

Frank Hearing #100645  
(Name / Prisoner I.D. Number)  
Northern Nevada Correctional Center  
Post Office Box 7000  
Carson City, NV 89702  
In Proper Person

Electronically Filed  
02/16/2022

Elizabeth A. Brown  
CLERK OF THE COURT

In The Eighth Judicial District Court

Electronically Filed  
Feb 18 2022 03:46 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Frank Hearing

Plaintiff/Petitioner,

vs.

State of Nevada

Defendant/Respondent.

Case No.: A-19-790102-w

Dept No.: XII

**NOTICE OF MOTION**

DATE OF HEARING: \_\_\_\_\_

TIME OF HEARING: \_\_\_\_\_

TO: Appeal to the Supreme Court from  
decision or order of this Court

**NOTICE** is hereby given that Frank Hearing, Movant in  
the above entitled action, will bring the attached motion for hearing before this  
court on \_\_\_\_\_ (date), at:

\_\_\_\_\_ (time), or as soon after that time as the matter can be  
heard, in court room \_\_\_\_\_ of the \_\_\_\_\_

Courthouse located at \_\_\_\_\_

Dated \_\_\_\_\_

**RECEIVED**

**JAN 24 2022**

Submitted by: \_\_\_\_\_ **CLERK OF THE COURT**

**Notice:** You are required to file a written response to this motion with the Clerk of the Court within ten (10) days of receipt and to serve a copy of the filed response on the other party. Failure to do so may result in the requested relief being granted by the Court without hearing prior to the scheduled hearing.

**CERTIFICATE OF SERVICE BY MAIL**

Pursuant to Frank Hearing,

I hereby certify that I am the Movant named herein and that on this 17<sup>th</sup> day of

January, 20 22, I mailed a true and correct copy of the foregoing:

Appeal to Eighth Judicial Court (for Appeal) to Supreme via first class mail, postage being fully prepaid, by submitting same to the prison legal mail system for delivery through the U.S. Postal Service, to the following address(es):

<u>Fr: Frank Hearing #1006445</u>	<u>Steven B. Wolfson</u>
<u>Ely State Prison</u>	<u>Clark County Dist Attorney</u>
<u>P.O. Box 1989</u>	<u>200 Lewis Ave</u>
<u>Ely, NV 89301</u>	<u>Las Vegas, NV 89155</u>

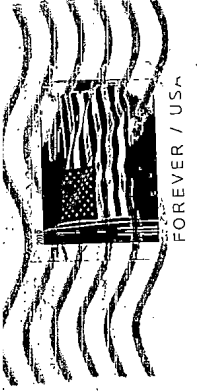
<u>Avon Ford</u>	
<u>Nevada Att General, 555</u>	
<u>E. Washington, Ste 3400</u>	
<u>Las Vegas, NV 89101-1008</u>	

Frank Hearing #1006445

Movant, In Proper Person

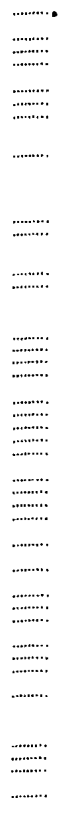
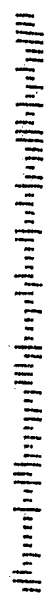
Mr. Frank Heavring 10006445  
Ely State Prison  
P.O. Box 1989  
Ely, NV 89301

LAS VEGAS NV 890  
18 JAN 2022 PM 5 L

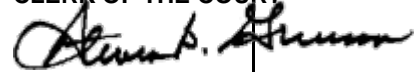


Steven D. Grierson  
(Clerk of the Court)  
200 Lewis Ave, 3rd floor  
Las Vegas, NV 89155-1160

000003-10169



ELY STATE PRISON  
JAN 17 2022



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 FRANK HEARRING,

10 Plaintiff(s),

11 vs.

12 STATE OF NEVADA,

13 Defendant(s),

Case No: A-19-790102-W

Dept No: XII

14  
15  
16 **CASE APPEAL STATEMENT**

17 1. Appellant(s): Frank Hearing

18 2. Judge: Michelle Leavitt

19 3. Appellant(s): Frank Hearing

20 Counsel:

21 Frank Hearing #1006445  
22 P.O. Box 1989  
23 Ely, NV 89301

24 4. Respondent (s): State of Nevada

25 Counsel:

26 Steven B. Wolfson, District Attorney  
27 200 Lewis Ave.  
28 Las Vegas, NV 89155-2212

Aaron D. Ford, Attorney General  
555 E. Washington Ave., Ste. 3900  
Las Vegas, NV 89101-1068

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

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

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

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

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

8 \*\*Expires 1 year from date filed

9 Appellant Filed Application to Proceed in Forma Pauperis: No  
10 Date Application(s) filed: N/A

11 9. Date Commenced in District Court: February 25, 2019

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

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

14 11. Previous Appeal: Yes

15 Supreme Court Docket Number(s): 78791

16 12. Child Custody or Visitation: N/A

17 13. Possibility of Settlement: Unknown

18 Dated This 17 day of February 2022.

19 Steven D. Grierson, Clerk of the Court

20 /s/ Heather Ungermann

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

26 cc: Frank Herring  
27  
28

# CASE SUMMARY

## CASE NO. A-19-790102-W

**Frank Herring, Plaintiff(s)**  
**vs.**  
**State of Nevada, Defendant(s)**

§  
§  
§  
§  
§  
§

Location: **Department 12**  
 Judicial Officer: **Leavitt, Michelle**  
 Filed on: **02/25/2019**  
 Cross-Reference Case Number: **A790102**  
 Supreme Court No.: **78791**

### CASE INFORMATION

**Related Cases**  
 C-13-291159-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

**Statistical Closures**  
 06/07/2019 Summary Judgment

Case Status: **06/07/2019 Closed**

### DATE

### CASE ASSIGNMENT

#### Current Case Assignment

Case Number A-19-790102-W  
 Court Department 12  
 Date Assigned 02/25/2019  
 Judicial Officer Leavitt, Michelle

### PARTY INFORMATION

**Plaintiff Herring, Frank**

**Pro Se**


**Defendant State of Nevada**


### DATE


### EVENTS & ORDERS OF THE COURT


### INDEX


#### EVENTS


02/25/2019  Inmate Filed - Petition for Writ of Habeas Corpus  
 Party: Plaintiff Herring, Frank  
*[1] Petition for Writ of Habeas Corpus (Post Conviction)*


04/05/2019  Ex Parte Motion  
 Filed By: Plaintiff Herring, Frank  
*[2] Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing*

04/11/2019  Clerk's Notice of Hearing  
*[3] Notice of Hearing*

04/12/2019  Findings of Fact, Conclusions of Law and Judgment  
*[4] Findings of Fact, Conclusions of Law, and Order*

04/15/2019  Notice of Entry  
*[5] Notice of Entry of Findings of Fact, Conclusions of Law and Order*

05/10/2019  Notice of Appeal (Criminal)  
*[6] Notice of Appeal*

05/14/2019  Case Appeal Statement

**CASE SUMMARY**  
**CASE NO. A-19-790102-W**

[7]

06/07/2019



Order to Statistically Close Case  
[8] *Civil Order to Statistically Close Case*

07/24/2019



Certificate of Service  
Filed by: Plaintiff Herring, Frank  
[9] *Certificate of Re-Service*

01/22/2020



NV Supreme Court Clerks Certificate/Judgment - Affirmed  
[10] *Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed*

12/02/2021



Inmate Filed - Petition for Writ of Habeas Corpus  
Party: Plaintiff Herring, Frank  
[11] *Post Conviction*

12/17/2021



Findings of Fact, Conclusions of Law and Order  
[12] *Findings of Fact, Conclusions of Law, and Order*

12/20/2021



Notice of Entry of Findings of Fact, Conclusions of Law  
Filed By: Defendant State of Nevada  
[13] *Notice of Entry of Findings of Fact, Conclusions of Law and Order*

02/16/2022



Notice of Appeal  
Filed By: Plaintiff Herring, Frank  
[14] *Notice of Motion ( Appeal to Supreme Court)*

02/17/2022



Case Appeal Statement  
*Case Appeal Statement*

**DISPOSITIONS**

01/22/2020

**Clerk's Certificate** (Judicial Officer: Leavitt, Michelle)  
Debtors: Frank Herring (Plaintiff)  
Creditors: State of Nevada (Defendant)  
Judgment: 01/22/2020, Docketed: 01/22/2020  
Comment: Supreme Court No. 78791 " Appeal Affirmed"

**HEARINGS**

05/30/2019

**CANCELED Motion for Appointment of Attorney** (8:30 AM) (Judicial Officer: Leavitt, Michelle)  
*Vacated - per Law Clerk*  
*Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing*

# DISTRICT COURT CIVIL COVER SHEET

A-19-790102-W  
Dept. XII

County, Nevada  
Case No. \_\_\_\_\_  
(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): <i>Frankie Herring</i>	Defendant(s) (name/address/phone): <i>State of Nevada</i>
Attorney (name/address/phone):	Attorney (name/address/phone):

## II. Nature of Controversy (please select the one most applicable filing type below)

### Civil Case Filing Types

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

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

2-25-2019

Date

*Prepared by Clerk*

Signature of initiating party or representative

See other side for family-related case filings.





*Heather S. Hemin*  
CLERK OF THE COURT

1       ORDR  
2

3                               EIGHTH JUDICIAL DISTRICT  
4                               CLARK COUNTY, NEVADA  
5

6       FRANK HEARRING,

7                               Petitioner,

8               vs.

9       STATE OF NEVADA,

10                              Respondent.  
11

)   Case No.: A-19-790102-W  
)

)   DEPT. No.: XII  
)   (Third Petition)  
)  
)  
)

12                              **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**  
13

14                              FINDINGS OF FACT

15               1.       On July 15, 2013, the State charged Frank Hearing ("Petitioner") by way  
16       of Information with Murder With Use of a Deadly Weapon, Attempt Murder With Use of  
17       a Deadly Weapon, Discharging Firearm At or Into Structure, Vehicle, Aircraft or  
18       Watercraft, and Possession of Firearm by Ex-Felon.

19               2.       On October 7, 2013, pursuant to negotiations, Petitioner entered into a  
20       Guilty Plea Agreement ("GPA") with the State, wherein, he agreed to plead guilty to one  
21       count of Murder (Second Degree) With Use of a Deadly Weapon. The same day, the  
22       court conducted a plea canvass on the record and thereafter accepted Petitioner's plea. An  
23       Amended Information was filed in open court reflecting the charge contained in the GPA.

24               3.       On December 10, 2013, Petitioner was sentenced to life imprisonment in  
25       the Nevada Department of Corrections with parole eligibility after ten years, plus a  
26       consecutive sentence of a maximum of 240 months and a minimum of 96 months for the  
27       deadly weapon enhancement. Petitioner received 293 days credit for time served.  
28       Judgment of Conviction was filed on December 30, 2013. Petitioner did not file a direct  
      appeal.

              4.       On May 15, 2014, Petitioner filed a Motion to Withdraw Counsel. On  
      June 12, 2014, the Motion was granted.

              5.       On November 12, 2014, Petitioner filed a Motion for Appointment of  
      Counsel and Request for Evidentiary Hearing. The State filed its response on November

1 25, 2014. On December 4, 2014, the court denied the motion, finding the request for  
2 evidentiary hearing was made prematurely and could be renewed in a Petition for Writ of  
3 Habeas Corpus (Post-Conviction).

4 6. On December 10, 2014, Petitioner filed a Motion to Withdraw Plea. On  
5 December 22, 2014, the State filed an opposition. On January 6, 2015, the district court  
6 denied Petitioner's motion. The district court filed its order on January 16, 2015.

7 7. On March 30, 2015, Petitioner filed a Petition for Writ of Habeas Corpus  
8 (Post-Conviction). On July 31, 2015, the State filed its response. A hearing was held on  
9 August 4, 2015 and the Petition was denied. The court's Findings of Fact, Conclusions of  
10 Law, and Order was filed on September 14, 2015.

11 8. On October 6, 2015, Petitioner filed a Notice of Appeal. On April 14,  
12 2016, the Supreme Court of Nevada affirmed the district court's denial of the Petition for  
13 Writ of Habeas Corpus (Post-Conviction). Remittitur issued on May 9, 2016.

14 9. On October 28, 2015, Petitioner filed a Motion for Records/Court Case  
15 Documents. A hearing was held on November 19, 2015 and the motion was granted in  
16 part. The district court filed its order on December 3, 2015.

17 10. On January 21, 2016, Petitioner filed a Motion for Records/Court Case  
18 Documents. On February 17, 2016, the State filed its response. A hearing was held on  
19 February 23, 2015 and the motion was denied. The district court filed its order on March  
20 2, 2016.

21 11. On March 8, 2016, Petitioner filed a Motion for Withdrawal of Attorney  
22 of Record or in the Alternative, Request for Records/Court Case Documents. On March  
23 11, 2016, the State filed its reply. A hearing was held on March 29, 2016 and the motion  
24 was denied. The district court filed its order on April 12, 2016.

25 12. On October 6, 2017, Petitioner filed a Motion to Withdraw Counsel. A  
26 hearing was held on October 31, 2017 and the motion was granted. The district court  
27 filed its order on November 14, 2017.

28 13. On December 11, 2017, Petitioner filed a Motion to Modify Sentence. On  
December 26, 2017, the State filed its opposition. A hearing was held on January 2, 2018  
and the motion was denied. The district court filed its order on January 8, 2018.

14. On December 29, 2017, Petitioner filed a Motion to Compel. A hearing  
was held on January 23, 2018 and the motion was granted. The district court filed its  
order on February 2, 2018.

15. On June 6, 2018, Petitioner filed a Motion to Compel. A hearing was held  
on June 28, 2018 and the court ordered a show cause hearing. Show cause hearings were  
held on July 31, 2018, August 2, 2018 and September 4, 2018 and were all continued for

counsel to appear. On September 11, 2018, counsel appeared and confirmed the file was turned over to the Petitioner.

16. On October 1, 2018, Petitioner filed a Motion for Order to Show Cause Contempt of Court and Monetary Sanctions. A hearing was held on November 6, 2018 and the court ordered the motion taken off calendar because the file was turned over.

17. On November 26, 2018, Petitioner filed a Notice of Appeal. On December 17, 2018, the Supreme Court of Nevada dismissed the appeal. Remittitur issued on January 11, 2019.

18. On February 25, 2019, Petitioner filed a second Petition for Writ of Habeas Corpus (Post-Conviction). On April 12, 2019, the district court filed Findings of Fact, Conclusions of Law, and Order denying the Petition as successive and time-barred.

19. On May 10, 2019, Petitioner filed a Notice of Appeal. On December 20, 2019, the Supreme Court of Nevada affirmed the district court's denial of the second Petition for Writ of Habeas Corpus (Post-Conviction). Remittitur issued on January 14, 2020.

20. On December 2, 2021, Petitioner filed the instant (third) Petition for Writ of Habeas Corpus (Post-Conviction).

21. Absent good cause for the failure to present the claim in a prior petition or for presenting the claim again, and actual prejudice, the petition must be dismissed.

#### CONCLUSIONS OF LAW

1. NRS 34.726(1), governing "Limitations on time to file..." requires that a petition for a writ of habeas corpus "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 the Supreme Court issues its remittitur." Late-filing of a petition may be excused from procedural default if the Petitioner can establish good cause for delay in bringing the claim. *Id.* Good cause for late-filing consists of a showing that: (1) "delay is not the fault of the petitioner"; and (2) "dismissal of the petition as untimely will unduly prejudice the petitioner." *Id.* at (1)(a)-(b).

2. To avoid dismissal, the petitioner must plead and prove specific facts that demonstrate good cause for his failure to present claims before and actual prejudice. *See State v. District Court*, 121 Nev. 225, 232, 112 P.3d 1070, 1074 (2005).

3. In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).



1  
2 4. The court may excuse the failure to show good cause where the prejudice  
3 from a failure to consider the claim amounts to a fundamental miscarriage of justice.  
4 *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

5 5. An impediment external to the defense may be demonstrated by a showing  
6 "that the factual or legal basis for a claim was not reasonably available to counsel, or that  
7 'some interference by officials,' made compliance impracticable." *Hathaway v. State*,  
8 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting *Murray v. Carrier*, 477 U.S. 478,  
9 488 (1986)).

10 6. NRS 34.810(2), governing "Additional reasons for dismissal of petition,"  
11 requires that "[a] second or successive petition must be dismissed if the judge or justice  
12 determines that it fails to allege new or different grounds for relief and that the prior  
13 determination was on the merits or, if new and different grounds are alleged, the judge or  
14 justice finds that the failure of the petitioner to assert those grounds in a prior petition  
15 constituted an abuse of the writ."

16 7. The petitioner has the burden of pleading and proving specific facts that  
17 demonstrate both good cause for failing to present a claim or for presenting a claim again  
18 and actual prejudice. NRS 34.810(3). *See also State v. Haberstroh*, 119 Nev. 173, 181, 69  
19 P.3d 676, 681 (2003).

20 8. A court must dismiss a habeas petition if it presents claims that either were  
21 presented in an earlier proceeding or could have been presented in an earlier proceeding,  
22 unless the court finds both cause for failing to present the claims earlier or for raising  
23 them again and actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622,  
24 28 P.3d 498, 507 (2001).

25 9. Unlike initial petitions which certainly require a careful review of the  
26 record, successive petitions may be dismissed based solely on the face of the petition.  
27 *Ford v. Warden*, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

28 10. Application of the statutory procedural default rules to post-conviction  
habeas petitions is mandatory. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112  
P.3d 1070, 1074 (2005).

11. Meritless, successive and untimely petitions clog the court system and  
undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944,  
950 (1994).

12. Petitioner had one year from December 30, 2013, the date the Judgement  
of Conviction was filed, to file a Petition for Writ of Habeas Corpus (Post-Conviction).  
The instant Petition was filed over seven years after the Judgement of Conviction was  
filed. As such, the instant petition is untimely. Absent good cause and prejudice, the  
instant petition is time barred and must be dismissed.

13. The instant petition is a successive petition, and therefore is also subject to dismissal pursuant to NRS 34.810(2). The petition must be dismissed if petitioner failed to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are raised in the petition and the court determines the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ. Absent good cause for the failure to present the claim in a prior petition or for presenting the claim again, and actual prejudice, the petition must be dismissed.

14. Petitioner failed to establish good cause for filing the instant Petition more than seven years after the Judgment of Conviction was filed. Further, the Petition raises some new or different claims; however, the court finds the failure to assert those claims in a previous petition constitutes an abuse of the writ.

15. Petitioner failed to demonstrate prejudice to the petitioner which would amount to a fundamental miscarriage of justice. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

16. Accordingly, the Petition is time barred. The Petition is a successive petition and constitutes an abuse of the writ.

### ORDER

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

Dated this \_\_\_\_ day of December 2021.

Dated this 17th day of December, 2021



MICHELLE LEAVITT  
DISTRICT JUDGE  
MICHELLE LEAVITT XII  
DISTRICT COURT JUDGE



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

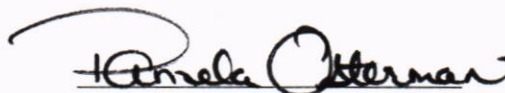
**CERTIFICATE OF MAILING**

I hereby certify that on the date filed, I placed a copy of the Order for Petition for Writ of Habeas Corpus (Post-Conviction) in the U.S. Mail, postage prepaid to:

Frank Herring #1006445  
Norther Nevada Correctional Center  
P.O. Box 700  
Carson City, NV 89702

Steven B. Wolfson  
Clark County District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89155

Aaron Ford  
Nevada Attorney General  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101-1068



Pamela Osterman  
Judicial Executive Assistant  
Department XII  
Eighth Judicial District Court

A-19-790102-W

Frank Herring

vs.

The State of Nevada

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Frank Herring, Plaintiff(s)

CASE NO: A-19-790102-W

7 vs.

DEPT. NO. Department 12

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 12/20/2021

16 Frank Herring

WSCC  
P.O. Box 7007  
Carson City, NV, 89702



1 NEFF

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5 FRANK HEARRING,

6 Petitioner,

Case No: A-19-790102-W

Dept No: XII

7 vs.

8 STATE OF NEVADA,

9 Respondent,

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

11 PLEASE TAKE NOTICE that on December 17, 2021, the court entered a decision or order in this matter,  
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed  
to you. This notice was mailed on December 20, 2021.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

17 Amanda Hampton, Deputy Clerk

18  
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 20 day of December 2021, I served a copy of this Notice of Entry on the  
21 following:

22 ☒ By e-mail:

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

24 ☒ The United States mail addressed as follows:

25 Frank Hearing # 1006445  
26 P.O. Box 7000  
Carson City, NV 89702

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk



*Heather S. Hemin*  
CLERK OF THE COURT

1 ORDR  
2

3 EIGHTH JUDICIAL DISTRICT  
4 CLARK COUNTY, NEVADA  
5

6 FRANK HEARRING,

7 Petitioner,

8 vs.

9 STATE OF NEVADA,

10 Respondent.  
11

) Case No.: A-19-790102-W  
)

) DEPT. No.: XII  
) (Third Petition)  
)  
)  
)

12 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER  
13

14 FINDINGS OF FACT

15 1. On July 15, 2013, the State charged Frank Hearing ("Petitioner") by way  
16 of Information with Murder With Use of a Deadly Weapon, Attempt Murder With Use of  
17 a Deadly Weapon, Discharging Firearm At or Into Structure, Vehicle, Aircraft or  
Watercraft, and Possession of Firearm by Ex-Felon.

18 2. On October 7, 2013, pursuant to negotiations, Petitioner entered into a  
19 Guilty Plea Agreement ("GPA") with the State, wherein, he agreed to plead guilty to one  
20 count of Murder (Second Degree) With Use of a Deadly Weapon. The same day, the  
court conducted a plea canvass on the record and thereafter accepted Petitioner's plea. An  
Amended Information was filed in open court reflecting the charge contained in the GPA.

21 3. On December 10, 2013, Petitioner was sentenced to life imprisonment in  
22 the Nevada Department of Corrections with parole eligibility after ten years, plus a  
consecutive sentence of a maximum of 240 months and a minimum of 96 months for the  
23 deadly weapon enhancement. Petitioner received 293 days credit for time served.  
Judgment of Conviction was filed on December 30, 2013. Petitioner did not file a direct  
24 appeal.

25 4. On May 15, 2014, Petitioner filed a Motion to Withdraw Counsel. On  
26 June 12, 2014, the Motion was granted.

27 5. On November 12, 2014, Petitioner filed a Motion for Appointment of  
28 Counsel and Request for Evidentiary Hearing. The State filed its response on November

1 25, 2014. On December 4, 2014, the court denied the motion, finding the request for  
2 evidentiary hearing was made prematurely and could be renewed in a Petition for Writ of  
3 Habeas Corpus (Post-Conviction).

4 6. On December 10, 2014, Petitioner filed a Motion to Withdraw Plea. On  
5 December 22, 2014, the State filed an opposition. On January 6, 2015, the district court  
6 denied Petitioner's motion. The district court filed its order on January 16, 2015.

7 7. On March 30, 2015, Petitioner filed a Petition for Writ of Habeas Corpus  
8 (Post-Conviction). On July 31, 2015, the State filed its response. A hearing was held on  
9 August 4, 2015 and the Petition was denied. The court's Findings of Fact, Conclusions of  
10 Law, and Order was filed on September 14, 2015.

11 8. On October 6, 2015, Petitioner filed a Notice of Appeal. On April 14,  
12 2016, the Supreme Court of Nevada affirmed the district court's denial of the Petition for  
13 Writ of Habeas Corpus (Post-Conviction). Remittitur issued on May 9, 2016.

14 9. On October 28, 2015, Petitioner filed a Motion for Records/Court Case  
15 Documents. A hearing was held on November 19, 2015 and the motion was granted in  
16 part. The district court filed its order on December 3, 2015.

17 10. On January 21, 2016, Petitioner filed a Motion for Records/Court Case  
18 Documents. On February 17, 2016, the State filed its response. A hearing was held on  
19 February 23, 2015 and the motion was denied. The district court filed its order on March  
20 2, 2016.

21 11. On March 8, 2016, Petitioner filed a Motion for Withdrawal of Attorney  
22 of Record or in the Alternative, Request for Records/Court Case Documents. On March  
23 11, 2016, the State filed its reply. A hearing was held on March 29, 2016 and the motion  
24 was denied. The district court filed its order on April 12, 2016.

25 12. On October 6, 2017, Petitioner filed a Motion to Withdraw Counsel. A  
26 hearing was held on October 31, 2017 and the motion was granted. The district court  
27 filed its order on November 14, 2017.

28 13. On December 11, 2017, Petitioner filed a Motion to Modify Sentence. On  
December 26, 2017, the State filed its opposition. A hearing was held on January 2, 2018  
and the motion was denied. The district court filed its order on January 8, 2018.

14. On December 29, 2017, Petitioner filed a Motion to Compel. A hearing  
was held on January 23, 2018 and the motion was granted. The district court filed its  
order on February 2, 2018.

15. On June 6, 2018, Petitioner filed a Motion to Compel. A hearing was held  
on June 28, 2018 and the court ordered a show cause hearing. Show cause hearings were  
held on July 31, 2018, August 2, 2018 and September 4, 2018 and were all continued for

counsel to appear. On September 11, 2018, counsel appeared and confirmed the file was turned over to the Petitioner.

16. On October 1, 2018, Petitioner filed a Motion for Order to Show Cause Contempt of Court and Monetary Sanctions. A hearing was held on November 6, 2018 and the court ordered the motion taken off calendar because the file was turned over.

17. On November 26, 2018, Petitioner filed a Notice of Appeal. On December 17, 2018, the Supreme Court of Nevada dismissed the appeal. Remittitur issued on January 11, 2019.

18. On February 25, 2019, Petitioner filed a second Petition for Writ of Habeas Corpus (Post-Conviction). On April 12, 2019, the district court filed Findings of Fact, Conclusions of Law, and Order denying the Petition as successive and time-barred.

19. On May 10, 2019, Petitioner filed a Notice of Appeal. On December 20, 2019, the Supreme Court of Nevada affirmed the district court's denial of the second Petition for Writ of Habeas Corpus (Post-Conviction). Remittitur issued on January 14, 2020.

20. On December 2, 2021, Petitioner filed the instant (third) Petition for Writ of Habeas Corpus (Post-Conviction).

21. Absent good cause for the failure to present the claim in a prior petition or for presenting the claim again, and actual prejudice, the petition must be dismissed.

#### CONCLUSIONS OF LAW

1. NRS 34.726(1), governing "Limitations on time to file..." requires that a petition for a writ of habeas corpus "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 the Supreme Court issues its remittitur." Late-filing of a petition may be excused from procedural default if the Petitioner can establish good cause for delay in bringing the claim. *Id.* Good cause for late-filing consists of a showing that: (1) "delay is not the fault of the petitioner"; and (2) "dismissal of the petition as untimely will unduly prejudice the petitioner." *Id.* at (1)(a)-(b).

2. To avoid dismissal, the petitioner must plead and prove specific facts that demonstrate good cause for his failure to present claims before and actual prejudice. *See State v. District Court*, 121 Nev. 225, 232, 112 P.3d 1070, 1074 (2005).

3. In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).



1  
2 4. The court may excuse the failure to show good cause where the prejudice  
3 from a failure to consider the claim amounts to a fundamental miscarriage of justice.  
4 *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

5 5. An impediment external to the defense may be demonstrated by a showing  
6 "that the factual or legal basis for a claim was not reasonably available to counsel, or that  
7 'some interference by officials,' made compliance impracticable." *Hathaway v. State*,  
8 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting *Murray v. Carrier*, 477 U.S. 478,  
9 488 (1986)).

10 6. NRS 34.810(2), governing "Additional reasons for dismissal of petition,"  
11 requires that "[a] second or successive petition must be dismissed if the judge or justice  
12 determines that it fails to allege new or different grounds for relief and that the prior  
13 determination was on the merits or, if new and different grounds are alleged, the judge or  
14 justice finds that the failure of the petitioner to assert those grounds in a prior petition  
15 constituted an abuse of the writ."

16 7. The petitioner has the burden of pleading and proving specific facts that  
17 demonstrate both good cause for failing to present a claim or for presenting a claim again  
18 and actual prejudice. NRS 34.810(3). *See also State v. Haberstroh*, 119 Nev. 173, 181, 69  
19 P.3d 676, 681 (2003).

20 8. A court must dismiss a habeas petition if it presents claims that either were  
21 presented in an earlier proceeding or could have been presented in an earlier proceeding,  
22 unless the court finds both cause for failing to present the claims earlier or for raising  
23 them again and actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622,  
24 28 P.3d 498, 507 (2001).

25 9. Unlike initial petitions which certainly require a careful review of the  
26 record, successive petitions may be dismissed based solely on the face of the petition.  
27 *Ford v. Warden*, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

28 10. Application of the statutory procedural default rules to post-conviction  
habeas petitions is mandatory. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112  
P.3d 1070, 1074 (2005).

11. Meritless, successive and untimely petitions clog the court system and  
undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944,  
950 (1994).

12. Petitioner had one year from December 30, 2013, the date the Judgement  
of Conviction was filed, to file a Petition for Writ of Habeas Corpus (Post-Conviction).  
The instant Petition was filed over seven years after the Judgement of Conviction was  
filed. As such, the instant petition is untimely. Absent good cause and prejudice, the  
instant petition is time barred and must be dismissed.

13. The instant petition is a successive petition, and therefore is also subject to dismissal pursuant to NRS 34.810(2). The petition must be dismissed if petitioner failed to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are raised in the petition and the court determines the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ. Absent good cause for the failure to present the claim in a prior petition or for presenting the claim again, and actual prejudice, the petition must be dismissed.

14. Petitioner failed to establish good cause for filing the instant Petition more than seven years after the Judgment of Conviction was filed. Further, the Petition raises some new or different claims; however, the court finds the failure to assert those claims in a previous petition constitutes an abuse of the writ.

15. Petitioner failed to demonstrate prejudice to the petitioner which would amount to a fundamental miscarriage of justice. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

16. Accordingly, the Petition is time barred. The Petition is a successive petition and constitutes an abuse of the writ.

### ORDER

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

Dated this \_\_\_\_ day of December 2021.

Dated this 17th day of December, 2021



MICHELLE LEAVITT  
DISTRICT JUDGE  
MICHELLE LEAVITT  
District Court Judge  
ERIN J. JONES DISTRICT



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

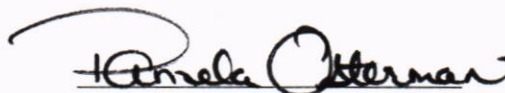
**CERTIFICATE OF MAILING**

I hereby certify that on the date filed, I placed a copy of the Order for Petition for Writ of Habeas Corpus (Post-Conviction) in the U.S. Mail, postage prepaid to:

Frank Herring #1006445  
Norther Nevada Correctional Center  
P.O. Box 700  
Carson City, NV 89702

Steven B. Wolfson  
Clark County District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89155

Aaron Ford  
Nevada Attorney General  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101-1068



Pamela Osterman  
Judicial Executive Assistant  
Department XII  
Eighth Judicial District Court

A-19-790102-W

Frank Herring

vs.

The State of Nevada

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Frank Herring, Plaintiff(s)

CASE NO: A-19-790102-W

7 vs.

DEPT. NO. Department 12

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 12/20/2021

16 Frank Herring

WSCC  
P.O. Box 7007  
Carson City, NV, 89702

# Certification of Copy

State of Nevada }  
County of Clark } SS:

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

NOTICE OF MOTION TO APPEAL TO THE SUPREME COURT FROM  
DECISION OR ORDER OF THIS COURT; CASE APPEAL STATEMENT; DISTRICT COURT  
DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

FRANK HEARRING,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

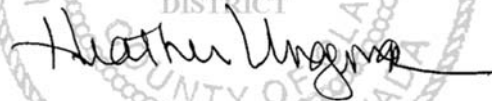
Case No: A-19-790102-W

Dept No: XII

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 17 day of February 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk