22
5 (2018)).

6 In determining what constitutes *reasonable efforts* to procure a witness, the Nevada
7 Supreme Court adopted a totality of the circumstances approach:

8 What constitutes reasonable efforts to procure a witness's
9 attendance must be determined upon considering the totality of the
10 circumstances. In the analogous circumstance of determining
11 whether a prosecutor has good cause for continuing a preliminary
12 hearing due to the absence of witnesses, this court rejected a
13 bright-line rule requiring a service of a subpoena on an out-of-state
14 witness, noting "[t]here may be circumstances where a prosecutor
15 can demonstrate 'good cause' for a continuance based upon an
16 absent witness even though it did not subpoena the witness.
17 Conversely, there may be circumstances where a prosecutor has
18 subpoenaed witnesses, yet cannot demonstrate 'good cause' for
19 their absence." In determining whether the proponent of
20 preliminary hearing testimony has met its burden of proving that a
21 witness is constitutionally unavailable, the touchstone of the
22 analysis is the reasonableness of the efforts.

23 Hernandez, 124 Nev. 649-650, 188 P.3d at 1134 (citations omitted).

24 Moreover, in Quillen, two victims previously testified that the defendant assaulted them
25 with a firearm. Quillen, 112 Nev. at 1373-74, 929 P.2d at 896. Both witnesses moved and
26 changed jobs after the preliminary hearing and prior to trial, leaving no forwarding address to
27 their new place of residence or employment. Id. at 1374-1375. The State's investigator
28 assigned to the case visited possible places of employment where the witnesses may have
moved to, ran a SCOPE check, and contacted the Department of Motor Vehicles, all to no
avail. Id. at 1375. However, cross-examination revealed that the investigator neither spoke to
any of the witness' neighbors nor did he try to find out if the men had relatives in town. Id.
Furthermore, it was also revealed that the investigator failed to contact any utilities or the post
office. Id. at 1376. There, the Court held, the efforts taken by the State to locate the witness
were reasonable. Id.

1 Here, Petitioner was not jointly tried with Gato and Castro. Thus, this Court FINDS
2 Bruton does not apply. See Third Petition, at 16. See Bruton v. United States, 391 U.S. 123,
3 88 S.Ct. 1620 (1968). Moreover, Gato and Castro's statements are not testimonial in nature as
4 they are statements of co-conspirators. See Crawford, 541 U.S. at 56 ("most of the hearsay
5 exceptions covered statements that by their nature were not testimonial – for example, business
6 records, or statements in furtherance of a conspiracy.") Thus, this Court finds Gato and
7 Castro's statements are admissible as statements of co-conspirators.

8 Gamboa was never charged with the commission of a crime. As such, the State
9 committed no wrongdoing in releasing Gamboa. In any event, the State did all that it could to
10 ensure that Gamboa would be present in court. Specifically, the State's investigator spent eight
11 (8) days attempting to contact Gamboa. Here, like in Quillen, the State's investigator searched
12 all known addresses and prior work contacts. Here, unlike in Quillen, the State's investigator
13 went a step further and contacted Gamboa's mother. However, like in Quillen, the State was
14 ultimately unsuccessful in finding Gamboa.

15 This Court finds, Petitioner's right to confrontation was not violated, and the State used
16 every reasonable means to locate Gamboa for trial. Therefore, Petitioner's claim is denied.

17 **VI. PETITIONER IS NOT ENTITLED TO APPOINTED COUNSEL**

18 Petitioner requests the appointment of counsel. See Motion, at 2(a). This Court finds
19 that, Petitioner is not entitled to appointed counsel.

20 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
21 conviction proceedings. See Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
22 (1991). The Nevada Supreme Court similarly observed that "[t]he Nevada Constitution...does
23 not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada
24 Constitution's right to counsel provision as being coextensive with the Sixth Amendment to
25 the United States Constitution." McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258
26 (1996). McKague specifically held that with the exception of NRS 34.820(1)(a) (entitling
27 appointed counsel when petitioner is under a sentence of death), one does not have "any
28

1 constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at 164,
2 912 P.2d at 258.

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

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

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

15 (emphasis added). Accordingly, under NRS 34.750, it is clear that the Court has discretion in
16 determining whether to appoint counsel.

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 defendant
22 filed a pro se post-conviction petition for writ of habeas corpus and requested counsel be
23 appointed. Id. The district court ultimately denied the petitioner’s petition and his appointment
24 of counsel request. Id.

25 However, in reviewing the district court’s decision, the Nevada Supreme Court
26 examined the statutory factors listed under NRS 34.750 and concluded that the district court’s
27 decision should be reversed and remanded. Id. The Court explained that the petitioner was
28 indigent, his petition could not be summarily dismissed, and he had, in fact, satisfied the
statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor, the Court concluded that
because the petitioner had 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 that

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

6 This Court finds that, Petitioner has not demonstrated that counsel should be appointed
7 pursuant to NRS 34.750. As a preliminary matter, Petitioner's request is suitable only for
8 summary denial as he has failed to provide any specific facts to support his bare and naked
9 request. *See Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Similarly, unlike
10 in Renteria-Novoa, Petitioner's Third Petition should be summarily denied for several reasons,
11 including, but not limited to, his Petition being time-barred, successive, barred by laches, and
12 his claim being barred under the Law of the Case Doctrine.

13 Petitioner failed to meet any of the additional statutory factors under NRS 34.750. The
14 issues Petitioner raises are not complex or difficult. Petitioner can comprehend the proceedings
15 because Petitioner filed several petitions for writ of habeas corpus, cites to the proper authority
16 for the issues he claims, and has filed several pre-trial motions. Additionally, there is no
17 discovery needed to resolve the issues raised in the Third Petition as they deal with issues
18 recorded in the trial transcripts, the transcripts before and after trial.

19 Finally, there has been no indication that Petitioner is unable to comprehend the
20 proceedings. Unlike the petitioner in Renteria-Novoa, who faced difficulties understanding the
21 English language. Thus, this Court finds Petitioner has failed to demonstrate any inability to
22 understand these proceedings. Therefore, Petitioner's request is denied.

23 **VII. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

24 Petitioner requests an evidentiary hearing. *See* Third Petition, at 19. This Court finds
25 that, Petitioner is not entitled to an evidentiary hearing.

26 Under NRS 34.770, a petitioner is entitled to an evidentiary hearing when a judge
27 reviews all supporting documents filed and determines that a hearing is necessary to explore
28 the specific facts alleged in the petition. An evidentiary hearing is unnecessary if a petition can

1 be resolved without expanding the record. *See Marshall v. State*, 110 Nev. 1328, 885 P.2d 603
2 (1994); *See also Mann v. State*, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A petitioner is
3 entitled to an evidentiary hearing if his petition is supported by specific factual allegations,
4 which, if true, would entitle him to relief unless the factual allegations are repelled by the
5 record. *See Marshall*, 110 Nev. at 1331, 885 P.2d at 605; *See also Hargrove*, 100 Nev. at 503,
6 686 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not entitled to an
7 evidentiary hearing on factual allegations belied or repelled by the record”). It is improper to
8 hold an evidentiary hearing simply to make a complete record. *See State v. Eighth Judicial*
9 *Dist. Court*, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered
10 itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a
11 record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

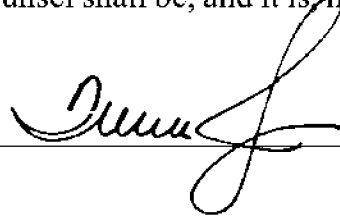
12 Further, the United States Supreme Court has held that an evidentiary hearing is not
13 required simply because counsel’s actions are challenged as being unreasonable strategic
14 decisions. *See Harrington v. Richter*, 562, U.S. 86, 105, 131 S. Ct. 770, 788 (2011). Although
15 courts may not indulge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

22 This Court finds, Petitioner’s claims are time-barred, successive, barred by laches, and
23 barred under the law of the case doctrine or capable of being addressed by the current record.
24 There is no need to expand the record, and an evidentiary hearing is not warranted in the instant
25 case.

26 Additionally, Petitioner presents no law or argument as to why he is entitled to an
27 evidentiary hearing. Thus, Petitioner’s request is bare and naked, and an evidentiary hearing is
28 not warranted in the instant case. Therefore, Petitioner’s request is denied.

1 **CONCLUSION**

2 Therefore, it is HEREBY ORDERED that Petitioner's Petition for Writ of Habeas
3 **Dated this 21st day of December, 2021**
Corpus (Post-Convection) and Motion to Appoint Counsel shall be, and it is hereby DENIED.

4
5 
6

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

E39 B14 F913 F1FF
Tierra Jones
District Court Judge

9
10 BY /s/ Taleen Pandukht
11 TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #005734
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1 **CSERV**

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

5
6 Sally Villaverde, Plaintiff(s)

CASE NO: A-18-780041-W

7 vs.

DEPT. NO. Department 10

8 Brian Williams Warden,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 12/21/2021

16 Dept Law Clerk

dept10lc@clarkcountycourts.us

Alanna S. Lavin

CLERK OF THE COURT

1 SALLY D. VILLAVERDE # 81701
2 defendant, In Propria Personam
3 Post Office Box 208, S.D.C.C.
4 Indian Springs, Nevada 89018

5 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6
7 IN AND FOR THE COUNTY OF CLARK
8

9 STATE OF NEVADA

10 Plaintiff,

11 vs.

12 SALLY D. VILLAVERDE

13 Defendant.
14

Case No. A-18-7B0041-W

Dept. No. 10

Docket _____
15

16 **NOTICE OF APPEAL**

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

21 PETITION FOR WRIT OF HABEAS CORPUS (Post-Conviction)
22

23 ruled on the 06 day of december, 2021.
24

25 Dated this 16 day of december, 2021.

Respectfully Submitted,

Sally D. Villaverde #81701

RECEIVED

DEC 26 2021

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

I, SALLY D. VILLAVERDE, hereby certify, pursuant to NRCP 5(b), that on this 16
day of December, 2021, I mailed a true and correct copy of the foregoing, "Notice of
APPEAL"

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

District Attorney Office
200 Lewis Ave
LAS VEGAS, NV 89165

Clerk of the Court at Clark
County
200 Lewis Ave 3rd Floor
LAS VEGAS NV 89155

CC:FILE

DATED: this 16 day of December, 2021.

Sally D. Villaverde # 81701
SALLY D. VILLAVERDE # 81701
Defendant /In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

NOTICE OF APPEAL
(Title of Document)

filed in District Court Case number A-18-780041-W

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

-OR-

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

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

(State specific law)

-or-

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

Sally D. Villaverde #81701
Signature

12-16-2021
Date

SALLY D. VILLVERDE #81701
Print Name

Defendant
Title

SALLY D. VILLAVERDE, #81701
Petitioner/In Propria Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070-0208

Electronically Filed
12/27/2021

Heather D. Lemin
CLERK OF THE COURT

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

STATE OF NEVADA

Plaintiff,

vs.

SALLY D. VILLAVERDE

Defendant.

CASE No. A-18-780041-W

DEPT.No. 10

DESIGNATION OF RECORD ON APPEAL

TO: Clerk of the Court
200 Lewis Ave 3rd Floor
Las Vegas NV 89155

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

DATED this 16 day of December, 2021.

RESPECTFULLY SUBMITTED BY:

Sally D. Villaverde #81701
SALLY D. Villaverde # 81701
defendant/In Propria Persona



1 ASTA
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5

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

10 SALLY D. VILLAVERDE ,

11 Plaintiff(s),

12 vs.

13 BRIAN WILLIAMS, WARDEN,

14 Defendant(s),
15

Case No: A-18-780041-W

Dept No: X

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Sally D. Villaverde

20 2. Judge: Tierra Jones

21 3. Appellant(s): Sally D. Villaverde

22 Counsel:

23 Sally D. Villaverde #81701
24 P.O. Box 208
Indain Springs, NV 89070

25 4. Respondent (s): Brian Williams, Warden

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
Las Vegas, NV 89155-2212

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

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

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

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

7 8. Appellant Granted Leave to Proceed in Forma Pauperis**: Yes, October 5, 2021
8 ***Expires 1 year from date filed*
9 Appellant Filed Application to Proceed in Forma Pauperis: No
Date Application(s) filed: N/A

10 9. Date Commenced in District Court: August 28, 2021

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

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

13 11. Previous Appeal: Yes

14 Supreme Court Docket Number(s): 77563

15 12. Child Custody or Visitation: N/A

16 13. Possibility of Settlement: Unknown

17 Dated This 29 day of December 2021.

18 Steven D. Grierson, Clerk of the Court

19
20
21 /s/ Amanda Hampton

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

25 cc: Sally D. Villaverde
26
27
28

SALLY D. VILLAVERDE, #81701
Petitioner/In Propria Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070

FILED
MAY 12 2022
[Signature]
CLERK OF COURT

PP
PA

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

SALLY D. VILLAVERDE,

Petitioner,

vs.

William Hutching (warden)

Respondent(s).

Case No. **A-18-780041-W**

Dept. No. **Dept. 10**

Docket _____

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the institution. If you are not in a specific institution of the department within its custody, name the director of the department of corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction and sentence.

1 Failure to raise all grounds in this petition may preclude you from filing future petitions
2 challenging your conviction and sentence.

3 (6) You must allege specific facts supporting the claims in the petition you file seeking relief
4 from any conviction or sentence. Failure to allege specific facts rather than just conclusions may
5 cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of
6 counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which
7 you claim your counsel was ineffective.

8 (7) If your petition challenges the validity of your conviction or sentence, the original and one
9 copy must be filed with the clerk of the district court for the county in which the conviction
10 occurred. Petitions raising any other claim must be filed with the clerk of the district court for the
11 county in which you are incarcerated. One copy must be mailed to the respondent, one copy to the
12 attorney general's office, and one copy to the district attorney of the county in which you were
13 convicted or to the original prosecutor if you are challenging your original conviction or sentence.
14 Copies must conform in all particulars to the original submitted for filing.

15 PETITION

16 1. Name of institution and county in which you are presently imprisoned or where and who you
17 are presently restrained of your liberty: Southern desert Correctional Center (SDCC)

18 2. Name the location of court which entered the judgment of conviction under attack: eighth
19 Judicial district Court CLark County, NEVADA

20 3. Date of judgment of conviction: June 6, 2021 (Amended Judgment of Conviction)

21 4. Case number: 03CL191012-2

22 5. (a) Length of sentence: 96 months max and 22 months minimum (burglary), Two Life.

23 (b) ^{Sentences without the Possibility of Parole (murder 1st degree)} If sentence is death, state any date upon which execution is scheduled: N/A

24 6. Are you presently serving a sentence for a conviction other than the conviction under attack in
25 this motion: No

26 Yes No ✓ If "Yes", list crime, case number and sentence being served at this time:

27 7. Nature of offense involved in conviction being challenged: first degree murder w/ use
28 of a deadly weapon, Robbery w/ use of a deadly weapon, Burglary.

- 1 8. What was your plea? (Check one)
- 2 (a) Not guilty ☒
- 3 (b) Guilty _____
- 4 (c) Nolo contendere _____
- 5 9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea
- 6 to another count of an indictment or information, or if a guilty plea was negotiated, give details: _____
- 7 N/A
- 8 _____
- 9 10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)
- 10 (a) Jury ☒
- 11 (b) Judge without a jury _____
- 12 11. Did you testify at trial? Yes _____ No ☒
- 13 12. Did you appeal from the judgment of conviction?
- 14 Yes ☒ No _____
- 15 13. If you did appeal, answer the following:
- 16 (a) Name of court: Supreme Court of Nevada
- 17 (b) Case number or citation: 84026
- 18 (c) Result: Pending
- 19 (d) Date of appeal: _____
- 20 (Attach copy of order or decision, if available). Pending
- 21 14.) If you did not appeal, explain briefly why you did not: N/A
- 22 _____
- 23 _____
- 24 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously
- 25 filed any petitions, applications or motions with respect to this judgment in any court, state or
- 26 federal? Yes ☒ No _____
- 27
- 28

1 16. If your answer to No 15 was "Yes", give the following information:

2 (a) (1) Name of court: U.S. district Court district of Nevada

3 (2) Nature of proceedings: Writ of Habeas Corpus (Post-Conviction) 2254

4
5 (3) Grounds raised: 1-Prosecutorial misconduct, Brady Violation, ineffective
6 assistance of Counsel,

7
8 (4) Did you receive an evidentiary hearing on your petition, application or motion?

9 Yes ___ No ✓

10 (5) Result: Pending

11 (6) Date of result: N/A

12 (7) If known, citations of any written opinion or date of orders entered pursuant to each
13 result: N/A

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

15 (1) Name of Court: N/A

16 (2) Nature of proceeding: N/A

17 (3) Grounds raised: N/A

18 (4) Did you receive an evidentiary hearing on your petition, application or motion?

19 Yes ___ No N/A

20 (5) Result: N/A

21 (6) Date of result: N/A

22 (7) If known, citations or any written opinion or date of orders entered pursuant to each
23 result: N/A

24 (c) As to any third or subsequent additional application or motions, give the same
25 information as above, list them on a separate sheet and attach. N/A

26

27

28

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion? N/A

(1) First petition, application or motion?

Yes No N/A

Citation or date of decision: N/A

(2) Second petition, application or motion?

Yes No N/A

Citation or date of decision: N/A

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You may relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length). N/A

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion or application or any other post-conviction proceeding? If so, identify: Yes

(a) Which of the grounds is the same: ineffective Assistance of Counsel by Counsel given built during Trial and Penalty Phase.

(b) The proceedings in which these grounds were raised: Post-Conviction (Petition of Habeas Corpus)

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length).

my Previous Judgment of Conviction (L.B.C) was invalid. and on June 6, 2021, was Amended. Thus, I Challenging the New Judgment, which Trigger the one Year Statute of Limitation to file a First Petition or Second Petition.

1 18. If any of the grounds listed in Nos. 23(a), (b), (c), and (d), or listed on any additional pages
2 you have attached, were not previously presented in any other court, state or federal, list briefly what
3 grounds were not so presented, and give your reasons for not presenting them. (You must relate
4 specific facts in response to this question. Your response may be included on paper which is 8 1/2 x
5 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten
6 pages in length). 23(a) TRIAL / APPELLATE Counsel were ineffective and never raised

7 this claims, 23(c) Trial Counsel was ineffective and ineffective Assistant of Counsel
8 Are Properly raise at Post-Conviction habeas Corpus.

9 19. Are you filing this petition more than one (1) year following the filing of the judgment of
conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.

10 (You must relate specific facts in response to this question. Your response may be included on
11 paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five
12 handwritten or typewritten pages in length). N/A See Also Argument at PAGE 6B, 6C
13
14

15 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the
16 judgment under attack?

17 Yes ☒ No ☐

18 If "Yes", state what court and the case number: Supreme Court of Nevada and
19 U.S. District Court, district of Nevada

20 21. Give the name of each attorney who represented you in the proceeding resulting in your
21 conviction and on direct appeal: RANDALL H. DIKE
22
23

24 22. Do you have any future sentences to serve after you complete the sentence imposed by the
25 judgment under attack?

26 Yes ☐ No ☒ If "Yes", specify where and when it is to be served, if you know: _____
27
28

1 STATEMENT OF THE CASE

2 On APRIL 08, 2004 Petitioner here in (VILLAVERDE) was convicted of three (3) Crimi-
3 nal Counts in Clark County District Court following a Jury trial. Petitioner was Con-
4 victed of first degree murder with use of a deadly weapon, Robbery with use of
5 a deadly weapon and burglary.

6 On June 3, 2004 VILLAVERDE was sentenced to a maximum term of 26 months and
7 a minimum term of 22 months in the Nevada Department of Corrections (NDOC) on
8 the burglary Count, to a term of life imprisonment without the possibility of Parole
9 on the murder Count, plus an equal and consecutive identical term for the deadly
10 weapon enhancement. The third Count was to run consecutive to the second Count
11 and the first Count was to run concurrent to the other two. and Credit for time
12 served denied.

13 Villaverde filed a direct appeal of his conviction with the Supreme Court of Nevada
14 and on February 15, 2006 the Court affirmed the convictions and sentences.

15 VILLAVERDE's case was severe for trial purpose from codefendant(s) Roberto CASTRO
16 And Rene Gato. Villaverde was the first one to face trial, convicted and sentenced.
17 On January 31, 2005, THE PROSECUTION filed an Amended information in support of
18 Co-defendant ROBERTO CASTRO ALFORD Plea. See (Exh. A attach herein), also informing
19 that VILLAVERDE committed the offense of "Voluntary Manslaughter" by Aiding/or
20 Abetting Defendant Roberto Castro to commit the underlying offense.

21 On or Around April 2018, VILLAVERDE learned of this information through docu-
22 ments sent by the Clerk of the Court at Clark County. immediately, Villaverde
23 filed a Petition for writ of Habeas Corpus that was denied by the eight
24 District Court, Court of Appeals, (Supreme Court) as untimely in 2020.

25 On MAY 19, 2021 VILLAVERDE filed a motion for Amended judgment of Con-
26 viction to include Jail time Credits. This Court granted the unopposed motion
27 and on June 14, 2021. an Amended Judgment of Conviction was filed. Awar-

1 ding Petitioner 469 days credit for time served.

2 On October 04, 2021 Petitioner filed a Petition for writ of habeas Corpus at Case No. A-18-74
3 0041-w Dept. 10, an Informa Pauperis motion was granted, and a Motion for Appointment
4 of Counsel denied.

5 On October 05, 2021 this Court issued an Order for respondent to answer within 45 days
6 the Petition for writ of habeas Corpus.

7 On November 18, 2021 Respondent filed an Answer to the Petition for writ of habeas Corpus.

8 On December 23, 2021 This Court issued the Notice of Entry of Finding of Fact Conclusion
9 of Law and Order.

10 PETITIONER filed a timely Notice of Appeal, and the decision is still pending in the
11 Supreme Court of Nevada.

12 Now Petitioner file this his Second Petition for writ of habeas Corpus Post-Conviction.

13 LEGAL ARGUMENTS

14 I. THE INSTANT PETITION IS NOT PROCEDURALLY BARRED.

15 In MAGWOOD v. Patterson, the United States Supreme Court held that,

16 "The phrase second or successive must be interpreted with respect to the judgment
17 challenged. Thus, where there is a new judgment intervening between the two
18 habeas petition the petition challenging the resulting new judgment is not second
19 or successive at all." See MAGWOOD v. Patterson 561 U.S. 320 130 S.Ct. 2788 177 LEd 592. 2012

20 As previously stated, on May 19, 2021 Villaverde filed a motion for Amended judgment
21 of conviction to include his Jail time credits. And this Court issued an Amended judg-
22 ment of conviction on June 14, 2021, awarding 469 days credit, because Villaverde's
23 previous judgment of conviction (J.O.C.) did not reflect his credit for time served in
24 jail per NRS 176.105 his previous J.O.C. was invalid. See Turner v. Baker 912 F.3d 1236,
25 2019 U.S. App Lexis 1289 (9th Cir.) at Case No. 17-72044.

26 In Turner the ninth Circuit Court of Appeals emphasized that the Nevada Supreme
27 Court has twice remanded cases to the trial court with instructions that it amend the

1 defendant's judgment to include credit for time served. See *Dartik*, 373 P.3d at 909, *Kuyken*
2 *dall* 926 P.2d at 783 and appellate courts do not remand cases unless the lower court's ru-
3 ling is erroneous. See *ex. ... Zivotofsky ex rel. Zivotofsky v. Clinton* 566 U.S. 189, 201-02, 132
4 S.Ct. 1921, 182 L.Ed.2d 923 (2012). "When we reverse... we typically remand for resolution of any
5 claims the lower court's error prevented them from addressing," thus, those decisions implicitly
6 demonstrate that judgments that do not include a defendant's credit for time served are
7 invalid.

8 THE ABOVE CONCLUSION ALSO APPLY IN THE INSTANT CASE. VILLAVERDE'S ORIGINAL J.D.C. DID NOT INCLU-
9 DE HIS JAIL CREDIT FOR TIME SERVED. THEREFORE, INVALID.

10 A Petition can be deemed "Second or Successive" under § 2244 (b) only if it challenges
11 the same state court judgment challenged in an earlier petition. See *United States v. Buen*
12 *restro*, 895 F.3d 1160, 1165 (4th Cir. 2018). Thus, when a new judgment intervenes between the
13 filing of two federal habeas petitions a petition challenging the new intervening judgment
14 is not considered "Second or Successive". MAGWOOD SUPRA.

15 VILLAVERDE'S ORIGINAL J.D.C. DID NOT REFLECT HIS JAIL TIME CREDIT. THUS, THE JUDGMENT WAS
16 NOT FINAL. THEREFORE, (DO NOT TRIGGER THE ONE-YEAR PERIOD FOR FILING A HABEAS PETITION). SEE *White*
17 *head v. State* 128 Nev. 259, 285 P.3d 1053 (2012).

18 VILLA VERDE Amended or New J.D.C. was issued on June 14, 2021. Hence, this petition
19 shall be deemed timely within the one year period for filing a habeas petition moreover,
20 NRS 176.565 permits the district court to "Amend a doc" to correct such an error "years
21 even decades after the entry of the original J.D.C." turner SUPRA.

22 For the above mentioned, VILLAVERDE'S Petition challenging the new intervening judgment
23 is not procedurally barred, Second or Successive, and Petitioner Pray this Court review
24 Arguments and issues stated herein and grant relief Accordingly.

Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

23. (a) GROUND ONE: THE TRIAL COURT COMMITTED ERROR BY DISMISSING
DEFENDANT VILLAVERDE'S JURY DURING THE PENALTY PHASE IN VIOLATION OF
DEFENDANT SIXTH AND FOURTEEN AMENDMENT CONSTITUTIONAL RIGHTS TO DUE
PROCESS AND EQUAL PROTECTION OF LAW AND NEVADA CONSTITUTION.

23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law):
Nevada has determined that a bifurcated trial with Separate guilt and Sentencing Phases is appropriate in first-degree murder cases. Nevada Revised Statute NRS 175.552 (1) requires that a district Court hold a Separate Penalty hearing when a defendant is convicted of first-degree murder. In the Present Case, Petitioner Villaverde here in, was convicted of first degree murder w/use of a deadly weapon by way of a jury trial, and was sentenced by the trial judge to serve two consecutive life term without the possibility of parole. for the murder conviction and enhanced sentences for the use of the deadly weapon by one of his co-defendants.

Villaverde contend that the trial court and/or judge abuse his discretion by dismissing the jury after the guilty phase, without giving them the opportunity to fairly complete the second phase of the trial, the sentencing judge, or trial judge did not confer with trial counsel or defense counsel into whether the "parties" stipulated or agree to have the trial judge carry out the second phase of the trial which is the sentencing. See NRS 175.552. which, clearly inform the following: "In a case in which the death penalty is not sought the parties may by stipulation waive the separate penalty hearing required in subsection 1. When stipulating to such a waiver the parties may

also include an agreement to have the Sentence if any imposed by the trial judge. Any stipulation pursuant to this Subsection must be in Writing and signed by the defendant his attorney if any and the Prosecuting Attorney."

Villaverde's Constitutional rights of due Process and equal Protection established in the Sixth and Fourteenth Amendment and Nevada Constitution were clearly Violated, by the trial judge's failure to follow the above stipulations stated at N.R.S 175.552, in fact, if Villaverde being Sentenced by his jury more likely he would have had a more lenient Sentences. The facts of his case indicated that he was not involved in the killing of the victim of this case, (ENRIQUE CAMINERO), THE evidences were not Substantial, nor Overwhelming, for Villaverde being harshly Sentenced to the maximum Penalties, THE STATE SEVERAL Theories of the Case and Arguments, always emphasized that Villaverde's Co-defendant Roberto Castro was the Sole Responsible for the Physical Killing of the above mentioned Victim MR. Caminero. See Also "Amended information" below.

During the First Phase of trial, the state formulated that Villaverde was liable only on theories of "Vicarious Criminal Liability and Aiding and Abetting" his Co-defendant Roberto Castro, whom Allegedly committed the Physical Act of Killing the victim. Thus, is easy to deduce that the trial jury perceived from the evidences, that Villaverde was guilty only, as Aider and Abettor, a fair indication that Villaverde's Sentences if Carry out by his jury as the law indicated, more likely, would've Never Sentenced to Life Without the Possibility of Parole, and how do we know this? Because, THE STATE PROSECUTION AFTER VILLVERDE'S CONVICTIONS and SENTENCES. Conceded on Record that THE Crime Committed by Co-defendant Roberto CASTRO WAS "Voluntary manslaughter," to wit, in the heat of Passion. Clear indication that the evidences of guilt for first degree Murder during Villaverde's jury Trial were unreliable, close to none. by the state Admitting on Record, in Open Court that the Crime Committed by defendants Involved the lesser offense of Voluntary Manslaughter ALSO. Violated Villaverde's Federal /state Rights, see, next Page.

1 INFO
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 J. TIMOTHY FATTIG
6 Deputy District Attorney
7 Nevada Bar #006639
8 200 South Third Street.
9 Las Vegas, Nevada 89155-2211
10 (702) 455-4711
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

Case No: C191012C

Dept No: XVII

12 -vs-

13 ROBERT CASTRO, aka Robert Rance
14 Castromontalvo, ID #1161921

Defendant.

AMENDED
INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.
17

18 DAVID ROGER, District Attorney within and for the County of Clark, State of
19 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

20 That ROBERT CASTRO, Robert Rance Castromontalvo, the Defendant above
21 named, having committed the crime of VOLUNTARY MANSLAUGHTER (Felony -
22 NRS 200.040, 200.050, 200.080), on or about the 6th day of March, 2002, within the County
23 of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases
24 made and provided, and against the peace and dignity of the State of Nevada; did, together
25 with SALLY VILLAVERDE and/or RENE GATO, then and there without authority of
26 law, wilfully, unlawfully, and feloniously, without malice and without deliberation kill
27 ENRIQUE CAMINERO, JR., a human being, by manual strangulation and/or by inflicting
28 multiple blunt force trauma upon his body, said defendant being liable under one or more of

EXHIBIT 1

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1 the following principles of criminal liability, to-wit: (1) by Defendant and/or SALLY
2 VILLAVERDE and/or RENE GATO directly committing the acts constituting the offense;
3 and/or (2) by said Defendant and/or SALLY VILLAVERDE and/or RENE GATO aiding or
4 abetting each other in its commission by directly or indirectly counseling, encouraging,
5 commanding or procuring the other to commit the offense, as evidenced by the conduct of
6 the Defendant and/or SALLY VILLAVERDE and/or RENE GATO before, during and after
7 the offense and/or (3) by conspiring with SALLY VILLAVERDE and/or RENE GATO to
8 commit the offense of robbery and/or murder whereby each is vicariously liable for the
9 foreseeable acts of the other made in furtherance of the conspiracy.

10
11 DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

12
13 BY 
14

15 J. TIMOTHY FATTIG
Deputy District Attorney
Nevada Bar #006639
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26 DA#03F02357c/lg
27 LVMPD EV#0205060996;0208312148;
28 0008180061;009082352
VOL MANSLTR- F
(TK1)

1 from The Amended information filed by the state Prosecution, After Villaverde's
2 trial and Sentencing, this Court can see that villaverde's maximum Senten-
3 ces of Life or Two Life without the Possibility of Parole, as Aider and Abettor,
4 are Cruel, excessive, and harshly imposed by the trial Judge. whom did not
5 had any right to impose Such Sentencing without waiver by the Parties.
6 See NRS 195.552.

7 I-2 WHETHER THE TRIAL JUDGE'S ABUSE OF DISCRETION WERE VINDICTIVE AND
8 UNCONSTITUTIONAL.

9 VILLAVERDE AVER that the trial JUDGE ABUSE OF discretion Were Vindictive
10 and inappropriate due to the fact that Petitioner Villaverde repeatedly Refuse,
11 to testify against Co-defendants, see Exh.A attach here in.
12 Before Petitioner's trial, Post-trial and Sentencing, Offers were made by the
13 State Prosecutors in exchange of "Cooperation" by Villaverde to testify on
14 behalf of the state. See (Exhibit A attach here in), in fact. THE State Prosecutors
15 forcibly transported VILLAVERDE from the maximum Security at Ely state Prison,
16 Nevada, in an attempt to Coerce Villaverde to testify against Codefendants,
17 or else he will spend the rest of his life behind bars. See Also Exh.A (at Court minutes
18 February 07, 2005), there is not doubt that trial Judge imposed harshly, severe
19 maximum Sentences as a tactical maneuver, and/or Fear Factor to Compel
20 Villaverde to turn evidences on behalf of the state against Codefendants. speci-
21 fically The trial Judge knew that mitigating factors existed in the Case of Villaver-
22 de which indicated Leniency, The fact THAT VILLAVERDE tried to SAVE the Victim's
23 Life by arriving CPR, Facts that came into light during the first of trial from
24 THE STATE'S own witnesses, (TERESA GAMBOA VILLAVERDE'S exgirlfriend and more
25 importantly Renee Worrell. Forensic doctor at cross examination under oath.) also
26 The fact that villaverde's Psi Record only reflected (1) Felony Possession of Control
27 Substances. A fair indication that VILLAVERDE'S Severe Maximum Sentences were
28 harshly imposed by the trial Judge Vindictively on Purpose.

23. (b) GROUND TWO: PETITIONER'S SENTENCES OF FIRST DEGREE MURDER WITH THE USE OF THE DEADLY WEAPON SHOULD BE MODIFIED AS A MATTER OF FEDERAL AND STATE LAW.

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law):

THE NEVADA Supreme Court has long recognized that Courts have the Power and Jurisdiction to modify a Sentence. See Stanley V. State, 787 P.2d 396, 106 nev. 75 (1990).

... that if a Sentencing Court Pronounces Sentence Within Statutory limits, the Court will have Jurisdiction to modify, Suspend or otherwise Correct that Sentence if it is based upon Materially untrue assumptions or mistakes which work to the extreme detriment of the defendant.

VILLAVERDE believe that this Court has based upon statev, the Jurisdiction to modify his Sentence, due to ambiguity in NRS. 200.030, Villaverde asserts that NRS 200.030 is ambiguous whereas the statute defines murder in Pertinent Part...

(a) Murder of the First degree includes any willful, deliberate or Premeditated Killing, or,

(b) A killing Committed in the PerPetration or attempted PerPetration of one of the Predicate felonies enumerated in the statute, e.g. Robbery, Burglary, Kidnapping.

All murder that is not murder of the First degree is murder of the Second Degree.

Murder of the Second Degree is murder with malice, aforethought but without the admixture of Premeditation or deliberation.

The language of nev. Rev. Stat. 200.030 enumerates Various types of murder, e.g.

(1) Premeditated murder (2) Felony murder and (3) Second degree murder. These Various theories are all Separate and distinct from one another. first in Premeditated murder Premeditation is defined as a design, a determination to kill. Distinctly formed in the mind by the time of the killing. Premeditated Murder is an intentional killing.

Next Felony murder is defined as, an accidental or negligent killing committed during the perpetration or attempted perpetration of one of the predicate crimes named within the statute. Wherein, Felony Murder is an unintentional killing. Finally Second degree murder is defined as murder with malice aforethought but without the admixture of Premeditation.

Based on the above description of the various theories of murder as outlined in NRS 200.030 the difference between the theories is clear, and as all are contained within the same statute. The statute is ambiguous. Ambiguity in a statute is found where the statute language lends itself to two or more reasonable interpretations. See *Nay v. State* 167 P.3d 430 (Nev. 2007) in the *Nay* case the Nevada Supreme Court also stated because the Felony-Murder statute is reasonably susceptible to "two inconsistent interpretations." We must apply the rule of "lenity" and interpret the measure as the majority has done today. Villaverde acknowledges that all types of murder requires the presence of malice aforethought. However, the record now reflect the state's concession after Villaverde's trial/sentencing that his codefendant Roberto Castro committed the homicide without malice and deliberation. See Amended information at page 7b herein, a clear indication that Codefendant Roberto CASTRO Lacked any intent to kill when he committed Voluntary manslaughter "in the heat of passion." Which, by law such offense cannot be upgraded to Felony murder, See (NRS 200.010, 200.030, 200.040, 200.050). Hence, Nevada law "during the perpetration of a felony precludes instructions on Voluntary manslaughter because "Express malice cannot coexist with irresistible passion." One distinguish from the other due to the absence of malice the presence or absence of this malice or mental condition marks the boundary which separates the two crimes of murder and manslaughter. See *Stevenson v. United States* 162 U.S. 313, 320, 16 S.Ct. 839, 842, 40 LEd 980 (1896), *SALGADO V. STATE* 38 Nev 64, 195 P 919, 158 P 764 (1914).

it is Villaverde legal position and argument that, since the record established Codefendant Roberto Castro's actions lacked any malice aforethought and deliberation at the time he committed the killing "while in the heat of passion", his current conviction and

1 Sentencing as aider and abettor of a first degree murder shall be vacated or modified.
2 whereas the record also reflected the Prosecution's own Concession that Villaverde "aided
3 and abetted" Roberto Castro to Commit voluntary manslaughter. See Factual basis at
4 Amended information at Page 7b, it's fair to say that under this theory alone, Villaverde's
5 Conviction / Sentences for Felony murder is inapplicable to his Case, and it's unconstitutional
6 for Villaverde stand Convicted / sentenced based in Factual basis on record that Con-
7 tradict the statute for what the felony murder was constructed and adopted in the state
8 of Nevada, which is "to deter felons from negligently or accidentally killing during the Commi-
9 ssion of one of the Crimes listed in NRS 200.030," from the Prosecutors' own admission
10 Roberto Castro was the one whom Committed the homicide, to wit, the Principal responsible
11 for the victim's death whereas also the Prosecution admitted on record, CASTRO's homicide
12 was neither "negligent, nor Accidental," was during an uncontrollable "heat of
13 Passion". Facts that were Accepted in Open Court by the Trial / Sentencing Court, and
14 if the Trial Court Found that Roberto Castro Killed The deceased "ENRIQUE CAMINERO"
15 under the influence of uncontrollable Passion and without a mixture of delibera-
16 tion, is because the Court Concluded that the Felonious Assault was mitigated
17 by Provocation and Committed without the mens rea essential to impute malice
18 to The Killing. Thus, The felony of assault in this instance Cannot Support a
19 felony murder Conviction because there is no malice to be transferred. Hence,
20 BY the Prosecution also establishing that Villaverde Aided and abetted Castro
21 to Commit Voluntary Manslaughter. Villaverde's Sentences must be Commensura-
22 te with his individual Criminal Culpability.

23 Moreover, it's very noteworthy that also on January 31, 2005, The Prosecution Amen-
24 ded Roberto Castro's robbery charge, and burglary. See dispositions 2/3 at Ex. A.)
25 a reduction of charges, dropping or dismissing the robbery / burglary which also
26 Violated Villaverde's due Process rights, because, under this underlying offenses,
27 The state Procured a felony murder Conviction at Villaverde's Trial when The Prose-
28 cutors instructed the Jury that "Roberto Castro, Rene Gate and Villaverde Cons-

1 Pired to Rob and Kill the victim for his drugs and money."

2 Villaverde over that the STATE's decision Post-trial to discard CASTRO'S Robbery and burglary
3 Charges nullified their previous theory of Felony murder provided to his jury during trial,
4 whom convicted Villaverde under the Natural and Probable Consequence doctrine, thus the
5 Prosecution's Actions Post-trial disposing the Robbery and burglary were highly Prejudicial
6 to Villaverde whom remain convicted and sentenced under a faulty theory of
7 felony murder, which is the same as to be convicted / sentenced on "untrue assumption
8 OF FACTS."

9 The Record reflect Co-defendant CASTRO was only convicted of Voluntary Manslaughter, a fair
10 indication that the state admitted evidences demonstrated Co-defendant Castro engaged
11 in a scuffle with the victim Prior to the victim's killing but did not show CASTRO committed
12 the elements of first degree murder. See Howard v. Sheriff of Clark County 83 Nev at 50-51,
13 422 P.2d at 539. Evidently the victim Enrique Caminero did not die as a foreseeable
14 consequence of the neglect or endangerment, by the Prosecution's own Admission
15 on record Caminero's death was a result of an Altercation Provoked by irresistible
16 passion, without malice and without deliberation, committed by Roberto Castro. See
17 Amended information filed Post-trial / sentencing on January 31, 2005 also at Page 7c, 7d
18 here in). Which Factual basis also stated that ROBERTO CASTRO, SALLY VILLAVARDE and
19 Rene Gato, aided / abetted each other in the commission of the offense. these factual basis were
20 filed in open Court and accepted by the trial Court. therefore, if the Natural and Probable Consequence
21 doctrine is to be applied to the above theory of the case, then by operation of State and Federal
22 Law Villaverde's Convictions / Sentences for first degree murder for felony murder shall not
23 stand and must be vacated, modified or reverse accordingly.

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23. (c) GROUND THREE: _____

23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): _____

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23. (d) GROUND FOUR: _____

23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): _____

1 WHEREFORE, SALLY D. VILLAVERDE, prays that the court grant (Post-Conviction)
2 relief to which he may be entitled in this proceeding.
3 EXECUTED at Southern Desert Correctional Center P.O. Box 208 Indian Spring, NV 89470
4 on the 30 day of April, 2022.

5
6 Sally D. Villaverde #81701
7 Signature of Petitioner

8 **VERIFICATION**

9 Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is
10 the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is
11 true and correct of his own personal knowledge, except as to those matters based on information and
12 belief, and to those matters, he believes them to be true.

13
14 Sally D. Villaverde #81701
15 Signature of Petitioner

16
17 Sally D. Villaverde #81701
18 Petitioner Acting Pro. Se
19 Attorney for Petitioner
20
21
22
23
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25

CERTIFICATE OF SERVICE BY MAILING

I, SALLY D. VILLAVERDE, hereby certify, pursuant to NRCP 5(b), that on this 30
day of APRIL, 2022, I mailed a true and correct copy of the foregoing, "Habeas Corpus
POST-CONVICTION) PETITION

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

District Attorney's Office
200 Lewis Ave
Las Vegas, NV, 89155

CC:FILE

DATED: this 30 day of APRIL, 2022.

Sally D. Villaverde # 81701
SALLY D. VILLA-VERDE # 01201
Petitioner /In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding PETITION FOR

WRIT OF HABEAS CORPUS (POST-CONVICTION)

(Title of Document)

filed in District Court Case number 03 C191012-2

☒ 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.

Sally D. Villaverde #81701
Signature

4/30/22
Date

SALLY D. VILLAVERDE #81701
Print Name

PETITIONER
Title

SALLY D. WILLAVERDE # 0081701
SDCC P.O. Box 208
Indian Springs, NV 89070

CONFIDENTIAL

To: Clerk of the Court
200 Lewis Ave, 3rd Floor
Las Vegas NV 89155-1160

US MAIL
FIRST CLASS
PERMIT NO. 100
LAS VEGAS, NV

1 SALLY D. VILLAUVERDE #81701
2 Defendant / In Propria Personam
3 SOC, Post Office Box-208
4 Indian Springs, Nevada. 89070-0208.

FILED
MAY 12 2022

Atty. & Plaintiff
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

7 STATE OF NEVADA,)
8 Plaintiff,)
9 Vs.)
10 SALLY D. VILLAUVERDE,)
11 Defendant.)

Case No **A-18-780041-W**
Dept. No **Dept. 10**
Docket

MOTION TO APPOINT COUNSEL

Date Of Hearing: _____
Time Of Hearing: _____

Hearing Requested

17 COMES NOW the Defendant SALLY D. VILLAUVERDE in proper person and
18 hereby moves this Honorable Court for an ORDER granting him Counsel in the herein
19 proceeding action.

20 This Motion is made and based upon all papers and pleadings on File herein
21 and attached Points and Authorities.

23 Dated: This 30 Day OF April, 2022.

Respectfully Submitted,

26 BY: Sally D. Villaverde #81701
27 SALLY D. VILLAUVERDE #81701
28 Defendant, In Forma Pauperis:

POINTS AND AUTHORITIES

NRS.34.750 Appointment of Counsel for indigents;pleading sipplemental to
petition;response to dismiss:

"If the Court is satisfied that the allegation of indigency is True and the
petition is Not dismissed summarily,the Court may appoint counsel to represent
the-"petitioner/defendant."

NRS.171.188 Procedure for appointment of attorney for indigent defendant:

"Any defendant charged with a public offense who is an indigent may, by oral
statement to the District Judge,justice of the peace,municipal judge or master,
request the appointment of an attorney to represent him."

NRS 178.397 Assignment of counsel;

"Every defendant accused of a gross misdemeanor or felony who is financially
unable to obtain counsel is entitled to have counsel assigned to represent him at
every stage of the proceedings from his initial appearance before a magistrate or
the court through appeal,unless he waives such appointment."

WHEREFORE ,petitioner/defendant,prays this Honorable Court will grant his
motion for the appointment of counsel to allow him the assistance that is needed
to insure that justice is served.

Dated:This 30 Day Of April ,2022 .

Respectfully Submitted,

BY: Sally D. Williams # 81701
Sally D. Williams # 81701
Defendant, In Forma Pauperis:

////

////

////

AFFIDAVIT OF: SALLY D. VILLAVERDE # 81701

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

TO WHOM IT MAY CONCERN:

I, SALLY D. VILLAVERDE the undersigned, do hereby swear that all statements, facts and events within my foregoing Affidavit are true and correct of my own knowledge, information and belief, and as to those, I believe them to be True and Correct. Signed under the penalty of perjury, pursuant to, NRS. 29.010; 53.045; 208.165, and state the following:

That defendant's Petition for writ of Habeas Corpus (Post-Conviction). Present Complex issues regarding his Convictions and Sentences, specifically, The Fact his Sixth Amendment rights to be Sentenced by the Same Jury that Convicted him, and the fact that new evidences Surfaced Post-trial / Sentencing revealing and demonstrated that defendant was Convicted / Sentenced under a different theory of the Case and Set of Facts. Which is the Same to Say that defendant was Convicted / Sentence under untrue Assumption of Facts.

If this honorable Court is to grant relief, The Court may Provide the Assistance of Counsel for Sentencing Purpose.

And defendant's First Language Spanish may represent a Language barrier. If evidentiary hearing is granted during the ongoing Litigation.

Wherefore, For the reasons stated above defendant herein Pray to this honorable Court to grant his motion for Appointment of Counsel.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

EXECUTED At: Indian Springs, Nevada, this 30 Day of April

2022.

BY: Sally D. Villaverde # 81701

SALLY D. VILLAVERDE # 81701
Post Office Box-308 (SDCC)
Indian Springs, Nevada 89307
Affiant, In Propria Personam:

CERTIFICATE OF SERVICE BY MAILING

I, SALLY D. VILLAVARDE, hereby certify, pursuant to NRCP 5(b), that on this 30
day of APRIL, 2022, I mailed a true and correct copy of the foregoing, "motion For
Appointment of Counsel"
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

District Attorney Office
200 Lewis Ave
LAS VEGAS, NV 89155

CC:FILE

DATED: this 30 day of APRIL, 2022.

Sally D. Villaverde # 81701
SALLY D. VILLAVARDE # 81701
defendant /In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION FOR

Appointment of Counsel
(Title of Document)

filed in District Court Case number 03C191012-2

☒ 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.

Sully D. Villaverde #81701
Signature

April 30, 2022
Date

Sully D. Villaverde #81701
Print Name

defendant
Title

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
437 - 440
WILL FOLLOW VIA
U.S. MAIL**

1 PPOW
2

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

5 Sally D Villaverde,

6 Petitioner,

7 vs.

8 Brian Williams Warden,

9 Respondent,
10

Case No: A-18-780041-W
Department 10

**ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS**

11 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on
12 May 12, 2022. The Court has reviewed the Petition and has determined that a response would assist the
13 Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good
14 cause appearing therefore,

15 **IT IS HEREBY ORDERED** that Respondent shall, within 45 days after the date of this Order,
16 answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS
17 34.360 to 34.830, inclusive.

18 **IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this Court's

19 Calendar on the 13th day of July, 2022, at the hour of

20 8:30 a.m.
21 _____ o'clock for further proceedings.

Dated this 12th day of May, 2022

22
23
24
25 District Court Judge

26 **EFA 336 1707 9982**
27 **Tierra Jones**
28 **District Court Judge**

1 **CSERV**

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

5
6 Sally Villaverde, Plaintiff(s)

CASE NO: A-18-780041-W

7 vs.

DEPT. NO. Department 10

8 Brian Williams Warden,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 5/12/2022

16 Dept Law Clerk

dept10lc@clarkcountycourts.us

17
18 If indicated below, a copy of the above mentioned filings were also served by mail
19 via United States Postal Service, postage prepaid, to the parties listed below at their last
20 known addresses on 5/13/2022

21 Sally Villaverde

Sally Villaverde #81701
PO Box 208
Indian Springs, NV, 89070

22 Steven Wolfson

Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, NV, 89155

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
443 - 444
WILL FOLLOW VIA
U.S. MAIL**

1 SALLY D. VILLAYERDE #81701

2 Petitioner / in Propria Persona
3 SDCC P.O BOX 209
Indian Springs, Nevada 89070

FILED

MAY 13 2022

[Signature]
CLERK OF COURT

4 IN THE EIGHTH JUDICIAL DISTRICT COURT OF

5 THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

6
7 SALLY D. VILLAYERDE
8 Petitioner

9 VS

10 WILLIAM HUTCHING (WARDEN)
11 Respondent

CASE NO. A-18-780041-W

dept N Dept. 10

12 PETITIONER'S EXHIBITS IN SUPPORT OF PETITION

13 FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

14 Comes now, Petitioner, SALLY D. VILLAYERDE, above mentioned and
15 is hereby informing this honorable Court that, on May 03, 2022, he
16 mailed his Petition for writ of habeas Corpus (Post-Conviction) dated
17 April 30, 2022, to The clerk of this Court. but, inadvertently Petitioner
18 forgot to include exhibits in support of his Petition for writ of habeas
19 Corpus (Post-Conviction). thus, he would like this honorable Court to excuse
20 this mistake or inconvenience by allowing Petitioner to include the exhibits
21 attach herein, as part of the record in support of the above mentioned Petition,
22 dated: this 09 day of may, 2022

23 Respectfully Submitted
24 Sally D. Villaverde #81701
SALLY D. VILLAYERDE # 81701
Petitioner / in Propria Persona

25 RECEIVED

26 MAY 11 2022

27 CLERK OF THE COURT

EXHIBIT A

- 1- a- Court minutes February 07, 2005, showing attempts made by the Prosecution, to negotiate a deal for Villaverde's testimony against Co-defendants.
- b- Letters from Defense Attorney Randall H. Pike explaining Villaverde the State Prosecution's offers in exchange for testimony against Co-defendants.
- c- Prosecution's Agreement Post-trial and Sentencing for VILLVERDE Provide "Information for testimony" against Co-defendants.
- d- Case Summary Showing Prosecution's dispositions discarding or dismissing Co-defendant Roberto Castro's Robbery/Burglary charges and the use of the deadly weapon inclusive.
- e- PETITIONER VILLVERDE'S Amended Judgment of Conviction Filed on June 14, 2021.

EXHIBIT A

DISTRICT COURT
CLARK COUNTY, NEVADA

~~Felony/Gross Misdemeanor~~ COURT MINUTES ~~February 07, 2005~~

03C191012-2 The State of Nevada vs Sally Villaverde

February 07, 2005	1:30 PM	Jury Trial	TRIAL BY JURY Relief Clerk: April Watkins Reporter/Recorder: Janie Olsen Court Interpreter: JEFFREY HANKS Heard By: Cherry, Michael A
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HEARD BY: COURTROOM: No Location

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Fattig, John T	Attorney
	Mitchell, Scott S.	Attorney

JOURNAL ENTRIES

- Maria Gomez, Court Interpreter, present.

Notice of Motion and Motion to Admit Prior Testimony of Leonel Garcia FILED IN OPEN COURT.

JURY PRESENT: Continued testimony and exhibits presented. (See worksheets.) OUTSIDE THE

PRESENCE OF THE JURY: Randall Pike, Esq. present on behalf of Co-Deft. Villaverde. Mr. Pike advised Deft. Villaverde has been convicted at trial and has an appeal pending. Offers have been

made by the State and the State had Deft. transported from Ely State Prison to Clark County

Detention Center (CCDC) with the knowledge and consent of counsel. Further, Deft. was
transported into the courtroom without Deft. Gato being present and was addressed by the state and
reiterated he does not want to testify or accept negotiations. Therefore, Deft. is unavailable for trial.

Additionally, Deft. requested counsel invoke his 5th Amendment rights. Mr. Fattig stated Deft's
alias' have been redacted from exhibits and will not be mentioned during testimony. JURY

PRESENT: Continued testimony and exhibits. Mr. Fattig stated a stipulation has been entered into to

PRINT DATE: 02/15/2019

Page 63 of 94

Minutes Date: April 08, 2003

PIKE & ASSOCIATES

ATTORNEYS AT LAW
3507 WEST CHARLESTON BLVD.
LAS VEGAS, NV 89102
(702) 878-6000
FAX (702) 671-4260
"A NEVADA LEGAL TRADITION SINCE 1960"

RANDALL H. PIKE, ESQ.
DOUGLAS R. PIKE, ESQ. (1927-2002)

June 4, 2004

HAND DELIVERED BY RUNNER

Sally Villaverde
Inmate
Clark County Detention Center

RE: STATE OF NEVADA VS. SALLY VILLAVERDE
CASE NO. C191012, DEPARTMENT XVII
YOUR MURDER CONVICTION

Dear Mr. Villaverde:

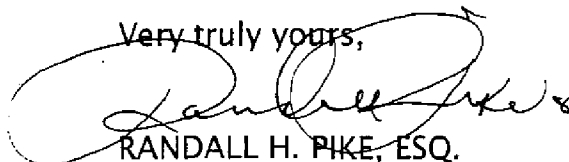
On four (4) previous occasions and again June 2, 2004 at the Clark County Detention Center, I have communicated the District Attorney's Offer to you of ONE TEN YEAR TO LIFE SENTENCE. On all occasions, you have turned down said offer.

As you know, this offer was made before your Trial in which a jury found you guilty on all counts of Murder and you have been sentenced to TWO LIFE WITHOUT PAROLE SENTENCES, and again after your Trial.

Therefore, I again urge you again to consider the offer because once your co-defendants go to trial in September, or if they accept offers themselves, or if some other witness comes forth on their behalf- THE OFFER MAY NO LONGER BE AVAILABLE TO YOU.

I know your concerns regarding the terms of cooperation, but as I CANNOT GUARANTEE the results of an Appeal, I must again request that you advise me, IN WRITING, of your final decision immediately. In the meantime, I am filing your Supreme Court Appeal on Monday.

Very truly yours,



RANDALL H. PIKE, ESQ.

RHP/cg

PIKE & ASSOCIATES

ATTORNEYS AT LAW
3507 WEST CHARLESTON BLVD.
LAS VEGAS, NV 89102
(702) 878-6000
FAX (702) 671-4260

"A NEVADA LEGAL TRADITION SINCE 1960"

RANDALL H. PIKE, ESQ.
DOUGLAS R. PIKE, ESQ. (1927-2002)

June 14, 2004

HAND DELIVERED BY RUNNER

Sally Villaverde
Inmate
Clark County Detention Center

RE: STATE OF NEVADA VS. SALLY VILLAVERDE
CASE NO. C191012, DEPARTMENT XVII
YOUR APPEAL

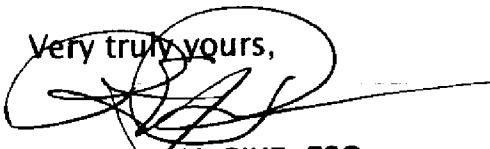
Dear Mr. Villaverde:

I received your undated letter on the above date indicating that you "[are] not interested in taking an offer of 10 to life in this case". As I indicated in my letter of the fourth, I was advising you of this as it is my ethical obligation to convey all offers to you for your decision and convey your response to the State.

Enclosed is a copy of the Notice of Appeal which you requested. I am unable to bring a Motion to withdraw as you have requested, as I have been appointed by the Court to complete the appeal. I have already obtained a copy of the transcript of the trial, along with the transcripts of the hearings, and I am working on the opening brief, which is to be filed within the next 120 days.

Once you are housed in the Nevada State Prison system, please advise me as to your location so I may forward a copy of the transcript to that location.

Very truly yours,



RANDALL H. PIKE, ESQ.

RHP/cg

Sally Villaverde
Inmate
Clark County Detention Center

SALLY VELLAVERDE
INMATE NO. 81701
ELY STATE PRISON
P.O. BOX 1989
ELY, NEVADA 89301

PIKE & ASSOCIATES
RANDALL H. PIKE
ATTORNEY AT LAW
3507 W. Charleston Blvd.
LAS VEGAS, NEVADA 89102

RE: STATE OF NEVADA v. SALLY VELLAVERDE
O-191012
Depo. No. XVEB

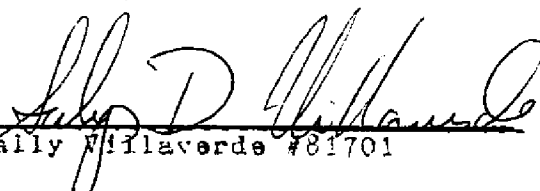
December 12, 2004

Dear Mr. Pike:

In receipt of your last correspondence dated November 18, 2004, informing me of the terms of negotiation, I DO NOT ACCEPT those terms.

I am sure that you will submit my Appellant's Opening Brief to the Nevada Supreme Court, as you stated that you would. Meanwhile, I am currently submitting your telephone number to the administration here so that I may call you soon and explain myself. In closing, season greetings to you and your entire staff.

Sincerely:


Sally Villaverde #81701

cc: RHP

///

///

///

AGREEMENT

Scott Mitchell, Esq. and Tim Fattig, Esq., Deputy District Attorneys in and for the Clark County District Attorney's Office and Defendant, Sally Villaverde and his attorney, Randall H. Pike, Esq., enter into the following Agreement regarding District Court Case Number C191012 and Supreme Court Case Number 43443.

1. That Defendant Villaverde will cooperate with the above-named Assistant District Attorneys in providing them with information and testimony regarding the Co-Defendants in this case, and that he will testify at trial against said Co-Defendants.

2. That Assistant District Attorneys, Scott Mitchell and Tim Fattig, as a result of this Agreement and upon the Defendant providing a full statement to investigators, agree to re-locate Villaverde from Ely State Prison to a location outside the State of Nevada for his protection and; furthermore, they agree to move the Court for a reduction of charges in this matter to One (1) Count of Murder in the First Degree with a stipulated sentence of life with the possibility of parole.

3. That after the above has been accomplished, Defendant agrees to withdraw his Nevada Supreme Court Appeal and agrees not to file any new Appeal in this matter.

DISTRICT ATTORNEY'S OFFICE:

FOR DEFENDANT:

SCOTT MITCHELL, ESQ.
Deputy District Attorney
Dated: _____

RANDALL H. PIKE, ESQ.
Attorney for Defendant Villaverde
Dated: _____

TIM FATTIG, ESQ.
Deputy District Attorney
Dated: _____

X

SALLY VILLVERDE
Defendant herein
Dated: _____

Highlighted Portion (Disposition 2, 3) Document #3

DEPARTMENT 3

CASE SUMMARY

CASE NO. 03C191012-3

CALENDAR CALL Heard By: Michael Cherry

01/27/2005

Calendar Call (8:30 AM)
CALENDAR CALL

01/28/2005

☒ Writ03C191012-
30228.tif pages

WRIT OF HABEAS CORPUS AD TESTIFICANDUM

01/31/2005

Jury Trial (1:30 PM)

TRIAL BY JURY Court Clerk: Penny Wisner Reporter/Recorder: Janie Olsen Court
Interpreter: JEFFREY HANKS Heard By: Cherry, Michael A

01/31/2005

Jury Trial (1:30 PM)

TRIAL BY JURY Court Clerk: Penny Wisner Reporter/Recorder: Janie Olsen Court
Interpreter: JEFFREY HANKS Heard By: Michael Cherry

01/31/2005

Conversion Case Event Type

SENTENCING

03C191012-
30227.tif pages

01/31/2005

☒ Expert Witness List

NOTICE OF WITNESSES - RELATED PARTYID: 03C191012_0001

03C191012-
30230.tif pages

01/31/2005

☒ Information

AMENDED INFORMATION

03C191012-
30231.tif pages

01/31/2005

☒ Memorandum

GUILTY PLEA MEMORANDUM/AGREEMENT

03C191012-
30232.tif pages

01/31/2005

☒ Information

AMENDED INFORMATION

03C191012-
30234.tif pages

01/31/2005

Disposition (Judicial Officer: User, Conversion)

2. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.

Charges Amended/Dropped

PCN: Sequence:

01/31/2005

Disposition (Judicial Officer: User, Conversion)

3. ROBBERY

Charges Amended/Dropped

PCN: Sequence:

01/31/2005

Disposition (Judicial Officer: User, Conversion)

3. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.

Charges Amended/Dropped

PCN: Sequence:

02/01/2005

Jury Trial (10:00 AM)

TRIAL BY JURY Court Clerk: Penny Wisner Reporter/Recorder: Janie Olsen Court
Interpreter: Maria Peralta De Gomez Heard By: Cherry, Michael A

02/02/2005

Jury Trial (10:30 AM)

TRIAL BY JURY Court Clerk: Penny Wisner Reporter/Recorder: Janie Olsen Court
Interpreter: ALEXANDRA ANDRADE Heard By: Cherry, Michael A

Heather J. Smith
CLERK OF THE COURT

1 AJOC

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4
5 THE STATE OF NEVADA,

6 Plaintiff,

CASE NO. 03C191012-2

7
8 -vs-

DEPT. NO. X

9 SALLY VILLAVERDE aka
10 Sally Dorian Villaverde
#1433466

11 Defendant.

12
13 AMENDED JUDGMENT OF CONVICTION

14 (JURY TRIAL)

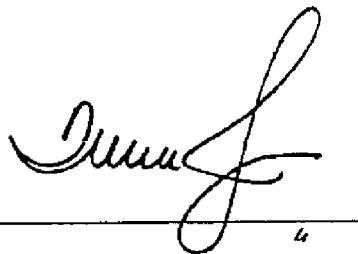
15
16
17 The Defendant previously entered a plea(s) of not guilty to the crime(s) of BURGLARY
18 (Felony); MURDER WITH USE OF A DEADLY WEAPON (Felony) and ROBBERY WITH
19 USE OF A DEADLY WEAPON (Felony), in of NRS 205.060, 200.010, 200.030, 193.165,
20 200.380, 193.165, and the matter having been tried before a jury, and the Defendant having
21 been represented by counsel and having been found guilty of the crime(s) of COUNT 1:
22 BURGLARY (Felony – NRS 205.060); COUNT 2: MURDER WITH USE OF A DEADLY
23 WEAPON (OPEN MURDER) (Felony – NRS 200.010, 200.030, 193.165) and COUNT 3:
24 ROBBERY WITH USE OF A DEADLY WEAPON (Felony – NRS 200.380, 193.165); and
25 thereafter on the 3rd day of June, 2004, the Defendant was present in court for sentencing with
26 his counsel, RANDALL PIKE, ESQ., and good cause appearing therefor,
27
28

1 THE DEFENDANT WAS HEREBY ADJUDGED guilty of the crime(s) as set forth in
2 the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee, submission to
3 testing to determine genetic markers and pay \$150.00 DNA Analysis fee to the Clark County
4 Clerk and \$3,000.00 RESTITUTION, Defendant SENTENCED as to COUNT 1 to a
5 MAXIMUM of NINETY-SIX (96) MONTHS and a MINIMUM of TWENTY-TWO (22)
6 MONTHS in the Nevada Department of Corrections (NDC), as to COUNT 2 to a term of LIFE
7 imprisonment without the possibility of parole in the Nevada Department of Corrections
8 (NDC), plus an EQUAL and CONSECUTIVE term for Use of a Deadly Weapon and as to
9 COUNT 3 to a MAXIMUM of ONE HUNDRED FIFTY-SIX (156) MONTHS and a
10 MINIMUM of THIRTY-FIVE (35) MONTHS in the Nevada Department of Corrections
11 (NDC), plus an EQUAL and CONSECUTIVE term for the Use of a Deadly Weapon; COUNT
12 3 CONSECUTIVE to COUNT 2.

15 THEREAFTER on the 9th day of June, 2021, the Defendant was present in court ^{not} with
16 ~~counsel DANIEL J. ALBREGTS, ESQ.~~, pursuant to Motion for Amended Judgment of
17 Conviction to Include Jail Time Credits, and good cause appearing; now therefore; COURT
18 ORDERED: **FOUR HUNDRED SIXTY-NINE (469) DAYS credit for time served.**
19
20

21 Dated this 14th day of June, 2021

22
23
24
25
26
27
28



A handwritten signature in black ink, appearing to read 'Tierra Jones', is written over a horizontal line. There is a small mark resembling a double quote or a comma at the end of the signature.

34A B12 2FA7 D464
Tierra Jones
District Court Judge

from: SALLY D. VILLAVENDE #81701
P.O. Box 218 SBCC
Indian Springs, NV 89070

Las Vegas P&DC 89119
TUE 10 MAY 2022 PM



To: STEVEN D. GRIERSON, Clerk of the Court
200 LEWIS AVE, 3rd Floor
LAS VEGAS, NV 89155

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Electronically Filed
5/13/2022 1:27 PM
Steven D. Grierson
CLERK OF THE COURT



Sally Villaverde, Plaintiff(s)
vs.

Brian Williams Warden, Defendant(s)

Case No.: A-18-780041-W

Department 10

NOTICE OF HEARING

Please be advised that the Plaintiff's Motion to Appoint Counsel in the above-entitled matter is set for hearing as follows:

Date: July 13, 2022

Time: 8:30 AM

Location: RJC Courtroom 14B
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Michelle McCarthy
Deputy Clerk of the Court



RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #05734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

DISTRICT COURT
CLARK COUNTY, NEVADA

SALLY VILLAVERDE,
#1433466

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent

CASE NO: A-18-780041-W
03C191012-2

DEPT NO: X

**STATE'S RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION) AND MOTION TO APPOINT COUNSEL AND
STATE'S MOTION TO DISMISS PURSUANT TO LACHES**

DATE OF HEARING: JULY 13, 2022
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Petitioner's Petition for Writ Of Habeas Corpus (Post-Conviction) and Motion to Appoint Counsel and State's Motion to Dismiss Pursuant to Laches.

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

//

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On March 23, 2003, Sally Villaverde ("Petitioner") and Co-Defendants Rene Gato and
4 Robert Castro were charged by way of Amended Criminal Complaint with Burglary (Felony
5 - NRS 205.060), Murder With Use of a Deadly Weapon (Open Murder) (Felony - NRS
6 200.010, 200.030, 193.165) and Robbery With Use of a Deadly Weapon (Felony - NRS
7 200.380, 193.165). On March 21, 2003, a preliminary hearing was held, after which the district
8 court held all three (3) defendants to answer to the charges in district court.

9 On March 25, 2003, Petitioner and the Co-Defendants were charged by way of
10 Information with Burglary (Felony - NRS 205.060), Murder With Use of a Deadly Weapon
11 (Open Murder) (Felony - NRS 200.010, 200.030, 193.165), and Robbery With Use of a Deadly
12 Weapon (Felony - NRS 200.380, 193.165). An Amended Information, charging only
13 Petitioner, was filed on March 29, 2004, following the district court's granting of Petitioner's
14 Motion to Sever Trials filed on January 27, 2004.

15 On March 31, 2004, a jury trial commenced. On April 8, 2004, the jury found Petitioner
16 guilty on all counts, including First Degree Murder With Use of a Deadly Weapon.

17 On June 3, 2004, the District Court sentenced Petitioner as follows: Count 1 - to a
18 maximum of ninety-six (96) months with a minimum of twenty-two (22) months in the Nevada
19 Department of Corrections ("NDC"); Count 2 - to a term of Life imprisonment without the
20 possibility of parole in the NDC, plus an equal and consecutive term for the Use of a Deadly
21 Weapon; Count 3 - to a maximum on one hundred fifty-six (156) months and a minimum of
22 thirty-five (35) months in the NDC, plus an equal and consecutive term for the Use of a Deadly
23 Weapon, Count 3 consecutive to Count 2. Credit for time served does not appear to have been
24 awarded according to the Court Minutes. On June 10, 2004, the District Court fielded The
25 Judgment of Conviction.

26 On June 10, 2004, Petitioner filed a direct appeal. On February 15, 2006, The Nevada
27 Supreme Court affirmed Petitioner's convictions. On March 14, 2006, the Nevada Supreme
28 Court issued Remittitur.

1 On April 3, 2006, Petitioner filed his first Petition for Writ of Habeas Corpus (Post-
2 Conviction) ("First Petition"). On April 20, 2006, Petitioner filed a Motion to Withdraw his
3 Petition Without Prejudice. On April 25, 2006, the State filed its Response. On May 3, 2006,
4 Petitioner filed a Reply. On May 31, 2006, Petitioner filed a Supplemental Petition for Writ of
5 Habeas Corpus, Memorandum of Points and Authorities in Support of the Petition, and
6 Appendix of Exhibits.

7 On April 12, 2007, the District Court appointed counsel. On August 27, 2007, appointed
8 counsel filed a Supplement to Petitioner's Petition for Writ of Habeas Corpus. On November
9 6, 2007, the State filed its Response to the Supplemental Petition. On January 10, 2008, the
10 District Court held an evidentiary hearing on Petitioner's ineffective assistance of counsel
11 claims. Following the evidentiary hearing, the Court denied the petition on the merits. On
12 February 26, 2008, the District Court filed The Findings of Facts, Conclusions of Law, and
13 Order.

14 On January 28, 2008, Petitioner filed a Notice of Appeal. On May 10, 2010, The Nevada
15 Supreme Court affirmed the District Court's denial of Petitioner's Petition. On June 4, 2010,
16 Nevada Supreme court issued Remittitur.

17 On August 28, 2018, Petitioner filed a second Petition for Writ of Habeas Corpus (Post-
18 Conviction) ("Second Petition") and Motion for Appointment of Counsel. On October 29,
19 2018, The State filed its Response. On November 1, 2018, the District Court held a hearing
20 and denied the Petition and the Motion. On December 5, 2018, the District Court filed its
21 Findings of Fact, Conclusions of Law, and Order was filed.

22 On November 26, 2018, Petitioner filed a Notice of Appeal. On October 30, 2019, the
23 Nevada Court of Appeals entered an Order of Affirmance. On November 20, 2019, Petitioner
24 submitted a Petition for Rehearing. On January 22, 2020, the Nevada Court of Appeals granted
25 rehearing and affirmed the district court's judgment. On May 18, 2020, the Court issued
26 Remittitur.

27 On March 26, 2019, Petitioner filed a Motion for Modification of Sentence. The State
28 filed an Opposition on April 17, 2019. On April 23, 2019, the District Court denied the motion.

1 On May 7, 2019, The Order Denying Petitioner's Motion for Modification of Sentence was
2 filed. On May 1, 2019, Petitioner filed a Notice of Appeal. On March 12, 2020, the Nevada
3 Court of Appeals affirmed the judgment of the District Court. On June 1, 2020, the Court
4 issued Remittitur. On June 14, 2021, the District Court filed an Amended Judgment of
5 Conviction, granting Petitioner four hundred sixty-nine (469) days credit for time served.

6 On October 4, 2021, Petitioner filed a third Petition for Writ of Habeas Corpus (Post-
7 Conviction) ("Third Petition"), a Motion to Appoint Counsel and Request for Evidentiary
8 Hearing. The State's Response was filed on November 18, 2021. On December 6, 2021, the
9 Court denied the Third Petition, Motion to Appoint Counsel and Request for Evidentiary
10 Hearing. The Findings of Fact, Conclusions of Law and Order was filed on December 21,
11 2021. On December 27, 2021, Petitioner filed a Notice of Appeal under Nevada Supreme
12 Court Case No. 84026, which is still pending a decision by the Nevada Supreme Court.

13 On May 12, 2022, Petitioner filed a fourth Petition for Writ of Habeas Corpus (Post-
14 Conviction) ("Fourth Petition") and a Motion to Appoint Counsel. The State's Response now
15 follows.

16 On May 26, 2022, Petitioner filed a Motion to Correct Illegal Sentence. On June 10,
17 2022, the State filed an Opposition. On June 20, 2022, the Court denied the Motion.

18 **STATEMENT OF FACTS**

19 In 1998, Leonel Garcia ("Garcia") met the Petitioner and Enrique Caminero
20 ("Caminero"). Mr. Garcia indicated that he was good friends with Caminero. Garcia knew that
21 Caminero was a very successful drug dealer.

22 In February of 2002, just weeks before the murder of Caminero, Rene Gato ("Gato"),
23 Roberto Castro ("Castro"), and Francisco Terrazon (Fanciquito) approached Garcia requesting
24 his assistance in kidnapping Caminero. They asked Garcia to assist in setting up a meeting
25 with Caminero in a hotel room. Once Caminero arrived at the hotel, the plan was to kidnap
26 him, tie him up and torture him until he revealed where his money was and who supplied him
27 with the drugs he sold.

1 Garica was to approach Caminero because he knew Caminero trusted him. However,
2 Garcia warned Caminero. Garcia then contacted Caminero's mother and the police after
3 hearing of Caminero's death.

4 Teresa Gamboa ("Gamboa") was the Petitioner's girlfriend. She testified at a
5 preliminary hearing regarding her involvement in the death of Caminero. Gamboa testified
6 that she was living with the Petitioner in March of 2002. She was also acquainted with Gato,
7 Castro. Petitioner asked Gamboa to rent a room for him on March 5, 2002, using a false ID.
8 In return, she and Petitioner were to receive money.

9 On March 5, 2002, using Gato's car, they drove to the Capri Motel. While traveling,
10 Gato asked the Petitioner how much Gamboa knew. Petitioner replied that she knew some
11 things but not everything. Gamboa testified that Gato had a large chrome gun. Upon arrival,
12 Gamboa rented a room in the back, as instructed, and returned to Gato's car. Then Gamboa,
13 Petitioner, and his two Co-Defendants entered the room. Gamboa stayed for about five
14 minutes, and they returned her home around 5:30 PM.

15 After, Petitioner took a taser gun, and all three left Gamboa. Petitioner returned home
16 around 10:30 PM. Gamboa described Petitioner as being "freaked out" and pacing the room.
17 She also noticed that Petitioner had blood on his pants and shirt. Petitioner was saying, "he's
18 dead," "No, no, I gave him mouth-to-mouth resuscitation," and "He was still – he was still
19 breathing."

20 On March 6, 2002, Petitioner and Gamboa drove to California and stayed at a Motel 6,
21 along with Gato and Castro. At the motel, Gamboa overheard Petitioner admit to using a belt
22 to strangle the victim, as well as using the taser gun.

23 Moreover, law enforcement recovered a palm print at the crime scene during the
24 investigation, preserved in diluted blood. The palm print was recovered near the area where
25 Caminero's body was found. The palm print matched with Petitioner. Two other fingerprints
26 from the bathroom also matched with Petitioner.

27 On February 18, 2003, a warrant was issued for Petitioner's arrest. Las Vegas
28 Metropolitan Police Department officers arrested Petitioner shortly after at Alfredo Martinez's

1 place of residence. While in custody and after being Mirandized, Petitioner admitted being in
2 the hotel room when Caminero arrived there. Once Caminero arrived, a struggle ensued. They
3 tried to gag Caminero and bind his legs and hands. However, Gato ended up shooting
4 Caminero. Castro then strangled Caminero causing a gurgling sound.

5 Gato then instructed Petitioner and Castro to clean the room for fingerprints. Petitioner
6 tried wiping down most of the room. Also, Petitioner took Caminero's SUV and other
7 belongings. Gamboa noticed Petitioner had 400 dollars in cash as well as several small gold
8 chains or bracelets. Gamboa indicated that Petitioner took the jewelry to a Super Pawn.

9 Also, Degna Ortega ("Ortega"), Caminero's mother, testified that Caminero always
10 wore or had on his person the pawned jewelry. Abdirazaq Mohamed, a manager at a pawn
11 store, testified that Petitioner pawned several items of jewelry, described as gold chains,
12 shortly after the murder.

13 **ARGUMENT**

14 **I. PETITIONER HAS A PENDING APPEAL FROM THE DENIAL OF HIS** 15 **THIRD PETITION**

16 The Nevada Supreme Court has declared, "[j]urisdiction in an appeal is vested solely
17 in the supreme court until the remittitur issues to the district court." Buffington v. State, 110
18 Nev. 124, 126, 868 P.2d 643, 644 (1994). While an appeal is pending, district courts do not
19 have jurisdiction over that case until remittitur has issued. Id. The Nevada Supreme Court "has
20 repeatedly held that the timely filing of a notice of appeal 'divests the district court of
21 jurisdiction to act and vests jurisdiction in [the appellate] court.'" Foster v. Dingwall, 126 Nev.
22 49, 52, 228 P.3d 453, 454-55 (2010) (quoting Mack-Manley v. Manley, 122 Nev. 849, 855,
23 138 P.3d 525, 529 (2006)). Pursuant to NRS 177.155, the Nevada Supreme Court retains
24 control and supervision of a case "from the filing of the notice of appeal until the issuance of
25 the certificate of judgment." Buffington, 110 Nev. at 126, 868 P.2d at 644.

26 Only a remittitur will return jurisdiction from an appellate court of competent
27 jurisdiction to the ditriect court. See NRS 177.305 ("After the certificate of judgment has been
28 remitted, the appellate court...shall have no further jurisdiction of the appeal or of the

1 proceedings thereon, and all order which may be necessary to carry the judgment into effect
2 shall be made by the court to which the certificate is remitted.”). Until such remittitur is
3 received, a district court lacks jurisdiction over a particular case. Buffington, 110 Nev. at 126,
4 868 P.2d at 644.

5 However, the Nevada Supreme Court has recognized concurrent jurisdiction when a
6 defendant files a Petition for Writ of Habeas Corpus (Post Conviction). See, Varwig v. State,
7 104 Nev. 40, 42, 752 P.2d 760, 761 (1988); see also, Daniels v. State, 100 Nev. 579, 580, 688
8 P.2d 315, 316 (1984).

9 Here, Petitioner timely filed a Notice of Appeal on December 27, 2021, under Nevada
10 Supreme Court Case No. 84026 appealing the denial of his Third Petition. No Opinion, Order
11 or Certificate of Judgment has been entered by the Nevada Supreme Court as of the time of
12 filing the instant Response. Therefore, the State respectfully submits that this Court should
13 decline to address this Petition on the merits until a decision has been issued by the Nevada
14 Supreme Court.

15 Nonetheless, even if this Court decides to entertain the instant Petition, the Petition is
16 procedurally barred and without merit.

17 **II. PETITIONER’S FOURTH PETITION IS PROCEDURALLY BARRED**

18 Petitioner’s Fourth Petition is procedurally barred for various reasons, as argued *infra*.
19 The Nevada Supreme Court has held that the district court has a *duty* to consider whether a
20 defendant’s post-conviction petition claims are procedurally barred. State v. Eighth Judicial
21 Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found
22 that “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions
23 is mandatory,” noting:

24
25 Habeas corpus petitions that are filed many years after conviction
26 are an unreasonable burden on the criminal justice system. The
27 necessity for a workable system dictates that there must exist a
28 time when a criminal conviction is final.

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

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 **A. THE INSTANT PETITION IS TIME-BARRED**

13 Petitioner's Fourth Petition is time-barred. NRS 34.726(1) states:

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

- 20 (a) That the delay is not the fault of the petitioner; and
21 (b) That dismissal of the petition as untimely will unduly
22 prejudice the petitioner.

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

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

6 This is not a case wherein the Judgment of Conviction was, for example, not final. See,
7 e.g., Johnson v. State, 133 Nev. 571, 402 P.3d 1266 (2017) (holding that the defendant's
8 judgment of conviction was not final until the district court entered a new judgment of
9 conviction on counts that the district court had vacated); Whitehead v. State, 128 Nev. 259,
10 285 P.3d 1053 (2012) (holding that a judgment of conviction that imposes restitution in an
11 unspecified amount is not final and therefore does not trigger the one-year period for filing a
12 habeas petition). Nor is there any other legal basis for running the one-year time limit from the
13 filing of the Amended Judgment of Conviction.

14 Here, the District Court filed the *original* Judgment of Conviction on June 10, 2004.
15 On March 14, 2006, the Nevada Supreme Court issued Remittitur. On June 14, 2021, the
16 District Court filed an Amended Judgment of Conviction, granting Petitioner four hundred
17 sixty-nine (469) days credit for time served. Petitioner claims his Fourth Petition is timely filed
18 because it was filed within one (1) year from the filing of his Amended Judgment of
19 Conviction. While "an amended judgment of conviction is substantively appealable under
20 NRS 177.015(3)," the appeal is limited only "to issues arising from the amendment." Witter
21 v. State, 135 Nev. 412, 416-17, 452 P.3d 406, 410 (2019). Hence, Petitioner can only raise
22 issues regarding credit for time served. Petitioner fails to cite any issues arising as a result of
23 the Amended Judgment of Conviction. Therefore, the instant Fourth Petition remains time-
24 barred and must be denied.

25 **B. THE INSTANT PETITION IS BARRED AS SUCCESSIVE**

26 Petitioner's Fourth Petition is barred because it is successive. NRS 34.810(2) states:

27
28 A second or successive petition *must be dismissed* if the
judge or justice determines that it fails to allege new or different

1 grounds for relief and that the prior determination was on the
2 merits or, if new and different grounds are alleged, the judge or
3 justice finds that the failure of the petitioner to assert those grounds
in a prior petition constituted an abuse of the writ.

4 (emphasis added). Application of NRS 34.810(2) is mandatory. See State v. Eight Judicial
5 Dist. Ct. ex el. County of Clark (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074-75 (2005).

6 Successive petitions are petitions that either fails to allege new or different grounds for
7 relief of which the grounds have already been decided on the merits or petitions that allege
8 new or different grounds, but a judge or justice finds that the petitioner's failure to assert those
9 grounds in a prior petition would constitute an abuse of the writ. See Lozada v. State, 110 Nev.
10 349, 352-53, 871 P.2d 944, 950 (1994) (overruled on other grounds by Rippo v. State, 134
11 Nev. 411, 423 P.3d 1084 (2018); Hart v. State, 116 Nev. 558, 563-64, 1 P.3d 969, 972 (2000)
12 (overruled on other grounds by Harris v. State, 130 Nev. 435, 329 P.3d 619 (2014) (holding
13 that “where a defendant previously has sought relief from the judgment, the defendant’s failure
14 to identify all grounds for relief in the first instance should weigh against consideration of the
15 successive motion.”). Successive petitions will only be decided on the merits if the petitioner
16 can show good cause and prejudice. See NRS 34.810(3).

17 The Nevada Supreme Court has stated: “Without such limitations on the availability of
18 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
19 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
20 system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at 950.
21 The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly require
22 a careful review of the record, successive petitions may be dismissed based solely on the face
23 of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,
24 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
25 the writ to wait to assert it in a later petition. See McClesky v. Zant, 499 U.S. 467, 497-98
26 (1991).

27 Here, Petitioner’s First Petition – through appointed counsel – was considered on the
28 merits. An evidentiary hearing was held on the First Petition. Ultimately the Court denied the

1 Petition on the merits, which consisted of ineffective assistance of counsel claims, and the
2 Nevada Supreme Court affirmed this Court's denial. Petitioner filed subsequently filed a
3 Second Petition on August 28, 2018, wherein he raised more ineffective assistance of counsel
4 claims based on challenges to jury instructions and prosecutorial misconduct and that he is not
5 guilty of First Degree Murder. See generally Second Petition. The Second Petition was also
6 denied on November 1, 2018. Then, on October 4, 2021, Petitioner filed a Third Petition, in
7 which Petitioner's allegations were no different from his prior Petitions. Now, Petitioner filed
8 his Fourth Petition alleging the same claim – he is innocent of First Degree Murder – and
9 alleging new claims. Raising the same claims again makes his Fourth Petition successive. The
10 new claims raised in the Fourth Petition were available to Petitioner since 2004. As such, any
11 new claims Petitioner does assert is an abuse of writ because Petitioner fails to show good
12 cause as to why he is now asserting these claims more than a decade after his conviction when
13 such claims were always available to Petitioner. As discussed above, his Fourth Petition is
14 time barred as the Amended Judgment of Conviction limits him to raising claims regarding
15 credit for time served. Therefore, the Fourth Petition is successive and an abuse of the writ and
16 must be denied.

17
18 **C. PETITIONER'S SUBSTANTIVE CLAIMS ARE WAIVED FOR FAILURE TO RAISE**
19 **ON DIRECT APPEAL**

20 NRS 34.810(1) reads:

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

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

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

28 ...

(2) Raised in a direct appeal or a prior petition for a writ of habeas
corpus or postconviction relief.

...

Unless the court finds both cause for the failure to present the grounds and actual
prejudice to the petitioner.

1 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and
2 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-
3 conviction proceedings [A]ll other claims that are appropriate for a direct appeal must be
4 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*"
5 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)
6 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A
7 court must dismiss a habeas petition if it presents claims that either were or could have been
8 presented in an earlier proceeding, unless the court finds both cause for failing to present the
9 claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State,
10 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

11 Here, Petitioner raises two (2) substantive claims with subclaims. In Ground One,
12 Petitioner claims the Court erred by dismissing the jury during the penalty phase and by
13 sentencing Petitioner absent a stipulation by the parties as required by NRS 175.552. Petition
14 at 7-7d. Related to this claim, Petitioner also claims the Court's "abuse of discretion were
15 vindictive and unconstitutional" when Petitioner refused to testify against his co-defendants.
16 Petition at 7d. In Ground Two, Petitioner claims his sentence should be modified because NRS
17 200.030 is ambiguous. Additionally, he claims that because the State filed an Amended
18 Information for Voluntary Manslaughter in his co-defendant Robert Castro's (hereinafter
19 "Castro") plea, this requires Petitioner's conviction for First Degree Murder be vacated.
20 Petition at 8. All of the claims except for the last one are waived because Petitioner failed to
21 raise these substantive claims on direct appeal. His claim regarding the Amended Information
22 is barred by case of the law and res judicata doctrines, as discussed *supra*. Thus, this Petition
23 should be denied.

24 **D. PETITIONER'S CLAIMS ARE BARRED BY THE LAW OF THE CASE AND RES**
25 **JUDICATA DOCTRINES**

26 "The law of a first appeal is law of the case on all subsequent appeals in which the facts
27 are substantially the same." Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting
28 Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). "The doctrine of the law of the

1 case cannot be avoided by a more detailed and precisely focused argument subsequently made
2 after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at 799. Under the law of
3 the case doctrine, issues previously decided on direct appeal may not be reargued in a habeas
4 petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelson v.
5 State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot
6 overrule the Nevada Supreme Court. Nev. Const. Art. VI § 6. See Mason v. State, 206 S.W.3d
7 869, 875 (Ark. 2005) (recognizing the doctrine’s applicability in the criminal context); see also
8 York v. State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011). Accordingly, by simply continuing
9 to file motions with the same arguments, his motion is barred by the doctrines of the law of
10 the case and res judicata. Id.; Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

11 Petitioner claims that his sentence for First Degree Murder should be “vacated,
12 modified, or reversed.” Petition 8c. Essentially, Petitioner is claiming, again, that he is not
13 guilty of First Degree Murder. This claim is barred. On March 26, 2019, Petitioner filed a
14 Motion for Modification of Sentence claiming that the State used “inconsistent theories”
15 against him and his co-defendant, Castro, who pled to a lesser crime. Motion at 3-13. This
16 Court denied Petitioner’s Motion, which the Nevada Court of Appeals affirmed:

17
18 Sally Dorian Villaverde appeals from an order of the district court denying a
19 motion to modify sentence filed on March 26, 2019. Eighth Judicial District
Court, Clark County; Douglas W. Herndon, Judge.

20 In his motion, Villaverde claimed that his sentence should be modified because
21 the State used different theories of the case between different codefendants, his
22 codefendant did not plead guilty to using a deadly weapon, and the district court
23 made inappropriate comments at sentencing and overlooked important
24 mitigating factors. Villaverde's claims fell outside the narrow scope of claims
25 permissible in a motion to modify-sentence. See Edwards v. State, 112 Nev. 704,
26 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits of any
of the claims raised in the motion; we conclude the district court did not err by
denying the motion. Accordingly, we ORDER the judgment of the district court
AFFIRMED.

27 Villaverde v. State, No. 78725-COA March 12, 2020.
28

1 Subsequently, Petitioner claimed in his Second Petition that he was innocent of First
2 Degree Murder based upon Castro's Guilty Plea Agreement. See Second Petition at 27-29.
3 Specifically, Petitioner argued:

4 [B]ecause Roberto Castro pleaded Guilty of Voluntary
5 Manslaughter and served 4 [] to 10 [years] [in] high desert state
6 prison. Show[s] once again that the [S]tates THEORY OF FIRST
7 DEGREE MURDER WAS UNRELIABLE beyond a reasonable
8 doubt.

8 See Second Petition at 28.

9 In the Third Petition, Petitioner again argued he is innocent of First Degree Murder
10 based upon Castro's Guilty Plea Agreement. See Third Petition at 11-13. Specifically,
11 Petitioner argued that:

13 The Prejudice involved in the case is that[] the Jury found
14 [Petitioner] Guilty and convicted [Petitioner] on [t]hories [that are]
15 inconsistent with the theories alleged by the State [regarding]
16 Castro's charging document or information.

16 . . .

17 [I]f the State conceded in open court, that [Castro's] name
18 thereto on the above amended information committed voluntary
19 manslaughter while "in the heat of passion." Then by operation of
20 State and Federal law, [Petitioner's] conviction for first-degree
21 murder must be vacated.

20 Third Petition at 13.

21 In his instant Fourth Petition, Petitioner raises the same claim. Specifically, Petitioner
22 argued that:

23 it is Villaverde legal position and argument that since the record established
24 codefendant Roberto Castro's actions lacked any malice aforethought and
25 deliberation at the time he committed the killing "while in the hear of passion,"
26 his current conviction and sentencing as aider and abettor of a first degree
27 murder shall be vacated or modified whereas the record also reflected the
28 Prosecution's own concession that Villaverde "aided and abetted" Roberto
Castro to commit voluntary manslaughter. See Factual basis at Amened
Information at page 7b

1 Fourth Petition at 8b. As shown above, Petitioner is raising the same issue he raised in his
2 previous Petitions. Despite wording his argument differently, the issue remains the same.
3 Petitioner relies on the Amended Information filed in Castro's Guilty Plea Agreement, wherein
4 Castro pled to Voluntary Manslaughter, to vacate Petitioner's First Degree Murder conviction.
5 This claim has repeatedly been denied, by the District Court and the Nevada Court of Appeals.

6 The Nevada Court of Appeals has already ruled on the merits of this issue. See Sally
7 Villaverde v. State, Docket No. 77563 (Order of Affirmance, May 21, 2020). Specifically, the
8 Nevada Court of Appeals held that:

9
10 Villaverde claim[s] his co-defendant's guilty plea was new
11 evidence, not presented at trial, that showed that he could not have
12 committed first-degree murder with the use of a deadly weapon,
robbery with the use of a deadly weapon, and burglary.

13 . . . [However,] Villaverde fail[s] to demonstrate he was
14 actually innocent. Villaverde's co-defendant's *Alford* plea to lesser
15 charges did not demonstrate Villaverde was factually innocent of
16 the charges he was convicted of. Accordingly, because Villaverde
17 failed to demonstrate it was more likely than not that no reasonable
jury would find him guilty beyond a reasonable doubt based on his
co-defendant's plea, we conclude the district court did not err by
denying this claim without first holding an evidentiary hearing.

18
19 Sally Villaverde v. State, Docket No. 77563-COA (Order of Affirmance, May 21, 2020) p. 2-
20 3. As shown above, Petitioner's claim is precluded for rehearing as the Nevada Court of
21 Appeals has already made a final ruling on the merits regarding the instant issue. Therefore,
22 Petitioner's claim is barred under the law of the case and res judicata doctrines.

23 **E. THIS PETITION IS PRESUMABLY BARRED DUE TO LACHES**

24 Certain limitations exist on how long a defendant may wait to assert a post-conviction
25 request for relief. Consideration of the equitable doctrine of laches is necessary in determining
26 whether a defendant has shown 'manifest injustice' that would permit a modification of a
27 sentence. Hart, 116 Nev. at 563–64, 1 P.3d at 972. In Hart, the Nevada Supreme Court stated:
28 "Application of the doctrine to an individual case may require consideration of several factors,

1 including: (1) whether there was an inexcusable delay in seeking relief; (2) whether an implied
2 waiver has arisen from the defendant's knowing acquiescence in existing conditions; and (3)
3 whether circumstances exist that prejudice the State. See Buckholt v. District Court, 94 Nev.
4 631, 633, 584 P.2d 672, 673–74 (1978).” Id.

5 NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
6 exceeding five years [elapses] between the filing of a judgment of conviction, an order
7 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
8 conviction and the filing of a petition challenging the validity of a judgment of conviction...”
9 The Nevada Supreme Court has observed, “[P]etitions that are filed many years after
10 conviction are an unreasonable burden on the criminal justice system. The necessity for a
11 workable system dictates that there must exist a time when a criminal conviction is final.”
12 Groesbeck v. Warden, 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the
13 statute requires the State plead laches. NRS 34.800(2). The State affirmatively pleads laches.

14 Here, there is inexcusable delay for seeking relief – especially because Petitioner’s
15 claims are meritless, which will be fully discussed below. A rebuttable presumption of
16 prejudice for the State arises because Petitioner brings this Petition more than a decade after
17 Remittitur was issued on March 14, 2006, which is more than twice the amount of time
18 specified in NRS 34.800. Further, Petitioner fails to rebut this presumption. Therefore,
19 Petitioner's Fourth Petition is barred by laches and must be denied.

20 **III. PETITIONER FAILS TO DEMONSTRATE GOOD CAUSE AND PREJUDICE** 21 **TO OVERCOME THE PROCEDURAL BARS**

22 **A. PETITIONER FAILS TO SHOW GOOD CAUSE**

23 To avoid procedural default under NRS 34.726 and NRS 34.810, the petitioner has the
24 burden of pleading and proving specific facts that demonstrate good cause for his failure to
25 present his claim in an earlier proceeding or to otherwise comply with the statutory
26 requirements, and that the petitioner will be unduly prejudiced if the petition is dismissed. *See*
27 Hogan v. Warden, 109 Nev. 952, 959-60, 860 P.2d 710, 715-16 (1993); Phelps v. Nevada
28 Dep’t of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a

1 habeas petition if it presents claims that either were or could have been presented in an earlier
2 proceeding, unless the court finds both cause for failing to present the claims earlier or for
3 raising them again and actual prejudice to the petitioner.” Evans, 117 Nev. at 646-47, 29 P.3d
4 at 523 (2001) (emphasis added).

5 Moreover, “to establish good cause, [petitioners] must show that an impediment
6 external to the defense prevented their compliance with the applicable procedural rule.” Clem
7 v. State, 119 Nev. 615,621, 81 P.3d 521,525 (2003) (emphasis added); See also Hathaway v.
8 State, 119 Nev. 248, 25 I, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537.
9 “A qualifying impediment might be shown where the factual or legal basis for a claim was not
10 reasonably available at the time of default.” Clem, 119 Nev. at 621, 81 P.3d at 525. The Court
11 continued, petitioners “cannot attempt to manufacture good cause.” Id. at 621, 81 P.3d at 526.
12 Examples of good cause include interference by State officials and the previous unavailability
13 of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012).
14 Any delay in the filing of the petition must not be the fault of the petitioner. See NRS
15 34.726(1)(a).

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

24 As previously discussed, the Amended Judgment of Conviction does not excuse
25 Petitioner’s untimely filing of his instant Petition. Moreover, Petitioner does not allege an
26 impediment external to the defense prevented Petitioner from raising these claims in an earlier
27 proceeding and offers no excuse for his failure to raise said issues at the appropriate time.
28 Thus, Petitioner fails to show good cause to overcome the procedural bars.

1 **B. PETITIONER FAILS TO SHOW PREJUDICE**

2 To establish prejudice, a Petitioner must show “not merely that the errors of [the
3 proceedings] created [the] possibility of prejudice, but that they worked to his actual and
4 substantial disadvantage, in affecting the State’s proceedings with [an] error of constitutional
5 dimensions.” Hogan, 109 Nev. at 960, 860 P.2d at 716 (quoting United States v. Frady, 456
6 U.S. 152, 170, 102 S. Ct. 1 584, 1 596 (1982)). Bare and naked allegations are insufficient to
7 warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v.
8 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it is contradicted
9 or proven to be false by the record as it existed at the time the claim was made.” Mann v. State,
10 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

11 Additionally, for a petitioner to demonstrate prejudice, he or she must show “not merely
12 that the errors of [the proceeding] created possibility of prejudice, but that they worked to his
13 actual and substantial disadvantage, in affecting the state proceedings with error of
14 constitutional dimensions.” Hogan v Warden, 109 Nev. at 960, 860 P.2d at 716 (internal
15 quotation omitted), Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545 (2001). To the
16 extent Petitioner argues that his claims raised herein show prejudice, his claim fails because
17 they are without merit.

18
19 **i. The District Court did not Err in Dismissing the Jury During the Penalty
20 Phase**

21 Petitioner alleges the District Court erred in dismissing the jury during the penalty phase
22 and by sentencing Petitioner in violation of NRS 175.552 because the parties did not stipulate
23 to waive the separate penalty hearing. Petition at 7-7d. Petitioner further alleges that the
24 District Court’s “abuse of discretion was vindictive and inappropriate” because Petitioner
repeatedly refused to testify against his co-defendants. Petition at 7d.

25 NRS 175.552 in part reads:

- 26
27 I. Except as otherwise provided in subsection 2, in every case in which there is
28 a finding that a defendant is guilty or guilty but mentally ill of murder of the

1 first degree, whether or not the death penalty is sought, the court shall
2 conduct a separate penalty hearing.

3 ...
4 II. In a case in which the death penalty is not sought ... the parties may by
5 stipulation waive the separate penalty hearing required in subsection 1. When
6 stipulating to such a waiver, the parties may also include an agreement to
7 have the sentence, if any, imposed by the trial judge. Any stipulation pursuant
8 to this subsection must be in writing and signed by the defendant, the
9 defendant's attorney, if any, and the prosecuting attorney.

10 Here, Petitioner's claim is belied by the record. On the first day of the jury trial, defense
11 counsel placed on the record that the parties stipulated to waiving the penalty hearing and that
12 sentencing would be up to the Court. See Jury Trial Day 1, March 29, 2004, at 3. The Court
13 then confirmed with Petitioner, if he was in agreement and understood the consequences of
14 the stipulation. Id. Therefore, Petitioner's claim is meritless and should be denied.

15 Likewise, Petitioner's claim regarding the Court's actions as "vindictive and
16 inappropriate" is also belied by the record. In support of this claim, Petitioner argues that "the
17 State forcibly transported Villaverde from the maximum security at Ely State Prison, Nevada,
18 in an attempt to coerce Villaverde to testify against codefendants." Petition at 7d. Petitioner
19 further alleges that "trial Judge imposed harshly, severe maximum sentences as a tactical
20 maneuver, and/or fear factor to compel Villaverde to turn evidence[] on behalf of the State
21 against Codefendants." Petition at 7d. Petitioner cites to the February 7, 2005 Court Minutes,
22 which relate to his previous co-defendant, Rene Gato's (hereinafter "Gato") jury trial, in
23 support of his frivolous claim. A review of the February 7, 2005 Court Minutes demonstrates
24 Petitioner's claim is simply not correct as the Minutes state, "Deft. was transported ... with
25 the knowledge and consent of counsel."

26 It is noteworthy that Petitioner had already been convicted and sentenced by February
27 7, 2005, at which point his appeal was pending. Accordingly, the District Court had already
28 sentenced Petitioner within the statutory constraints. Moreover, the Court Minutes indicate
that the State extended an offer to Petitioner who was transported from Ely State Prison to
Court to appear at Gato's trial - with the knowledge and consent of Petitioner's counsel. See
Jury Trial Transcript, Feb. 7, 2005, p. 76-77 in Case No. C191012-1. As such, Petitioner was

1 not forcibly brought to court. After Petitioner reiterated that he did not want to accept the
2 State's post-trial negotiations to testify even with immunity at Gato's trial, Petitioner was
3 transferred back to prison. No one forced Petitioner to testify nor did the District Court impose
4 a sentence as strategy to coerce Petitioner to testify. Thus, this claim should be denied.

5 **ii. Petitioner's Sentence for First Degree Murder Should Not be Modified**

6 Petitioner claims his sentence for First Degree Murder should be modified for two (2)
7 reasons. First, NRS 200.030 is ambiguous. Petition at 8. Second, the State dismissed several
8 charges in co-defendant's case. Petition at 8b. According to Petitioner, NRS 200.030 is
9 ambiguous because it details different degrees of murder, and despite acknowledging that the
10 "theories are clear," Petitioner claims the statute "lends itself to two or more reasonable
11 interpretations." Petition at 8a. According to Petitioner, "all types of murder require the
12 presence of malice aforethought. However, the record reflects the State's concession after
13 Villaverde's trial/sentencing that his codefendant Roberto Castro committed the homicide
14 without malice and deliberation." Petition at 8a. Essentially, Petitioner argues that because his
15 co-defendant, Castro, entered a guilty plea agreement for voluntary manslaughter, Petitioner's
16 first degree murder conviction cannot stand as the State "admi[tte]d Roberto Castro was the
17 one whom committed the homicide." Petition 8b.

18 In general, a district court lacks jurisdiction to modify or vacate a sentence once the
19 defendant has started serving it. Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373
20 (1992), overruled on other grounds, Harris v. State, 130 Nev. 435, 446, 329 P.3d 619, 627
21 (2014). A motion to correct or modify an illegal sentence may only challenge the facial legality
22 of the sentence: either the district court was without jurisdiction to impose a sentence or the
23 sentence was imposed in excess of the statutory maximum. Edwards v. State, 112 Nev. 704,
24 708, 918 P.2d 321, 324 (1996).

25 A district court does have inherent authority to correct, vacate, or modify a sentence
26 where the defendant can demonstrate the sentence violates due process because it is based on
27 a materially untrue assumption or mistake of fact that has worked to the defendant's extreme
28 detriment. Edwards, 112 Nev. at 707, 918 P.2d at 324. However, not every mistake or error

1 during sentencing gives rise to a due process violation. State v. Dist. Ct. (Husney), 100 Nev.
2 90, 97, 677 P.2d 1044, 1048 (1984). The Nevada Supreme Court has emphasized that a
3 “motion to modify a sentence is limited in scope to sentences based on mistaken assumptions
4 about a defendant’s criminal record which work to the extreme detriment of the defendant.”
5 Edwards, 112 Nev. at 708, 918 P.2d at 324.

6 NRS 200.030 is not ambiguous. A statute is ambiguous if “it is subject to more than
7 one reasonable interpretation.” Hobbs v. State, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011).
8 The statute is clear as it defines the degree of murders and only offers one reasonable
9 interpretation per definition. Petitioner’s claim is predicated on his misunderstanding that his
10 co-defendant’s proceeding has an effect on his case, which it does not. Both defendants were
11 originally charged with Murder with Use of a Deadly Weapon as the direct perpetrator and
12 under the same criminal theories of liability: directly committing the crime, aiding and
13 abetting, and conspiracy. Information filed March 25, 2003, at 2. Together, they were bound
14 up to District Court on all charges. Id. The only difference is that Petitioner chose to go to trial
15 on the charges in the Information, while Castro chose to enter into a plea agreement where the
16 theories of liability were the same. See Guilty Plea Agreement (“GPA”), Case C191012C.
17 Additionally, as discussed above, this Court and the Nevada Court of Appeals have already
18 adjudicated that “Villaverde's co-defendant's *Alford* plea to lesser charges did not demonstrate
19 Villaverde was factually innocent of the charges he was convicted of.” Sally Villaverde v.
20 State, Docket No. 77563-COA (Order of Affirmance, May 21, 2020).

21 Petitioner’s second reason for sentence modification is that State dismissed the Robbery
22 and Burglary charges in Castro’s case, which violated Petitioner’s due process rights. Petition
23 at 8b. Again, Petitioner mistakenly relies on his co-defendant’s decision to accept a plea deal
24 as justification to invalidate Petitioner’s conviction. This is not a reason to modify Petitioner’s
25 sentence because Petitioner voluntarily rejected the State’s offer and went to trial on the
26 original Information whereas Castro accepted the offer. Therefore, Petitioner’s sentence
27 should not be modified, and Petitioner has failed to show prejudice to overcome the procedural
28 bar.

1 **III. PETITIONER IS NOT ENTITLED TO APPOINTED COUNSEL**

2 Petitioner requests the appointment of counsel because of complex issues and
3 Petitioner’s “first language Spanish may represent a language barrier.” See Motion, at 3.
4 However, Petitioner is not entitled to appointed counsel.

5 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
6 conviction proceedings. See Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
7 (1991). The Nevada Supreme Court similarly observed that “[t]he Nevada Constitution...does
8 not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada
9 Constitution’s right to counsel provision as being coextensive with the Sixth Amendment to
10 the United States Constitution.” McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258
11 (1996). McKague specifically held that with the exception of NRS 34.820(1)(a) (entitling
12 appointed counsel when petitioner is under a sentence of death), one does not have “any
13 constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at 164,
14 912 P.2d at 258.

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

18 A petition may allege that the petitioner is unable to pay the costs
19 of the proceedings or to employ counsel. If the court is satisfied
20 that the allegation of indigency is true and the petition *is not*
21 *dismissed summarily*, the court may appoint counsel to represent
22 the petitioner. In making its determination, the court may consider,
23 among other things, the severity of the consequences facing the
24 petitioner and whether:

- 25 (a) The issues presented are difficult;
26 (b) The petitioner is unable to comprehend the proceedings; or
27 (c) Counsel is necessary to proceed with discovery.

28 (emphasis added). Accordingly, under NRS 34.750, it is clear that the Court has discretion in
determining whether to appoint counsel.

 More recently, the Nevada Supreme Court examined whether a district court
appropriately denied a defendant’s request for appointment of counsel based upon the factors
listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-

1 Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75,
2 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the defendant
3 filed a pro se postconviction petition for writ of habeas corpus and requested counsel be
4 appointed. Id. The district court ultimately denied the petitioner's petition and his appointment
5 of counsel request. Id. In reviewing the district court's decision, the Nevada Supreme Court
6 examined the statutory factors listed under NRS 34.750 and concluded that the district court's
7 decision should be reversed and remanded. Id. The Court explained that the petitioner was
8 indigent, his petition could not be summarily dismissed, and he had in fact satisfied the
9 statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor, the Court concluded that
10 because petitioner had represented, he had issues with understanding the English language
11 which was corroborated by his use of an interpreter at his trial, that was enough to indicate that
12 the petitioner could not comprehend the proceedings. Id. Moreover, the petitioner had
13 demonstrated that the consequences he faced—a minimum eighty-five (85) year sentence—
14 were severe and his petition may have been the only vehicle for which he could raise his
15 claims. Id. at 76-77, 391 P.3d at 761-62. Finally, his ineffective assistance of counsel claims
16 may have required additional discovery and investigation beyond the record. Id.

17 Pursuant to NRS 34.750, Petitioner has not demonstrated that counsel should be
18 appointed. Unlike in Renteria-Novoa, Petitioner's Fourth Petition should be summarily denied
19 for several reasons, including, but not limited to, his Petition being time-barred, successive,
20 barred by laches, and his claims being waived as well as meritless.

21 Notwithstanding summary denial, Petitioner's request should still be denied as he has
22 failed to meet any of the additional statutory factors under NRS 34.750. While the severity of
23 the consequences may be significant, the issues Petitioner presents are not complex. His first
24 claim, that neither he nor the parties stipulated to waiving the penalty phase, is belied by the
25 record. The Court even addressed the matter with Petitioner. As to his claim of sentence
26 modification based on Castro's subsequent plea, that claim is also meritless. Petitioner has
27 previously raised this claim and this Court denied it on the merits on April 23, 2019. The
28 Nevada Court of Appeals affirmed the District Court's judgment. Sally Villaverde v. State,

1 No. 78725-COA March 12, 2020. Notably, this is Petitioner's Fourth Petition. The issues he
2 presents are not complex; rather, Petitioner fails to accept responsibility for his actions and the
3 fact that the law can hold him responsible under multiple theories of culpability. Therefore,
4 the issues presented are not difficult.

5 Additionally, there has been no indication that Petitioner is unable to comprehend the
6 proceedings. Unlike the petitioner in Renteria-Novoa who faced difficulties understanding the
7 English language, here Petitioner has failed to demonstrate any inability to understand these
8 proceedings. Although Petitioner sometimes used a Spanish interpreter, Petitioner has
9 demonstrated that that he can comprehend the proceedings. Post-trial, Petitioner has filed
10 several Petitions for Writ of Habeas Corpus, citing to the proper authority for the issues he
11 claims. Further, Odyssey does not indicate that he had an interpreter at the Evidentiary Hearing
12 held regarding his First Petition. Therefore, Petitioner does not have a language barrier and is
13 able to comprehend the proceedings.

14 Finally, counsel is not necessary to proceed with further discovery in this case. The
15 claims Petitioner raises are without merit and are easily negated with the record, such as his
16 first claim regarding an alleged failure to stipulate to waive the penalty phase. Petitioner's
17 second claim regarding sentence modification also does not need additional discovery as the
18 law does not offer any reason to modify his sentence. Due to habeas relief not being warranted,
19 there is no need for additional discovery, let alone counsel's assistance to conduct such
20 investigation. Therefore, Petitioner's request should be denied.

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

22 Petitioner requests an evidentiary hearing. Motion at 1. Petitioner, however, fails to
23 show that an evidentiary hearing is warranted.

24 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing.

25 It reads:

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

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

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

7 (emphasis added). The Nevada Supreme Court has held that if a petition can be resolved
8 without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110
9 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002).
10 A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
11 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
12 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
13 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction
14 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the
15 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it
16 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is
17 improper to hold an evidentiary hearing simply to make a complete record. See State v. Eighth
18 Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court
19 considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as
20 complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

21 Here, Petitioner is not entitled to an evidentiary hearing because his Petition is not
22 supported by specific factual allegations that entitle him to relief as his claims are belied by
23 the record and are barred by the law of the case doctrine. Because Petitioner’s claims are
24 meritless, holding an evidentiary hearing would only expand an already thorough record,
25 which is an incorrect basis for holding an evidentiary hearing.

26 //

27 //

28 //

//

//

1 **CONCLUSION**

2 For the foregoing reasons, the State respectfully requests this Court DENY Petitioner's
3 Fourth Petition for Writ of Habeas Corpus (Post-Conviction) and Motion to Appoint Counsel
4 and Evidentiary Hearing Request. Additionally, the State also respectfully request its Motion
5 to Dismiss Pursuant to Laches be GRANTED.

6 DATED this 24th day of June, 2022.

7 Respectfully submitted,

8 STEVEN B. WOLFSON
9 Clark County District Attorney
Nevada Bar #1565

10 BY /s/ *Taleen Pandukht*
11 TALEEN PANDUKHT
12 Chief Deputy District Attorney
13 Nevada Bar #05734

14 **CERTIFICATE OF MAILING**

15 I hereby certify that service of the above and foregoing was made this 24th day of June,
16 2022, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

17 SALLY VILLAVERDE, #81701
18 S.D.C.C.
19 POX 208
INDIAN SPRINGS, NV 89070

20 BY /s/ *E. Del Padre*
21 E. DEL PADRE
22 Secretary for the District Attorney's Office
23
24
25
26
27
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

SALLY DORIAN VILLAVERDE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 84026
District Court Case No. A780041; ~~6491042~~

FILED

JUL 11 2022

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 13th day of June, 2022.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
July 08, 2022.

Elizabeth A. Brown, Supreme Court Clerk

By: Andrew Lococo
Deputy Clerk

A-18-780041-W
CCJA
NV Supreme Court Clerks Certificate/Judgm
4998729



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SALLY DORIAN VILLAYERDE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84026-COA

FILED

JUN 13 2022

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

ORDER OF AFFIRMANCE

Sally Dorian Villaverde appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 4, 2021. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Villaverde filed his petition more than 15 years after issuance of the remittitur on direct appeal on March 14, 2006. *See Villaverde v. State*, Docket No. 43443 (Order of Affirmance, February 15, 2006). Thus, Villaverde's petition was untimely filed. *See* NRS 34.726(1). Moreover, Villaverde's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Villaverde's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Further, because the State specifically pleaded laches, Villaverde was required to

¹*See Villaverde v. State*, No. 51000, 2010 WL 3271248 (Nev. May 10, 2010) (Order of Affirmance). Villaverde also filed a second petition that was denied as procedurally barred. *See Villaverde v. State*, No. 77563-COA, 2020 WL 399170 (Nev. Ct. App. Jan. 22, 2020) (Order Granting Rehearing and Order of Affirmance).

overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).

Villaverde argues that the district court erred by denying his petition as procedurally barred because an amended judgment of conviction adding credit for time served was filed on June 14, 2021. Specifically, Villaverde argues that NRS 176.105(d) requires that the "exact amount of credit granted for time spent in confinement before conviction" must be included in the judgment of conviction. Further, he argues that the failure to include credit for time served in the judgment of conviction rendered the judgment of conviction invalid similarly as to when the amount of restitution is not included in the judgment of conviction. See *Whitehead v. State*, 128 Nev. 259, 262-263, 285 P.3d 1053, 1055 (2012) (interpreting NRS 176.105(1) and holding that a judgment of conviction is not final when the judgment contains an indeterminate restitution requirement). Thus, he argues, the one-year time period for filing a petition began when the amended judgment of conviction adding credits for time served was filed and any previous petition filed could not be used to find that his current petition was successive.

Since *Whitehead*, the Nevada Supreme Court has held that where a defendant is convicted by jury verdict, the finality of the subsequently entered judgment of conviction would not be determinative of this court's jurisdiction because a defendant can appeal from a jury verdict. See *Witter v. State*, 135 Nev. 412, 415, 452 P.3d 406, 409 (2019). Further, the court held that a "defendant [cannot] treat a judgment of conviction with an indeterminate restitution provision as final by litigating a direct appeal and postconviction habeas petitions only to later change course and argue that the judgment was never final." *Id.*

We agree that the failure to include the credit for time served could have affected the finality of Villaverde's judgment of conviction.

However, like the appellant in *Witter*, Villaverde was convicted pursuant to a jury verdict, and he was able to appeal from that verdict pursuant to NRS 177.015(3). Further, as in *Witter*, Villaverde litigated a direct appeal and two previous postconviction petitions, and he did not challenge the finality of his judgment of conviction on the ground that the judgment of conviction was not a final judgment for its failure to include credit for time served. Therefore, Villaverde is "estopped from now arguing the judgment was not final and that the subsequent proceedings were null and void for lack of jurisdiction." *Id.* at 416, 452 P.3d at 410. Because all of Villaverde's underlying claims in his petition related to his original judgment of conviction and not the amended judgment, his petition was procedurally barred. *See id.* at 416-417, 452 P.3d at 410.

Villaverde also argues the district court erred by denying his petition without allowing him to respond to the State's assertion that statutory laches applied. The State filed its response to the petition on November 18, 2021, and stated it sent the response in the mail the same day. The district court denied the petition at a hearing on December 6, 2021, exactly 18 days later and on the final day Villaverde could have filed a reply. *See* NRAP 26(a) (extending the NRAP timing rules to statutes that do not specify a method of computing time), NRAP 26(c) (allowing an extra three days for service by paper); NRS 34.750(4) (allowing 15 days to respond to a motion to dismiss); NRS 34.800(2) (stating that a petitioner must be given an opportunity to respond to allegations regarding laches). Therefore, the district court erred by ruling on the petition prior to giving Villaverde the full 18 days to respond to the laches argument. However, we conclude the error was harmless because Villaverde did not attempt to respond to the laches argument in a late-filed response below nor does he specify on appeal what his argument would have been in response to the State's laches

**PLEADING
CONTINUES
IN NEXT
VOLUME**