

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK HEARRING, JR.,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
Mar 14 2022 01:03 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-19-790102-W

Docket No: 84258

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
FRANK HEARRING #1006445,
PROPER PERSON
P.O. BOX 1989
ELY, NV 89301

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

A-19-790102-W Frank Herring, Plaintiff(s) vs. State of Nevada, Defendant(s)

I N D E X

<u>VOLUME:</u>	<u>PAGE NUMBER:</u>
-----------------------	----------------------------

1	1 - 110
---	---------

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	5/14/2019	Case Appeal Statement	51 - 52
1	2/17/2022	Case Appeal Statement	109 - 110
1	7/24/2019	Certificate of Re-Service	54 - 56
1	3/14/2022	Certification of Copy and Transmittal of Record	
1	6/7/2019	Civil Order to Statistically Close Case	53 - 53
1	4/5/2019	Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing	30 - 33
1	4/12/2019	Findings of Fact, Conclusions of Law, and Order	35 - 40
1	12/17/2021	Findings of Fact, Conclusions of Law, and Order	91 - 97
1	1/22/2020	Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed	57 - 62
1	5/10/2019	Notice of Appeal	48 - 50
1	4/15/2019	Notice of Entry of Findings of Fact, Conclusions of Law and Order	41 - 47
1	12/20/2021	Notice of Entry of Findings of Fact, Conclusions of Law and Order	98 - 105
1	4/11/2019	Notice of Hearing	34 - 34
1	2/16/2022	Notice of Motion (Appeal to Supreme Court from Decision or Order of this Court)	106 - 108
1	2/25/2019	Petition for Writ of Habeas Corpus (Post Conviction)	1 - 29
1	12/2/2021	Petition for Writ of Habeas Corpus (Post- Conviction) (Non Death Penalty); Evidentiary Hearing Req.	63 - 90

1 Frank Herring, #1006445
2 Warm Springs Correctional Center
3 P.O. Box 7007
4 Carson City, Nevada 89702

5 PETITIONER IN PROPER PERSON

FILED

FEB 25 2019 7

Ann L. Blum
CLERK OF COURT

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

8
9
10 Frank Herring

11 Petitioner,

Case No.: A-19-790102-W

Dept. XII

12 V.

Dept. No.

13 State of Nevada

14 Respondent

15
16
17 PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

18 INSTRUCTIONS:

19
20 (1) This petition must be legibly handwritten or typewritten, signed by the
petitioner and verified.

21 (2) Additional pages are not permitted except where noted or with respect to the
22 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
23 submitted in the form of a separate memorandum.

24 (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
25 your credit in any account in the institution.

26 (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,
27 name the warden or head of the institution. If you are not in a specific institution
of the Department but within its custody, name the Director of the Department of
28 Corrections.

A-19-790102-W
IPWHC
Inmate Filed - Petition for Writ of Habeas
4819192

1 (5) You must include all grounds or claims for relief which you may have
2 regarding your conviction or sentence. Failure to raise all grounds in this petition
may preclude you from filing future petitions challenging your conviction and sentence.

3 (6) You must allege specific facts supporting the claims in the petition you file
4 seeking relief from any conviction or sentence. Failure to allege specific facts
5 rather than just conclusions may cause your petition to be dismissed. If your petition
contains a claim of ineffective assistance of counsel, that claim will operate to waive
6 the attorney-client privilege for the proceeding in which you claim your counsel was
ineffective.

7 (7) When the petition is fully completed, the original and one copy must be filed
with the clerk of the state district court for the county in which you were convicted.
8 One copy must be mailed to the respondent, one copy to the Attorney General's Office,
and one copy to the district attorney of the county in which you were convicted or to
9 the original prosecutor if you are challenging your original conviction or sentence.
Copies must conform in all particulars to the original submitted for filing.

10
11 **PETITION**

12
13 1. Name of institution and county in which you are presently
14 imprisoned or where and how you are presently restrained of your
15 liberty: Warm Springs Correctional Center, Carson County.
16

17
18 2. Name and location of court which entered the judgment of
19 conviction under attack:

20 The Eighth Judicial District Court of Clark County,
21 Nevada
22

23 3. Date of judgment of conviction: December 30, 2013-~~2014~~

24
25 4. Case number: C-13-291159-1
26

27 5. (a) Length of sentence: 10 yrs to Life, Consecutive with 8+20 yrs
28

1 (b) If sentence is death, state any date upon which
2 execution is scheduled: _____
3

4 6. Are you presently serving a sentence for a conviction
5 other than the conviction under attack in this motion?

6 Yes _____ No X

7 If "yes," list crime, case number and sentence being
8 served at this time: _____
9

10 7. Nature of offense involved in conviction being
11 challenged: Murder (Second Degree) w/ the use of a Deadly Weapon
12 Category A Felony.
13

14 8. What was your plea? (check one)

15 (a) Not guilty _____

16 (b) Guilty X

17 (c) Guilty but mentally ill _____

18 (d) Nolo contendere _____
19

20 9. If you entered a plea of guilty to one count of an
21 indictment or information, and a plea of not guilty to another
22 count of an indictment or information, or if a plea of guilty was
23 negotiated, give details: The Plea of guilty was unknowingly and
24 Unintelligently made as well as involuntarily entered due to
25 defense attorney's ineffectiveness of Attorney
26

27 10. If you were found guilty after a plea of not guilty, was
28 the finding made by: (check one)

1 (a) Jury _____

2 (b) Judge without a jury _____

3
4 11. Did you testify at the trial? Yes _____ No X

5
6 12. Did you appeal from the judgment of conviction?

7 Yes _____ No X

8
9 13. If you did appeal, answer the following:

10 (a) Name of court: _____

11 (b) Case number or citation: _____

12 (c) Result: _____

13
14
15 (d) Date of result: _____

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

17
18 14. If you did not appeal, explain briefly why you did not:

19 The reason(s) was because I negotiated plea agreement with
20 states attorney by the Coersion of Incompetent trial
21 Counsel.

22
23 15. Other than a direct appeal from the judgment of
24 conviction and sentence, have you previously filed any petitions,
25 applications or motions with respect to this judgment in any
26 court, state or federal? Yes X No _____

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

3 (a) (1) Name of court: Eighth Judicial District

4 (2) Nature of proceeding: _____
5

6 (3) Grounds raised: Motion to withdraw guilty plea which
7 was denied by trial court, and United States Supreme Court
8 affirmed the trial court's decision.

9 (4) Did you receive an evidentiary hearing on your
10 petition, application or motion? Yes _____ No X

11 (5) Result: _____
12

13 (6) Date of result: _____

14 (7) If known, citations of any written opinion or date of
15 orders entered pursuant to such result: _____
16

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

19 (1) Name of court: _____ N/A

20 (2) Nature of proceeding: _____ N/A

21 (3) Grounds raised: _____ N/A
22

23
24 (4) Did you receive an evidentiary hearing on your petition,
25 application or motion? Yes _____ No X

26 (5) Result: _____ N/A

27 (6) Date of result: _____ N/A
28

1 (7) If known, citations of any written opinion or date of
2 orders entered pursuant to such result: _____
3 _____
4 _____

5 (c) As to any third or subsequent additional applications or
6 motions, give the same information as above, list them on a
7 separate sheet and attach.

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

11 (1) First petition, application or motion?

12 Yes X No _____

13 Citation or date of decision: December 1, 2016

14 (2) Second petition, application or motion?

15 Yes N/A No _____

16 Citation or date of decision: _____
17

18 (3) Third or subsequent petitions, applications or motions?

19 Yes _____ No _____

20 Citation or date of decision: _____
21

22 (e) If you did not appeal from the adverse action on any
23 petition, application or motion, explain briefly why you did not.

24 (You must relate specific facts in response to this question.

25 Your response may be included on paper which is 8 1/2 by 11

26 inches attached to the petition. Your response may not exceed

27 five handwritten or typewritten pages in length.)
28

1 17. Has any ground being raised in this petition been
2 previously presented to this or any other court by way of
3 petition for habeas corpus, motion, application or any other
4 post-conviction proceeding? If so, identify:

5
6 (a) Which of the grounds is the same: Petitioners plea negotia-
7 tions unknowing and unintelligent, Petitioners trial Counsel failed to properly in-
8 terview potential witnesses, Ineffective assistance, Failure to interview State witness (key)
9 (See Attached)

10 (b) The proceedings in which these grounds were raised:

11 In petitioners (First) Writ of Habeas Corpus (Post-Conviction)
12 Petition.

13 (c) Briefly explain why you are again raising these grounds.

14 I am again raising these ground because I believe they are
15 relevant to these proceedings.

16 (You must relate specific facts in response to this
17 question. Your response may be included on paper which is 8 1/2
18 by 11 inches attached to the petition. Your response may not
19 exceed five handwritten or typewritten pages in length.)

20
21
22
23
24 18. If any of the grounds listed in Nos. 23(a), (b), (c) and
25 (d), or listed on any additional pages you have attached, were
26 not previously presented in any other court, state or federal,
27 list briefly what grounds were not so presented, and give your
28 reasons for not presenting them. (You must relate specific facts

1 in response to this question. Your response may be included on
2 paper which is 8 1/2 by 11 inches attached to the petition. Your
3 response may not exceed five handwritten or typewritten pages in
4 length.)

5 (See Attached)
6
7

8
9 19. Are you filing this petition more than 1 year following
10 the filing of the judgment of conviction or the filing of a
11 decision on direct appeal? If so, state briefly the reasons for
12 the delay. (You must relate specific facts in response to this
13 question. Your response may be included on paper which is 8 1/2
14 by 11 inches attached to the petition. Your response may not
15 exceed five handwritten or typewritten pages in length.)

16 Petitioner has been attempting to receive (All) documents (Court
17 Case documents) from retained Counsel and/or records related
18 to Case # C-13-291159-1. Received Sept 7, 2018 (on or about.)

19 20. Do you have any petition or appeal now pending in any
20 court, either state or federal, as to the judgment under attack?
21 Yes _____ No X If yes, state what court and the case number:
22
23

24 21. Give the name of each attorney who represented you in
25 the proceeding resulting in your conviction and on direct appeal:
26
27

28 22. Do you have any future sentences to serve after you
complete the sentence imposed by the judgment under attack?

Yes _____ No X

Continuation From question #17

- 1
- 2 ground #4 - Retained Counsel failure to interview
- 3 states Key witness.
- 4 ground #5 Retained Seasoned Counsel's failure to present
- 5 mitigating evidence during sentencing.
- 6 ground Six - Retained Seasoned Counsel's failure to
- 7 ~~file~~ file motion for ~~the~~ psychological evaluation for
- 8 states Key witness.
- 9 ground #7 Retained Seasoned Counsel rendered ineff-
- 10 ective assistance when Counsel advised petitioner to
- 11 accept revised plea
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27

1 Continuation From question #18 OF Habeas Petition:

2 ground # 8 - Petitioner(s) alleges retained seasoned Counsel

3 ~~acted~~ intentionally withheld knowledge of material

4 information.

5 ground #9 - Petitioner alleges trial Court erred when

6 court(s) did not construe petitioners Motion to Withdraw

7 guilty plea.

8 ground #10 - Petitioner alleges ~~acted~~ ^{retained} seasoned Counsel

9 failed to seek out and/or disclose exculpatory evidence.

10 ground #11 Petitioner alleges retained seasoned Counsel

11 rendered ineffective assistance when seasoned Counsel

12 failed to make reasonable investigations on behalf of

13 petitioner.

14 ground #12 - Petitioner alleges the Detectives and/or Crime

15 Scene Analyst Experts failed to conduct a thorough

16 investigation of Crime Scene by failing to perform forensic

17 testing investigative duties on spent 9mm Cartridge Casings.

18 ground #13 - Petitioner alleges retained seasoned Counsel

19 rendered ineffective assistance to petitioner when Counsel

20 failed to conduct a proper and thorough investigation of

21 Crime Scene.

22

23 Petitioner was in ~~the~~ the process of awaiting for (All)

24 relevant Court Case / records and documents to be turned

25 over and received.

26

27

23. (a) GROUND ONE: Petitioner Alleges Crime Scene Analyst Ex-
ports and detectives failed to conduct a thorough investiga-
tion of crime scene by performing forensic testing
in violation of petitioners 6th and 14th Amendment rights.

23. (a) SUPPORTING FACTS (tell your story briefly without citing
cases or law): Petitioner alleges Crime Scene Analyst Ex-
ports and detectives failed to thoroughly and properly per-
form forensic testing investigative duties such as locate,
test and process potential mitigating evidence, which if
done such evidence would show that someone else
committed the charged crime and exonerate petitioner
from doing such criminal activity. This failure by
Crime Scene analyst experts and detectives to collect
and perform forensic testing thoroughly process Crime
Scene evidence denied petitioner a Constitutional right
to an appropriate investigation these elements are
instrumental in proving a defendants guilt and/or in-
nocentance. This failure to perform these forensic testing
investigative duties, mishandling potential evidence that
could have exonerated petitioner this failure to per-
form these duties violates petitioners due process rights
and furthermore impeaches Crime Scene experts Anal-
ysist and detectives credibility, furthermore there ex-
ist a reasonable probability sufficient to under-
mine confidence in the outcome of these pro-
ceeding(s) and investigative duties, in violation of
petitioners 6th and 14th Amendment rights.

23. (b) GROUND TWO: Petitioner Alleges trial Court erred when trial Court failed to Construe petitioners Motion to Withdraw Guilty Plea petition as post-Conviction writ for Habeas Corpus, in violation of petitioners 6th and 14th Amendment rights.

23. (b) SUPPORTING FACTS (tell your story briefly without citing cases or law): Petitioner Alleges that trial Court failed to Construe petitioners Motion To Withdraw Guilty Plea as Post-Conviction writ. Petitioner further states that on December 10, 2014, petitioners Motion To Withdraw Guilty Plea petition was filed 20 days prior to the 1yr deadline, which does not time bar petitioner from seeking post-Conviction relief. Petitioner alleges that this failure to comply would constitute a miscarriage of justice, prejudice and/or a manifest injustice because petitioner filed Motion to withdraw guilty plea in a timely manner within the 1yr timeline and therefore should be decided on its merits, therefore procedural defaults should be excused under this standard and petitioners petition should be heard on its merits failure to do so would violate petitioners due process rights) 6th and 14th Amendment rights.

23. (b) GROUND ³ Petitioner alleges Seasoned retained trial Counsel rendered ineffective assistance when Seasoned trial Counsel failed to make reasonable investigations on behalf of petitioner in violation of petitioners 6th and 14th Amendment rights.

23. (b) SUPPORTING FACTS (tell your story briefly without citing cases or law): Petitioner alleges retained Seasoned trial Counsel rendered ineffective assistance when trial Counsel failed to make a reasonable decision that would make investigations and/or using private investigator unnecessary given the gravity of the charges of: Murder w/ the use of a deadly weapon, Attempted Murder w/ the use of a deadly weapon, and prohibited person in possession of a deadly weapon, petitioner further alleges prejudice ensued when Seasoned trial Counsel failed to seek out on yielding reasonable doubt on behalf of petitioner Seasoned Counsel would have found doubt as to petitioners guilty and/or innocence to the alleged crimes. In violation of petitioners 6th and 14th Amendment rights.

23. (c) GROUND 4 : Petitioner alleges seasoned retained trial Counsel intentionally withheld knowledge of favorable, material information from petitioner which denied petitioner a Constitutional right to effective assistance of Counsel in violation of petitioners 6th and 14th Amendment rights.

23. (c) SUPPORTING FACTS (tell your story briefly without citing cases or law): Petitioner alleges seasoned retained Counsel intentionally withheld knowledge of favorable evidence from petitioner, retained seasoned Counsel withheld material evidence until petitioners request for Records/Court case documents motion was filed and/or after petitioner received records/Court case documents. Seasoned retained trial Counsel Coersing petitioner into believing pleading guilty would be in his best interest, Seasoned retained Counsel withheld exculpatory material evidence from petitioner that could have exonerated petitioner from the Crimes of; Murder w/the use of a Deadly weapon, Attempted Murder w/the use of a Deadly weapon, and Prohibited person in possession of a dangerous weapon. Petitioner did not have notice of this due process violation until after he had plead guilty, been sentenced and after conviction had been affirmed. Petitioners seasoned trial Counsel intentionally withheld favorable evidence after petitioners repeated request for Court case documents in violation of petitioners 5th, 6th and 14th Amendment rights. Petitioner alleges that the above stated issue was withheld by seasoned Counsel either intentionally or inadvertently, and prejudice ensued.

Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

23. (a) GROUND 5: Petitioner Alleges seasoned retained Counsel failed to seek out and/or disclose exculpatory evidence to petitioner in violation of petitioners 6th and 14th Amendment right(s).

23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Petitioner alleges retained Counsel failed to perform duties imposed by ethical principles as well as Constitutional ones when seasoned retained Counsel failed to seek out exculpatory evidence, mitigating evidence on behalf of petitioner to the crimes of: Murder w/ the use of a deadly weapon, Attempted Murder w/ the use of a deadly weapon, and a prohibited person in possession of a deadly weapon which denied petitioner a Constitutional right to a Compulsory process and to have the assistance of Counsel for defense during a serious criminal proceedings in violation of standards for criminal justice, in violation of petitioners 6th and 14th Amendment rights.

23. (d) GROUND : 6 :: Petitioner alleges that retained trial Counsel rendered ineffective assistance when retained seasoned Counsel's failure to seek out exculpatory, mitigating evidence when seasoned Counsel failed to conduct a thorough investigation of crime scene in violation of Petitioner's 6th and 14th Amendment rights.

23. (d) SUPPORTING FACTS (tell your story briefly without citing cases or law): Petitioner's seasoned trial Counsel never paid a visit to the crime scene, seasoned Counsel neglected to use any investigator to fully comprehend and properly assess the situation and circumstances surrounding the crime scene related to petitioner's alleged crimes of Murder w/ the use of Deadly weapon, Attempted Murder w/ the use of a Deadly weapon, and prohibited person in possession of a Deadly weapon a serious criminal proceedings. Seasoned Counsel has a duty to make reasonable investigations or make reasonable decisions that make these particular investigations unnecessary. Had seasoned retained Counsel and/or investigator properly used investigative measures took a tactical and reasonable approach in properly and thoroughly investigating and assessing the crime scene then seasoned Counsel would have found strong evidence that would've provided unyielding reasonable doubt as to the petitioner's guilty or innocence to the alleged crimes. When Crime scene Analyst experts and detectives state in Application and Affidavit for search warrant that based solely on (witnesses) hearing 5-7 shot Affinate believes spent 9mm casings were from a previous shooting without forensic testing. In violation of petitioner's 6th and 14th Amendment rights.

23. (d) GROUND 7: Petitioner alleges that his plea negotiation was unknowing and unintelligently as well as involuntarily made due to trial counsel's ineffective assistance in violation of the petitioner's 6th Amendment and 14th Amendment rights).

23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The defense attorney purposely lead petitioner to believe he (petitioner) would get the death by withholding the results to the grand jury's indictment seeking the death penalty until after petitioner's plea negotiation agreement, causing petitioner to plea negotiate with state's attorney. Petitioner was coerced into accepting a lesser charge from First degree Murder to avoid the death penalty because of trial counsel's coercion and this deception (forced) petitioner to plead guilty to avoid the death penalty which petitioner contends that due to trial counsel's performance of misrepresentation, petitioner would've preferred to go to trial instead of plea negotiations.

Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

23. (a) GROUND 8: Petitioner alleges trial Counsel failed to properly interview potential witnesses and make independent investigation of the facts and circumstances of the case rendering ineffective assistance of Counsel in viol of 6th Amend

23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Retained Counsel Carl Arnold (Seasoned Counsel) represented petitioner Frank bearing in a Murder case in the first degree which carried a penalty of death. Trial Counsel failed to properly interview witnesses that petitioner presented to him by way of visitation in the Clark County detention center. Petitioner alleges that seasoned Counsels failure to interview potential witnesses that could have exonerated petitioner from the crime(s) constituted bad performance of a reasonable trial attorney in violation of the 6th and 14th Amendment rights to effective assistance of Counsel and due process rights to life and liberty.

23. (b) GROUND ⁹ : Petitioner alleges seasoned Counsel rendered ineffective assistance of Counsel when he failed to use private investigator of the office to conduct thorough investigation in violation of 6th and 14th Amendment.

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Petitioner alleges trial counsel failed to use the law office's private investigator to perform investigative duties such as locate friends and family of petitioner who would have made statements on behalf of petitioner's alibi to the crime of Murder w/ the use of a deadly weapon and exonerate him from doing such criminal activity. This failure of the use of a private investigator that seasoned trial counsel has chosen to do denied petitioner a Constitutional right to a fair trial proceedings, which lead to petitioner's plea negotiations because of ineffective assistance of Counsel, in violation of petitioner's 6th and 14th Amendment rights to effective assistance of counsel during a serious criminal proceedings.

23. (d) GROUND 10: Petitioner alleges that seasoned Counsel failed to properly interview state's attorney Key witness.

23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law):
Petitioner contends seasoned trial Counsel failed to properly interview the state's witness (Key witness) to receive the witness point of the investigation which renders Competent seasoned Counsel and this prejudiced petitioner because Key witness pursued a course of misidentification (with certainty) until coercion took place. A proper interview would have given seasoned Counsel a better view of the state's witnesses demeanor however trial Counsel fail to perform such critical duties which lead to petitioners 6th and 14th Amendment rights constitutional right(s) to effective assistance of Counsel guaranteed under the state and federal Constitution.

1 23. (d) GROUND ¹¹: Petitioner alleges seasoned trial Counsel
2 rendered ineffective assistance when Counsel advised peti-
3 tioner(s) to accept revised plea despite petitioner's protesta-
4 tions of innocence.

5 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law):
6 Season trial Counsel purposely advised petitioner to
7 accept plea negotiations based solely on petitioner's
8 inability to pay retained counsel's fees of 10,000.00,
9 Petitioner alleges seasoned Counsel was improperly
10 motivated. Trial Counsel induced guilty plea(s) based
11 solely on petitioner's inability to pay Counsel's fee
12 because counsel's Coersion and deception forced
13 petitioner to plead guilty, which violates petitioner's
14 6th and 14th Amendment rights).

Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

23. (a) GROUND 12: Petitioner alleges seasoned Counsel failed to file motion for a psychological evaluation for states Key witness knowing witnesses inconsistent statements testimony during preliminary hearing.

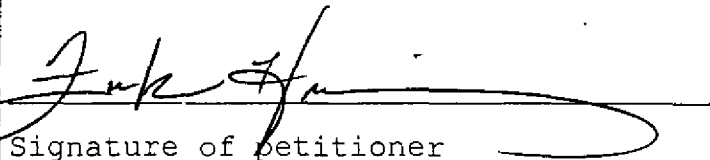
23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law):
Petitioner alleges seasoned Counsel failed to file motion for a psychological evaluation for states Key witness once it was discovered that states Key witness testimony during the Preliminary hearing showed inconsistencies which seasoned trial Counsel failed to Investigate and petitioner requested for this evaluation to be conducted by filing a motion with the courts however was told "No" by trial Counsel. This rendered ineffectiveness on behalf of Counsel on the petitioners seasoned trial Counsel's part because this Key witness was states only witness to a Murder and petitioner was not allowed to Confront this witness by questioning in violation of petitioners 6th and 14th Amendment rights to Confrontation of the accuser and also in violation of petitioners state and Federal Constitutional due process and related to Counsel's performance rendered ineffectiveness denying petitioner of his Federal, Constitutional rights.

1 23. (b) GROUND: 13: Petitioner alleges trial Counsel failed to
2 present mitigating evidence during sentencing hearing
3 which would have rendered a more lenient sentence
4 from trial Judge and show good character of petitioner.

5 23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law):
6 Petitioner alleges seasoned trial counsel failed to present
7 mitigating evidence during sentencing which petitioner
8 had advised counsel to do and seasoned Counsel re-
9 fused to present Mitigating testimony from petitioners
10 church members, school mentors, youth Counselor, Par-
11 ents, Fiance, Childhood friends and petitioners Super-
12 visors as well as past Employer so trial judge can
13 show leniency toward petitioner's sentencing because
14 state's attorney presented evidence to show petitioner
15 is Bad character which rendered unfairness, in violation
16 of petitioners Constitutional rights to state and fed-
17 eral Constitution, in violation of 6th and 14th Amend-
18 ment to effectiveness of Counsel.

1 WHEREFORE, petitioner prays that the court grant petitioner
2 relief to which he may be entitled in this proceeding.

3
4 EXECUTED at Warm Springs Correctional Center
5 on the 21st day of the month of February of the
6 year 2019

7
8 
9 Signature of petitioner

10 W.S.C.C, P.O. Box 7007
11 Carson City, NV 89702
12 _____

13 Address
14 _____

15 Signature of attorney (if any)
16 _____

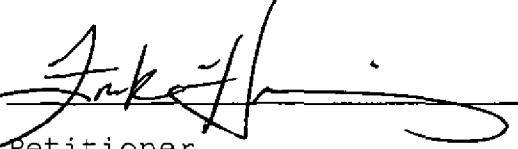
17 Attorney for petitioner
18 _____
19 _____
20 _____

21 Address
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____
28 _____

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

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.


Petitioner

Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, Frank Herring, hereby certify pursuant to
N.R.C.P. 5(b), that on this 21st day of the month of February
of the year 2019, I mailed a true and correct copy of the
foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

State of Nevada

Respondent prison or jail official

P.O. Box 7007 3301 E. 5th St
Carson City, NV 89702

Address

Attorney General's Office

100 North Carson Street

Carson City, Nevada 89701-4717

Steve Wolfson

District Attorney of County of Conviction

200 Lewis Avenue 3rd floor
Las Vegas, NV 89155-1160

Address

[Signature]
Signature of Petitioner

P.O. Box 7007

Warm Springs Correctional Center

Carson City, Nevada 89702

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Post-Conviction Writ For Habeas Corpus
(Title of Document)

filed in District Court Case number C-13-291159-1

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

-OR-

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

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

Charles B. Harris v. State of Nevada 329 P.3d 619, 2014
(State specific law)

-or-

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

Frank Herring
Signature

2/21/19
Date

Frank Herring
Print Name

Title

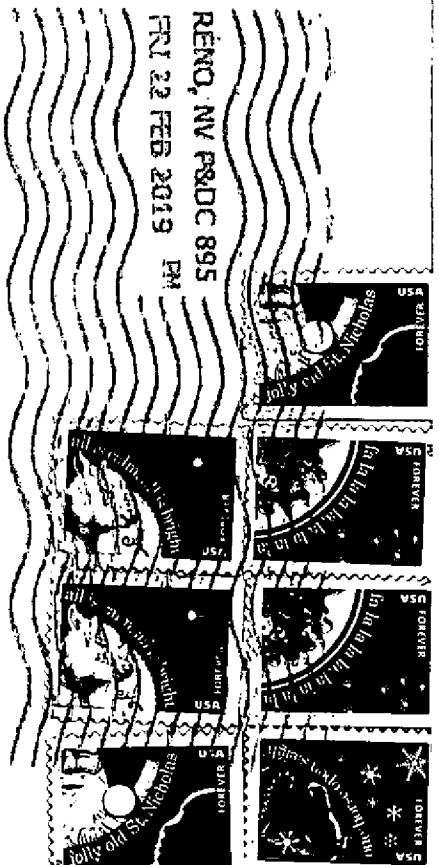
FRANK HEARRING # 1006445 1006445-

U.S.C.C.

P.O. Box 7007

Carson City, NV 89702

RENO, NV 89702 895
FRI 22 FEB 2019 PM



STEVEN D. GRIERSON

Clerk of the Court

200 Lewis Avenue, 3rd Floor

Las Vegas, NV 89155-1160

1006445-

21
FILED

APR 05 2019

Frank Herring #1006445
Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702

John Herring
CLERK OF COURT

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

.....

Frank Herring
Petitioner
Vs.
State of Nevada
Respondent

Case No. A-13-790102-W

**EX PARTE MOTION FOR APPOINTMENT OF COUNSEL
AND REQUEST FOR EVIDENTIARY HEARING**

COMES NOW Petitioner Frank Herring, in pro se, and moves
this Court for its order allowing the appointment of counsel for Petitioner and for an
evidentiary hearing. This motion is made and based in the interest of justice.

Pursuant to NRS 34.750(1),

A petition may allege that the petitioner is unable to pay the costs of
the proceedings or to employ counsel. If the court is satisfied that the
allegation of indigence is true and the petitioner is not dismissed
summarily, the court may appoint counsel to represent the petitioner.
In making its determination, the court may consider, among other
things, the severity of the consequences facing the petitioner and
whether:

- (a) The issues present are difficult;
- (b) The petitioner is unable to comprehend the proceedings, or
- (c) Counsel is necessary to proceed with discovery.

Petitioner is presently incarcerated at Warm Springs Correctional Center, Carson City,
Nevada, where he is unemployed, indigent and unable to retain private counsel to
represent him.

Petitioner is unlearned and unfamiliar with the complexities of Nevada state law,
particularly state post-conviction proceedings. Further Petitioner alleges that the issues in
this case are complex and require an evidentiary hearing. Petitioner is unable to factually

CLERK OF THE COURT

APR 05 2019

RECEIVED

A-19-790102-W
EXMT
Ex Parte Motion
4828407

1

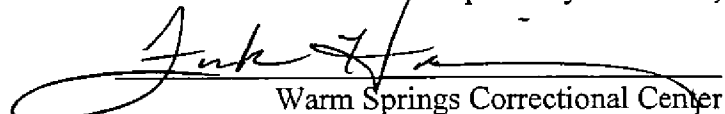


develop and adequately present the claims without the assistance of counsel. Counsel is unable to adequately present the claims without an evidentiary hearing.

Petitioner hereby respectfully requests that the Court appoint counsel and set a date for an evidentiary hearing for the reasons stated above.

Dated this 1st day of April, 2019.

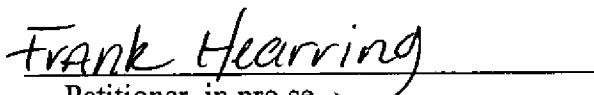
Respectfully submitted,


Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702

AFFIRMATION
PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding REQUEST FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING does NOT contain the social security number of any person.

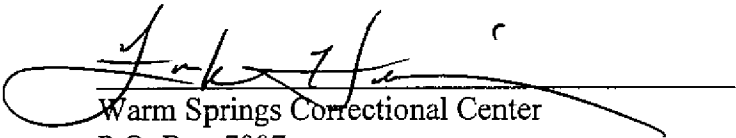
Dated this 1st day of April, 2019.


Petitioner, in pro se

CERTIFICATE OF SERVICE BY MAIL

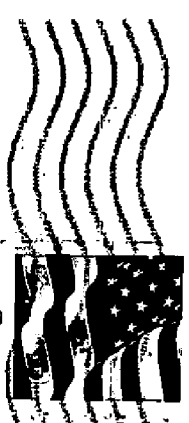
I, Frank Herring, hereby certify pursuant to N.R.C.P. 5(b), that on
this 1st day of April, 2019, I handed to a prison
official for mailing a true and correct copy of the foregoing REQUEST FOR
APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING
addressed as following:

Steven B. Wolfson
200 Lewis Avenue
3rd Floor LV, NV
89155-1160


Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702

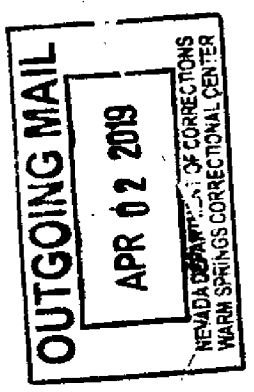
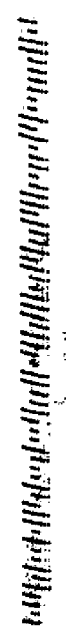
Mr. Frank Hearing #10010445
N.S.C.C
P.O. Box 7007
Carson City, NV 89702

RENO NV 895
02 APR 2019 PM 2 T



Steven D. Grierson
200 Lewis Avenue 3rd
Floor Las Vegas, NV 89155

8910136300



DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
4/11/2019 10:42 AM
Steven D. Grierson
CLERK OF THE COURT



Frank Herring, Plaintiff(s)

vs.

State of Nevada, Defendant(s)

Case No.: A-19-790102-W

Department 12

NOTICE OF HEARING

Please be advised that the Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing in the above-entitled matter is set for hearing as follows:

Date: May 30, 2019

Time: 8:30 AM

Location: RJC Courtroom 14D
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 ORDR

2
3 EIGHTH JUDICIAL DISTRICT
4 CLARK COUNTY, NEVADA
5

6 FRANK HEARRING,) Case No.: A-19-790102-W
7)
8 Petitioner,) DEPT. No.: XII
9 vs.) (Second Petition)
10)
11 STATE OF NEVADA,)
12)
13 Respondent)
14

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

16 FINDINGS OF FACT

17 1. On July 15, 2013, the State charged Frank Herring by way of information
18 with Murder With Use of a Deadly Weapon, Attempt Murder With Use of a Deadly
19 Weapon, Discharging Firearm At or Into Structure, Vehicle, Aircraft or Watercraft, and
20 Possession of Firearm by Ex-Felon.

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

26 3. On December 10, 2013, Petitioner was sentenced to life imprisonment in
27 the Nevada Department of Corrections with parole eligibility after ten years, plus a
28 consecutive sentence of a maximum of 240 months and a minimum of 96 months for the
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
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

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

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, 2016 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. A show cause hearing was
held on July 31, 2018, August 2, 2018 and September 4, 2018 and were all continued for

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

3 16. On October 10, 2018, Petitioner filed a Motion for Order to Show Cause
4 Contempt of Court and Monetary Sanctions. A hearing was held on November 6, 2018
5 and the court ordered the motion taken off calendar because the file was turned over. On
6 November 26, 2018, Petitioner filed a Notice of Appeal. On December 17, 2018, the
7 Supreme Court of Nevada dismissed the appeal. Remittitur issued on January 11, 2019.

8 17. On February 25, 2019, Petitioner filed the instant (second) Petition for
9 Writ of Habeas Corpus (post-conviction).

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

12 CONCLUSIONS OF LAW

13 1. NRS 34.726(1), governing "Limitations on time to file..." requires that a
14 petition for a writ of habeas corpus "must be filed within 1 year after entry of the
15 judgment of conviction or, if an appeal has been taken from the judgment, within 1 year
16 after the Supreme Court issues its remittitur." Late-filing of a petition may be excused
17 from procedural default if the Petitioner can establish good cause for delay in bringing
18 the claim. *Id.* Good cause for late-filing consists of a showing that: (1) "delay is not the
19 fault of the petitioner"; and (2) "dismissal of the petition as untimely will unduly
20 prejudice the petitioner." *Id.* at (1)(a)-(b).

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

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

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

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

6. NRS 34.810(2), governing "Additional reasons for dismissal of petition,"
requires that "[a] second or successive petition must be dismissed if the judge or justice

1 determines that it fails to allege new or different grounds for relief and that the prior
2 determination was on the merits or, if new and different grounds are alleged, the judge or
3 justice finds that the failure of the petitioner to assert those grounds in a prior petition
constituted an abuse of the writ."

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

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

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

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

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

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

21 13. The instant petition is a successive petition, and therefore is also subject
22 to dismissal pursuant to NRS 34.810(1)(b)(2); NRS 34.810(2). The petition must be
23 dismissed if petitioner failed to allege new or different grounds for relief and the prior
24 determination was on the merits or, if new and different grounds are raised in the petition
25 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 five years after the Judgment of Conviction was filed. The instant 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. The Petitioner further 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 11 day of April 2019.

MICHELLE LEAVITT
DISTRICT COURT JUDGE
DEPARTMENT XII
EIGHTH JUDICIAL 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 Hcarring #1006445
Warm Springs Correctional Center
P.O. Box 7007
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 Rocha
Judicial Executive Assistant
Department XII
Eighth Judicial District Court

A-19-790102-W
Frank Hcarring
vs.
The State of Nevada



NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

FRANK HEARRING,

Petitioner,

vs.

STATE OF NEVADA,

Respondent,

Case No: A-18-790102-W

Dept No: XII

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

PLEASE TAKE NOTICE that on April 12, 2019, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you 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 April 15, 2019.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Debra Donaldson

Debra Donaldson, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 15 day of April 2019, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

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

☒ The United States mail addressed as follows:

Frank Hearring # 1006445
P.O. Box 7007
Carson City, NV 89702

/s/ Debra Donaldson

Debra Donaldson, Deputy Clerk



1 ORDR
2
3

4 EIGHTH JUDICIAL DISTRICT
5 CLARK COUNTY, NEVADA

6 FRANK HEARRING,) Case No.: A-19-790102-W
7)
8 Petitioner,) DEPT. No.: XII
9 vs.) (Second Petition)
10)
11 STATE OF NEVADA,)
12)
13 Respondent)
14

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

16 FINDINGS OF FACT

17 1. On July 15, 2013, the State charged Frank Herring by way of information
18 with Murder With Use of a Deadly Weapon, Attempt Murder With Use of a Deadly
19 Weapon, Discharging Firearm At or Into Structure, Vehicle, Aircraft or Watercraft, and
20 Possession of Firearm by Ex-Felon.

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

26 3. On December 10, 2013, Petitioner was sentenced to life imprisonment in
27 the Nevada Department of Corrections with parole eligibility after ten years, plus a
28 consecutive sentence of a maximum of 240 months and a minimum of 96 months for the
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
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

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

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, 2016 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. A show cause hearing was
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 10, 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. 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.

17. On February 25, 2019, Petitioner filed the instant (second) Petition for Writ of Habeas Corpus (post-conviction).

18. 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).

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

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

6. NRS 34.810(2), governing "Additional reasons for dismissal of petition," requires that "[a] second or successive petition must be dismissed if the judge or justice

1 determines that it fails to allege new or different grounds for relief and that the prior
2 determination was on the merits or, if new and different grounds are alleged, the judge or
3 justice finds that the failure of the petitioner to assert those grounds in a prior petition
constituted an abuse of the writ."

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

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

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

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

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

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

21 13. The instant petition is a successive petition, and therefore is also subject
22 to dismissal pursuant to NRS 34.810(1)(b)(2); NRS 34.810(2). The petition must be
23 dismissed if petitioner failed to allege new or different grounds for relief and the prior
24 determination was on the merits or, if new and different grounds are raised in the petition
25 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 five years after the Judgment of Conviction was filed. The instant 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. The Petitioner further 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 11 day of April 2019.

MICHELLE LEAVITT
DISTRICT COURT JUDGE
DEPARTMENT XII
EIGHTH JUDICIAL 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

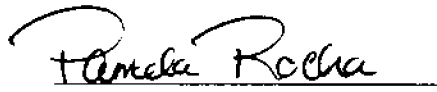
CERTIFICATE OF MAILING

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 Hcarring #1006445
Warm Springs Correctional Center
P.O. Box 7007
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 Rocha
Judicial Executive Assistant
Department XII
Eighth Judicial District Court

A-19-790102-W
Frank Hcarring
vs.
The State of Nevada

A-19-790102-W

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

State of Nevada
PLAINTIFF

case no: A-18-790102-W

VS.

NOTICE OF APPEAL

Frank Herring

DEFENDANT

Notice is hereby given that Frank Herring, In Pro Se, proper person
In the above named case, hereby appeals to the United States Court of Appeals for the Ninth
Circuit from a judgment in Writ of Habeas Corpus (Post Conviction).
On 11th day of April, 2019, which was received by Frank Herring
On 15th day of April, 2019.

Frank Herring respectfully requests on this 6th day of May
2019, that this Honorable Court enter this Notice of Appeal.

[Signature]
RESPECTFULLY

Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702

CLERK OF THE COURT

RECEIVED
MAY 10 2019

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DESIGNATION OF TRANSCRIPTS
TO BE USED IN RECORD ON APPEAL

District Court Case Number: C-13-291159-1

Court of Appeals Case Number: A-18-790102-W

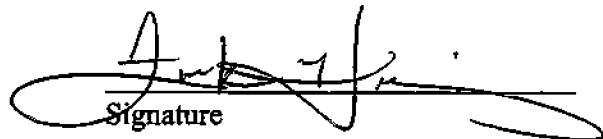
Case Caption: Motion For Writ of Habeas Corpus.

_____ Transcripts are NOT required for this appeal.

The undersigned hereby designates the following transcripts to be used in the record on appeal for the above listed case and appeal:

Date of Hearing	Docket Number	Proceeding	Recorder/ Reporter	Transcript Filed Yes/No
5/21/13	13F08177X	Criminal Complaint		
7/11/13	13F08177X	Transcript Preliminary Hearing		YES
12/10/14	C-13-291159-1	Notice of Motion to Withdrawal Plea		
5/26/15	C-13-291159-1	Notice of Motion; Request for Records/Court Case Documents		
12/3/15	C-13-291159-1	Order Granted in part and denying in part Defendant's Records/Court Case Documents		
3/8/16	C-13-291159-1	Motion for Withdrawal of Attorney's Record for Records/Court Case Documents		
1/23/18	C-13-291159-1	Pro Per Motion to Compel		
10/31/17	C-13-291159-1	Motion to Withdraw Counsel (Order Granted)		

Date: May 6, 2019

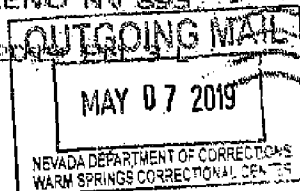

Signature

Frank Herring
Print Name

Frank Herring
Appellant/Appellee

Mr. Frank Herring #1006445
W.S.C.C
P.O. Box 7007
Carson City, NV 89702

REND NV 895



Steven D. Grierson
200 Lewis Avenue 3rd floor
Las Vegas, NV 89155-1160

8910186300





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 FRANK HEARRING,

11 Plaintiff(s),

12 vs.

13 STATE OF NEVADA,

14 Defendant(s),

Case No: A-19-790102-W

Dept No: XII

15
16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Frank Hearing

19 2. Judge: Michelle Leavitt

20 3. Appellant(s): Frank Hearing

21 Counsel:

22 Frank Hearing #1006445
23 P.O. Box 7007
24 Carson City, NV 89702

25 4. Respondent (s): State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
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: No
15 Supreme Court Docket Number(s): N/A
16 12. Child Custody or Visitation: N/A
17 13. Possibility of Settlement: Unknown

18 Dated This 14 day of May 2019.

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

Steven D. Grierson

OSCC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

FRANK HEARRING, PLAINTIFF(S) CASE NO.: A-19-790102-W
VS.
STATE OF NEVADA, DEFENDANT(S) DEPARTMENT 12

CIVIL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Default Judgment
- ☐ Judgment on Arbitration
- ☐ Stipulated Judgment
- ☒ Summary Judgment
- ☐ Involuntary Dismissal
- ☐ Motion to Dismiss by Defendant(s)
- ☐ Stipulated Dismissal
- ☐ Voluntary Dismissal
- ☐ Transferred (before trial)
- ☐ Non-Jury – Disposed After Trial Starts
- ☐ Non-Jury – Judgment Reached
- ☐ Jury – Disposed After Trial Starts
- ☐ Jury – Verdict Reached
- ☐ Other Manner of Disposition

DATED this 6 day of June, 2019.

Michelle Leavitt
MICHELLE LEAVITT
DISTRICT COURT JUDGE

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155



1 CSERV

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

7
8 FRANK HEARRING,

9 Plaintiff(s),

10 vs.

11 STATE OF NEVADA,

12 Defendant(s).

Case No: A-19-790102-W

Dept No: XII

13
14
15 **CERTIFICATE OF RE-SERVICE**

16 I HEREBY CONFIRM that the Notice of Entry of Findings of Fact Conclusions of Law
17 and Order originally filed on April 15, 2019 has been served on the Office of the Clark County
18 District Attorney and the Office of the Attorney General via electronic service.

19
20 All other respective party(ies) and their counsel(s), if any, have already received copies
21 via U.S. Mail when initially filed.

22
23 Steven D. Grierson, Clerk of the Court

24 s/Debra Donaldson

25 Debra Donaldson, Deputy Clerk

Ungermann, Heather

From: Donaldson, Debra
Sent: Wednesday, July 24, 2019 10:16 AM
To: 'motions@clarkcountynvda.com'; 'wiznetfilings@ag.nv.gov'; Ungermann, Heather
Subject: FW: Filing Accepted for Case: A-19-790102-W; Frank Herring, Plaintiff(s)vs.State of Nevada, Defendant(s); Envelope Number: 4146782

From: efilingmail@tylerhost.net [mailto:efilingmail@tylerhost.net]
Sent: Monday, April 15, 2019 3:20 PM
To: Donaldson, Debra
Subject: Filing Accepted for Case: A-19-790102-W; Frank Herring, Plaintiff(s)vs.State of Nevada, Defendant(s); Envelope Number: 4146782



Filing Accepted

Envelope Number: 4146782
Case Number: A-19-790102-W
Case Style: Frank Herring, Plaintiff(s)vs.State of Nevada, Defendant(s)

The filing below was accepted through the eFiling system. You may access the file stamped copy of the document filed by clicking on the below link.

Filing Details

Court	Clark District Criminal/Civil
Case Number	A-19-790102-W
Case Style	Frank Herring, Plaintiff(s)vs.State of Nevada, Defendant(s)
Date/Time Submitted	4/15/2019 3:17 PM PST
Date/Time Accepted	4/15/2019 3:19 PM PST
Accepted Comments	Auto Review Accepted
Filing Type	Notice of Entry - NEO (CIV)
Filing Description	Notice of Entry of Findings of Fact, Conclusions of Law and Order
Activity Requested	EFile
Filed By	Debra Donaldson
Filing Attorney	

Document Details

Lead Document	A790102.041519_neo_dd.pdf
Lead Document Page	7

Count**File Stamped Copy****Download Document**

This link is active for 45 days.

Please Note: If you have not already done so, be sure to add yourself as a service contact on this case in order to receive eService.

For technical assistance, contact your service provider

Odyssey File & Serve

(800) 297-5377

Please do not reply to this email. It was automatically generated.

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK HEARRING, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 78791
District Court Case No. A790102

FILED

JAN 22 2020

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

Elizabeth A. Brown
CLERK OF COURT

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

“ORDER the judgment of the district court AFFIRMED.”

Judgment, as quoted above, entered this 20th day of December, 2019.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
January 14, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Monique Mercier
Administrative Assistant

A-19-790102-W
CCJA
NV Supreme Court Clerks Certificate/Judgm
4889129



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANK HEARRING, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78791-COA

FILED

DEC 20 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Frank Hearing, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 25, 2019. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Hearing, who did not appeal his conviction, filed his petition more than five years after entry of the judgment of conviction on December 30, 2013. Hearing's petition was therefore untimely filed. See NRS 34.726(1). Because he raised claims new and different from those raised in his prior petition, Hearing's petition was also an abuse of the writ.¹ See NRS 34.810(2). Hearing's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(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

¹See *Hearing v. State*, Docket No. 68968 (Order of Affirmance, April 14, 2016).

Nev. 248, 252, 71 P.3d 503, 506 (2003). And the good cause claim must explain the entire delay. *See id.* (a good cause claim must itself not be procedurally barred). To warrant an evidentiary hearing on his good cause claims, Herring's claims could not be bare but had to allege specific facts that, if true and not belied by the record, would have entitled him to relief. *See Berry v. State*, 131 Nev. 957, 967, 363 P.3d 1148, 1155 (2015).

Herring first claimed he had good cause because the district court should have construed his motion to withdraw his guilty plea, filed in 2014, as a postconviction petition for a writ of habeas corpus. Herring did not appeal the district court's denial of his motion, and he has not explained the four-year delay between the denial of the motion and the filing of the instant petition.

Herring next claimed he had been waiting on his documents and records and he did not learn of the alleged due process violations until after his conviction was affirmed. Herring's bare claims did not identify what documents or records he needed or why they were necessary to his petition. They also failed to specify when he learned of the alleged violations or how an impediment external to the defense prevented his learning of them.

To the extent Herring claimed he had good cause to reraise claims because they are relevant to these proceedings, he failed to explain why mere relevance should allow him to overcome the procedural bars. And to the extent Herring claimed his actual innocence should overcome a procedural bar, he did not demonstrate actual innocence because he failed to show that "in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him." *Bousley v. United States*, 523 U.S. 614, 623 (1998) (internal quotation marks omitted); *see also Mazzan v.*

Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). For the foregoing reasons, we conclude the district court did not err by denying Herring's petition as procedurally barred.

Finally, the district court denied Herring's motion to appoint postconviction counsel. The issues Herring presented were not difficult, he appeared able to comprehend the proceedings, and it does not appear counsel was necessary to proceed with any discovery. We therefore conclude the district court did not abuse its discretion by denying Herring's motion for the appointment of postconviction counsel. See NRS 34.750(1); see generally *Renteria-Novoa v. State*, 133 Nev. 75, 391 P.3d 760 (2017). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


Gibbons C.J.


Bulla J.

cc: Hon. Michelle Leavitt, District Judge
Frank Herring, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²The Honorable Jerome T. Tao did not participate in the decision in this matter.

CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE: January 14, 2020
Supreme Court Clerk, State of Nevada
By: [Signature] Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK HEARRING, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 78791
District Court Case No. A790102

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: January 14, 2020

Elizabeth A. Brown, Clerk of Court

By: Monique Mercier
Administrative Assistant

cc (without enclosures):

Hon. Michelle Leavitt, District Judge
Frank Hearring, Jr.
Clark County District Attorney \ Alexander G. Chen, Chief Deputy District
Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JAN 22 2020.

HEATHER UNGERMANN

Deputy District Court Clerk

**RECEIVED
APPEALS**

JAN 21 2020

CLERK OF THE COURT

1 Frank Hearring
2 #1006445

3 Northern Nevada Correctional Center
4 Post Office Box 700
5 Carson City, NV 89702

6 Petitioner, In Proper Person

FILED

DEC 02 2021

Ann L. Johnson
CLERK OF COURT

7 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8
9 IN AND FOR THE COUNTY OF Clark

10 Frank Hearring
11 Petitioner,

12 vs.

13 State of Nevada
14 Respondent.

Case No.: A-19-790102-W
Dept. No. 12

Evidentiary Hearing Req
PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION)
(Non Death Penalty)

15 **INSTRUCTIONS:**

- 16 1. This petition must be legibly handwritten or typewritten, signed by the petitioner and
17 verified.
- 18 2. Additional pages are not permitted except where noted or with respect to the facts which
19 you rely upon to support your grounds for relief. No citation of authorities need be furnished.
20 If briefs or arguments are submitted, they should be submitted in the form of a separate
21 memorandum.
- 22 3. If you want an attorney appointed, you must complete the Affidavit in Support of Motion
23 for Leave to Proceed In Forma Pauperis. You must have an authorized officer at the prison
24 complete the certificate as to the amount of money and securities on deposit to your credit in
25 any account in the institution.
- 26 4. You must name as Respondent the person by whom you are confined or restrained. If you
27 Are in a specific institution of the department of corrections, name the warden or head of the
28

1 23. ~~GROUND~~ 10 || Petitioner Alleges that trial Counsel Failed
2 to Present Mitigating Evidence during the sentencing hearing
3 which would have rendered a more lenient sentence from
4 trial Judge and to show Good Character of Petitioner.

5 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The
6 Petitioner Alleges that trial counsel Failed to present Mitigating
7 Evidence during Sentencing which he had Advised Counsel
8 to do and Trial Counsel Refused to present Mitigating Test-
9 imony from the Petitioner's Church members, School Mentor,
10 Youth Counselor, Parents (Mother & Father) Fiancee, child hood
11 friends, and Petitioner's Supervisor's as well as Employer so
12 that Trial Judge can show Leniency towards Petitioner's
13 Sentencing because State's Attorney Presented Evidence to
14 show Petitioner's Bad Character which rendered unfair-
15 ness in violation of the Petitioner's Constitutional Rights to
16 the State & Federal Constitution in violation of the 6th & 14th
17 Amendment to Effectiveness of Counsel.

11 Petitioner Alleges that trial counsel rendered

Ineffective Assistance of counsel, when counsel advised him to accept the revised plea, despite his protestations of innocence on advice of an attorney who was improperly motivated ~~due to~~ Petitioners inability to pay retained attorney.

Supporting FACTS (Tell your story briefly without citing cases or law.):

The defense Attorney purposely advised petitioner to accept plea negotiations based on petitioners inability to pay retained fees of 10,000. Petitioner alleges that defense counsel was improperly motivated. Defense Counsel induced guilty plea(s) based solely on defendant's inability to pay counsel's fee. Because of Counsel's coercion and this deception forced petitioner to plead guilty which is a violation of petitioners Sixth Amendment and fourteenth Amendment right(s).

(b) Ground 12 //

Petitioner Alleges trial Counsel rendered Ineffective Assistance of Counsel when he failed to use private investigator of office to conduct a thorough investigation, in violation of Petitioners 6th and 14th Amendment rights.

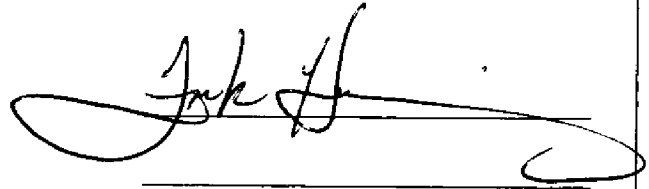
Supporting Facts:

Petitioner alleges trial counsel failed to use law office's Private investigator to perform investigative duties; such as locate friends and family of petitioner who would have made statements on behalf of petitioner's alibi to the Crime of Murder with the Use of A Deadly Weapon and exonerate him from doing such Criminal Activity. Petitioner alleges trial Counsel was ineffective and notwithstanding range of Competence demanded of attorney's in Criminal Cases by failing to perform duties imposed by ethical principles as well as Constitutional when Counsel failed to seek out exculpatory evidence, which denied petitioner a Constitutional right to a fair trial proceedings during a Serious criminal proceedings further violating petitioners due process rights in violation of petitioners 6th and 14th Amendment rights, this failure of the use of private investigator that seasoned, Competent trial Counsel denied petitioner a fundamental Constitutional right.


1 WHEREFORE, petitioner prays that the court grant petitioner
2 Relief to which he may be entitled in this proceeding.

3 EXECUTED at N.N.C.C., Carson City, NV 89702 Nevada on the 11th
4 Day of November, 20 21.

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



1
2
3
4
5
6
7
8
9
0
1
2
3
4
5


Petitioner

10

11	
12	
13	
14	

17
18
19
20

2

4	
5	

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document For A (Motion)
Petition For Writ of Habeas Corpus (Post Conviction)
Relief
(Title of Document)

filed in case number: C-13-291159-1

☒ Document does not contain the social security number of any person

-OR-

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

☐ A specific state or federal law, to wit:

(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS125B.055)

Date: Nov 11, 2021

[Signature]
(Signature)
Frank Hearing
(Print Name)
[Signature]
(Attorney for)

Frank Hearnings #1006445

Box 7000

San City, NV 89702

Steven D. Emerson
Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155

LEGAL MAIL
CONFIDENTIAL

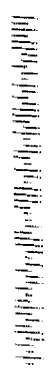
3 MAY 1996
MAILER
11160003
9001 062
ZIP 89101
0117286006

Mr Frank Hearing # 1006445
N.N.C.C
P.O. Box 7000
Carson City, NV 89702

Steven D. Emerson
Clerk of the Court
200 Lewis Avenue 3rd Floor
Las Vegas, NV 89155

LEGAL MAIL
CONFIDENTIAL

Model 3 7417-15 VAL
11/6/2011
USPS 0101 963
ZIP 89101
01/01/2010



NOV 15 2021

2nd

NORTH CAROLINA CONSTITUTIONAL CENTER
858 9th St
LAW LIBRARY

Mr. Frank K Hearnings #1006445

V.N.C.C

P.O. Box 7000

Las Vegas City, NV 89702

73

Steven D. GrierSON

Clerk of the Court^{3rd}

200 Lewis Avenue, Floor

Las Vegas, NV 89155

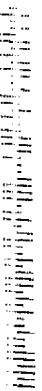
LEGAL MAIL
CONFIDENTIAL

Postnet 3717

US POSTAGE 30015



ZIP 89155



1 institution. If you are not in a specific institution of the department but within its custody, name the
2 director of the department of corrections.

3 (5) You must include all grounds or claims for relief which you may have regarding your
4 conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing
5 future petitions challenging your conviction and sentence.

6 (6) You must allege specific facts supporting the claims in the petition you file seeking
7 relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions
8 may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of
9 counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you
10 claim your counsel was ineffective.

11 (7) When the petition is fully completed, the original and copy must be filed with the
12 clerk of the state district court for the county in which you were convicted. One copy must be mailed
13 to the respondent, one copy to the attorney general's office, and one copy to the district attorney of
14 the county in which you were convicted or to the original prosecutor if you are challenging your
15 original conviction or sentence. Copies must conform in all particulars to the original submitted for
16 filing.

17 PETITION

18 1. Name of institution and county in which you are presently imprisoned or where and
19 how you are presently restrained of your liberty: Northern Nevada Correctional Center,
Carson County, Restrained by Penny Russell

20 2. Name and location of court which entered the judgment of conviction under attack:

21 8th Judicial District Court of Clark County, Nevada

22 3. Date of judgment of conviction: Dec 10, 2013

23 4. Case Number: C-13-291159-1

24 5. (a) Length of sentence: 10 yrs to life w/ consecutive 8 to

25 20 yrs.

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No X

If "yes", list crime, case number and sentence being served at this time:

7. Nature of offense involved in conviction being challenged: Murder (Second Degree) with the use of A Deadly Weapon, (Category A) Felony

8. What was your plea? (check one)

(a) Not guilty _____ (c) Guilty but mentally ill _____

(b) Guilty X (d) Nolo contendere _____

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment of information, or if a plea of guilty was negotiated, give details: The Plea of guilty was Unknowingly and Unintelligently made as well as involuntarily Entered Due to Defense Attorneys Ineffectiveness (Assistance.)

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

(a) Jury _____

(b) Judge without a jury _____

11. Did you testify at the trial? Yes _____ No _____

12. Did you appeal from the judgment of conviction?

Yes _____ No X

13. If you did appeal, answer the following:

(a) Name of court: _____

(b) Case number or citation: _____

(c) Result: _____

(d) Date of result: _____

(Attach copy of order or decision, if available)

14. If you did not appeal, explain briefly why you did not:

The Reason(s) was because I Negotiate A Plea Agreement with States Attorney by the Coersion of Incompetent trial Counsel.

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ☒ No ☐

16. If you answer to No. 15 was "yes," give the following information:

(a) (1) Name of court: 8th Judicial District Court

(2) Name of proceeding: _____

(3) Grounds raised: Motion to withdraw guilty plea, which was denied, Ineffective Assist, Crime Scene Analyst Experts and Detectives failure to Conduct thorough Investigative duties.

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☒

(5) Result: _____

(6) Date of result: _____

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: _____

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

(1) Name of court: 8th Judicial District Court

(2) Nature of proceeding: _____

(3) Grounds raised: Crime Scene Analyst Experts Failure to Conduct Investigative duties.

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☒

(5) Result: _____

(6) Date of result: _____

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: _____

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

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

(1) First petition, application or motion?

Yes _____ No X

(2) Second petition, application or motion?

Yes _____ No X

(3) Third or subsequent petitions, applications or motions?

Yes _____ No _____

Citation or date of decision.

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

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

(a) Which of the grounds is the same: Ineffective Assist, Crime Scene

Analyst failure to investigate,

(b) The proceedings in which these grounds were raised:

1 Ineffective Assistance of Counsel; In motion to withdraw
2 draw guilty plea

3 (c) Briefly explain why you are again raising these grounds. (You must relate
4 specific facts in response to this question. Your response may be included on paper which is 8 1/2 by
5 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten
6 pages in length.)

7 Because Negotiations of Plea Agreement was Coerced by
8 Defense Attorney when I wanted to go to Jury trial.

9 18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional
10 pages you have attached, were not previously presented in any other court, state or federal, list
11 briefly what grounds were not so presented, and give your reasons for not presenting them. (You
12 must relate specific facts in response to this question. Your response may be included on paper
13 which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or
14 typewritten pages in length.)

15 See Attached: (Subject Matter Jurisdiction, Vio-
16 lation of Equal Protection, And Due Process.)

17 19. Are you filing this petition more than 1 year following the filing of the judgment of
18 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.

19 (You must relate specific facts in response to this question. Your response may be included on paper
20 which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or
21 typewritten pages in length.)

22 Reasons for delays After 1yr deadline was
because A Motion to withdraw Guilty Plea was Late filed.

23 20. Do you have any petition or appeal now pending in any court, either state or federal,
24 as to the judgment under attack? Yes _____ No X

25 If yes, state what court and the case number:

26 21. Give the name of each attorney who represented you in the proceeding resulting in
27 your conviction and on direct appeal: Defense Attorney: Carl Arnold

①

Continuation, (page #18)

(State Habeas Corpus Relief)

i.) Trial court proceeded for want of Subject Matter Jurisdiction in prosecution of Non-Existent Offense, (See ~~Below~~ Below)

A.) Information charges "Murder with the Use of a Deadly Weapon." No such offense exists within The Nev Statutes, Nev Revised Statutes, nor in Common law. "Use of a Deadly Weapon" is not an offense, but rather is a predicate fact which if proven beyond a reasonable doubt, permits the enhancement of the sentence of "Murder." The information should have charged (Only Murder.) As the instant offense and in fact the text alleged that the offense was committed with the use of a deadly weapon, which would then allow an enhanced penalty.

Trial court lacked jurisdiction subject Matter because the charging document failed to state a legitimate offense. Information charges "Murder with the Use of a Deadly Weapon," No such offense is defined by Statute nor by Common law.

Which constitutes a Violation of Equal Protection, And Due Process.

Subject Matter Jurisdiction

Holding subject-matter jurisdiction (Never) forfeited or waived, defects require correction regardless of whether errors raised in District Court. "Subject-Matter Jurisdiction can 'Never' be waived or forfeited. The objections may be resurrected at Anytime, or point in the litigation, and a valid objection may lead a Court midway through briefing to dismiss a Complaint in it's entirety.

The use of a firearm or other deadly weapons in the commission of a crime, (NRS 193.193) is Not a Separate — Criminal offense, rather it's an additional penalty. This section does not create any separate offense but provides an additional penalty for the primary offense, whose imposition is contingent upon the finding of the prescribed fact. (NRS 193.165) (2), as it reads at the time of defendant Hearing's alleged crime in (2013). The Nevada Supreme Courts, observed that the additional penalty imposed for "Use of A Deadly Weapon" is Not an offense at all, (NRS 193.165) clearly evidence exist where legislative intent to impose separate penalties for a primary offense and in this case, the "Use of a Deadly Weapon" in the Commission of the offense, this section does not create "Any" Separate offense, but rather provides an additional penalty for the primary ... (Emp, added) indicating that "Use of a Deadly weapon is (Not) the offense, but rather is a penalty. Defendant Hearing alleges that Since "Use of a Deadly Weapon" was made an essential element of the Murder charge, imposition of two separate Sentences for that Use violates the rule that when the same evidence is required ⁸⁰ then there is but one offense.

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack:

Yes _____ No X

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground One:

SEE

Supporting Facts:

Attached

Ground

ONE

(b) Ground

Petitioner Alleges crime Scene Analyst Experts And Detectives Failed to Conduct a thorough Investigation of Crime Scene, a violation of petitioners 6th and 14th Amendment rights.

Supporting Facts:

Petitioner alleges crime scene analyst experts and Detectives of the Metropolitan Police Department failed to thoroughly and properly perform investigative duties, forensic testing such as locate, test and process mitigating evidence, which if done of course traditionally exculpatory evidence such as that which could show that someone else committed the charged crime and exonerate petitioner from doing such criminal activity. This fact creates a reasonable probability sufficient to undermine confidence in the outcome of these proceedings, this failure of crime scene analyst experts and detectives to collect and/or test or thoroughly process crime scene evidence denied petitioner a constitutional right to an appropriate investigation, which were not followed up on and/or completed by law enforcement which lead to petitioners plea negotiations because of detectives and crime scene analyst experts bias which otherwise impeach their credibility in violation of petitioners 6th and 14th Amendment rights during a serious criminal proceedings.

(c) Ground

2||

Petitioner Alleges trial Court erred when trial Court did not construe petitioners Motion to Withdraw Guilty Plea as petitioners post-conviction writ for Habeas Corpus in violation of petitioners 6th and 14th Amendment rights.

Supporting Facts:

Petitioner alleges trial Court failed to construe petitioners Motion to Withdraw guilty plea as post-conviction writ. Petitioner also states that on December 10, 2014 petitioners Motion to Withdraw Guilty Plea was filed at least 20 days prior to the 1 year deadline which does not time bar petitioner from seeking post-conviction relief. Petitioner alleges this bias to comply would constitute prejudice and a miscarriage of justice because petitioner filed Motion to Withdraw guilty plea in a timely manner and within the 1yr timeline and should be heard and/or decided on its merits, failure to do so would violate petitioners due process rights to the 6th and 14th Amendment(s).

(d) Ground 3||

Petitioner Alleges seasoned trial Counsel intentionally withheld knowledge of material information from petitioner which denied petitioners rights to 5th, 6th and 14th Amendments to effective assistance of Counsel.

Supporting Facts:

Petitioner alleges seasoned trial Counsel withheld favorable evidence from petitioner, retained trial Counsel withheld knowledge of material evidence from petitioner until petitioners request for records/court case documents was received, after Coercing petitioner into believing pleading guilty would be in petitioners best interest. Seasoned retained Counsel withheld exculpatory material evidence from petitioner that could have exonerated petitioner from the crimes of Murder w/use of a deadly weapon, petitioner did not have knowledge of this due process violation until after guilty plea, filing Motion for Court + Case records and after petitioners conviction had been affirmed. Seasoned retained trial Counsel intentionally withheld favorable evidence from petitioner after petitioners repeated request for records/court case documents in violation of petitioners 5th, 6th and 14th Amendment rights.

(e) Ground

4||

From a disloyal Seasoned retained Counsel failed to seek
out and present exculpatory evidence, mitigating evid-
ence, in violation of petitioner's 6th and 14th Amend-
ment rights.

Supporting Facts:

Petitioner's disloyal Seasoned retained Counsel failed to per-
form duties imposed by ethical principles, as well as Constitu-
tional when retained Seasoned Counsel failed to seek out
exculpatory evidence, mitigating evidence on behalf of peti-
titioner to the Crimes of; Murder w/ the Use of a De-
adly Weapon, a prohibited person in possession of a Dead-
ly Weapon, a Fire Arm, which denied petitioner a Consti-
tutional right to a Compulsory process and to have
the assistance of counsel for defense during a ser-
ious criminal proceedings, in violation of standards
for Criminal justice, in violation of petitioner's
6th and 14th Amendment rights.

#4

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

23. a. GROUND 5 || Petitioner Alleges that his Plea Negotiation WAS UNKNOWING AND UNINTELLIGENTLY AS WELL AS INVOLUNTARILY MADE DUE TO TRIAL COUNSEL'S INEFFECTIVE ASSISTANCE IN VIOLATION OF THE PETITIONER'S SIXTH AMENDMENT AND FOURTEENTH AMENDMENT RIGHT

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The Defense Attorney Purposely lead Petitioner to believe he was getting the Death Penalty by withholding the Results to the Grand Jury's Indictment Seeking the Death Penalty until After Petitioner's Plea Negotiation Agreement, Causing Petitioner to Plea Negotiate with the States Attorney. Petitioner WAS COERSED INTO ACCEPTING A LESSER CHARGE FROM FIRST DEGREE MURDER TO SECOND DEGREE MURDER BECAUSE OF TRIAL COUNSEL'S COERSION AND THIS DECEPTION [FORCED] PETITIONER TO PLEAD GUILTY TO AVOID THE DEATH PENALTY WHICH HE CONTEND THAT DUE TO TRIAL COUNSEL'S PERFORMANCE OF MISREPRESENTATION, HE WOULD'VE PREFERRED TO GO TO TRIAL INSTEAD OF PLEA BARGAINING.

23. (b) GROUND 6 || Petitioner Alleges that Trial Counsel Failed to properly Interview potential witnesses and make Independent Investigation of the Facts and Circumstances of the Case Rendering Ineffectiveness Assistance of Counsel in Viol of 6th Amend.

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The Court Appointed Defense Attorney: CARL ARNOLD to Represent Petitioner: FRANK HEARRING in a Murder Case in the First Degree which carried a penalty of Death. Trial Counsel Failed to properly Interview witnesses that Petitioner Presented to him by way of Visitation in the Clark County Detention Center. Petitioner Alleges that Counsel's Failure to interview Potential witnesses that could've exonerated him from the crime constituted bad Performance of a Reasonable Trial Attorney in Violation of the 6th Amendment and 14th Amendment Right To Effectiveness Assistance of Counsel and Due Process Rights to Life & Liberty

23. (c) GROUND I ||: Petitioner Alleges that the Trial Counsel
Rendered INEFFECTIVE Assistance of Counsel when he Failed to
Use the Private Investigator of the Office to conduct A thorough
Investigation in violation of his 6th Amendment to Effective Counsel.

23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The
Petitioner Alleges that Trial Counsel Failed to use the LAW OFFICE's
Private Investigator to perform Investigative duties such as
Locate Friend & Family of Petitioner who would have made
Statements on behalf of Petitioner's Alibi to the Crime of
Murder with the Use of A deadly Weapon AND EXONARATE him
From doing such Criminal Activity. This Failure of the Use
of A Private Investigator that Trial Counsel has choosing
to do, denied Petitioner A Constitutional Right to A Fair
Trial Proceeding which lead to Petitioner's Plea Negotiation
because of INEFFECTIVE Assistance From Counsel in Violation
of His 6th Amendment to Effectiveness of Counsel during A
Serious Criminal Proceeding.

23. GROUND 8 || Petitioner alleges that Trial Counsel Failed to properly Interview States Attorney Key Witness,

23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The Petitioner contend that Trial Counsel Failed to properly Interview the States Attorney Key Witness to Recieve the witness Point of the Investigation which Renders Competent Trial Counsel and this Prejudiced the Petitioner because this Key Witness pursued a course of MisIdentification until they were shown A photograph that WAS of Petitioner and other black males which Petitioner's Picture WAS EXPOSE in size much bigger then the rest of the black males. A proper Interview would have given Trial Counsel A better view of the States witness demeanor, but trial Counsel Failed to perform such critical duties which had violated Petitioner's 6th Amendment Constitutional Right to Effective Assistance of Counsel guaranteed under the State and Federal Constitution.

23. F GROUND 9 || Petitioner Alleges that Trial Counsel Failed to File a Motion for a Psychological Evaluation for the States Key Witness After Knowing witness had a inconsistent statement testimony during preliminary hearing.

23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The Petitioner Alleges that trial Counsel Failed to File a Motion for a psychological Evaluation for the states key witness once it was discovered that the states witness Testimony during the Preliminary Hearing showed inconsistency which Trial Counsel Failed to investigate and Petitioner Requested for this Evaluation to be conducted by Filing a Motion with the Courts but was told "No" by Trial Counsel. This Rendered ineffectiveness of Counsel on the Trial Attorney's Part because this key witness was the State's only witness to a Murder Conviction and Petitioner was not allowed to Confront this witness by Questioning in violation of Petitioner's 6th Amendment Right to Confrontation of the Accuser and the 14th Amendment to the State & Federal Const. to Due Process and Counsel's Performance Rendered Ineffectiveness, denying Petitioner of his Federal Constitutional Right.

Alana B. Smith
CLERK OF THE COURT

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

ORDR

EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA

FRANK HEARRING,)	Case No.: A-19-790102-W
)	
Petitioner,)	DEPT. No.: XII
vs.)	(Third Petition)
)	
STATE OF NEVADA,)	
)	
Respondent.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT

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

2. On October 7, 2013, pursuant to negotiations, Petitioner entered into a Guilty Plea Agreement ("GPA") with the State, wherein, he agreed to plead guilty to one 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.

3. On December 10, 2013, Petitioner was sentenced to life imprisonment in 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 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 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).

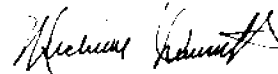
16. Accordingly, the Petition is time barred. The Petition is a successive petition and constitutes an abuse of the writ.

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 CLERK

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 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 FRANK HEARRING,

6 Petitioner,

Case No: A-19-790102-W

Dept No: XII

7 vs.

8 STATE OF NEVADA,

9 Respondent,

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

10
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
15 to you. This notice was mailed on December 20, 2021.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Amanda Hampton

18 Amanda Hampton, Deputy Clerk

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 Hearring # 1006445
26 P.O. Box 7000
Carson City, NV 89702

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

Alana B. Smith
CLERK OF THE COURT

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

ORDR

EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA

FRANK HEARRING,)	Case No.: A-19-790102-W
)	
Petitioner,)	DEPT. No.: XII
vs.)	(Third Petition)
)	
STATE OF NEVADA,)	
)	
Respondent.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT

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

2. On October 7, 2013, pursuant to negotiations, Petitioner entered into a Guilty Plea Agreement ("GPA") with the State, wherein, he agreed to plead guilty to one 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.

3. On December 10, 2013, Petitioner was sentenced to life imprisonment in 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 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 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
12 undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944,
13 950 (1994).

14 12. Petitioner had one year from December 30, 2013, the date the Judgement
15 of Conviction was filed, to file a Petition for Writ of Habeas Corpus (Post-Conviction).
16 The instant Petition was filed over seven years after the Judgement of Conviction was
17 filed. As such, the instant petition is untimely. Absent good cause and prejudice, the
18 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).

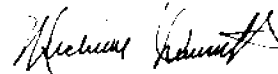
16. Accordingly, the Petition is time barred. The Petition is a successive petition and constitutes an abuse of the writ.

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 CLERK

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

Frank Herring #1006445
(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

Heather S. Smith
CLERK OF THE COURT

In The Eighth Judicial District Court

Frank Herring

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 Herring, 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 17th 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 3900</u>	_____
<u>Las Vegas, NV 89101-1008</u>	_____

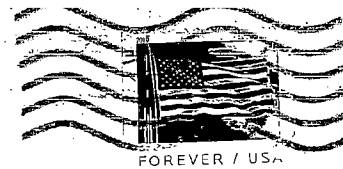
Frank Hearing #1006445

Movant, In Proper Person

Mr. Frank Herring + 100645
Ely State Prison
P.O. Box 1989
Ely, NV 89301

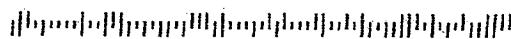
LAS VEGAS NV 890

18 JAN 2022 PM 5 L



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

89101-890000



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
10 FRANK HEARRING,

11 Plaintiff(s),

12 vs.

13 STATE OF NEVADA,

14 Defendant(s),

Case No: A-19-790102-W

Dept No: XII

15
16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Frank Hearing

19 2. Judge: Michelle Leavitt

20 3. Appellant(s): Frank Hearing

21 Counsel:

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

25 4. Respondent (s): State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
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

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated March 3, 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 110.

FRANK HEARRING,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

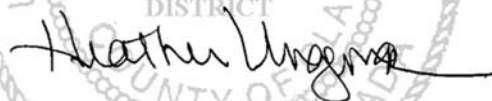
Case No: A-19-790102-W

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 14 day of March 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

