

Steven D. Grierson

1 Genaro Richard Perry #11533660

2 . In Propria Personam
3 Post Office Box 208, S.D.C.C.
4 Indian Springs, Nevada 89018

Electronically Filed
Jul 20 2022 09:51 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

5 IN THE ^{8th} JUDICIAL DISTRICT COURT OF THE STATE
6 IN AND FOR THE COUNTY OF Clark

7
8 Genaro Richard Perry

9
10 Plaintiff,

11 vs.

12 State of Nevada

13 Defendant.
14

Case No. A-22-851874-W

Dept. No. 11A

Docket _____

15
16 **NOTICE OF APPEAL**

17 NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,
18 Genaro Richard Perry, 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

22
23 ruled on the 27 day of June, 20 22

24
25 Dated this 10 day of July, 20 22

26 Respectfully Submitted,

27 Genaro Richard Perry

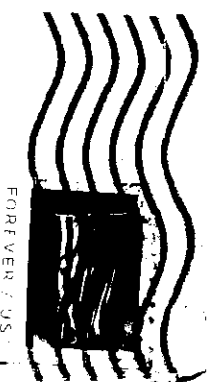
28 RECEIVED

JUL 13 2022

CLERK OF THE COURT

Genaro Richard Perry #1153366
SDE
PO Box 208
Indian Springs NV
89070

LAS VEGAS NV 890
11 JUL 2022 PM 3 L

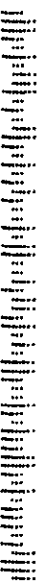


FOREVER / US

Clerk of the Court
200 Lewis Ave 3rd floor
LV NV

89155

89101-890000



Legal



1 ASTA
2
3
4
5

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

10 GENARO RICHARD PERRY,

11 Plaintiff(s),

12 vs.

13 STATE OF NEVADA; WARDEN HOWELL,

14 Defendant(s),
15

Case No: A-22-851874-W

Dept No: XVII

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Genaro Richard Perry

20 2. Judge: Michael Villani

21 3. Appellant(s): Genaro Richard Perry

22 Counsel:

23 Genaro Richard Perry #1153366
24 P.O. Box 208
Indian Springs, NV 89070

25 4. Respondent (s): State of Nevada; Warden Howell

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**: N/A
8 ***Expires 1 year from date filed*
9 Appellant Filed Application to Proceed in Forma Pauperis: No
10 Date Application(s) filed: N/A

11 9. Date Commenced in District Court: April 29, 2022

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

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

14 11. Previous Appeal: No

15 Supreme Court Docket Number(s): N/A

16 12. Child Custody or Visitation: N/A

17 13. Possibility of Settlement: Unknown

18 Dated This 14 day of July 2022.

19 Steven D. Grierson, Clerk of the Court

20
21 /s/ Heather Ungermann

22 Heather Ungermann, Deputy Clerk
23 200 Lewis Ave
24 PO Box 551601
25 Las Vegas, Nevada 89155-1601
26 (702) 671-0512

27 cc: Genaro Richard Perry
28

Steven D. Grierson

Genaro Richard Perry, 1153366
Petitioner/In Propria Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070-0208

^{gik}
JUDICIAL DISTRICT COURT
COUNTY OF Clark, STATE OF NEVADA

Genaro Richard Perry,
Plaintiff,
vs.
State of Nevada
Defendant.

CASE No. A-22-851874-W
DEPT.No. 11A

DESIGNATION OF RECORD ON APPEAL

TO: Clerk of the Court

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

DATED this 10 day of July, 20 22

RESPECTFULLY SUBMITTED BY:

Genaro Richard Perry
Genaro Richard Perry # 1153366
Plaintiff/In Propria Persona

CERTIFICATE OF SERVICE BY MAILING

I, Genaro Richard Perry hereby certify, pursuant to NRCP 5(b), that on this 10
day of July, 2022, I mailed a true and correct copy of the foregoing, "

Notice of Appeal"

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

Clerk of the Court
200 Leys Ave 3rd floor
2V NV
89155

CC:FILE

DATED: this 10 day of July, 2022

Genaro Richard Perry
Genaro Richard Perry #153366
/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-22-851874-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.

Genaro Richard Perry
Signature

7-10-22
Date

Genaro Richard Perry
Print Name

Title

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-22-851874-W

Genaro Perry, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

§
§
§
§
§
§

Location: **Department 17**
Judicial Officer: **Villani, Michael**
Filed on: **04/29/2022**
Cross-Reference Case Number: **A851874**
Defendant's Scope ID #: **1456173**

CASE INFORMATION

Related Cases

C-14-298879-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Case Status: **04/29/2022 Open**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-22-851874-W
Court Department 17
Date Assigned 04/29/2022
Judicial Officer Villani, Michael

PARTY INFORMATION

Plaintiff **Perry, Genaro Richard**

Lead Attorneys

Pro Se

Defendant **State of Nevada**

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

Warden Howell


DATE

EVENTS & ORDERS OF THE COURT


INDEX

EVENTS


04/29/2022

 Inmate Filed - Petition for Writ of Habeas Corpus
Party: Plaintiff Perry, Genaro Richard
[1] Inmate Filed - Petition for Writ of Habeas Corpus


05/02/2022

 Order for Petition for Writ of Habeas Corpus
[2] Order for Petition for Writ of Habeas Corpus

06/03/2022

 Motion
Filed By: Plaintiff Perry, Genaro Richard
[3] Motion and Order for Transportation of Inmate for Court Appearance or in the Alternative, for Appearance by Telephone or Video Conference

06/03/2022

 Clerk's Notice of Hearing
[4] Notice of Hearing

06/06/2022

 Response
[5] State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction)

07/01/2022

 Motion

CASE SUMMARY

CASE NO. A-22-851874-W

Filed By: Plaintiff Perry, Genaro Richard

[6] Motion and Order for Transportation of Inmate for Court Appearance or in the Alternative for Appearance by Telephone or Video Conference

07/13/2022



Notice of Appeal

[7] Notice of Appeal

07/13/2022



Designation of Record on Appeal

[8] Designation of Record on Appeal

07/14/2022



Case Appeal Statement

Case Appeal Statement

HEARINGS

06/27/2022



Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Villani, Michael)

Denied;

Journal Entry Details:

Plaintiff not present. Court advised it was basing its decision on the pleadings on file herein and not accepting oral argument. COURT ORDERED, matter taken UNDER ADVISEMENT with a written decision to issue this afternoon. NDC CLERK'S NOTE: A copy of this Minute Order mailed to: Genaro Richard Perry #1153366 SDCC PO Box 208 Indian Springs, NV 89070 (6/28/2022 SA);

06/29/2022



Minute Order (3:00 AM) (Judicial Officer: Villani, Michael)

Minute Order - No Hearing Held;

Journal Entry Details:

Petition for Writ of Habeas Corpus came before the Court and was taken under advisement. The Court incorporates by reference the procedural history as set forth in the State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction). Further, Petitioner filed a Petition for Writ of Habeas Corpus on April 24, 2017, prior to the present Court being appointed to hear the case. The Petition asserts 19 Grounds of Ineffective Assistance of Counsel, and that these 19 Grounds were not ruled upon by the prior court before Petitioner filed the second Petition for Writ of Habeas Corpus. While these claims would be time-barred in the present Petition, the Court will now review the 19 grounds from Petitioner's first Petition for Writ of Habeas Corpus. Petitioner alleges numerous errors establishing ineffective assistance of counsel in his first Petition for Writ of Habeas Corpus: Claim 1 Petitioner complains trial counsel was ineffective for failing to list or call the TJ Maxx security guard or Dr. Gabaeff. What witnesses are called or are not called is trial strategy. Further, the court declined counsel's request to call the security guard. Counsel cannot be deemed ineffective for failing to make futile objections, file futile motions, or for failing to make futile arguments. Ennis v. State, 122 Nev. 694, 706 (2006). Further, Perry fails to establish prejudice. Based on evidence presented at trial, Perry cannot establish a more favorable outcome had Dr. Gabaeff testified. Claim 2 Counsel did not have the knife tested for DNA and fingerprints. Petitioner fails to show how further testing of the knife would have changed the outcome of the trial. Claim 3 Counsel did not challenge the criminal complaint, which failed to list the address of the incident. The Complaint does not need to list a specific address or location. As the Victim's address is not an essential element of the crime, it would have been futile to challenge the lack of address. Claim 4 Counsel did not object to the removal of self-defense instructions. Defendant waived his right to a jury trial so he could put on a self-defense case and testify without the jury learning about his criminal record. The Court had determined that there was no evidence of self-defense, so an objection would have been futile. Moreover, Petitioner fails to establish prejudice because the Nevada Court of Appeals addressed the issue on direct appeal as if an objection had been made. While the Court of Appeals did determine that it was error to reject the self-defense instructions, such error was harmless. Claim 5 Counsel waived the preliminary hearing. Petitioner, not his counsel, waived the preliminary hearing. As such, counsel cannot be deemed ineffective for a decision that belonged solely to Petitioner. Claim 6 Counsel failed to have the Court order a psychological evaluation of the victim. The record fails to establish a compelling need for such an examination as the record is bare of an evidence supporting any of the three Abbott factors, such as a request would have been futile. Claim 7 Counsel used the term drug-addled maniac in the closing argument. Counsel's closing argument focused primarily on the victim's credibility, and he used the term to highlight the Victim's seemingly unreasonable act of letting Petitioner spend the night with her prior to the

CASE SUMMARY**CASE NO. A-22-851874-W**

incident. Further, this action could not have destroyed Petitioner's self-defense claim as the court had already denied the requested instructions. Claim 8 Counsel failed to investigate the Victim's life/past. He claimed she had mental health issues and sold pills, however there was no evidence in the record to suggest this. These are therefore bare assertions. Claim 9 Counsel failed to interview Dr. Leibowitz. Perry fails to show how a better investigation or interview of this expert would have resulted in a more favorable outcome. Further, at trial, counsel thoroughly cross-examined Dr. Leibowitz regarding that the victim's injuries made it obvious this was an abuse situation. As the record demonstrates, counsel was more than prepared to cross-examine the expert. Claim 10 Counsel failed to interview the TJ Maxx security guard. As the Security guard was precluded from testifying, such an interview would have been unnecessary. Claim 11 Counsel failed to raise an objection to a conflict of interest. Perry's claims related to this conflict of interest resulting in charges being reduced are bare assertions. Further, Perry chose to waive the preliminary hearing, and as such counsel cannot be ineffective for this. Claim 12 Counsel failed to challenge overlapping charges of assault and battery. These charges were based on separate allegations. Perry was convicted of assault for threatening to kill the victim with a knife, and convicted on battery for kicking and punching the Victim in every room of her home. The Nevada Supreme Court has held that dual convictions under the assault and battery statutes can stand as each crime includes elements the other does not. Claim 13 Counsel failed to investigate his claim that Victim poured bleach on his clothes. The only evidence that Perry cites to support this claim is his own statement. As such, this is a bare assertion. Claim 14 Counsel failed to investigate the fabricated crime scene. Victim testified at trial that she purposefully left blood evidence throughout the house because she thought she was going to die and wanted to leave a sign that there was a struggle. Further, a crime scene analyst took pictures of the scene and of the Victim, and Victim was not the only one who had taken pictures. Claim 15 Counsel failed to ask Victim about which bleach she had used. Petitioner fails to show what questioning the Victim about pouring bleach on his clothes in a bathtub would have revealed. Claim 16 Counsel failed to correct incorrect dates in the PSI. Petitioner fails to establish what these errors were or how they added many more years on his sentence. As such, this is a bare assertion. Claim 17 Counsel failed to file a motion for a new trial because of the court's rejection of his proposed self-defense instruction. This motion would have been futile as the court had already rejected Perry's first request for those instructions. Further, the Nevada Court of Appeals determined the presence of these instructions would not have altered the outcome due to the overwhelming evidence of Perry's guilt. Claim 18 Counsel failed to investigate Victim's alleged prescription pill fraud. Petitioner's claim is a bare assertion. Claim 19 Petitioner claims he is entitled to relief based on the cumulative effect of Counsel's ineffectiveness. Nevada does allow for multiple deficiencies in counsel's performance may be cumulated for purposes of the prejudice prong of Strickland when the individual deficiencies otherwise would not meet the prejudice prong. However, a finding of this type of cumulative error is rare. Petitioner has failed to show that any of the alleged ineffective assistance claims are meritorious, let alone there was 2 or more that cumulatively prejudiced him. Mere allegations of error without proof of prejudice are insufficient to demonstrate cumulative error. Petitioner alleges three additional errors establishing ineffective assistance of appellate counsel in his second Petition for Writ of Habeas Corpus: Claim 20 Counsel was ineffective for failing to include a certificate of service in his motion requesting order directing the Las Vegas Metropolitan Police Department to Conduct Genetic Marker and Latent Print Analysis of Evidence Impounded at the Crime Scene, which therefore invalidated the Motion. However, the State did not argue this in briefing and there is no evidence counsel's failure to include a certificate of service in Petitioner's Motion had any effect on the court's denial of his Motion. Claims 21-22 Counsel failed to use Nevada statutes or NRS to support his Motion for fingerprint analysis. To the contrary, Counsel cited to Nevada Statutes and Nevada Supreme Court cases as controlling authority in their Motion. Further, Petitioner also fails to identify what statutes or authority his counsel should have included. These claims are therefore bare assertions. A criminal defendant is not entitled to a perfect trial. *Ennis v. State*, 91 Nev. 530, 533, 539 P.2d 114, 115 (1975). To be successful in a Post-Conviction Relief action claiming ineffective assistance of counsel, he is required to establish that counsel's representation fell below an objective standard of reasonableness and that but for said error there is a reasonable probability that the result would have been different. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). Further, errors, if any, in this case do not rise to the level of cumulative error which would warrant redress. Therefore, COURT ORDERED Petitioner's Writ of Habeas Corpus is DENIED. The State is directed to submit a proposed order consistent with the foregoing within fourteen (14) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. Status Check for the Order will be set for July 13, 2022 at 8:30 am. Status Check will be vacated if the Order is filed before the hearing date. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve and mailed to: Genaro Richard Perry #1153366 SDCC PO Box 208 Indian Springs, NV (SA

CASE SUMMARY

CASE NO. A-22-851874-W

6/29/2022);

07/05/2022



Minute Order (3:00 AM) (Judicial Officer: Villani, Michael)

Minute Order - No Hearing Held;

Journal Entry Details:

Plaintiff/ Inmate s Motion and Order for Transportation of Inmate for Court Appearance or, in the Alternative, for Appearance by Telephone or Video Conference, is set to come before the Court on the July 6, 2022 Calendar at 8:30 A.M. COURT NOTES, the Motion for Transportation was for Petitioner s Writ of Habeas Corpus hearing held on June 27, 2022 at 8:30 A.M. COURT FURTHER NOTES that this matter was already adjudicated. Therefore, the Motion is moot. COURT ORDERED, matter VACATED. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve and a copy mailed to: Genaro Richard Perry #1153366 SDCC PO Box 208 Indian Springs, NV 89070 (7/5/2022 SA);

07/06/2022

CANCELED Motion (8:30 AM) (Judicial Officer: Villani, Michael)

Vacated

Plaintiff /Inmate's Motion and Order for Transportation of Inmate for Court Appearance or in the Alternative, for Appearance by Telephone or Video Conference

07/13/2022

Status Check: Status of Case (8:30 AM) (Judicial Officer: Ellsworth, Carolyn)

07/13/2022, 07/27/2022

Status Check: Order

Matter Continued;

DISTRICT COURT CIVIL COVER SHEET

A-22-851874-W

Dept. 17

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): Genaro Perry	Defendant(s) (name/address/phone): State of Nevada
Attorney (name/address/phone):	Attorney (name/address/phone):

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

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

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

April 29, 2022

Date

PREPARED BY CLERK

Signature of initiating party or representative

See other side for family-related case filings.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

June 27, 2022

A-22-851874-W Genaro Perry, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

**June 27, 2022 8:30 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Samantha Albrecht
Odalys Garcia

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT: Overly, Sarah Attorney

JOURNAL ENTRIES

- Plaintiff not present.

Court advised it was basing its decision on the pleadings on file herein and not accepting oral argument. COURT ORDERED, matter taken UNDER ADVISEMENT with a written decision to issue this afternoon.

NDC

CLERK'S NOTE: A copy of this Minute Order mailed to: Genaro Richard Perry #1153366 SDCC PO Box 208 Indian Springs, NV 89070 (6/28/2022 SA)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

June 29, 2022

A-22-851874-W	Genaro Perry, Plaintiff(s)
	vs.
	State of Nevada, Defendant(s)

June 29, 2022	3:00 AM	Minute Order
----------------------	----------------	---------------------

HEARD BY: Villani, Michael	COURTROOM: Chambers
-----------------------------------	----------------------------

COURT CLERK: Samantha Albrecht

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Petition for Writ of Habeas Corpus came before the Court and was taken under advisement.

The Court incorporates by reference the procedural history as set forth in the State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction). Further, Petitioner filed a Petition for Writ of Habeas Corpus on April 24, 2017, prior to the present Court being appointed to hear the case. The Petition asserts 19 Grounds of Ineffective Assistance of Counsel, and that these 19 Grounds were not ruled upon by the prior court before Petitioner filed the second Petition for Writ of Habeas Corpus. While these claims would be time-barred in the present Petition, the Court will now review the 19 grounds from Petitioner's first Petition for Writ of Habeas Corpus.

Petitioner alleges numerous errors establishing ineffective assistance of counsel in his first Petition for Writ of Habeas Corpus:

Claim 1 Petitioner complains trial counsel was ineffective for failing to list or call the TJ Maxx security guard or Dr. Gabaeff. What witnesses are called or are not called is trial strategy. Further, the court declined counsel's request to call the security guard. Counsel cannot be deemed ineffective for failing to make futile objections, file futile motions, or for failing to make futile arguments. *Ennis v. State*, 122 Nev. 694, 706 (2006). Further, Perry fails to establish prejudice. Based on evidence presented

at trial, Perry cannot establish a more favorable outcome had Dr. Gabaeff testified.

Claim 2 Counsel did not have the knife tested for DNA and fingerprints. Petitioner fails to show how further testing of the knife would have changed the outcome of the trial.

Claim 3 Counsel did not challenge the criminal complaint, which failed to list the address of the incident. The Complaint does not need to list a specific address or location. As the Victim's address is not an essential element of the crime, it would have been futile to challenge the lack of address.

Claim 4 Counsel did not object to the removal of self-defense instructions. Defendant waived his right to a jury trial so he could put on a self-defense case and testify without the jury learning about his criminal record. The Court had determined that there was no evidence of self-defense, so an objection would have been futile. Moreover, Petitioner fails to establish prejudice because the Nevada Court of Appeals addressed the issue on direct appeal as if an objection had been made. While the Court of Appeals did determine that it was error to reject the self-defense instructions, such error was harmless.

Claim 5 Counsel waived the preliminary hearing. Petitioner, not his counsel, waived the preliminary hearing. As such, counsel cannot be deemed ineffective for a decision that belonged solely to Petitioner.

Claim 6 Counsel failed to have the Court order a psychological evaluation of the victim. The record fails to establish a compelling need for such an examination as the record is bare of an evidence supporting any of the three Abbott factors, such as a request would have been futile.

Claim 7 Counsel used the term "drug-addled maniac" in the closing argument. Counsel's closing argument focused primarily on the victim's credibility, and he used the term to highlight the Victim's seemingly unreasonable act of letting Petitioner spend the night with her prior to the incident. Further, this action could not have destroyed Petitioner's self-defense claim as the court had already denied the requested instructions.

Claim 8 Counsel failed to investigate the Victim's life/past. He claimed she had mental health issues and sold pills, however there was no evidence in the record to suggest this. These are therefore bare assertions.

Claim 9 Counsel failed to interview Dr. Leibowitz. Perry fails to show how a better investigation or interview of this expert would have resulted in a more favorable outcome. Further, at trial, counsel thoroughly cross-examined Dr. Leibowitz regarding that the victim's injuries made it obvious this was an abuse situation. As the record demonstrates, counsel was more than prepared to cross-examine the expert.

Claim 10 Counsel failed to interview the TJ Maxx security guard. As the Security guard was precluded from testifying, such an interview would have been unnecessary.

Claim 11 Counsel failed to raise an objection to a conflict of interest. Perry s claims related to this conflict of interest resulting in charges being reduced are bare assertions. Further, Perry chose to waive the preliminary hearing, and as such counsel cannot be ineffective for this.

Claim 12 Counsel failed to challenge overlapping charges of assault and battery. These charges were based on separate allegations. Perry was convicted of assault for threatening to kill the victim with a knife, and convicted on battery for kicking and punching the Victim in every room of her home. The Nevada Supreme Court has held that dual convictions under the assault and battery statutes can stand as each crime includes elements the other does not.

Claim 13 Counsel failed to investigate his claim that Victim poured bleach on his clothes. The only evidence that Perry cites to support this claim is his own statement. As such, this is a bare assertion.

Claim 14 Counsel failed to investigate the fabricated crime scene . Victim testified at trial that she purposefully left blood evidence throughout the house because she thought she was going to die and wanted to leave a sign that there was a struggle. Further, a crime scene analyst took pictures of the scene and of the Victim, and Victim was not the only one who had taken pictures.

Claim 15 Counsel failed to ask Victim about which bleach she had used. Petitioner fails to show what questioning the Victim about pouring bleach on his clothes in a bathtub would have revealed.

Claim 16 Counsel failed to correct incorrect dates in the PSI. Petitioner fails to establish what these errors were or how they added many more years on his sentence. As such, this is a bare assertion.

Claim 17 Counsel failed to file a motion for a new trial because of the court s rejection of his proposed self-defense instruction. This motion would have been futile as the court had already rejected Perry s first request for those instructions. Further, the Nevada Court of Appeals determined the presence of these instructions would not have altered the outcome due to the overwhelming evidence of Perry s guilt.

Claim 18 Counsel failed to investigate Victim s alleged prescription pill fraud. Petitioner s claim is a bare assertion.

Claim 19 Petitioner claims he is entitled to relief based on the cumulative effect of Counsel s ineffectiveness. Nevada does allow for multiple deficiencies in counsel s performance may be cumulated for purposes of the prejudice prong of Strickland when the individual deficiencies otherwise would not meet the prejudice prong. However, a finding of this type of cumulative error is rare. Petitioner has failed to show that any of the alleged ineffective assistance claims are meritorious, let alone there was 2 or more that cumulatively prejudiced him. Mere allegations of error without proof of prejudice are insufficient to demonstrate cumulative error.

Petitioner alleges three additional errors establishing ineffective assistance of appellate counsel in his

second Petition for Writ of Habeas Corpus:

Claim 20 Counsel was ineffective for failing to include a certificate of service in his motion requesting order directing the Las Vegas Metropolitan Police Department to Conduct Genetic Marker and Latent Print Analysis of Evidence Impounded at the Crime Scene, which therefore invalidated the Motion. However, the State did not argue this in briefing and there is no evidence counsel's failure to include a certificate of service in Petitioner's Motion had any effect on the court's denial of his Motion.

Claims 21-22 Counsel failed to use Nevada statutes or NRS to support his Motion for fingerprint analysis. To the contrary, Counsel cited to Nevada Statutes and Nevada Supreme Court cases as controlling authority in their Motion. Further, Petitioner also fails to identify what statutes or authority his counsel should have included. These claims are therefore bare assertions.

A criminal defendant is not entitled to a perfect trial. *Ennis v. State*, 91 Nev. 530, 533, 539 P.2d 114, 115 (1975). To be successful in a Post-Conviction Relief action claiming ineffective assistance of counsel, he is required to establish that counsel's representation fell below an objective standard of reasonableness and that but for said error there is a reasonable probability that the result would have been different. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). Further, errors, if any, in this case do not rise to the level of cumulative error which would warrant redress.

Therefore, COURT ORDERED Petitioner's Writ of Habeas Corpus is DENIED. The State is directed to submit a proposed order consistent with the foregoing within fourteen (14) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. Status Check for the Order will be set for July 13, 2022 at 8:30 am. Status Check will be vacated if the Order is filed before the hearing date.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve and mailed to: Genaro Richard Perry #1153366 SDCC PO Box 208 Indian Springs, NV (SA 6/29/2022)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 05, 2022

A-22-851874-W Genaro Perry, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

July 05, 2022 3:00 AM Minute Order

HEARD BY: Villani, Michael

COURTROOM: Chambers

COURT CLERK:

Samantha Albrecht

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Plaintiff/ Inmate s Motion and Order for Transportation of Inmate for Court Appearance or, in the Alternative, for Appearance by Telephone or Video Conference, is set to come before the Court on the July 6, 2022 Calendar at 8:30 A.M. COURT NOTES, the Motion for Transportation was for Petitioner s Writ of Habeas Corpus hearing held on June 27, 2022 at 8:30 A.M. COURT FURTHER NOTES that this matter was already adjudicated. Therefore, the Motion is moot. COURT ORDERED, matter VACATED.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve and a copy mailed to: Genaro Richard Perry #1153366 SDCC PO Box 208 Indian Springs, NV 89070 (7/5/2022 SA)



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

GENARO RICHARD PERRY #1153366
P.O. BOX 208
INDIAN SPRINGS, NV 89070

DATE: July 14, 2022
CASE: A-22-851874-W

RE CASE: GENARO RICHARD PERRY vs. STATE OF NEVADA; WARDEN HOWELL

NOTICE OF APPEAL FILED: July 13, 2022

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☐ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☐ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☒ Order
- ☒ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DESIGNATION OF RECORD ON APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

GENARO RICHARD PERRY,

Plaintiff(s),

vs.

STATE OF NEVADA; WARDEN HOWELL,

Defendant(s),

Case No: A-22-851874-W

Dept No: XVII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 14 day of July 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

