

# IN THE SUPREME COURT OF THE STATE OF NEVADA

GENARO RICHARD PERRY,  
Appellant(s),

vs.

THE STATE OF NEVADA, AND JERRY  
HOWELL, WARDEN,  
Respondent(s),

Electronically Filed  
Jul 29 2022 08:49 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No: A-22-851874-W

Docket No: 85042

## RECORD ON APPEAL

**ATTORNEY FOR APPELLANT**  
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PROPER PERSON  
P.O. BOX 208  
INDIAN SPRINGS, NV 89070

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

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

**FILED**  
**APR 29 2022**  
*[Signature]*  
CLERK OF COURT

ff  
DA  
IN THE 8<sup>th</sup> JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF Clark

Genaro Richard Perry

Petitioner,

vs.

State of Nevada  
Warden Howell et al

Respondent(s).

Case No. **A-22-851874-W**  
Dept. No. **Dept. 17**  
Docket \_\_\_\_\_

*First Amended*

**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.

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APR 18 2022

CLERK OF THE COURT

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: SPCC

18 2. Name the location of court which entered the judgment of conviction under attack: 8th judicial district court Clark County dept VI

19 3. Date of judgment of conviction: 10-1-2015

20 4. Case number: C298879

21 5. (a) Length of sentence: 96 to 336 months

22 (b) If sentence is death, state any date upon which execution is scheduled: \_\_\_\_\_

23 6. Are you presently serving a sentence for a conviction other than the conviction under attack in  
24 this motion:

25 Yes \_\_\_\_\_ No X If "Yes", list crime, case number and sentence being served at this time: \_\_\_\_\_

26 7. Nature of offense involved in conviction being challenged: \_\_\_\_\_

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 \_\_\_\_\_  
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: Nevada Supreme Court

17 (b) Case number or citation: 69139

18 (c) Result: case affirmed

19 (d) Date of appeal: 12/14/2016

20 (Attach copy of order or decision, if available).

21 14.) If you did not appeal, explain briefly why you did not: \_\_\_\_\_  
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 ☒

1 16. If your answer to No 15 was "Yes", give the following information:

2 (a) (1) Name of court: \_\_\_\_\_

3 (2) Nature of proceedings: \_\_\_\_\_

4 \_\_\_\_\_

5 (3) Grounds raised : \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_

8 (4) Did you receive an evidentiary hearing on your petition, application or motion?

9 Yes \_\_\_\_ No \_\_\_\_

10 (5) Result: \_\_\_\_\_

11 (6) Date of result: \_\_\_\_\_

12 (7) If known, citations of any written opinion or date of orders entered pursuant to each  
13 result: \_\_\_\_\_

14 (b) As to any second petition, application or motion, give the same information:

15 (1) Name of Court: \_\_\_\_\_

16 (2) Nature of proceeding: \_\_\_\_\_

17 (3) Grounds raised: \_\_\_\_\_

18 (4) Did you receive an evidentiary hearing on your petition, application or motion?

19 Yes \_\_\_\_ No \_\_\_\_

20 (5) Result: \_\_\_\_\_

21 (6) Date of result: \_\_\_\_\_

22 (7) If known, citations or any written opinion or date of orders entered pursuant to each  
23 result: \_\_\_\_\_

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.

26 \_\_\_\_\_

27 \_\_\_\_\_

28 \_\_\_\_\_



1 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action  
2 taken on any petition, application or motion?

3 (1) First petition, application or motion?

4 Yes \_\_\_\_ No \_\_\_\_

5 Citation or date of decision: \_\_\_\_\_

6 (2) Second petition, application or motion?

7 Yes \_\_\_\_ No \_\_\_\_

8 Citation or date of decision: \_\_\_\_\_

9 (e) If you did not appeal from the adverse action on any petition, application or motion,  
10 explain briefly why you did not. (You may relate specific facts in response to this question. Your  
11 response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response  
12 may not exceed five handwritten or typewritten pages in length). \_\_\_\_\_

13 \_\_\_\_\_  
14 \_\_\_\_\_  
15 17. Has any ground being raised in this petition been previously presented to this or any other  
16 court by way of petition for habeas corpus, motion or application or any other post-conviction  
17 proceeding? If so, identify:

18 (a) Which of the grounds is the same: no

19 \_\_\_\_\_  
20 (b) The proceedings in which these grounds were raised: \_\_\_\_\_

21 \_\_\_\_\_  
22 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts  
23 in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches  
24 attached to the petition. Your response may not exceed five handwritten or typewritten pages in  
25 length). \_\_\_\_\_

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). \_\_\_\_\_  
7 \_\_\_\_\_

8 19. Are you filing this petition more than one (1) year following the filing of the judgment of  
9 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). \_\_\_\_\_  
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: \_\_\_\_\_  
19 \_\_\_\_\_

20 21. Give the name of each attorney who represented you in the proceeding resulting in your  
21 conviction and on direct appeal: Ross Smillie

22 Travis E Shelter  
23 \_\_\_\_\_  
24 \_\_\_\_\_

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 \_\_\_\_\_

## Ground One

Ineffective assistance of counsel. Trial counsel failed to call or list witnesses.

(Strickland v Washington 966 U.S. 668 1984)

(U.S. v Tucker 716 F2d 576 9th Cir) This is a due process violation of petitioners 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> amendment rights to the U.S. Constitution.

Trial counsel failed to list or call defense expert Dr. Steven Gabaeff MD. Counsel had Dr. Gabaeff ready to testify at the initial jury trial, which was postponed because neither the defense doctor nor the state's doctor were available to testify at that date. Trial counsel failed to utilize Dr. Gabaeff at the bench trial.

To directly dispute Corla Carpenter's injuries (Exhibit 1) Dr. Gabaeff's notes) were Dr. Gabaeff says quote "Two different stories about the assault with result of severe fracture to (R) orbit. Unnecessary ophthalmologic care before incident and after too, including a surgery that was most likely not necessary." Followed by "This is a trumped up case of conjunctivitis milked for multiple visits and two false dx iritis and episcleritis... with pay and conjunctivitis

Ground One pg(2)

doesn't pay". Finally quote "Double vision and sunken eye" quote "No documentation on that... and not noted by others".

This statement directly disputes the state's doctor's finding. It also shows the state's doctor is misdiagnosing Carpenter for fraudulent billing purposes.

Trial attorney Shetler testified in the jury trial that quote "we would ask to continue this matter because we think that having no doctor here to talk about anything for the jury is a little to risky because that is one of the aggravating factors of the crimes were charged with".

After that statement; not to call the doctor is negligence on behalf of the trial attorney.

If Dr. Gabaëff would have testified.

The credibility of the state's doctor would be impeachable and very unbelievable. Therefore bolstering the self defense claim.

Trial counsel failed to list or all the security guard who witnessed Carpenter

Ground One pg (3)

running through TJ Max with a knife and crowbar. Wick Carpenter lied about during direct testimony and cross-examination. Thus committing perjury. For which she should have been impeached and brought up on charges.

The TJ-Max security guard would testify to the fact that Carpenter is a raving lunatic. By running through TJ-Max with a knife and crowbar, over the fact that a person who owed her \$. Didn't have everything that was owed to Carpenter.

If the security guard testifies. That allow's the defense to impeach the victim's credibility. And since this is a he said / she said case. That is crucial to the self-defense claim.

By not calling the guard. That prejudiced Gerardo Perry.

## Ground two

Ineffective assistance of counsel. Trial counsel's failure to have the knife tested for finger prints and DNA. (Strickland v Washington) (Sanborn v State 107 Nev 399, 812 P2d 1279) (US v Agurs 49 LED 2d) (McGuire v State 100 Nev 153; 677 P2d 1060)

Trial counsel absolutely should have had the knife tested to prove that Carpenters fingerprints and petitioners DNA was on the knife. Combine this with the fact that petitioner was cut on his chest (see exhibit one) by carpenter. This would prove petitioners side of the story. Which is crucial to the self-defense aspect of this case.

It is crucial in a he said/she said case that all evidence is checked and verified. Since trial counsel failed to have the fingerprints and DNA tested. That is ineffective assistance at the highest level. This prejudiced the petitioner as this evidence would have had the charges lowered to a simple domestic violence on both people involved.

## Ground two pg (2)

There is even the probability that Corla Carpenter should be brought up on charges for fabricating evidence (blood on the walls ect) in-order to trump up charges on the petitioner. Since carpenter is a paralegal. She knows how to manipulate the system and the people who operate within it. Carpenter refers to the state as "her legal team".

## Ground three

Ineffective assistance of counsel. Trial counsel's failure to raise the issue that the criminal complaint fails to list the address or cross roads of the incident. And the appellant attorney failed to raise the issue on direct appeal. (Strickland v Washington) (Alvarado v state 912 P2d 943) (State v Harnish 954 P2d 1180) (US v Vauages 151 F3d 1185 9th cir)  
This is a due process violation of the 5th 6th 8th and 14th amendment rights to the U.S. Constitution

The state's complaint is fraudulent and doesn't follow the Nevada Rules of Court procedure. The complaint must contain a physical address at which the crime occurred. Not just the county. In this case there is not any address on the

1 Ground three pg 2  
2 complaint. Therefore it's fraudulent and  
3 incomplete. Both trial and appeal attorney  
4 failed to raise this issue. This is negligence  
5 and ineffective assistance. The prejudice here  
6 is overwhelming.

7  
8 Ground four  
9 Ineffective assistance of counsel. Trial counsel  
10 failed to object to the removal of the self-  
11 defense instructions. (Strickland V Washington)  
12 (Wegant V Ducharme 774 F2d 1491 9th cir) (Riley V State  
13 808 P2d 551) (Mumy V state 430 P2d 121) This is  
14 a due process violation of the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup>  
15 amendment right to the U.S. Constitution.

16  
17 Trial counsel failed to object to the judge  
18 not allowing the self-defense instructions.  
19 As the judge stated the defense had not  
20 shown any evidence of self-defense. The  
21 decision of guilt has to be decided before  
22 the judge can say there was no evidence  
23 of self-defense. Trial counsel should have  
24 objected to reserve the issue for appeal.  
25 A plain objection is enough to reserve the  
26 issue for appeal. This is ineffective assistance  
27 and prejudice the petitioner as self-defense



1 Ground four pg 2  
2 was the basis of the defense at trial.

3  
4 Ground five

5 Ineffective assistance of trial counsel.

6 Trial counsel waived the pre-liminary hearing,  
7 (Strickland v Washington) This is a due  
8 process violation of the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup>  
9 amendment rights to the U.S. Constitution.

10  
11 Trial counsel was ineffective for waiving  
12 the right to petitioners preliminary hearing.  
13 Counsel would have been able to question  
14 the witness on all inconsistencies. Such  
15 as the blood on the walls and garage floor.  
16 Also the fact that she poured bleach on  
17 the petitioners clothes and cut his  
18 chest with a knife. This would have  
19 changed or dropped all charges. This  
20 prejudiced the petitioner and cost him  
21 30 years of his life.

22  
23 Ground six

24 Ineffective assistance of counsel. Trial  
25 counsel failed to have Carla Carpenter  
26 take a psychiatric examination before  
27 trial. (Strickland v Washington) (State v Osgood)

## Ground six pg 2

2003 SD 87, 667 N.W. 2d 687 S.D. 2003)

trial counsel failed to get a pre-trial psychiatric examination of Corla Carpenter. "The purpose of a psychological or psychiatric examination of the victim is to detect any thought disorders or distortion of perceptions that might effect the credibility of the complaining witness" (State v Osgood)

In this case Carpenter is diagnosed with multiple psychiatric issues. And this was a he said/she said case. Therefore the mental status of Carpenter is crucial to this case. Also Carpenter changed her story multiple times to different people. In this particular case. Carpenter's state of mind plays a big role in the self-defense claim. By not having Carpenter tested, the trial counsel was unable to effectively cross-examine Carpenter about the fabricated crime scene. This prejudice the petitioner. A psychiatric evaluation is critical to get this case dropped or atleast the charges lowered.

## Ground Seven

Ineffective assistance of counsel. Trial counsel called petitioner quote "A drug-addicted maniac". (Strickland v Washington) (Byford v State 994 P2d 700)

Ground seven pg 2

1  
2 Trial counsel called petitioner "a drug-addled  
3 mainitc" In the closing argument. This destroyed  
4 any possibility of showing petitioners self-defense  
5 claim to have any credibility. The petitioner  
6 cannot overcome the prejudice at this point  
7 of the trial. Before that comment, petitioner  
8 had a chance at a rebuttal.

Ground 8

9  
10  
11 Ineffective assistance of trial counsel. Trial  
12 counsel failed to do pre-trial investigation into  
13 Carpenter's past. (Strickland v Washington) (Sanborn  
14 v State 812 P2d 1297) (U.S. v Vavages 151 F3d 1185  
15 9th cir) This is a due process violation of the  
16 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> amendment rights to the  
17 U.S. Constitution.

18  
19 Trial counsel's failure to investigate Carpenter's  
20 life/past. Corla Carpenter is ingrained in fraud  
21 by selling perscription pills. She also has  
22 many mental issues, when exposed in court  
23 would destroy her credibility. This is crucial  
24 in a he said/she said case. Especially since  
25 Carpenter used her knowlage of the justice system  
26 to up the charges on petitioner. This prejudice the  
27 petitioner as it goes to the heart of the self defense.

## Ground 9

Ineffective assistance of counsel. Trial counsel failed to interview the states doctor before trial. (Strickland v Washington) (Sanborn v State) (US v Agurs) This is a due process violation to the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> amendment rights to the U.S. Constitution.

Trial counsel failed to interview the states doctor who was a expert in his field. But testified alot about the "abuse" factor in this case, which the doctor addmitt's to not being A expert in. The abuse factor in this case changes the charge from domestic violance to assault and or battery. This is huge for a case that has multiple stories to try to determin the truth.

If trial counsel would have interviewed the doctor. The defense would have been able to prepair for that portion of the trial. This prejudiced the petitioner beyond repair.

## Ground 10

Ineffective assistance of trial counsel. Trial counsel failed to interview the TJ-Max security guard. (Strickland v Washington)

## Ground 10 pg 2

(Sauborn v State) (ClS v Agur's) This is a due process violation of the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> amendments rights to the U.S. Constitution.

Trial counsel failed to interview the TJ-MAX security guard, who's testimony is paramount to this case. As Carpenter's actions inside a store with a knife and crowbar. Go to the very heart of Carpenter's mental status, which is what made petitioner defend himself the way he did. The security guard has seen Carpenter act like a lunatic in public. This testimony would bolster the petitioner's self defense claim. By not interviewing this key witness, the trial attorney was unable to impeach Carpenter about her fabricated lie's. This prejudiced the petitioner.

## Ground 11

Ineffective assistance of trial counsel. Trial counsel failed to raise the conflict of interest as the court appointed investigator is married to the justice court judge who ruled on this case. (Strickland v Washington) (Robinson v Nori's 60 F3d 457) (Page v US 884 F2d 300) (ClS v Agur's 49 LED 20)

## Ground 11 pg 2

There's a conflict of interest as the appointed court investigator is married to the judge who ruled on the case. If the investigator had done a better job. The defense would have never waived the preliminary hearing. Thus possibly leaving the charges reduced or dropped all together. Also alot more investigation needed to be done on all the states witnesses, on the crime scene, the crime scene photo's and all other fabricated evidence. This prejudiced the petitioner.

## Ground 12

Ineffective assistance of trial counsel. Trial counsel failed to address the overlapping charges. (Strickland v Washington) this is a due process violation of the 5<sup>th</sup> 6<sup>th</sup> 8<sup>th</sup> and 14<sup>th</sup> amendment rights to the US Constitution.

Trial counsel failed to file a pre-trial writ or motion to have the overlapping charges of assault with a deadly weapon and battery resulting in substantial bodily harm, dismissed as you cant be convicted of both for the same act. It is either one or the other. These overlapping charges

Ground 12 pg 2

are Carpenters idea as she is trained in criminal law. These convictions are unconstitutional together. It has to be one or the other. Trial counsel's failure to address this has cost petitioner multiple years of his life. No doubt this prejudiced the petitioner.

Ground 13

Ineffective assistance of trial counsel. Trial counsel failed to investigate the crime scene and bleach used on petitioners clothes by Corla Carpenter. (Strickland v Washington) (Sanborn v State) (US v Agurs) This is a due process violation of the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> amendment rights to the U.S. Constitution.

Trial counsel failed to investigate the crime scene. At which Corla Carpenter poured bleach on petitioners clothes. (Exhibit one) This shows the erratic behavior by Carpenter that would support the self-defense claim by petitioner. Anyone pouring bleach on anything, is to ruin it or change the evidence. This should have been investigated by defense counsel. This prejudiced the petitioner.

## Ground 14

1  
2 The effective assistance of counsel. Trial  
3 counsel failed to investigate blood on the  
4 floor and walls. (Strickland v Washington)  
5 (Sanborn v State) (USV Agins) This is a due  
6 process violation of the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and  
7 14<sup>th</sup> amendment rights to the U.S. Constitution.

8  
9 Trial counsel failed to investigate the  
10 residence where Corla Carpenter fabricated  
11 a crime scene. This is a failure to raise  
12 the fabricated evidence defense. (Tejada v  
13 Dubois 142 F3d 18 1<sup>st</sup> Cir 1998)  
14 Corla Carpenter went throughout the residence  
15 placing blood in specific places to fabricate  
16 a story to up the charges on petitioner. Carpenter  
17 also was the one to take specific pictures  
18 that the state used at trial. This causes a  
19 chain of custody issue with the pictures as  
20 the witness is not a investigator or cop. These  
21 pictures could be altered to support carpenter's  
22 story. Carpenter refer's to "her legal team"  
23 at the sentencing testimony. That infer's the  
24 DA, prosecutor and cops are working for Carpenter.  
25 That would be malicious prosecution.  
26 The blood in the garage and on the knife  
27 had to be tested. Because if both



Ground 14 pg 2

people's blood is on the knife and carpenter's blood is on the garage around where the car was. then that supports the self-defense claim. The lack of investigation prejudiced the petitioner and would have led to a acquittal.

Ground 15

Ineffective assistance of trial counsel. Trial counsel failed to cross-examine Carpenter about the bleach she used. (Strickland v Washington) (US v Tucker 716 F2d 576 9th Cir)

Trial counsel failed to subject the states case to a adversarial testing process. By failing to question Corla Carpenter about the bleach she poured on petitioners clothes in the bath tub. Nor did counsel question carpenter about the fabricated pictures, blood marks or multiple inconsistencies. By just leaving these questions un-asked. This placed the burden of proof on the petitioner. Those facts would have led to a acquittal.

## Ground 16

Ineffective assistance of counsel. Trial counsel failed to correct petitioner's PSI. (Strickland v Washington) (Stockmeier v State 255 P3d 209)

This is a due process violation of the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> amendment rights to the U.S. Constitution.

Trial counsel failed to have the PSI corrected. There are incorrect dates for past issues, shortcomings in completed sentences and a truck load of lies in the victim impact statement.

All these caused the court to impose maximum penalties on all charges. This was not addressed in district court or direct appeal. So now I must address this in the habeas.

Trial counsel's failure to correct the PSI has added many more years on the petitioner's sentence. This prejudices the petitioner.

## Ground 17

Ineffective assistance of counsel. Trial counsel failed to file a motion for a new trial. (Strickland v Washington) This is a due process violation of the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> amendment rights to the U.S. Constitution.

## Ground 17 pg 2

1 Trial counsel failed to file a motion for  
2 a new trial within (7) days of the verdict  
3 (NRS 176.09187)  
4

5 Counsel should have filed a motion using the  
6 fact the court ruled on the jury instructions  
7 deciding on petitioners guilt before the  
8 verdict had been announced. Then using  
9 that to limit the jury instructions. This  
10 prejudiced petitioner.

## Ground 18

11  
12 Ineffective assistance of counsel. Trial  
13 counsel failed to investigate the fraud  
14 by Carpenter. (Strickland v Washington)  
15 (Sanborn v State) (Agurs v U.S.) This is a  
16 due process violation of the 5<sup>th</sup> 6<sup>th</sup> 8<sup>th</sup> and  
17 14<sup>th</sup> amendment rights to the U.S. Constitution.  
18

19  
20 Trial counsel failed to investigate Corla  
21 Carpenters fraud with DR. Bruce, who  
22 is currently incarcerated for the mass  
23 sales of prescription pills. Carpenter was  
24 a knowing participant. This goes directly  
25 to Carpenters credibility. This is a he said/  
26 she said case. So this investigation  
27 is crucial in-order to impeach Carpenter

Ground 18 pg 2

at trial. This prejudiced petitioner.

Ground 19

ineffective assistance of trial counsel.

Trial counsel's cumulative errors.

(Strickland v Washington) (US v Kladavins

739 F. Supp 1221) (Ramseyer v Wood 69 F3d

1434 9th cir)

This case has set a new record for

the cumulative error effect. This

is what happens when one person

acts as a judge and jury. Even if

the court doesn't find a single ground

is enough to grant a new trial.

the cumulative errors definitely

do warrant a new trial.

## Ground 20

Ineffective assistance of appellant counsel.

Appellant counsel failed to file a certificate of service with petition to the district court.

Strickland v Washington

Appellant counsel failed to include a certificate of service in Genaro Richard Perry's petition to have the Metropolitan Police Department do genetic marker testing and latent finger print testing.

Therefore invalidating Perry's petition.

This is a 6<sup>th</sup> & 14<sup>th</sup> Amendment violation of ineffective assistance of counsel and a due process violation.

## Ground 21

Ineffective assistance of Appellant Counsel.

Appellant counsel failed to use Nevada statutes OR NRS to support Perry's petition for finger print analysis.

Strickland v Washington

Appellant counsel failed to list any Nevada statute OR NRS in Mr. Perry's petition to get finger-print analysis on evidence collected in the case.

which when the analysis is done, would show the girlfriend fingerprints on the knife. Along with Mr. Perry's blood.

Therefore proving Mr. Perry's self-defense claim to be true.

Were Mr. Perry wouldn't have been convicted of these crimes.

This is a due process violation and a 6<sup>th</sup> / 14<sup>th</sup> Amendment violation to the US Constitution.

## Ground 22

Ineffective Assistance of Appellant Counsel.

Appellant counsel failed to state any Nevada statutes OR NRS in the appeal of Mr. Perry's petition for DNA and fingerprint analysis. *Strickland v Washington*

Appellant counsel failed to list any Nevada statute or NRS in the appeal for the district court's denial of Mr. Perry's petition for DNA and fingerprint analysis.

Therefore the appellate court was unable to take jurisdiction on Mr. Perry's appeal.

This is ineffective assistance of counsel and a due process violation. Of the 6<sup>th</sup>/14<sup>th</sup> Amendment to the U.S. Constitution.

1 WHEREFORE, Senao Richard Perry, prays that the court grant evidentiary hearing  
2 relief to which he may be entitled in this proceeding.

3 EXECUTED at SPCC  
4 on the 2 day of April, 2022.

5  
6 Senao R. Perry  
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 Senao R. Perry  
15 Signature of Petitioner

16 Senao R. Perry  
17 PRO SE  
18 Attorney for Petitioner



**CERTIFICATE OF SERVICE BY MAILING**

I, Genaro Richard Perry, hereby certify, pursuant to NRCP 5(b), that on this 2nd  
day of April, 2022, I mailed a true and correct copy of the foregoing, "

First Amended Petition for writ of habeas corpus"

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 Lewis Ave 3rd floor  
LV NV 89155

CC:FILE

DATED: this 2nd day of April, 2022.

Genaro R. Perry  
Genaro Richard Perry 01153366  
/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 \_\_\_\_\_

first Awarded Petition for writ of habeas corpus  
(Title of Document)

filed in District Court Case number C298879

☒ 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.

Gerardo R Perry 4-2-22  
Signature Date

Gerardo Richard Perry  
Print Name

\_\_\_\_\_  
Title

Genaro Richard Penny #1153366

SPC

P.O. Box 208

Indian Springs NV

89072

Legal

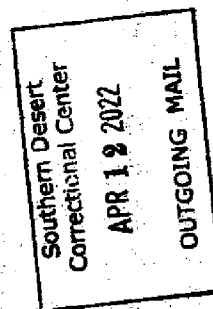
Clerk of the court  
200 Lewis Ave 3rd floor  
LV NV  
89155

CONFIDENTIAL

quotient  
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Psalm 146:7

SEE your King comes to you, gentle  
riding on a donkey. (Matthew 21:5)



IN GOD WE TRUST

*Heather L. Smith*  
CLERK OF THE COURT

1 PPOW  
2

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

5 Genaro Richard Perry,

6 Petitioner,

7 vs.

8 State of Nevada; Warden Howell,

9 Respondent,  
10

Case No: A-22-851874-W  
Department 17

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

11 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on  
12 April 29, 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 June 27, 2022 at 8:30 A.M.

20 Calendar on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the hour of

21 \_\_\_\_\_ o'clock for further proceedings.  
22

23 Dated this 2nd day of May, 2022

24 *Michael Villani*

25 District Court Judge

26 **5A9 11A A84D CAD8**  
27 **Michael Villani**  
28 **District Court Judge**

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 Genaro Perry, Plaintiff(s)

CASE NO: A-22-851874-W

7 vs.

DEPT. NO. Department 17

8 State of Nevada, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

13  
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  
known addresses on 5/3/2022

16 Genaro Perry

#1153366

SDCC

P.O. Box 208

Indian Springs, NV, 89070  
17  
18  
19  
20  
21  
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28

*Heavenly. Hemin*  
CLERK OF THE COURT

*GERARDO L. PERRY*

NDOC No. 1153166

In proper person

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR THE  
COUNTY OF CLARK

*GERARDO RICHARD PERRY*

Petitioner, )

v. STATE OF Nevada; )

WARDEN *H. H. H. H.* )

Case No. A-22-85/874-W

Dept. No. 17

Respondent. )

MOTION AND ORDER FOR TRANSPORTATION  
OF INMATE FOR COURT APPEARANCE  
OR, IN THE ALTERNATIVE,  
FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE

Petitioner, *Gerardo Richard Perry*, proceeding pro se, requests  
that this Honorable Court order transportation for his personal appearance or, in the  
alternative, that he be made available to appear by telephone or by video conference  
at the hearing in the instant case that is scheduled for JUNE 27, 2022  
at 8:30 AM.

RECEIVED  
MAY 16 2022  
CLERK OF THE COURT

1 In support of this Motion, I allege the following:

2 1. I am an inmate incarcerated at Summit Desert Correctional Center

3 My mandatory release date is May 17, 2027.

4  
5 2. The Department of Corrections is required to transport offenders to and  
6  
7 from Court if an inmate is required or requests to appear before a Court in this state.  
8

9 NRS 209.274 Transportation of Offender to Appear Before Court states:

10 "1. Except as otherwise provided in this section, when an offender is  
11 required or requested to appear before a Court in this state, the  
12 Department shall transport the offender to and from Court on the day  
13 scheduled for his appearance.

14 2. If notice is not provided within the time set forth in NRS 50.215, the  
15 Department shall transport the offender to Court on the date scheduled  
16 for his appearance if it is possible to transport the offender in the usual  
17 manner for the transportation of offenders by the Department. If it is  
18 not possible for the Department to transport the offender in the usual  
19 manner:

20 (a) The Department shall make the offender available on the date scheduled  
21 for his appearance to provide testimony by telephone or by video conference,  
22 if so requested by the Court.

23 (b) The Department shall provide for special transportation of the offender to  
24 and from the Court, if the Court so orders. If the Court orders special  
25 transportation, it shall order the county in which the Court is located to  
26 reimburse the Department for any cost incurred for the special transportation.

27 (c) The Court may order the county sheriff to transport the offender to and  
28 from the Court at the expense of the county."

29 3. My presence is required at the hearing because:



☐ I AM NEEDED AS A WITNESS.

My petition raises substantial issues of fact concerning events in which I participated and about which only I can testify. *See U.S. v. Hayman*, 342 U.S. 205 (1952) (District Court erred when it made findings of fact concerning Hayman's knowledge and consent to his counsel's representation of a witness against Hayman without notice to Hayman or Hayman's presence at the evidentiary hearing).

☒ THE HEARING WILL BE AN EVIDENTIARY HEARING.

My petition raises material issues of fact that can be determined only in my presence. *See Walker v. Johnston*, 312 U.S. 275 (1941) (government's contention that allegations are improbable and unbelievable cannot serve to deny the petitioner an opportunity to support them by evidence). The Nevada Supreme Court has held that the presence of the petitioner for habeas corpus relief is required at any evidentiary hearing conducted on the merits of the claim asserted in the petition. *See Gebers v. Nevada*, 118 Nev. 500 (2002).

4. The prohibition against ex parte communication requires that I be present at any hearing at which the state is present and at which issues concerning the claims raised in my petition are addressed. U.S. Const. amends. V, VI.

5. If a person incarcerated in a state prison is required or is requested to appear as a witness in any action, the Department of Corrections must be notified in writing not less than 7 business days before the date scheduled for his appearance in Court if the inmate is incarcerated in a prison located not more than 40 miles from Las Vegas. NRS 50.215(4). If a person is incarcerated in a prison located 41 miles or more from Las Vegas, the Department of Corrections must be notified in writing not less than 14 business days before the date scheduled for the person's appearance in Court.

6. Southern Desert Correctional Center is located approximately  
44 miles from Las Vegas, Nevada.

1 7. If there is insufficient time to provide the required notice to the Department  
2 of Corrections for me to be transported to the hearing, I respectfully request that this  
3 Honorable Court order the Warden to make me available on the date of the  
4 scheduled appearance, by telephone, or video conference, pursuant to NRS  
5 209.274(2)(a), so that I may provide relevant testimony and/or be present for the  
6 evidentiary hearing.

7 8. The rules of the institution prohibit me from placing telephone calls from  
8 the institution, except for collect calls, unless special arrangements are made with  
9 prison staff. Nev. Admin. Code DOC 718.01. However, arrangements for my  
10 telephone appearance can be made by contacting the following staff member at my  
11 institution: Southern Desert Correctional Center Warden Hocking  
12 whose telephone number is (725) 216-6000

13  
14 Dated this 9 day of May, 2022.

15  
16 James R. Lee

17  
18  
19 PRO SE  
20  
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22  
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29

**CERTIFICATE OF SERVICE BY MAILING**

I, Crenaro Richard Perry, hereby certify, pursuant to NRCP 5(b), that on this 9  
day of May, 20 22, I mailed a true and correct copy of the foregoing, "Motion  
And order for Transportation of inmate for Court Appearance"  
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

Eighth Judicial District Court  
Regional Justice Center  
700 Lewis Avenue  
Las Vegas, Nevada 89155

CC:FILE

DATED: this 9 day of May, 20 22

Crenaro R. Perry  
Crenaro R. Perry # 1153104  
S.D.C.C. / 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 And

ORDER FOR TRANSPORTATION OF INMATE FOR COURT APPEARANCE  
(Title of Document)

filed in District Court Case number A-22-251874-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 L. Terry  
Signature

5-9-22  
Date

Genaro L. Terry  
Print Name

PRO SE  
Title

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2 AS Leggett, NY 89155

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1 LEFT SIDE  
2 OF FILE PLEASE  
3 IN THE 8th JUDICIAL DISTRICT COURT OF THE  
4 STATE OF NEVADA IN AND FOR THE  
5 COUNTY OF Clark

6 GERALD R. LEXLEY )  
7 Petitioner, )

8 v. STATE OF NEVADA )  
9 WARDEN HUTCHINGS )

10 Case No. A-22-851874-W

11 \_\_\_\_\_ ) Dept. No. 17  
12 \_\_\_\_\_ )

13 Respondent. )  
14 \_\_\_\_\_ )

15  
16 ORDER FOR TRANSPORTATION OF INMATE FOR COURT APPEARANCE  
17 OR, IN THE ALTERNATIVE, FOR APPEARANCE BY TELEPHONE OR VIDEO  
18 CONFERENCE

19 Based upon the above motion, I find that the presence of  
20 \_\_\_\_\_ is necessary for the hearing that is scheduled in this  
21 case on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at  
22 \_\_\_\_\_.

23 THEREFOR, IT IS HEREBY ORDERED that,

24 ☐ Pursuant to NRS 209.274, Warden \_\_\_\_\_  
25 of \_\_\_\_\_ is hereby commanded to have  
26 \_\_\_\_\_ transported to appear before me at a hearing  
27 scheduled for \_\_\_\_\_ at \_\_\_\_\_ at the  
28 \_\_\_\_\_ County Courthouse. Upon completion of the hearing,

1 \_\_\_\_\_ is to be transported back to the above  
2 named institution.

3  
4 ☐ Pursuant to NRS 209.274(2)(a), Petitioner shall be made available for telephonic  
5 or video conference appearance by his or her institution. My clerk will contact  
6 \_\_\_\_\_ at \_\_\_\_\_ to make  
7 arrangements for the Court to initiate the telephone appearance for the hearing.  
8

9 Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
10 \_\_\_\_\_

11  
12 \_\_\_\_\_  
13 District Court Judge  
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29

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

Electronically Filed  
6/3/2022 9:48 AM  
Steven D. Grierson  
CLERK OF THE COURT



Genaro Perry, Plaintiff(s)

Case No.: A-22-851874-W

vs.

State of Nevada, Defendant(s)

Department 17

**NOTICE OF HEARING**

Please be advised that the Plaintiff /Inmate's Motion and Order for Transportation of Inmate for Court Appearance or in the Alternative, for Appearance by Telephone or Video Conference in the above-entitled matter is set for hearing as follows:

**Date:** July 06, 2022

**Time:** 8:30 AM

**Location:** RJC Courtroom 11A  
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  
JOHN AFSHAR  
Deputy District Attorney  
Nevada Bar #14408  
8200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

GENARO RICHARD PERRY,  
#1456173

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-22-851874-W

C-14-298879-1

DEPT NO: XVII

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

DATE OF HEARING: June 27, 2022  
TIME OF HEARING: 8:30 AM

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

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 June 25, 2014, Genaro Perry (hereinafter “Petitioner”) was charged by way of  
4 Information with Count One: Robbery with Use of a Deadly Weapon (Category B Felony –  
5 NRS 200.380), Count Two: False Imprisonment with Use of a Deadly Weapon (Category B  
6 Felony – NRS 200.460), Count Three: Grand Larceny Auto (Category B Felony – NRS  
7 200.460), Count Four: Assault with a Deadly Weapon (Category B Felony – NRS 207.190),  
8 Count Five: Coercion (Category B Felony – NRS 207.190), Count Six: Battery Resulting in  
9 Substantial Bodily Harm Constituting Domestic Violence (Category C Felony – NRS 200.481,  
10 200.485) and Count Seven: Preventing or Dissuading Witness or Victim from Reporting Crime  
11 or Commencing Prosecution (Category D Felony – NRS 199.305).

12 On October 1, 2015, after a three-day bench trial, the district court found Petitioner  
13 guilty on all counts. On January 6, 2016, Petitioner was sentenced to an aggregate total of a  
14 maximum of three hundred thirty-six (336) months and a minimum of ninety-six (96) months  
15 in the Nevada Department of Corrections, with five hundred ninety-seven (597) days credit  
16 for time served. Petitioner’s Judgment of Conviction was filed on January 22, 2016. An  
17 Amended Judgment of Conviction was filed on April 28, 2017. A second Amended Judgment  
18 of Conviction striking verbiage referencing an aggregate total sentence in Petitioner’s  
19 Amended Judgment of Conviction was filed on August 8, 2017.

20 Petitioner filed a Notice of Appeal on November 4, 2015, appealing this Court’s guilty  
21 verdict. On December 14, 2016, the Nevada Supreme Court affirmed this Court’s verdict and  
22 issued Remittitur on January 10, 2017.

23 On February 7, 2017, Petitioner filed a Petition for Writ of Habeas Corpus (Post-  
24 conviction) (hereinafter “First Petition”), Motion for Appointment of Attorney, Motion to  
25 Dismiss Counsel, and Motion for a New Trial. The State filed its response on April 7, 2017.  
26 On April 24, 2017, the district court denied Petitioner’s Motion for New Trial but granted  
27 Petitioner’s Motion to Withdraw Counsel and Motion to Appoint Counsel. The court appointed  
28 Jean Schwartzer Esq. as counsel for the purposes of filing a supplement to the First Petition.

1 On February 3, 2021, Petitioner filed a Motion Requesting Order Directing the Las  
2 Vegas Metropolitan Police Department to Conduct Genetic Marker and Latent Print Analysis  
3 of Evidence Impounded at Crime Scene and requested a hearing. The State filed its Response  
4 on February 11, 2021. On February 17, 2021, Petitioner's Motion was denied, and the district  
5 court issued its Order on April 16, 2021.

6 On August 16, 2021, Petitioner filed a Motion to Withdraw Counsel, which was granted  
7 by the district court. Counsel never filed a supplement to the First Petition before withdrawing.  
8 Petitioner filed a Pro Per Supplement to his own Petition on November 29, 2021.

9 On November 29, 2021, Petitioner filed a Motion to Modify and/or Correct Illegal  
10 Sentence. The State filed its Opposition on December 15, 2021. This Court denied Petitioner's  
11 Motion on December 20, 2021, and issued its Order on December 29, 2021.

12 Petitioner filed a second Notice of Appeal on January 27, 2022, appealing this Court's  
13 decision to deny his Motion to Modify and/or Correct Illegal Sentence. On February 18, 2022,  
14 the Nevada Supreme Court affirmed the district court's denial of Petitioner's Motion and  
15 issued Remittitur on March 15, 2022. However, that Remittitur was recalled by the Nevada  
16 Court of Appeals and is currently still on appeal.

17 Petitioner filed the instant Petition (hereinafter "Second Petition") on April 29, 2022.  
18 The State's Response now follows.

### 19 **STATEMENT OF FACTS**

20 Petitioner's Presentence Investigation Report (hereinafter "PSI") summarized the facts  
21 of the crime as follows:

22 Petitioner and Carla Carpenter (hereinafter "Carpenter") were  
23 involved in a six-month relationship. On April 20, 2014, Petitioner  
24 came over to Carpenter's house to get his property. He ended up  
25 spending the night at her house because it was late. The following  
26 morning, Petitioner asked Carpenter for \$5,000.00 to buy drugs.  
27 When she refused to lend him the money, Petitioner grabbed a  
28 steak knife and threatened to kill her and her family. He then  
lunged at Carpenter with the knife.

Next, Petitioner banged Carpenter's head against the kitchen floor  
and kicked her in the face several times. When she tried to call the  
police, Petitioner threw her phone against the wall. Petitioner

would not allow her to leave.

Petitioner then picked up Carpenter's car keys, held the knife to her and said, "I will take these." Before he left in her car, he threw her phone in the toilet and threatened to kill her and her ex-husband if she called the police. Carpenter suffered numerous injuries as well as damage to her house.

PSI 6-7.

## **ARGUMENT**

### **I. THE SECOND PETITION IS PROCEDURALLY BARRED**

The Second Petition is procedurally time-barred. As aptly explained by NRS 34.726(1):

1. Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:

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

NRS 34.726(1)(a)(b).

The one-year time bar of NRS 34.726(1) is strictly construed. Gonzales v. State, 118 Nev. 590, 593-596, 53 P.3d 901, 902-904 (2002) (rejected post-conviction petition filed two days late pursuant to the "clear and unambiguous" provisions of NRS 34.726(1)). The Nevada Supreme Court has held that NRS 34.726(1) should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

Here, Petitioner failed to file prior to the one-year deadline. Remittitur issued from Petitioner's appeal on January 10, 2017. Petitioner did timely raise these claims in his First Petition filed on February 7, 2017, but the fact that he timely raised these claims in a prior petition does not overcome the procedural bar as to the Second Petition. The Second Petition was filed over four (4) years after Petitioner's one-year deadline. Therefore, this Court should

1 deny Petitioner's claims because they are time-barred.

2 **A. Application of Procedural Bars is Mandatory**

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

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

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

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

23 Given that the application of the procedural bars is mandatory, and Petitioner's Petition  
24 is time-barred, this Court should deny Petitioner's claims.

25 **B. This Court should dismiss Claims 1-19 in the instant Petition, but address the**  
26 **claims in his Petition filed February 7, 2017**

27 Petitioner's Claims 1-19 are should not be considered as they are procedurally time-  
28 barred and application of the procedural bars is mandatory. However, he previously filed the  
First Petition on February 7, 2017, where he raised the exact same claims as Claims 1-19 in  
the Second Petition. That Petition was filed within the one-year time bar. There, the district

1 court did not rule on the Petition, but appointed counsel so they could file a supplement to the  
2 Petition. However, counsel did not file a supplement before withdrawing as counsel. Petitioner  
3 drafted and filed his own Supplement on November 29, 2021, but this Court should not  
4 consider the Supplement because a petitioner cannot supplement his own Petition. NRS  
5 34.750.

6 Now, as argued *supra*, this Court should deny Petitioner's Claims 1-19 because they  
7 are time-barred. However, this Court should consider Petitioner's previously filed Petition  
8 because the district court never ruled on it, and it was timely filed. The State addressed  
9 Petitioner's claims in its Response filed on April 7, 2017. In that Response, the State  
10 demonstrated that Petitioner's claims are meritless. Therefore, this Court should dismiss  
11 Claims 1-19 in the instant Petition, but rule on the same claims in the previously filed Petition  
12 that is not time-barred.

13 **C. Petitioner's Claims 20-22 are also time-barred and Petitioner does not**  
14 **demonstrate good cause**

15 In Claims 20-22, Petitioner claims his "appellate" counsel, referring to Ms. Schwartzner,  
16 was ineffective for failing to file a certificate of service and cite Nevada statutes in his Motion  
17 Requesting Order Directing the Las Vegas Metropolitan Police Department to Conduct  
18 Genetic Marker and Latent Print Analysis of Evidence Impounded at the Crime Scene. Petition  
19 at 25-27. These claims should be denied as untimely, because as addressed *supra*, Petitioner  
20 failed to file the instant Petition within the one-year time limit. Further, Petitioner fails to  
21 demonstrate good cause.

22 Petitioner's failure to prove good cause or prejudice requires the denial of his claims.  
23 Here, Petitioner cannot demonstrate good cause to overcome the procedural time bar because  
24 Petitioner was not entitled to post-conviction counsel, thus he was not entitled to effective  
25 counsel in his Motion or on appeal from the denial of that motion. Under the U.S. Constitution,  
26 the Sixth Amendment provides no right to counsel in post-conviction proceedings. Coleman  
27 v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566 (1991). In McKague v. Warden, 112  
28 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada Supreme Court similarly observed that

1 “[t]he Nevada Constitution...does not guarantee a right to counsel in post-conviction  
2 proceedings, as we interpret the Nevada Constitution’s right to counsel provision as being  
3 coextensive with the Sixth Amendment to the United States Constitution.” McKague  
4 specifically held that with the exception of NRS 34.820(1)(a) (entitling appointed counsel  
5 when petitioner is under a sentence of death), one does not have “any constitutional or statutory  
6 right to counsel at all” in post-conviction proceedings. Id. at 164, 912 P.2d at 258. Where there  
7 is no right to counsel there is no right to the effective assistance of counsel, and the  
8 ineffectiveness of said counsel does not provide good cause to overcome the procedural bars.  
9 Id. Therefore, Petitioner’s post-conviction counsel cannot be ineffective because he did not  
10 have a right to effective assistance of counsel in his Motion and Petitioner cannot use counsel’s  
11 alleged ineffectiveness as good cause to overcome the procedural bars. His claims must be  
12 denied.

13 Additionally, Petitioner’s claim is not supported by any evidence. “Bare” and “naked”  
14 allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled  
15 by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

16 First, in Claim 20, Petitioner claims his counsel was ineffective for failing to include a  
17 certificate of service in his Motion Requesting Order Directing the Las Vegas Metropolitan  
18 Police Department to Conduct Genetic Marker and Latent Print Analysis of Evidence  
19 Impounded at the Crime Scene. Petition at 25. He claims this invalidated his Motion. Id.  
20 However, the State did not argue that the failure to include a certificate of service invalidated  
21 his Motion, and the district court did not cite that failure in its ruling. There is no evidence  
22 counsel’s failure to include a certificate of service in Petitioner’s Motion had any effect on the  
23 court’s denial of his Motion.

24 Second, in Claims 21-22, Petitioner claims counsel “failed to use Nevada statutes or  
25 NRS to support [his Motion] for fingerprint analysis.” Petition at 26-27. To the contrary, his  
26 counsel repeatedly cited Nevada statutes and Nevada Supreme Court cases as controlling  
27 authority in his Motion. Additionally, Petitioner fails to identify what statutes or authority his  
28 counsel should have included in his Motion. Therefore, his claims should be summarily denied

1 as they are bare and naked. Further, he cannot demonstrate good cause to overcome the  
2 procedural bar because he was not entitled to effective post-conviction counsel, thus his claims  
3 of ineffective assistance of counsel are without merit and must be denied.

4 **CONCLUSION**

5 For the foregoing reasons, the State respectfully requests Petitioner's Second Petition  
6 be DENIED.

7 DATED this 6th day of June, 2022.

8 Respectfully submitted,

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

11 BY /s/ John Afshar  
12 JOHN AFSHAR  
13 Deputy District Attorney  
Nevada Bar #14408

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that service of State's Response to Petitioner's Petition for Writ of Habeas  
16 Corpus (Post-Conviction), was made this 6th day of June, 2022, by Mail via United States  
Postal Service to:

17 **GENARO RICHARD PERRY**  
18 **#1153366**  
19 **Southern Desert Correctional Center**  
20 **P.O. Box 208**  
**Indian Springs, NV 89070**

21 /s/ Kristian Falcon

22 Secretary for the District Attorney's Office

23  
24  
25  
26  
27  
28 JA/SG/kf/DVU



LEFT SIDE  
OF FILE PLEASE

IN THE 8<sup>th</sup> JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR THE  
COUNTY OF CLARK

GENARO RICHARD LERRY )  
Petitioner, )

v. )

Case No. A-22-851874-W

STATE OF NEVADA, Warden Hutchings )

Dept. No. 17

Respondent. )

**ORDER FOR TRANSPORTATION OF INMATE FOR COURT APPEARANCE**  
**OR, IN THE ALTERNATIVE, FOR APPEARANCE BY TELEPHONE OR VIDEO**  
**CONFERENCE**

Based upon the above motion, I find that the presence of  
GENARO R. LERRY is necessary for the hearing that is scheduled in this  
case on the 27<sup>th</sup> day of JUNE, 2022, at  
8:30 am.

THEREFOR, IT IS HEREBY ORDERED that,

☒ Pursuant to NRS 209.274, Warden Hutchings  
of Southern Desert Correctional Center is hereby commanded to have  
GENARO R. LERRY transported to appear before me at a hearing  
scheduled for JUNE 27, 2022 at 8:30 am at the  
Eighth Judicial District County Courthouse. Upon completion of the hearing,

RECEIVED

JUN 21 2022

CLERK OF THE COURT

1 GENARO R. PERRY is to be transported back to the above  
2 named institution.  
3

4 ☐ Pursuant to NRS 209.274(2)(a), Petitioner shall be made available for telephonic  
5 or video conference appearance by his or her institution. My clerk will contact  
6 \_\_\_\_\_ at \_\_\_\_\_ to make  
7 arrangements for the Court to initiate the telephone appearance for the hearing.  
8

9 Dated this \_\_\_\_\_ day of \_\_\_\_\_.  
10  
11

12 \_\_\_\_\_  
13 District Court Judge  
14  
15  
16  
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28  
29

*Heather S. Smith*  
CLERK OF THE COURT

Genaro R. Perry

NDOC No. 1153364

P.O. BOX 208

Indian Springs, Nevada  
In proper person PRO SE

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

Genaro Richard Perry

Petitioner, )

v. )

Case No. A-22-851874-W

STATE of Nevada, warden handling  
Respondent. )

Dept. No. 17

MOTION AND ORDER FOR TRANSPORTATION  
OF INMATE FOR COURT APPEARANCE  
OR, IN THE ALTERNATIVE,  
FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE

Petitioner, Genaro Richard Perry, proceeding pro se, requests  
that this Honorable Court order transportation for his personal appearance or, in the  
alternative, that he be made available to appear by telephone or by video conference  
at the hearing in the instant case that is scheduled for June 27, 2022  
at 8:30 AM.

RECEIVED

JUN 21 2022

CLERK OF THE COURT

1 In support of this Motion, I allege the following:

2 1. I am an inmate incarcerated at Southern Desert Correctional Center

3 My mandatory release date is 11/20/24.

4  
5 2. The Department of Corrections is required to transport offenders to and  
6  
7 from Court if an inmate is required or requests to appear before a Court in this state.

8  
9 NRS 209.274 Transportation of Offender to Appear Before Court states:

10 "1. Except as otherwise provided in this section, when an offender is  
11 required or requested to appear before a Court in this state, the  
12 Department shall transport the offender to and from Court on the day  
13 scheduled for his appearance.

14 2. If notice is not provided within the time set forth in NRS 50.215, the  
15 Department shall transport the offender to Court on the date scheduled  
16 for his appearance if it is possible to transport the offender in the usual  
17 manner for the transportation of offenders by the Department. If it is  
18 not possible for the Department to transport the offender in the usual  
19 manner:

20 (a) The Department shall make the offender available on the date scheduled  
21 for his appearance to provide testimony by telephone or by video conference,  
22 if so requested by the Court.

23 (b) The Department shall provide for special transportation of the offender to  
24 and from the Court, if the Court so orders. If the Court orders special  
25 transportation, it shall order the county in which the Court is located to  
26 reimburse the Department for any cost incurred for the special transportation.

27 (c) The Court may order the county sheriff to transport the offender to and  
28 from the Court at the expense of the county."

29 3. My presence is required at the hearing because:

☒ I AM NEEDED AS A WITNESS.

My petition raises substantial issues of fact concerning events in which I participated and about which only I can testify. *See U.S. v. Hayman*, 342 U.S. 205 (1952) (District Court erred when it made findings of fact concerning Hayman's knowledge and consent to his counsel's representation of a witness against Hayman without notice to Hayman or Hayman's presence at the evidentiary hearing).

☐ THE HEARING WILL BE AN EVIDENTIARY HEARING.

My petition raises material issues of fact that can be determined only in my presence. *See Walker v. Johnston*, 312 U.S. 275 (1941) (government's contention that allegations are improbable and unbelievable cannot serve to deny the petitioner an opportunity to support them by evidence). The Nevada Supreme Court has held that the presence of the petitioner for habeas corpus relief is required at any evidentiary hearing conducted on the merits of the claim asserted in the petition. *See Gebers v. Nevada*, 118 Nev. 500 (2002).

4. The prohibition against ex parte communication requires that I be present at any hearing at which the state is present and at which issues concerning the claims raised in my petition are addressed. U.S. Const. amends. V, VI.

5. If a person incarcerated in a state prison is required or is requested to appear as a witness in any action, the Department of Corrections must be notified in writing not less than 7 business days before the date scheduled for his appearance in Court if the inmate is incarcerated in a prison located not more than 40 miles from Las Vegas. NRS 50.215(4). If a person is incarcerated in a prison located 41 miles or more from Las Vegas, the Department of Corrections must be notified in writing not less than 14 business days before the date scheduled for the person's appearance in Court.

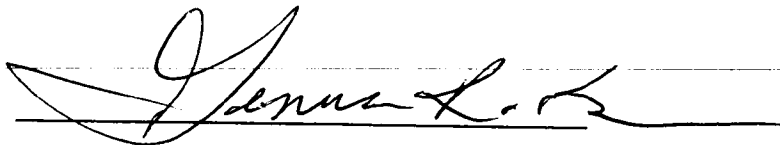
6. Southwest Desert Correctional Center is located approximately 40 miles from Las Vegas, Nevada.

1 7. If there is insufficient time to provide the required notice to the Department  
2 of Corrections for me to be transported to the hearing, I respectfully request that this  
3 Honorable Court order the Warden to make me available on the date of the  
4 scheduled appearance, by telephone, or video conference, pursuant to NRS  
5 209.274(2)(a), so that I may provide relevant testimony and/or be present for the  
6 evidentiary hearing.

7 8. The rules of the institution prohibit me from placing telephone calls from  
8 the institution, except for collect calls, unless special arrangements are made with  
9 prison staff. Nev. Admin. Code DOC 718.01. However, arrangements for my  
10 telephone appearance can be made by contacting the following staff member at my  
11 institution: Southern Desert Correctional Center  
12 whose telephone number is (125) 216-6500

13  
14 Dated this 27 day of JUNE, 2022.

15 GENARO R. LERRY 1153340  
16 P.O. BOX 208  
17 Indian Springs, NV 89020

18  
19 

CERTIFICATE OF SERVICE BY MAILING

I, GENARO RICHARD PERLEY, hereby certify, pursuant to NRCP 5(b), that on this 27<sup>th</sup>  
day of JUNE, 2022, I mailed a true and correct copy of the foregoing, "ORDER  
FOR PETITION FOR WRIT OF HABEAS CORPUS."  
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

STEVEN D. GRIERSON  
CLERK OF THE COURT  
800 LEWIS AVENUE, 3RD FLOOR  
LAS VEGAS, NV 89155-1162

STEVEN B. WOLFSON, DISTRICT ATTORNEY  
OFFICE OF THE DISTRICT ATTORNEY  
800 LEWIS AVENUE  
P.O. BOX 552212  
LAS VEGAS, NV 89155-2212

CC:FILE

DATED: this 27 day of JUNE, 2022

Genaro R. Perley  
Genaro R. Perley # 1153366  
S.D.C.C. /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 Order

FOR PETITION FOR WRIT OF HABEAS CORPUS  
(Title of Document)

(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 L. Perez  
Signature

6/13/22  
Date

GENARO R. PERRY  
Print Name

Pro SE

**RECEIVED**

JUN 21 2022

**CLERK OF THE COURT**



GERARD & TERRY WISE  
P.O. BOX 208  
Indian Springs, NV 89040

B/S 2614881  
FIRST CLASS MAIL  
06/15/2022  
US POSTAGE \$000.73  
ZIP 89101  
041M1254121

STEVEN D. GATEHEAD, Clerk of the Court  
200 Lewis Avenue, 3rd Floor  
Las Vegas, NV 89155-1160

IN GOD WE TRUST

No weapon used against me will succeed Isaiah 54:19

14659

OUTGOING MAIL  
JUN 14 2022  
Desert  
Operational Center

*Steven D. Grierson*

1 Genaro Richard Perry #1153366

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

5 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6 IN AND FOR THE COUNTY OF Clark

7  
8 Genaro Richard Perry

9  
10 Plaintiff,

11 vs.

12 State of Nevada

13 Defendant.

Case No. A-22-851874-W

Dept. No. 11A

Docket \_\_\_\_\_

14  
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 COURT

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

LAS VEGAS NV 890  
11 JUL 2022 PM 3 L

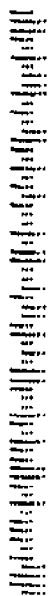


Clerk of the Court  
200 Lewis Ave 3rd floor  
LV NV

89155

Legal

89101-890000



*Steven D. Grierson*

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

*gth* 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  
700 Lewis Ave. 3rd floor  
2V NV 89155

CC:FILE

DATED: this 10 day of July, 2022

Genaro Richard Perry  
Genaro Richard Perry #1153366  
/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



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  
Date Application(s) filed: N/A

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

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: No

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

15 12. Child Custody or Visitation: N/A

16 13. Possibility of Settlement: Unknown

17 Dated This 14 day of July 2022.

18  
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  
Las Vegas, Nevada 89155-1601  
(702) 671-0512

25 cc: Genaro Richard Perry  
26  
27  
28



**FCL**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**JOHN AFSHAR**  
Deputy District Attorney  
Nevada Bar #14408  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

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

**GNERARO RICHARD PERRY**  
ID#1456173

Petitioner,

-vs-

**THE STATE OF NEVADA.**

Respondent.

**CASE NO: A-22-851874-W**

**C-14-298879-1**

**DEPT NO: XVII**

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

**DATE OF HEARING: June 7, 2022**  
**TIME OF HEARING: 11:00 AM**

THIS CAUSE having come on for hearing before the Honorable MICHAEL VILLANI, District Judge, on the 7<sup>th</sup> day of June 2022, the matter heard in Chambers, and this Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, this Court makes the following findings of fact and conclusions of law:

//

//

//

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//

1  
2 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

3 **PROCEDURAL HISTORY**

4 On June 25, 2014, Genaro Perry (hereinafter “Petitioner”) was charged by way of  
5 Information with Count One: Robbery with Use of a Deadly Weapon (Category B Felony –  
6 NRS 200.380), Count Two: False Imprisonment with Use of a Deadly Weapon (Category B  
7 Felony – NRS 200.460), Count Three: Grand Larceny Auto (Category B Felony – NRS  
8 200.460), Count Four: Assault with a Deadly Weapon (Category B Felony – NRS 207.190),  
9 Count Five: Coercion (Category B Felony – NRS 207.190), Count Six: Battery Resulting in  
10 Substantial Bodily Harm Constituting Domestic Violence (Category C Felony – NRS 200.481,  
11 200.485) and Count Seven: Preventing or Dissuading Witness or Victim from Reporting Crime  
12 or Commencing Prosecution (Category D Felony – NRS 199.305).

13 On October 1, 2015, after a three-day bench trial, the district court found Petitioner  
14 guilty on all counts. On January 6, 2016, Petitioner was sentenced to an aggregate total of a  
15 maximum of three hundred thirty-six (336) months and a minimum of ninety-six (96) months  
16 in the Nevada Department of Corrections, with five hundred ninety-seven (597) days credit  
17 for time served. Petitioner’s Judgment of Conviction was filed on January 22, 2016. An  
18 Amended Judgment of Conviction was filed on April 28, 2017. A second Amended Judgment  
19 of Conviction striking verbiage referencing an aggregate total sentence in Petitioner’s  
20 Amended Judgment of Conviction was filed on August 8, 2017.

21 Petitioner filed a Notice of Appeal on November 4, 2015, appealing this Court’s guilty  
22 verdict. On December 14, 2016, the Nevada Supreme Court affirmed this Court’s verdict and  
23 issued Remittitur on January 10, 2017.

24 On February 7, 2017, Petitioner filed a Petition for Writ of Habeas Corpus (Post-  
25 conviction) (hereinafter “First Petition”), Motion for Appointment of Attorney, Motion to  
26 Dismiss Counsel, and Motion for a New Trial. The State filed its response on April 7, 2017.  
27 On April 24, 2017, the district court denied Petitioner’s Motion for New Trial but granted  
28 Petitioner’s Motion to Withdraw Counsel and Motion to Appoint Counsel. The court appointed

1 Jean Schwartzer Esq. as counsel for the purposes of filing a supplement to the First Petition.

2 On February 3, 2021, Petitioner filed a Motion Requesting Order Directing the Las  
3 Vegas Metropolitan Police Department to Conduct Genetic Marker and Latent Print Analysis  
4 of Evidence Impounded at Crime Scene and requested a hearing. The State filed its Response  
5 on February 11, 2021. On February 17, 2021, Petitioner's Motion was denied, and the district  
6 court issued its Order on April 16, 2021.

7 On August 16, 2021, Petitioner filed a Motion to Withdraw Counsel, which was granted  
8 by the district court. Counsel never filed a supplement to the First Petition before withdrawing.  
9 Petitioner filed a Pro Per Supplement to his own Petition on November 29, 2021.

10 On November 29, 2021, Petitioner filed a Motion to Modify and/or Correct Illegal  
11 Sentence. The State filed its Opposition on December 15, 2021. This Court denied Petitioner's  
12 Motion on December 20, 2021, and issued its Order on December 29, 2021.

13 Petitioner filed a second Notice of Appeal on January 27, 2022, appealing this Court's  
14 decision to deny his Motion to Modify and/or Correct Illegal Sentence. On February 18, 2022,  
15 the Nevada Supreme Court affirmed the district court's denial of Petitioner's Motion and  
16 issued Remittitur on March 15, 2022. However, that Remittitur was recalled by the Nevada  
17 Court of Appeals and is currently still on appeal.

18 Petitioner filed the instant Petition (hereinafter "Second Petition") on April 29, 2022.  
19 The State filed its Response on June 6, 2022. On June 29, 2022, this Court denied both  
20 Petitioner's First and Second Petitions. This Court's Findings of Fact, Conclusions of Law and  
21 Order now follows.

## 22 **STATEMENT OF THE FACTS**

23 Petitioner's Presentence Investigation Report (hereinafter "PSI") summarized the facts  
24 of the crime as follows:

25 Petitioner and Carla Carpenter (hereinafter "Carpenter") were  
26 involved in a six-month relationship. On April 20, 2014, Petitioner  
27 came over to Carpenter's house to get his property. He ended up  
28 spending the night at her house because it was late. The following  
morning, Petitioner asked Carpenter for \$5,000.00 to buy drugs.  
When she refused to lend him the money, Petitioner grabbed a  
steak knife and threatened to kill her and her family. He then

lunged at Carpenter with the knife.

Next, Petitioner banged Carpenter's head against the kitchen floor and kicked her in the face several times. When she tried to call the police, Petitioner threw her phone against the wall. Petitioner would not allow her to leave.

Petitioner then picked up Carpenter's car keys, held the knife to her and said, "I will take these." Before he left in her car, he threw her phone in the toilet and threatened to kill her and her ex-husband if she called the police. Carpenter suffered numerous injuries as well as damage to her house.

PSI 6-7.

## **ANALYSIS**

### **I. PETITIONER RECEIVED THE EFFECTIVE ASSISTANCE OF COUNSEL**

Petitioner alleges nineteen instances of ineffective assistance of counsel. Nevada has adopted the standard outlined in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), for determinations regarding the effectiveness of counsel. Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984); Kirksey v. State, 112 Nev. 980,998, 923 P.2d 1102, 1113 (1996). Under Strickland, in order to assert a claim of ineffective assistance of counsel, the defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying a two-pronged test. Strickland, 466 U.S. at 686-687, 104 S. Ct. at 2064; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the defendant must show that his counsel's representation fell below an objective standard of reasonableness, and that, but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. See Strickland, 466 U.S. at 687-688, 694, 104 S. Ct. at 2064, 2068.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentuck, 559 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney's representations amounted to incompetence under prevailing professional norms, "not whether it deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 88, 131 S. Ct. 770, 778 (2011). Furthermore, "[e]ffective counsel does not mean errorless counsel, but rather counsel whose assistance is ' [w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430,432, 537 P.2d 473,474

1 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

2 A court begins with a presumption of effectiveness and then must determine whether  
3 the defendant has demonstrated by a preponderance of the evidence that counsel was  
4 ineffective. Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 35 (2004). The role of a  
5 court in considering allegations of ineffective assistance of counsel is "not to pass upon the  
6 merits of the action not taken but to determine whether, under the particular facts and  
7 circumstances of the case, trial counsel failed to render reasonably effective assistance."  
8 Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (emphasis added) (citing  
9 Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)).

10 In considering whether trial counsel was effective, the court must determine whether  
11 counsel made a "sufficient inquiry into the information ... pertinent to his client's case."  
12 Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); citing. Strickland, 466 U.S. at  
13 690-691, 104 S. Ct. at 2066. Once this decision is made, the court will consider whether  
14 counsel made "a reasonable strategy decision on how to proceed with his client's case."  
15 Doleman, 112 Nev. at 846, 921 P.2d at 280; citing Strickland, 466 U.S. at 690-691, 104 S. Ct.  
16 at 2066. Counsel's strategy decision is a "tactical" decision and will be "virtually  
17 unchallengeable absent extraordinary circumstances." Doleman, 112 Nev. at 846, 921 P.2d at  
18 280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466  
19 U.S. at 691, 104 S. Ct. at 2066.

20 This analysis does not indicate that the court should "second guess reasoned choices  
21 between trial tactics, nor does it mean that defense counsel, to protect himself against  
22 allegations of inadequacy, must make every conceivable motion no matter how remote the  
23 possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711; citing Cooper, 551 F  
24 .2d at 1166 (9th Cir. 1977). In essence, the court must "judge the reasonableness of counsel's  
25 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
26 conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. However, counsel cannot be deemed  
27 ineffective for failing to make futile objections, file futile motions, or for failing to make futile  
28 arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

1 Even if a defendant can demonstrate that his counsel's representation fell below an  
2 objective standard of reasonableness, he must still demonstrate prejudice and show a  
3 reasonable probability that, but for counsel's errors, the result of the trial would have been  
4 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
5 Strickland, 466 U.S. at 687). "A reasonable probability is a probability sufficient to undermine  
6 confidence in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. A defendant who  
7 contends his attorney was ineffective because he did not adequately investigate must show  
8 how a better investigation would have rendered a more favorable outcome probable. Molina  
9 v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

10 Finally, claims asserted in a petition for post-conviction relief must be supported with  
11 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v.  
12 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not  
13 sufficient, nor are those belied and repelled by the record. Id.

#### 14 **1. Ground 1**

15 Petitioner complains that counsel was ineffective for failing to list or call the TJ Maxx  
16 security guard or Dr. Gabaeff. Motion at 7-9. However, Petitioner cannot demonstrate  
17 deficient performance because counsel retains the authority to determine what witnesses to  
18 call at trial. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). Moreover, counsel did try  
19 to call the security guard, but the Court declined his request. RT, 09/30/15, at 62-64. Counsel  
20 was not ineffective for failing to challenge the Court's ruling, as it would have been futile.  
21 Ennis, 122 Nev. at 706, 137 P.3d at 1103.

22 Moreover, Petitioner fails to establish prejudice. Petitioner asserts that counsel was  
23 ineffective for failing to call Dr. Gabaeff because counsel told the Court that "having no doctor  
24 [at trial] to talk about anything for the jury is a little too risky ... " RT, 05/07/15, at 2; Motion  
25 at 8. However, a review of the record belies Petitioner's claim. Hargrove, 100 Nev. at 502, 686  
26 P.2d at 225. On the second day of trial, during jury selection, the State and counsel discussed  
27 with the Court last-minute witness issues. Id. at 2-9. Counsel's discussed strategy was not to  
28 call Dr. Gabaeff, but to introduce Gabaeff's reports through the State's expert and to argue. Id.

1 at 2-3. Moreover, counsel repeatedly discussed cross-examining the State's expert, who was  
2 the victim's attending physician. Id. at 3, 9. In context, counsel was more concerned about  
3 cross-examining the State's expert than calling his own. Id. at 9. Moreover, the "Court  
4 indicated to [counsel] that he knew his doctor would not be available and that he would be  
5 using the State's witness .... " Court Minutes, 05/07/15.

6 Further, Petitioner fails to demonstrate what Dr. Gabaeff's testimony would have  
7 rendered a more favorable outcome probable. See Molina, 120 Nev. at 192, 87 P.3d at 538.  
8 Petitioner argues that Dr. Gabaeff would have impeached the credibility of State's expert  
9 because Dr. Gabaeff's notes alleged false billing. Motion at 7-8. First, Petitioner fails to  
10 establish how Dr. Gabaeff, having never treated the victim, would establish false billing for  
11 her ailments. Moreover, even Dr. Gabaeff's notes confirm there was a severe fracture to the  
12 orbital structure of the victim's right eye. See Exhibit 1. Indeed, there was substantial testimony  
13 and photographic evidence presented at the bench trial, with respect to the victim's injuries.  
14 RT, 09/29/15, at 14-25, 51-55, 65-72, 76-79. As such, Petitioner cannot establish a more  
15 favorable outcome had Dr. Gabaeff testified.

16 Similarly, Petitioner cannot establish prejudice for the failure to call the TJ Maxx  
17 security guard. At trial, the victim, Coria Carpenter, testified that she "lost it" in the store and  
18 chased a woman through the store with a crowbar over money. Id. at 74-76, 80-82. As such,  
19 Petitioner fails to demonstrate what else the security guard would have testified to at trial. See  
20 Molina, 120 Nev. at 192, 87 P.3d at 538. Accordingly, Petitioner's claim is denied.

## 21 **2. Ground 2**

22 In Ground 2, Petitioner complains that counsel was ineffective for failing to have the  
23 knife tested for DNA and fingerprints. Motion at 10. However, Petitioner fails to demonstrate  
24 how further forensic investigation would have rendered a more favorable outcome probable.  
25 Molina, 120 Nev. at 192, 87 P.3d at 538. Indeed, based on the testimony presented at trial, the  
26 results would have confirmed the presence of both the victim's and Petitioner's blood and  
27 fingerprints on the knife. See RT, 09/29/15, at 53. Further, Petitioner's assertion that "this  
28 evidence would have had the charges lowered to a simple domestic violence on both people

involved" is nothing more than a naked assertion suitable only for summary dismissal. Hargrove, 100 Nev. at 502, 686 P.2d at 225. As such, this claim is denied.

### 3. Ground 3

Petitioner next complains that the counsel was ineffective for not challenging the Criminal Complaint, which failed to list the location of the incident. Motion at 11. However, a specific address is not required. A criminal complaint is intended solely to put the defendant on formal written notice of the charge he must defend; it need not show probable cause for arrest on its face and may simply be drawn in the words of the statute so long as the essential elements of the crime are stated. Sanders v. Sheriff, 85 Nev. 179, 451 P.2d 718 (1969). As the victim's address is not an essential element of the crime, it would have been futile to challenge the lack of address. Ennis, 122 Nev. at 706, 137 P.3d at 1103. Moreover, Petitioner has consistently claimed self-defense; surely, he did not need notice of the place where he was allegedly defending himself. Accordingly, the claim is denied.

### 4. Ground 4

In Ground 4, Petitioner argues that counsel was ineffective for failing to object to the removal of self-defense instructions. Motion at 12. Petitioner waived his right to a jury trial so that he could put on a self-defense case and testify without a jury learning about his criminal record. However, at the conclusion of the trial, the Court determined that there was no evidence of self-defense, so a formal objection by counsel would have been futile. RT, 10/01/15, at 3; Ennis, 122 Nev. at 706, 137 P.3d at 1103. Moreover, Petitioner fails to establish prejudice because the Nevada Court of Appeals addressed the issue on direct appeal, under the abuse of discretion standard-as if an objection had been made. Perry v. State, Docket No. 69139 (Order of Affirmance, Dec. 14, 2016). While the Court of Appeals determined that it was error to reject the self-defense instructions, such error was harmless. Id at 2-3. Therefore, he cannot demonstrate a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelson, 115 Nev. at 403, 990 P.2d at 1268. Thus, Petitioner's claim is denied.

### 5. Ground 5



1       Petitioner next asserts counsel's ineffectiveness for waiving the preliminary hearing.  
2 Motion at 13. Petitioner fails to recognize that it was he, not counsel, who waived the  
3 preliminary hearing. Reporter's Transcript, 06/19/14, at 2-3. As such, counsel cannot be  
4 deemed ineffective for a decision that belonged solely to Petitioner. See Rhyne, 118 Nev. at  
5 8, 38 P.3d at 167. As such, Petitioner's claim is denied.

#### 6       **6. Ground 6**

7       In Ground 6, Petitioner claims counsel was ineffective for failing to have the Court  
8 order a psychiatric examination of the victim. Motion at 13-14. However, the record fails to  
9 demonstrate a compelling need for an examination. A compelling need for an examination  
10 exists if: (1) the State has called or obtained some benefit from a psychological or psychiatric  
11 expert; (2) the evidence of the crime is supported by little or no corroboration beyond the  
12 testimony of the victim; and (3) a reasonable basis exists to believe that mental or emotional  
13 state of the victim may have affected her veracity. Abbott v. State, 122 Nev. 715, 727-32, 138  
14 P .3d 462, 470-73 (2006). As the record is completely bare of evidence supporting any of the  
15 three Abbott factors, such a request would have been futile. Ennis, 122 Nev. at 706, 137 P .3d  
16 at 1103. As counsel cannot be ineffective for failing to make futile requests, Petitioner's claim  
17 is denied.

#### 18       **7. Ground 7**

19       Petitioner complains that counsel was ineffective for calling him a "drug-addled  
20 maniac," which "destroyed any possibility of showing [] self-defense." Motion at 14-15. First,  
21 counsel was not ineffective for using the term. During the trial, the victim testified on cross-  
22 examination that Petitioner had "erratic behaviors" and used and sold drugs. RT, 09/29/15, at  
23 84-86, 88. Moreover, in context, counsel's closing argument focused primarily on the victim's  
24 credibility. Counsel highlighted what he believed to be the unreasonableness of her testimony  
25 in an attempt to discredit her. Id at 18-20. He focused on the victim's description of past abuse,  
26 but the seemingly unreasonable act of allowing Petitioner to come over and sleep in her bed  
27 with her. RT, 10/01/15, at 19. And although she denied that Petitioner was a "drug-addled  
28 maniac," counsel's point was that, even if Petitioner was a "drug-addled maniac," the victim's

actions became even more inconsistent and unreasonable. Id.

Further, counsel's comment did not "destroy" Petitioner's self-defense claim. The Court previously denied the requested instructions, finding there was no evidence. RT, 10/01/15, at 3. Indeed, the Nevada Court of Appeals determined that it was "clear beyond a reasonable doubt that a rational trier of fact would have found Perry guilty" even if the instruction had been given. Perry v. State, Docket No. 69139 (Order of Affirmance, Dec. 14, 2016). Accordingly, the claim is denied.

#### **8. Ground 8**

In Ground 8, Petitioner complains that counsel's failure to investigate "Carpenter's life/past" was ineffective. Motion at 15. He asserts that she has mental health issues and is engaged in fraudulent activity selling prescription pills. Id. These are bare assertions suitable only for summary dismissal. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly, the claim is denied.

#### **9. Ground 9**

Petitioner next complains that counsel was ineffective for failing to interview the State's expert, Dr. Leibowitz. Motion at 16. However, Petitioner fails to show how a better investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at 192, 87 P.3d at 538. Indeed, Petitioner's claim is a naked assertion, belied by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

At trial, counsel thoroughly cross-examined Dr. Leibowitz regarding the conclusion that the victim's injuries made it obvious this was an abuse situation. RT, 09/29/15, at 25-28. During counsel's cross-examination, he effectively attacked the doctor's credibility by getting the doctor to discuss potential bias; Dr. Leibowitz told the Court he came to testify because "I have, you know, a sister and daughter and I wouldn't want them punched out and that's how I look at it." Id. at 25-26. Similarly, counsel's cross-examination attacked Dr. Leibowitz's conclusion that this was definitively abuse. See id at 27-28. As the record demonstrates, counsel was more than prepared to cross-examine Dr. Leibowitz. As such, Petitioner's claim is belied by the record and denied. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

1       **10. Ground 10**

2       Petitioner further asserts counsel failed to interview the TJ Maxx security guard. Motion  
3 at 16. However, Petitioner cannot demonstrate prejudice because the Court precluded the  
4 security guard's testimony. RT, 09/30/15, at 62-64. As interviewing the guard was ultimately  
5 unnecessary, counsel cannot be deemed ineffective. See Ennis, 122 Nev. at 706, 137 P.3d at  
6 1103.

7       Moreover, Petitioner fails to show how a better investigation would have rendered a  
8 more favorable outcome probable. Molina, 120 Nev. at 192, 87 P.3d at 538. At trial, Carpenter  
9 testified that she "lost it" in the store and chased a woman through the store with a crowbar  
10 over money. Id. at 74-76, 80-82. As such, it is unclear what the security guard would have  
11 stated that would have been more favorable to Petitioner. Thus, his claim is denied.

12       **11. Ground 11**

13       In Ground 11, Petitioner claims that counsel was ineffective for failing to raise the  
14 court-appointed investigator's "conflict of interest," which resulted in an incomplete  
15 investigation and his waiver of the preliminary hearing. Motion at 17-18. First, Petitioner's  
16 claims that the investigator had a conflict of interest and that the charges might have been  
17 reduced are bare assertions. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Further, as discussed,  
18 supra, Petitioner chose to waive his preliminary hearing. Reporter's Transcript, 06/19/14, at 2-  
19 3. As such, counsel cannot be deemed ineffective for a decision that belonged solely to  
20 Petitioner. See Rhyne, 118 Nev. at 8, 38 P.3d at 167. Accordingly, Petitioner's claim is denied.

21       **12. Ground 12**

22       Petitioner claims that counsel was ineffective for failing to challenge "overlapping  
23 charges" of assault and battery. Motion at 18-19. First, the Assault with a Deadly Weapon and  
24 Battery Resulting in Substantial Bodily Harm charges were based on separate allegations-  
25 Petitioner was charged with Assault with a Deadly Weapon for threatening to kill Carpenter  
26 with the knife and the Battery Resulting in Substantial Bodily Harm was because Petitioner  
27 kicked and punched Carpenter in every room of her home. Moreover, challenging the charges  
28 would have been futile because the Nevada Supreme Court has held that dual convictions

1 under the assault and battery statutes can stand as each crime includes elements the other does  
2 not. Jackson v. State, 128 Nev. 598, 606-07, 291 P.3d 1274, 1279-80 (2012) (citing  
3 Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180 (1932)). Accordingly, Petitioner's  
4 claim is denied. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

### 5 **13. Ground 13**

6 Petitioner further argues that counsel was ineffective for failing to investigate his claim  
7 that Carpenter poured bleach on his clothes, which would have supported his claim of self-  
8 defense. Motion at 19. However, the only evidence that Petitioner cites to support his claim is  
9 his own statement. See Exhibit 1. As such, this is a bare assertion, and his claim is denied.  
10 Hargrove, 100 Nev. at 502, 686 P.2d at 225.

### 11 **14. Ground 14**

12 In Ground 14, Petitioner asserts counsel failed to investigate the "fabricated [] crime  
13 scene." Motion at 20. Specifically, Petitioner focuses on Carpenter's "placing blood in specific  
14 places" and taking of pictures. Id. However, Carpenter testified at trial that she purposefully  
15 left blood evidence throughout the house because she thought she was going to die and wanted  
16 to leave a sign that "there was a struggle." RT, 09/12, 9/15, at 56. Because Carpenter fully  
17 admitted to purposefully leaving blood evidence, it is unclear what further investigation would  
18 have shown. Molina, 120 Nev. at 192, 87 P.3d at 538.

19 Moreover, Petitioner's claim that counsel was ineffective because Carpenter took all of  
20 the pictures is belied by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Indeed, Crime  
21 Scene Analyst Danielle Keller testified that she took photographs of the scene and of  
22 Carpenter. RT, 09/13/15, at 48, 54-55. As such, Petitioner cannot establish ineffectiveness.

23 Finally, Petitioner's assertion that he was maliciously prosecuted is a bare assertion  
24 suitable only for summary dismissal. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly,  
25 Ground 14 is denied.

### 26 **15. Ground 15**

27 Petitioner also claims that counsel's failure to cross-examine the victim "about the  
28 bleach she used" was ineffective. Motion at 21. However, Petitioner cannot demonstrate

deficient performance because counsel retains the authority to determine what questions to ask of witnesses. Rhyne, 118 Nev. at 8, 38 P.3d at 167. Moreover, Petitioner fails to show what questioning Carpenter about pouring bleach on his clothes in a bathtub would have revealed. Thus, he cannot establish the result of the trial would have been different had counsel asked about the alleged bleaching. McNelson, 115 Nev. at 403, 990 P.2d at 1268. Thus, Petitioner's claim is denied.

#### **16. Ground 16**

Next, Petitioner asserts that trial counsel failed to correct incorrect dates in his PSI. Motion at 22. Yet Petitioner fails to state what the alleged errors were or how they "added many more years on [his] sentence." Id. Accordingly, Petitioner's assertion is a bare and naked claim that is denied. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

#### **17. Ground 17**

Petitioner also asserts that counsel should have filed a motion for a new trial because the Court rejected his proposed self-defense instructions. Motion at 22-23. Filing such a motion would have been futile because the Court already rejected Petitioner's first request for those instructions. Ennis, 122 Nev. at 706, 137 P.3d at 1103. Consequently, Petitioner fails to show deficient performance.

Moreover, Petitioner fails to demonstrate prejudice because the Nevada Court of Appeals determined that the presence of a self-defense instruction would not have made any difference in light of the overwhelming evidence of Petitioner's guilt. Perry v. State, Docket No. 69139 (Order of Affirmance, Dec. 14, 2016) (harmless error to reject the self-defense instructions in light of evidence of guilt). Accordingly, Petitioner's claim is denied.

#### **18. Ground 18**

Petitioner again complains that counsel was ineffective for not investigating Carpenter's alleged prescription pill fraud with "Dr. Bruce." Motion at 23. It is unclear who "Dr. Bruce" is; moreover, Petitioner's claim is a bare assertion suitable only for summary dismissal. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly, the claim is denied.

#### **19. Ground 19**

1       Petitioner asserts he is entitled to relief because of the cumulative effect of counsel's  
2 ineffectiveness. Motion at 24. While the Nevada Supreme Court has noted that some courts  
3 do apply cumulative error in addressing ineffective assistance claims, it has not specifically  
4 adopted this approach. See McConnell v. State, 125 Nev. 243,250 n.17, 212 P.3d 307,318 n.17  
5 (2009). Nevada is not alone; with respect to claims of cumulative Strickland error, the Eighth  
6 Circuit Court of Appeals has concluded that "a habeas petitioner cannot build a showing of  
7 prejudice on a series of errors, none of which would by itself meet the prejudice test."  
8 Middleton v. Roper, 455 F.3d 83 8, 851 (8th Cir. 2006), cert. denied, 549 U.S. 1134, 127 S.  
9 Ct. 980 (2007).

10       However, the Nevada Supreme Court has noted that that other courts have held that  
11 "multiple deficiencies in counsel's performance may be cumulated for purposes of the  
12 prejudice prong of the Strickland test when the individual deficiencies otherwise would not  
13 meet the prejudice prong." McConnell, 125 Nev. at 259 n.17, 212 P.3d at 318 n.17 (utilizing  
14 this approach to note that the defendant is not entitled to relief). Even if the Court applies  
15 cumulative error analysis to Petitioner's claims of ineffective assistance, Petitioner fails to  
16 demonstrate cumulative error warranting reversal. A cumulative error finding in the context  
17 of a Strickland claim is extraordinarily rare and requires an extensive aggregation of errors.  
18 See, e.g., State v. Hester, 127 N.M. 218, 222, 979 P.2d 729, 733 (1999); Harris by and Through  
19 Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995); Derden v. McNeel, 978 F.2d 1453,  
20 1461 (5th Cir. 1992).

21       Under cumulative error analysis, a defendant must first make a threshold showing that  
22 counsel's performance was deficient and counsels representation fell below an objective  
23 standard of reasonableness. State v. Sheahan, 139 Idaho 267, 287, 77 P.3d 956, 976 (2003);  
24 State v. Savo, 108 P.3d 903, 916 (Alaska 2005); State v. Maestas, 299 P.3d 892, 990 (Utah  
25 2012). In fact, logic dictates that cumulative error cannot exist where the defendant fails to  
26 show that any violation or deficiency existed under Strickland. McConnell, 125 Nev. at 259,  
27 212 P.3d at 318; United States v. Franklin, 321 F.3d 1231, 1241 (9th Cir. 2003); Turner v.  
28 Quarterman, 481 F.3d 292, 301 (5th Cir. 2007); Pearson v. State, 12 P.3d 686, 692 (Wyo.

1 2000); Hester, 979 P .2d at 733. Further, in order to cumulate errors, the defendant must not  
2 only show that an error occurred regarding counsel's representation, but that at least two errors  
3 occurred. Rolle v. State, 236 P.3d 259, 276-77 (Wyo. 2010); Hooks v. Workman, 689 F.3d  
4 1148, 1194-95 (10th Cir. 2012).

5 If the defendant can show that two or more errors existed in counsel's representation,  
6 then he must next show that cumulatively, the errors prejudiced him. McConnell, 125 Nev. at  
7 259n.17, 212 P.3d at 318 n.17; Doyle v. State, 116 Nev. 148, 163, 995 P.2d 465, 474 (2000); State  
8 v. Novak, 124 P .3d 182, 189 (Mont. 2005); Savo, 108 P .13d at 916. A defendant can only  
9 demonstrate the existence of prejudice when he has shown that the cumulative effect of the  
10 errors "were sufficiently significant to undermine [the court's] confidence in the outcome of  
11 the ... trial." In re Jones, 13 Cal.4<sup>th</sup> 552, 584, 917 P.2d 1175, 1193 (1996); Collins v. Sec'y of  
12 Pennsylvania Dep't of Corr., 742 F.3d 528, 542 (3d Cir. 2014). "[M]ere allegations of error  
13 without proof of prejudice" are insufficient to demonstrate cumulative error. Novak, 124 P.3d  
14 at 189. Further, "in most cases errors, even unreasonable errors, will not have a cumulative  
15 impact sufficient to undermine confidence in the outcome of the trial, especially if the evidence  
16 against the defendant remains compelling." Theil, 665 N.W.2d at 322-23; see also Maestas,  
17 299 P.3d at 990 (holding that errors resulting in no harm are insufficient to demonstrate  
18 cumulative error).

19 As discussed, *supra*, Petitioner has failed to make a single showing that counsel's  
20 representation was objectively unreasonable. Further, even if Petitioner had made such a  
21 showing, he has failed to demonstrate that the cumulative effect of these errors was so  
22 prejudicial as to undermine this Court's confidence in the outcome of Petitioner's case. Collins,  
23 742 F.3d at 542. Therefore, his claim of cumulative error is without merit and is denied.

## 24 **20. Claim 20**

25 In Claim 20, Petitioner claims his appellate counsel was ineffective for failing to  
26 include a certificate of service in his motion requesting order directing the Las Vegas  
27 Metropolitan Police Department to Conduct Genetic Marker and Latent Print Analysis of  
28 Evidence Impounded at the Crime Scene, which therefore invalidated the Motion. Second

1 Petition at 25-27. However, the State did not argue that the failure to include a certificate of  
2 service invalidated his Motion, and the district court did not cite that failure in its ruling. There  
3 is no evidence counsel's failure to include a certificate of service in Petitioner's Motion had  
4 any effect on the court's denial of his Motion.

5 **21. Claims 21-22**

6 In Claims 21-22, Petitioner claims counsel "failed to use Nevada statutes or NRS to  
7 support [his Motion] for fingerprint analysis." Second Petition at 26-27. To the contrary, his  
8 counsel cited Nevada statutes and Nevada Supreme Court cases as controlling authority in his  
9 Motion. Additionally, Petitioner fails to identify what statutes or authority his counsel should  
10 have included in his Motion. Therefore, his claims are summarily denied as they are bare and  
11 naked. Further, he cannot demonstrate good cause to overcome the procedural bar because he  
12 was not entitled to effective post-conviction counsel, thus his claims of ineffective assistance  
13 of counsel are without merit and are denied.

14 **ORDER**

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

17 Dated this 14th day of July, 2022

18   
19 \_\_\_\_\_  
DISTRICT JUDGE

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

53A 50C E539 063F  
Michael Villani  
District Court Judge

23 BY /s/ John Afshar  
24 JOHN AFSHAR  
25 Deputy District Attorney  
26 Nevada Bar #14408  
27  
28



1 CERTIFICATE OF SERVICE

2 I hereby certify that service of Findings of Fact, Conclusions of Law and Order, was  
3 made this 13th day of July, 2022, by Mail via United States Postal Service to:

4 Genaro Richard Perry #1153366  
5 SDCC  
6 P.O. BOX 208  
Indian Springs, NV 89070

7  
8 /s/ Kristian Falcon

9 Secretary for the District Attorney's Office  
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28 JA/kf/Appeals/DVU

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Genaro Perry, Plaintiff(s)

CASE NO: A-22-851874-W

7 vs.

DEPT. NO. Department 17

8 State of Nevada, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 7/14/2022

15 District Attorney

motions@clarkcountyda.com

16 John Taylor

john.taylor@clarkcountyda.com

17 Morgan Thomas

Morgan.Thomas@ClarkCountyDA.com

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR THE  
COUNTY OF CLARK

GENARO RICHARD PERRY )  
Petitioner, )

v. STATE OF NEVADA, )  
WARDEN HATCHINGS )

Case No. A-22-851874-W

Dept. No. 17

Respondent. )

ORDER FOR TRANSPORTATION OF INMATE FOR COURT APPEARANCE  
OR, IN THE ALTERNATIVE, FOR APPEARANCE BY TELEPHONE OR VIDEO  
CONFERENCE

Based upon the above motion, I find that the presence of  
GENARO RICHARD PERRY is necessary for the hearing that is scheduled in this  
case on the 6 day of JULY, 2022, at  
8:30 am.

THEREFOR, IT IS HEREBY ORDERED that,

☒ Pursuant to NRS 209.274, Warden HATCHINGS  
of SOUTHERN DESERT CORRECTIONAL CENTER is hereby commanded to have  
GENARO RICHARD PERRY transported to appear before me at a hearing  
scheduled for JULY 6, 2022 at 8:30 at the  
EIGHTH JUDICIAL DISTRICT COURT County Courthouse. Upon completion of the hearing,

1 Gerardo Richard Leroy is to be transported back to the above  
2 named institution.  
3

4 ☐ Pursuant to NRS 209.274(2)(a), Petitioner shall be made available for telephonic  
5 or video conference appearance by his or her institution. My clerk will contact  
6 \_\_\_\_\_ at \_\_\_\_\_ to make  
7 arrangements for the Court to initiate the telephone appearance for the hearing.  
8

9 Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
10  
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13 \_\_\_\_\_  
14 District Court Judge  
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07/15/2022

*Heather S. Shuman*  
CLERK OF THE COURT

GENARO R. PERRY

NDOC No. 1153366

P.O. BOX 208  
INDIAN SPRINGS, NV 89410

In proper person pro se

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

GENARO RICHARD PERRY )

Petitioner, )

v. STATE OF NEVADA; )  
WARDEN HUTCHINGS )

Case No. A-22-851874-W

Dept. No. 17

Respondent. )

MOTION AND ORDER FOR TRANSPORTATION  
OF INMATE FOR COURT APPEARANCE  
OR, IN THE ALTERNATIVE,  
FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE

Petitioner, GENARO RICHARD PERRY, proceeding pro se, requests  
that this Honorable Court order transportation for his personal appearance or, in the  
alternative, that he be made available to appear by telephone or by video conference  
at the hearing in the instant case that is scheduled for JULY 6, 2022  
at 8:30 AM.

1 In support of this Motion, I allege the following:

2 1. I am an inmate incarcerated at Southern Desert Correctional Center

3 My mandatory release date is 11/20/2024.

4  
5 2. The Department of Corrections is required to transport offenders to and  
6  
7 from Court if an inmate is required or requests to appear before a Court in this state.

8  
9 NRS 209.274 Transportation of Offender to Appear Before Court states:

10 "1. Except as otherwise provided in this section, when an offender is  
11 required or requested to appear before a Court in this state, the  
12 Department shall transport the offender to and from Court on the day  
13 scheduled for his appearance.

14 2. If notice is not provided within the time set forth in NRS 50.215, the  
15 Department shall transport the offender to Court on the date scheduled  
16 for his appearance if it is possible to transport the offender in the usual  
17 manner for the transportation of offenders by the Department. If it is  
18 not possible for the Department to transport the offender in the usual  
19 manner:

20 (a) The Department shall make the offender available on the date scheduled  
21 for his appearance to provide testimony by telephone or by video conference,  
22 if so requested by the Court.

23 (b) The Department shall provide for special transportation of the offender to  
24 and from the Court, if the Court so orders. If the Court orders special  
25 transportation, it shall order the county in which the Court is located to  
26 reimburse the Department for any cost incurred for the special transportation.

27 (c) The Court may order the county sheriff to transport the offender to and  
28 from the Court at the expense of the county."

29 3. My presence is required at the hearing because:

☒ I AM NEEDED AS A WITNESS.

My petition raises substantial issues of fact concerning events in which I participated and about which only I can testify. *See U.S. v. Hayman*, 342 U.S. 205 (1952) (District Court erred when it made findings of fact concerning Hayman's knowledge and consent to his counsel's representation of a witness against Hayman without notice to Hayman or Hayman's presence at the evidentiary hearing).

☒ THE HEARING WILL BE AN EVIDENTIARY HEARING.

My petition raises material issues of fact that can be determined only in my presence. *See Walker v. Johnston*, 312 U.S. 275 (1941) (government's contention that allegations are improbable and unbelievable cannot serve to deny the petitioner an opportunity to support them by evidence). The Nevada Supreme Court has held that the presence of the petitioner for habeas corpus relief is required at any evidentiary hearing conducted on the merits of the claim asserted in the petition. *See Gebers v. Nevada*, 118 Nev. 500 (2002).

4. The prohibition against ex parte communication requires that I be present at any hearing at which the state is present and at which issues concerning the claims raised in my petition are addressed. U.S. Const. amends. V, VI.

5. If a person incarcerated in a state prison is required or is requested to appear as a witness in any action, the Department of Corrections must be notified in writing not less than 7 business days before the date scheduled for his appearance in Court if the inmate is incarcerated in a prison located not more than 40 miles from Las Vegas. NRS 50.215(4). If a person is incarcerated in a prison located 41 miles or more from Las Vegas, the Department of Corrections must be notified in writing not less than 14 business days before the date scheduled for the person's appearance in Court.

6. Southern Desert Correctional Center is located approximately 40 miles from Las Vegas, Nevada.

1 7. If there is insufficient time to provide the required notice to the Department  
2 of Corrections for me to be transported to the hearing, I respectfully request that this  
3 Honorable Court order the Warden to make me available on the date of the  
4 scheduled appearance, by telephone, or video conference, pursuant to NRS  
5 209.274(2)(a), so that I may provide relevant testimony and/or be present for the  
6 evidentiary hearing.

7 8. The rules of the institution prohibit me from placing telephone calls from  
8 the institution, except for collect calls, unless special arrangements are made with  
9 prison staff. Nev. Admin. Code DOC 718.01. However, arrangements for my  
10 telephone appearance can be made by contacting the following staff member at my  
11 institution: Southern Desert Correctional Center  
12 whose telephone number is (725) 216-6000

13  
14 Dated this 20 day of June, 2022.

15  
16 Genaro R. Perez  
17  
18  
19 Pro SE  
20  
21  
22  
23  
24  
25  
26  
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28  
29



**CERTIFICATE OF SERVICE BY MAILING**

I, Cenado Richard Kelly, hereby certify, pursuant to NRCP 5(b), that on this 20  
day of JUNE, 2022, I mailed a true and correct copy of the foregoing, "Motion and  
ORDER FOR TRANSPORTATION OF INMATE FOR COURT APPEARANCE"  
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

STEVEN D. GRIERSON,  
CLERK OF THE COURT  
800 LEWIS AVENUE, 3RD FLOOR  
LAS VEGAS, NV 89155-1100

STEVEN B. WOLFSON, District Attorney  
OFFICE OF THE DISTRICT ATTORNEY  
200 LEWIS AVENUE  
P.O. BOX 552212  
LAS VEGAS, NV 89155-2212

CC:FILE

DATED: this 20 day of JUNE, 2022

Cenado R. Kelly  
S.D.C.C. /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 and order

FOR TRANSPORTATION FOR COURT APPEARANCE  
(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.

Gervasio R. Perry  
Signature

6/20/22  
Date

Gervasio R. Perry  
Print Name

Pro SE  
Title

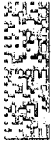
Greene R. Perry 1153504  
P.O. Box 208  
Indian Springs, NV 89070

quodient

FIRST-CLASS MAIL

06/07/2022

US POSTAGE \$001.56

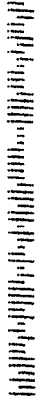


ZIP 89101

0411172254121

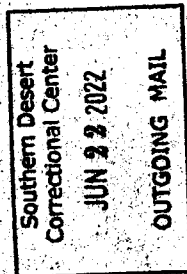
SDCC

STEVEN J. CLIFTON, Clerk of the Court  
800 Lewis Avenue, 3rd Floor  
Las Vegas, NV 89155-1100



Psalm 146: 7

No weapon used against me will succeed (prosper) Isaiah 54:17



IN God WE TRUST

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Electronically Filed  
7/15/2022 11:10 AM  
Steven D. Grierson  
CLERK OF THE COURT



Genaro Perry, Plaintiff(s)

vs.

State of Nevada, Defendant(s)

Case No.: A-22-851874-W

Department 17

**NOTICE OF HEARING**

Please be advised that the Plaintiff/Inmate's - Motion and Order for Transportation of Inmate for Court Appearance or, in the Alternative, for Appearance by Telephone or Video Conference in the above-entitled matter is set for hearing as follows:

**Date:** August 15, 2022

**Time:** 8:30 AM

**Location:** RJC Courtroom 11A  
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



1 NEFF

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

4  
5 GENARO PERRY,

6 Petitioner,

Case No: A-22-851874-W

Dept No: XVII

7 vs.

8 STATE OF NEVADA; ET AL.,

9 Respondent,

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

10  
11 **PLEASE TAKE NOTICE** that on July 14, 2022, the court entered a decision or order in this matter, a true  
12 and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed  
15 to you. This notice was mailed on July 20, 2022.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Heather Ungermann

18 Heather Ungermann, Deputy Clerk

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

20 I hereby certify that on this 20 day of July 2022, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

22 Clark County District Attorney's Office  
23 Attorney General's Office – Appellate Division-

24 ☒ The United States mail addressed as follows:

25 Genaro Perry # 1153366  
26 P.O. Box 208  
27 Indian Springs, NV 89070

28 /s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

*Heather A. Hume*

CLERK OF THE COURT

**FCL**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**JOHN AFSHAR**  
Deputy District Attorney  
Nevada Bar #14408  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**GNERARO RICHARD PERRY**  
ID#1456173

Petitioner,

-vs-

**THE STATE OF NEVADA.**

Respondent.

**CASE NO: A-22-851874-W**

**C-14-298879-1**

**DEPT NO: XVII**

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

**DATE OF HEARING: June 7, 2022**  
**TIME OF HEARING: 11:00 AM**

THIS CAUSE having come on for hearing before the Honorable MICHAEL VILLANI, District Judge, on the 7<sup>th</sup> day of June 2022, the matter heard in Chambers, and this Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, this Court makes the following findings of fact and conclusions of law:

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1  
2 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

3 **PROCEDURAL HISTORY**

4 On June 25, 2014, Genaro Perry (hereinafter “Petitioner”) was charged by way of  
5 Information with Count One: Robbery with Use of a Deadly Weapon (Category B Felony –  
6 NRS 200.380), Count Two: False Imprisonment with Use of a Deadly Weapon (Category B  
7 Felony – NRS 200.460), Count Three: Grand Larceny Auto (Category B Felony – NRS  
8 200.460), Count Four: Assault with a Deadly Weapon (Category B Felony – NRS 207.190),  
9 Count Five: Coercion (Category B Felony – NRS 207.190), Count Six: Battery Resulting in  
10 Substantial Bodily Harm Constituting Domestic Violence (Category C Felony – NRS 200.481,  
11 200.485) and Count Seven: Preventing or Dissuading Witness or Victim from Reporting Crime  
12 or Commencing Prosecution (Category D Felony – NRS 199.305).

13 On October 1, 2015, after a three-day bench trial, the district court found Petitioner  
14 guilty on all counts. On January 6, 2016, Petitioner was sentenced to an aggregate total of a  
15 maximum of three hundred thirty-six (336) months and a minimum of ninety-six (96) months  
16 in the Nevada Department of Corrections, with five hundred ninety-seven (597) days credit  
17 for time served. Petitioner’s Judgment of Conviction was filed on January 22, 2016. An  
18 Amended Judgment of Conviction was filed on April 28, 2017. A second Amended Judgment  
19 of Conviction striking verbiage referencing an aggregate total sentence in Petitioner’s  
20 Amended Judgment of Conviction was filed on August 8, 2017.

21 Petitioner filed a Notice of Appeal on November 4, 2015, appealing this Court’s guilty  
22 verdict. On December 14, 2016, the Nevada Supreme Court affirmed this Court’s verdict and  
23 issued Remittitur on January 10, 2017.

24 On February 7, 2017, Petitioner filed a Petition for Writ of Habeas Corpus (Post-  
25 conviction) (hereinafter “First Petition”), Motion for Appointment of Attorney, Motion to  
26 Dismiss Counsel, and Motion for a New Trial. The State filed its response on April 7, 2017.  
27 On April 24, 2017, the district court denied Petitioner’s Motion for New Trial but granted  
28 Petitioner’s Motion to Withdraw Counsel and Motion to Appoint Counsel. The court appointed



1 Jean Schwartzer Esq. as counsel for the purposes of filing a supplement to the First Petition.

2 On February 3, 2021, Petitioner filed a Motion Requesting Order Directing the Las  
3 Vegas Metropolitan Police Department to Conduct Genetic Marker and Latent Print Analysis  
4 of Evidence Impounded at Crime Scene and requested a hearing. The State filed its Response  
5 on February 11, 2021. On February 17, 2021, Petitioner's Motion was denied, and the district  
6 court issued its Order on April 16, 2021.

7 On August 16, 2021, Petitioner filed a Motion to Withdraw Counsel, which was granted  
8 by the district court. Counsel never filed a supplement to the First Petition before withdrawing.  
9 Petitioner filed a Pro Per Supplement to his own Petition on November 29, 2021.

10 On November 29, 2021, Petitioner filed a Motion to Modify and/or Correct Illegal  
11 Sentence. The State filed its Opposition on December 15, 2021. This Court denied Petitioner's  
12 Motion on December 20, 2021, and issued its Order on December 29, 2021.

13 Petitioner filed a second Notice of Appeal on January 27, 2022, appealing this Court's  
14 decision to deny his Motion to Modify and/or Correct Illegal Sentence. On February 18, 2022,  
15 the Nevada Supreme Court affirmed the district court's denial of Petitioner's Motion and  
16 issued Remittitur on March 15, 2022. However, that Remittitur was recalled by the Nevada  
17 Court of Appeals and is currently still on appeal.

18 Petitioner filed the instant Petition (hereinafter "Second Petition") on April 29, 2022.  
19 The State filed its Response on June 6, 2022. On June 29, 2022, this Court denied both  
20 Petitioner's First and Second Petitions. This Court's Findings of Fact, Conclusions of Law and  
21 Order now follows.

## 22 **STATEMENT OF THE FACTS**

23 Petitioner's Presentence Investigation Report (hereinafter "PSI") summarized the facts  
24 of the crime as follows:

25 Petitioner and Carla Carpenter (hereinafter "Carpenter") were  
26 involved in a six-month relationship. On April 20, 2014, Petitioner  
27 came over to Carpenter's house to get his property. He ended up  
28 spending the night at her house because it was late. The following  
morning, Petitioner asked Carpenter for \$5,000.00 to buy drugs.  
When she refused to lend him the money, Petitioner grabbed a  
steak knife and threatened to kill her and her family. He then

lunged at Carpenter with the knife.

Next, Petitioner banged Carpenter's head against the kitchen floor and kicked her in the face several times. When she tried to call the police, Petitioner threw her phone against the wall. Petitioner would not allow her to leave.

Petitioner then picked up Carpenter's car keys, held the knife to her and said, "I will take these." Before he left in her car, he threw her phone in the toilet and threatened to kill her and her ex-husband if she called the police. Carpenter suffered numerous injuries as well as damage to her house.

PSI 6-7.

## **ANALYSIS**

### **I. PETITIONER RECEIVED THE EFFECTIVE ASSISTANCE OF COUNSEL**

Petitioner alleges nineteen instances of ineffective assistance of counsel. Nevada has adopted the standard outlined in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), for determinations regarding the effectiveness of counsel. Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984); Kirksey v. State, 112 Nev. 980,998, 923 P.2d 1102, 1113 (1996). Under Strickland, in order to assert a claim of ineffective assistance of counsel, the defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying a two-pronged test. Strickland, 466 U.S. at 686-687, 104 S. Ct. at 2064; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the defendant must show that his counsel's representation fell below an objective standard of reasonableness, and that, but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. See Strickland, 466 U.S. at 687-688, 694, 104 S. Ct. at 2064, 2068.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentuck, 559 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney's representations amounted to incompetence under prevailing professional norms, "not whether it deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 88, 131 S. Ct. 770, 778 (2011). Furthermore, "[e]ffective counsel does not mean errorless counsel, but rather counsel whose assistance is ' [w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430,432, 537 P.2d 473,474

1 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

2 A court begins with a presumption of effectiveness and then must determine whether  
3 the defendant has demonstrated by a preponderance of the evidence that counsel was  
4 ineffective. Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 35 (2004). The role of a  
5 court in considering allegations of ineffective assistance of counsel is "not to pass upon the  
6 merits of the action not taken but to determine whether, under the particular facts and  
7 circumstances of the case, trial counsel failed to render reasonably effective assistance."  
8 Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (emphasis added) (citing  
9 Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)).

10 In considering whether trial counsel was effective, the court must determine whether  
11 counsel made a "sufficient inquiry into the information ... pertinent to his client's case."  
12 Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); citing. Strickland, 466 U.S. at  
13 690-691, 104 S. Ct. at 2066. Once this decision is made, the court will consider whether  
14 counsel made "a reasonable strategy decision on how to proceed with his client's case."  
15 Doleman, 112 Nev. at 846, 921 P.2d at 280; citing Strickland, 466 U.S. at 690-691, 104 S. Ct.  
16 at 2066. Counsel's strategy decision is a "tactical" decision and will be "virtually  
17 unchallengeable absent extraordinary circumstances." Doleman, 112 Nev. at 846, 921 P.2d at  
18 280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466  
19 U.S. at 691, 104 S. Ct. at 2066.

20 This analysis does not indicate that the court should "second guess reasoned choices  
21 between trial tactics, nor does it mean that defense counsel, to protect himself against  
22 allegations of inadequacy, must make every conceivable motion no matter how remote the  
23 possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711; citing Cooper, 551 F  
24 .2d at 1166 (9th Cir. 1977). In essence, the court must "judge the reasonableness of counsel's  
25 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
26 conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. However, counsel cannot be deemed  
27 ineffective for failing to make futile objections, file futile motions, or for failing to make futile  
28 arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

1 Even if a defendant can demonstrate that his counsel's representation fell below an  
2 objective standard of reasonableness, he must still demonstrate prejudice and show a  
3 reasonable probability that, but for counsel's errors, the result of the trial would have been  
4 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
5 Strickland, 466 U.S. at 687). "A reasonable probability is a probability sufficient to undermine  
6 confidence in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. A defendant who  
7 contends his attorney was ineffective because he did not adequately investigate must show  
8 how a better investigation would have rendered a more favorable outcome probable. Molina  
9 v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

10 Finally, claims asserted in a petition for post-conviction relief must be supported with  
11 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v.  
12 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not  
13 sufficient, nor are those belied and repelled by the record. Id.

#### 14 **1. Ground 1**

15 Petitioner complains that counsel was ineffective for failing to list or call the TJ Maxx  
16 security guard or Dr. Gabaeff. Motion at 7-9. However, Petitioner cannot demonstrate  
17 deficient performance because counsel retains the authority to determine what witnesses to  
18 call at trial. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). Moreover, counsel did try  
19 to call the security guard, but the Court declined his request. RT, 09/30/15, at 62-64. Counsel  
20 was not ineffective for failing to challenge the Court's ruling, as it would have been futile.  
21 Ennis, 122 Nev. at 706, 137 P.3d at 1103.

22 Moreover, Petitioner fails to establish prejudice. Petitioner asserts that counsel was  
23 ineffective for failing to call Dr. Gabaeff because counsel told the Court that "having no doctor  
24 [at trial] to talk about anything for the jury is a little too risky ... " RT, 05/07/15, at 2; Motion  
25 at 8. However, a review of the record belies Petitioner's claim. Hargrove, 100 Nev. at 502, 686  
26 P.2d at 225. On the second day of trial, during jury selection, the State and counsel discussed  
27 with the Court last-minute witness issues. Id. at 2-9. Counsel's discussed strategy was not to  
28 call Dr. Gabaeff, but to introduce Gabaeff's reports through the State's expert and to argue. Id.

1 at 2-3. Moreover, counsel repeatedly discussed cross-examining the State's expert, who was  
2 the victim's attending physician. Id. at 3, 9. In context, counsel was more concerned about  
3 cross-examining the State's expert than calling his own. Id. at 9. Moreover, the "Court  
4 indicated to [counsel] that he knew his doctor would not be available and that he would be  
5 using the State's witness .... " Court Minutes, 05/07/15.

6 Further, Petitioner fails to demonstrate what Dr. Gabaeff's testimony would have  
7 rendered a more favorable outcome probable. See Molina, 120 Nev. at 192, 87 P.3d at 538.  
8 Petitioner argues that Dr. Gabaeff would have impeached the credibility of State's expert  
9 because Dr. Gabaeff's notes alleged false billing. Motion at 7-8. First, Petitioner fails to  
10 establish how Dr. Gabaeff, having never treated the victim, would establish false billing for  
11 her ailments. Moreover, even Dr. Gabaeff's notes confirm there was a severe fracture to the  
12 orbital structure of the victim's right eye. See Exhibit 1. Indeed, there was substantial testimony  
13 and photographic evidence presented at the bench trial, with respect to the victim's injuries.  
14 RT, 09/29/15, at 14-25, 51-55, 65-72, 76-79. As such, Petitioner cannot establish a more  
15 favorable outcome had Dr. Gabaeff testified.

16 Similarly, Petitioner cannot establish prejudice for the failure to call the TJ Maxx  
17 security guard. At trial, the victim, Coria Carpenter, testified that she "lost it" in the store and  
18 chased a woman through the store with a crowbar over money. Id. at 74-76, 80-82. As such,  
19 Petitioner fails to demonstrate what else the security guard would have testified to at trial. See  
20 Molina, 120 Nev. at 192, 87 P.3d at 538. Accordingly, Petitioner's claim is denied.

## 21 **2. Ground 2**

22 In Ground 2, Petitioner complains that counsel was ineffective for failing to have the  
23 knife tested for DNA and fingerprints. Motion at 10. However, Petitioner fails to demonstrate  
24 how further forensic investigation would have rendered a more favorable outcome probable.  
25 Molina, 120 Nev. at 192, 87 P.3d at 538. Indeed, based on the testimony presented at trial, the  
26 results would have confirmed the presence of both the victim's and Petitioner's blood and  
27 fingerprints on the knife. See RT, 09/29/15, at 53. Further, Petitioner's assertion that "this  
28 evidence would have had the charges lowered to a simple domestic violence on both people

involved" is nothing more than a naked assertion suitable only for summary dismissal. Hargrove, 100 Nev. at 502, 686 P.2d at 225. As such, this claim is denied.

### 3. Ground 3

Petitioner next complains that the counsel was ineffective for not challenging the Criminal Complaint, which failed to list the location of the incident. Motion at 11. However, a specific address is not required. A criminal complaint is intended solely to put the defendant on formal written notice of the charge he must defend; it need not show probable cause for arrest on its face and may simply be drawn in the words of the statute so long as the essential elements of the crime are stated. Sanders v. Sheriff, 85 Nev. 179, 451 P.2d 718 (1969). As the victim's address is not an essential element of the crime, it would have been futile to challenge the lack of address. Ennis, 122 Nev. at 706, 137 P.3d at 1103. Moreover, Petitioner has consistently claimed self-defense; surely, he did not need notice of the place where he was allegedly defending himself. Accordingly, the claim is denied.

### 4. Ground 4

In Ground 4, Petitioner argues that counsel was ineffective for failing to object to the removal of self-defense instructions. Motion at 12. Petitioner waived his right to a jury trial so that he could put on a self-defense case and testify without a jury learning about his criminal record. However, at the conclusion of the trial, the Court determined that there was no evidence of self-defense, so a formal objection by counsel would have been futile. RT, 10/01/15, at 3; Ennis, 122 Nev. at 706, 137 P.3d at 1103. Moreover, Petitioner fails to establish prejudice because the Nevada Court of Appeals addressed the issue on direct appeal, under the abuse of discretion standard-as if an objection had been made. Perry v. State, Docket No. 69139 (Order of Affirmance, Dec. 14, 2016). While the Court of Appeals determined that it was error to reject the self-defense instructions, such error was harmless. Id at 2-3. Therefore, he cannot demonstrate a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelson, 115 Nev. at 403, 990 P.2d at 1268. Thus, Petitioner's claim is denied.

### 5. Ground 5

1       Petitioner next asserts counsel's ineffectiveness for waiving the preliminary hearing.  
2 Motion at 13. Petitioner fails to recognize that it was he, not counsel, who waived the  
3 preliminary hearing. Reporter's Transcript, 06/19/14, at 2-3. As such, counsel cannot be  
4 deemed ineffective for a decision that belonged solely to Petitioner. See Rhyne, 118 Nev. at  
5 8, 38 P.3d at 167. As such, Petitioner's claim is denied.

#### 6       **6. Ground 6**

7       In Ground 6, Petitioner claims counsel was ineffective for failing to have the Court  
8 order a psychiatric examination of the victim. Motion at 13-14. However, the record fails to  
9 demonstrate a compelling need for an examination. A compelling need for an examination  
10 exists if: (1) the State has called or obtained some benefit from a psychological or psychiatric  
11 expert; (2) the evidence of the crime is supported by little or no corroboration beyond the  
12 testimony of the victim; and (3) a reasonable basis exists to believe that mental or emotional  
13 state of the victim may have affected her veracity. Abbott v. State, 122 Nev. 715, 727-32, 138  
14 P .3d 462, 470-73 (2006). As the record is completely bare of evidence supporting any of the  
15 three Abbott factors, such a request would have been futile. Ennis, 122 Nev. at 706, 137 P .3d  
16 at 1103. As counsel cannot be ineffective for failing to make futile requests, Petitioner's claim  
17 is denied.

#### 18       **7. Ground 7**

19       Petitioner complains that counsel was ineffective for calling him a "drug-addled  
20 maniac," which "destroyed any possibility of showing [] self-defense." Motion at 14-15. First,  
21 counsel was not ineffective for using the term. During the trial, the victim testified on cross-  
22 examination that Petitioner had "erratic behaviors" and used and sold drugs. RT, 09/29/15, at  
23 84-86, 88. Moreover, in context, counsel's closing argument focused primarily on the victim's  
24 credibility. Counsel highlighted what he believed to be the unreasonableness of her testimony  
25 in an attempt to discredit her. Id at 18-20. He focused on the victim's description of past abuse,  
26 but the seemingly unreasonable act of allowing Petitioner to come over and sleep in her bed  
27 with her. RT, 10/01/15, at 19. And although she denied that Petitioner was a "drug-addled  
28 maniac," counsel's point was that, even if Petitioner was a "drug-addled maniac," the victim's

actions became even more inconsistent and unreasonable. Id.

Further, counsel's comment did not "destroy" Petitioner's self-defense claim. The Court previously denied the requested instructions, finding there was no evidence. RT, 10/01/15, at 3. Indeed, the Nevada Court of Appeals determined that it was "clear beyond a reasonable doubt that a rational trier of fact would have found Perry guilty" even if the instruction had been given. Perry v. State, Docket No. 69139 (Order of Affirmance, Dec. 14, 2016). Accordingly, the claim is denied.

#### **8. Ground 8**

In Ground 8, Petitioner complains that counsel's failure to investigate "Carpenter's life/past" was ineffective. Motion at 15. He asserts that she has mental health issues and is engaged in fraudulent activity selling prescription pills. Id. These are bare assertions suitable only for summary dismissal. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly, the claim is denied.

#### **9. Ground 9**

Petitioner next complains that counsel was ineffective for failing to interview the State's expert, Dr. Leibowitz. Motion at 16. However, Petitioner fails to show how a better investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at 192, 87 P.3d at 538. Indeed, Petitioner's claim is a naked assertion, belied by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

At trial, counsel thoroughly cross-examined Dr. Leibowitz regarding the conclusion that the victim's injuries made it obvious this was an abuse situation. RT, 09/29/15, at 25-28. During counsel's cross-examination, he effectively attacked the doctor's credibility by getting the doctor to discuss potential bias; Dr. Leibowitz told the Court he came to testify because "I have, you know, a sister and daughter and I wouldn't want them punched out and that's how I look at it." Id. at 25-26. Similarly, counsel's cross-examination attacked Dr. Leibowitz's conclusion that this was definitively abuse. See id at 27-28. As the record demonstrates, counsel was more than prepared to cross-examine Dr. Leibowitz. As such, Petitioner's claim is belied by the record and denied. Hargrove, 100 Nev. at 502, 686 P.2d at 225.



1       **10. Ground 10**

2       Petitioner further asserts counsel failed to interview the TJ Maxx security guard. Motion  
3 at 16. However, Petitioner cannot demonstrate prejudice because the Court precluded the  
4 security guard's testimony. RT, 09/30/15, at 62-64. As interviewing the guard was ultimately  
5 unnecessary, counsel cannot be deemed ineffective. See Ennis, 122 Nev. at 706, 137 P.3d at  
6 1103.

7       Moreover, Petitioner fails to show how a better investigation would have rendered a  
8 more favorable outcome probable. Molina, 120 Nev. at 192, 87 P.3d at 538. At trial, Carpenter  
9 testified that she "lost it" in the store and chased a woman through the store with a crowbar  
10 over money. Id. at 74-76, 80-82. As such, it is unclear what the security guard would have  
11 stated that would have been more favorable to Petitioner. Thus, his claim is denied.

12       **11. Ground 11**

13       In Ground 11, Petitioner claims that counsel was ineffective for failing to raise the  
14 court-appointed investigator's "conflict of interest," which resulted in an incomplete  
15 investigation and his waiver of the preliminary hearing. Motion at 17-18. First, Petitioner's  
16 claims that the investigator had a conflict of interest and that the charges might have been  
17 reduced are bare assertions. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Further, as discussed,  
18 supra, Petitioner chose to waive his preliminary hearing. Reporter's Transcript, 06/19/14, at 2-  
19 3. As such, counsel cannot be deemed ineffective for a decision that belonged solely to  
20 Petitioner. See Rhyne, 118 Nev. at 8, 38 P.3d at 167. Accordingly, Petitioner's claim is denied.

21       **12. Ground 12**

22       Petitioner claims that counsel was ineffective for failing to challenge "overlapping  
23 charges" of assault and battery. Motion at 18-19. First, the Assault with a Deadly Weapon and  
24 Battery Resulting in Substantial Bodily Harm charges were based on separate allegations-  
25 Petitioner was charged with Assault with a Deadly Weapon for threatening to kill Carpenter  
26 with the knife and the Battery Resulting in Substantial Bodily Harm was because Petitioner  
27 kicked and punched Carpenter in every room of her home. Moreover, challenging the charges  
28 would have been futile because the Nevada Supreme Court has held that dual convictions

1 under the assault and battery statutes can stand as each crime includes elements the other does  
2 not. Jackson v. State, 128 Nev. 598, 606-07, 291 P.3d 1274, 1279-80 (2012) (citing  
3 Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180 (1932)). Accordingly, Petitioner's  
4 claim is denied. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

### 5 **13. Ground 13**

6 Petitioner further argues that counsel was ineffective for failing to investigate his claim  
7 that Carpenter poured bleach on his clothes, which would have supported his claim of self-  
8 defense. Motion at 19. However, the only evidence that Petitioner cites to support his claim is  
9 his own statement. See Exhibit 1. As such, this is a bare assertion, and his claim is denied.  
10 Hargrove, 100 Nev. at 502, 686 P.2d at 225.

### 11 **14. Ground 14**

12 In Ground 14, Petitioner asserts counsel failed to investigate the "fabricated [] crime  
13 scene." Motion at 20. Specifically, Petitioner focuses on Carpenter's "placing blood in specific  
14 places" and taking of pictures. Id. However, Carpenter testified at trial that she purposefully  
15 left blood evidence throughout the house because she thought she was going to die and wanted  
16 to leave a sign that "there was a struggle." RT, 09/12, 9/15, at 56. Because Carpenter fully  
17 admitted to purposefully leaving blood evidence, it is unclear what further investigation would  
18 have shown. Molina, 120 Nev. at 192, 87 P.3d at 538.

19 Moreover, Petitioner's claim that counsel was ineffective because Carpenter took all of  
20 the pictures is belied by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Indeed, Crime  
21 Scene Analyst Danielle Keller testified that she took photographs of the scene and of  
22 Carpenter. RT, 09/13/15, at 48, 54-55. As such, Petitioner cannot establish ineffectiveness.

23 Finally, Petitioner's assertion that he was maliciously prosecuted is a bare assertion  
24 suitable only for summary dismissal. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly,  
25 Ground 14 is denied.

### 26 **15. Ground 15**

27 Petitioner also claims that counsel's failure to cross-examine the victim "about the  
28 bleach she used" was ineffective. Motion at 21. However, Petitioner cannot demonstrate

deficient performance because counsel retains the authority to determine what questions to ask of witnesses. Rhyne, 118 Nev. at 8, 38 P.3d at 167. Moreover, Petitioner fails to show what questioning Carpenter about pouring bleach on his clothes in a bathtub would have revealed. Thus, he cannot establish the result of the trial would have been different had counsel asked about the alleged bleaching. McNelson, 115 Nev. at 403, 990 P.2d at 1268. Thus, Petitioner's claim is denied.

#### **16. Ground 16**

Next, Petitioner asserts that trial counsel failed to correct incorrect dates in his PSI. Motion at 22. Yet Petitioner fails to state what the alleged errors were or how they "added many more years on [his] sentence." Id. Accordingly, Petitioner's assertion is a bare and naked claim that is denied. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

#### **17. Ground 17**

Petitioner also asserts that counsel should have filed a motion for a new trial because the Court rejected his proposed self-defense instructions. Motion at 22-23. Filing such a motion would have been futile because the Court already rejected Petitioner's first request for those instructions. Ennis, 122 Nev. at 706, 137 P.3d at 1103. Consequently, Petitioner fails to show deficient performance.

Moreover, Petitioner fails to demonstrate prejudice because the Nevada Court of Appeals determined that the presence of a self-defense instruction would not have made any difference in light of the overwhelming evidence of Petitioner's guilt. Perry v. State, Docket No. 69139 (Order of Affirmance, Dec. 14, 2016) (harmless error to reject the self-defense instructions in light of evidence of guilt). Accordingly, Petitioner's claim is denied.

#### **18. Ground 18**

Petitioner again complains that counsel was ineffective for not investigating Carpenter's alleged prescription pill fraud with "Dr. Bruce." Motion at 23. It is unclear who "Dr. Bruce" is; moreover, Petitioner's claim is a bare assertion suitable only for summary dismissal. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly, the claim is denied.

#### **19. Ground 19**

1       Petitioner asserts he is entitled to relief because of the cumulative effect of counsel's  
2 ineffectiveness. Motion at 24. While the Nevada Supreme Court has noted that some courts  
3 do apply cumulative error in addressing ineffective assistance claims, it has not specifically  
4 adopted this approach. See McConnell v. State, 125 Nev. 243,250 n.17, 212 P.3d 307,318 n.17  
5 (2009). Nevada is not alone; with respect to claims of cumulative Strickland error, the Eighth  
6 Circuit Court of Appeals has concluded that "a habeas petitioner cannot build a showing of  
7 prejudice on a series of errors, none of which would by itself meet the prejudice test."  
8 Middleton v. Roper, 455 F.3d 83 8, 851 (8th Cir. 2006), cert. denied, 549 U.S. 1134, 127 S.  
9 Ct. 980 (2007).

10       However, the Nevada Supreme Court has noted that that other courts have held that  
11 "multiple deficiencies in counsel's performance may be cumulated for purposes of the  
12 prejudice prong of the Strickland test when the individual deficiencies otherwise would not  
13 meet the prejudice prong." McConnell, 125 Nev. at 259 n.17, 212 P.3d at 318 n.17 (utilizing  
14 this approach to note that the defendant is not entitled to relief). Even if the Court applies  
15 cumulative error analysis to Petitioner's claims of ineffective assistance, Petitioner fails to  
16 demonstrate cumulative error warranting reversal. A cumulative error finding in the context  
17 of a Strickland claim is extraordinarily rare and requires an extensive aggregation of errors.  
18 See, e.g., State v. Hester, 127 N.M. 218, 222, 979 P.2d 729, 733 (1999); Harris by and Through  
19 Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995); Derden v. McNeel, 978 F.2d 1453,  
20 1461 (5th Cir. 1992).

21       Under cumulative error analysis, a defendant must first make a threshold showing that  
22 counsel's performance was deficient and counsels representation fell below an objective  
23 standard of reasonableness. State v. Sheahan, 139 Idaho 267, 287, 77 P.3d 956, 976 (2003);  
24 State v. Savo, 108 P.3d 903, 916 (Alaska 2005); State v. Maestas, 299 P.3d 892, 990 (Utah  
25 2012). In fact, logic dictates that cumulative error cannot exist where the defendant fails to  
26 show that any violation or deficiency existed under Strickland. McConnell, 125 Nev. at 259,  
27 212 P.3d at 318; United States v. Franklin, 321 F.3d 1231, 1241 (9th Cir. 2003); Turner v.  
28 Quarterman, 481 F.3d 292, 301 (5th Cir. 2007); Pearson v. State, 12 P.3d 686, 692 (Wyo.

1 2000); Hester, 979 P .2d at 733. Further, in order to cumulate errors, the defendant must not  
2 only show that an error occurred regarding counsel's representation, but that at least two errors  
3 occurred. Rolle v. State, 236 P.3d 259, 276-77 (Wyo. 2010); Hooks v. Workman, 689 F.3d  
4 1148, 1194-95 (10th Cir. 2012).

5 If the defendant can show that two or more errors existed in counsel's representation,  
6 then he must next show that cumulatively, the errors prejudiced him. McConnell, 125 Nev. at  
7 259n.17, 212 P.3d at 318 n.17; Doyle v. State, 116 Nev. 148, 163, 995 P.2d 465, 474 (2000); State  
8 v. Novak, 124 P .3d 182, 189 (Mont. 2005); Savo, 108 P .13d at 916. A defendant can only  
9 demonstrate the existence of prejudice when he has shown that the cumulative effect of the  
10 errors "were sufficiently significant to undermine [the court's] confidence in the outcome of  
11 the ... trial." In re Jones, 13 Cal.4<sup>th</sup> 552, 584, 917 P.2d 1175, 1193 (1996); Collins v. Sec'y of  
12 Pennsylvania Dep't of Corr., 742 F.3d 528, 542 (3d Cir. 2014). "[M]ere allegations of error  
13 without proof of prejudice" are insufficient to demonstrate cumulative error. Novak, 124 P.3d  
14 at 189. Further, "in most cases errors, even unreasonable errors, will not have a cumulative  
15 impact sufficient to undermine confidence in the outcome of the trial, especially if the evidence  
16 against the defendant remains compelling." Theil, 665 N.W.2d at 322-23; see also Maestas,  
17 299 P.3d at 990 (holding that errors resulting in no harm are insufficient to demonstrate  
18 cumulative error).

19 As discussed, *supra*, Petitioner has failed to make a single showing that counsel's  
20 representation was objectively unreasonable. Further, even if Petitioner had made such a  
21 showing, he has failed to demonstrate that the cumulative effect of these errors was so  
22 prejudicial as to undermine this Court's confidence in the outcome of Petitioner's case. Collins,  
23 742 F.3d at 542. Therefore, his claim of cumulative error is without merit and is denied.

## 24 **20. Claim 20**

25 In Claim 20, Petitioner claims his appellate counsel was ineffective for failing to  
26 include a certificate of service in his motion requesting order directing the Las Vegas  
27 Metropolitan Police Department to Conduct Genetic Marker and Latent Print Analysis of  
28 Evidence Impounded at the Crime Scene, which therefore invalidated the Motion. Second

1 Petition at 25-27. However, the State did not argue that the failure to include a certificate of  
2 service invalidated his Motion, and the district court did not cite that failure in its ruling. There  
3 is no evidence counsel's failure to include a certificate of service in Petitioner's Motion had  
4 any effect on the court's denial of his Motion.

5 **21. Claims 21-22**

6 In Claims 21-22, Petitioner claims counsel "failed to use Nevada statutes or NRS to  
7 support [his Motion] for fingerprint analysis." Second Petition at 26-27. To the contrary, his  
8 counsel cited Nevada statutes and Nevada Supreme Court cases as controlling authority in his  
9 Motion. Additionally, Petitioner fails to identify what statutes or authority his counsel should  
10 have included in his Motion. Therefore, his claims are summarily denied as they are bare and  
11 naked. Further, he cannot demonstrate good cause to overcome the procedural bar because he  
12 was not entitled to effective post-conviction counsel, thus his claims of ineffective assistance  
13 of counsel are without merit and are denied.

14 **ORDER**

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

17 Dated this 14th day of July, 2022

18   
19 \_\_\_\_\_  
DISTRICT JUDGE

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

53A 50C E539 063F  
Michael Villani  
District Court Judge

23 BY /s/ John Afshar  
24 JOHN AFSHAR  
25 Deputy District Attorney  
26 Nevada Bar #14408  
27  
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that service of Findings of Fact, Conclusions of Law and Order, was  
3 made this 13th day of July, 2022, by Mail via United States Postal Service to:

4 Genaro Richard Perry #1153366  
5 SDCC  
6 P.O. BOX 208  
Indian Springs, NV 89070

7  
8 /s/ Kristian Falcon

9 Secretary for the District Attorney's Office  
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28 JA/kf/Appeals/DVU

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Genaro Perry, Plaintiff(s)

CASE NO: A-22-851874-W

7 vs.

DEPT. NO. Department 17

8 State of Nevada, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 7/14/2022

15 District Attorney

motions@clarkcountyda.com

16 John Taylor

john.taylor@clarkcountyda.com

17 Morgan Thomas

Morgan.Thomas@ClarkCountyDA.com



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**June 27, 2022**

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

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**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

PRINT DATE: 07/28/2022

Page 2 of 8

Minutes Date: June 27, 2022

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**

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

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**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)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**July 13, 2022**

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

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July 13, 2022	8:30 AM	Status Check: Status of Case
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**HEARD BY:** Villani, Michael **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Samantha Albrecht

**RECORDER:** Charisse Ward

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	State of Nevada	Defendant
	Turner, Robert B.	Attorney

**JOURNAL ENTRIES**

- Plaintiff not present.

State advised their Appellate Department was preparing the order. COURT ORDERED, status check CONTINUED. Court advised the status check would be vacated if the order was filed.

NDC

CONTINUED TO: 7/27/2022 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**July 21, 2022**

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

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**July 21, 2022      3:00 AM      Minute Order**

**HEARD BY:** Ellsworth, Carolyn      **COURTROOM:** Chambers

**COURT CLERK:**  
Samantha Albrecht

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Status Check: Order set to come before the Court on the July 27, 2022 Calendar at 8:30 A.M. COURT NOTES, Notice of Entry of Findings of Fact, Conclusions of Law was filed on July 20, 2022. COURT ORDERED, matter 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 is set to come before the Court on the August 15, 2022 Calendar at 8:30 A.M. COURT NOTES, the Motion was filed on July 15, 2022, but requests transportation to a hearing on July 5, 2022. As the hearing date referenced in the Motion has already passed, 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 (7/21/2022 SA)



# Certification of Copy and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Supreme Court order dated July 22, 2022, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 124.

GENARO RICHARD PERRY,

Plaintiff(s),

vs.

STATE OF NEVADA; WARDEN HOWELL,

Defendant(s),

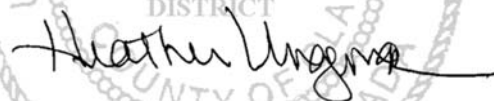
Case No: A-22-851874-W

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 29 day of July 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

