

Steven D. Grierson

Electronically Filed
Jul 25 2022 09:58 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Justin D. Porter #1042449

In Proper Person

P.O. Box 650 H.D.S.P. 89070
Indian Springs, Nevada 89018

8th JUDICIAL DISTRICT COURT
CLARK COUNTY NEVADA

Justin D. Porter,

Petitioner,

-v-

CALVIN JOHNSON-WARDEN,

Respondent,

Case No. A-19-798035-W
Dept. No. 17
Docket _____

NOTICE OF APPEAL

Notice is hereby given that the Petitioner, Justin D.

Porter, by and through himself in proper person, does now appeal

to the Supreme Court of the State of Nevada, the decision of the District

Court Denying Petitioner's Petition for writ of
Habeas Corpus (Post conviction) on the day of
JULY 6, 2022.

Dated this date, July 14, 2022.

Respectfully Submitted,

Justin Porter

In Proper Person

RECEIVED

JUL 18 2022

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

I, Justin D. Porter, hereby certify, pursuant to NRCP 5(b), that on this 14
day of July, 2022, I mailed a true and correct copy of the foregoing, "

NOTICE OF APPEAL.

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Steven D. Grierson, Clerk of Court
200 Lewis Avenue 3RD Floor
LAS VEGAS, NV 89155-1160

DATED: this 14 day of July, 2022.

Justin D. Porter #1042449
Justin D. Porter #1042449
/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs Nevada 89911 89070

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

"NOTICE OF APPEAL"

(Title of Document)

filed in District Court Case number A-19-798035-U

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

-OR-

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

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

(State specific law)

-or-

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

Justin D. Porter
Signature

7-14-2022
Date

Justin D. Porter
Print Name

NOTICE OF APPEAL
Title

Justin D. Porter #1042449
P.O. Box 650 (HDSP)
Indian Springs, NV 89070

LAS VEGAS NV 890

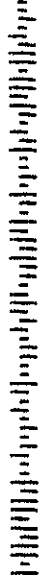
15 JUL 2022 PM 5 L

FOREVER / USA

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

Legat

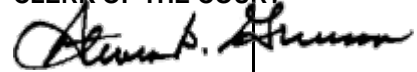
000003-10168



UNIT 5 NB

AUG 3 2022

HIGH DESERT STATE PRISON



1 ASTA

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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 JUSTIN PORTER,

11 Plaintiff(s),

12 vs.

13 BRIAN WILLIAMS - WARDEN,

14 Defendant(s),
15

Case No: A-19-798035-W

Dept No: XVII

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Justin Porter

20 2. Judge: Michael Villani

21 3. Appellant(s): Justin Porter

22 Counsel:

23 Justin Porter #1042449
24 P.O. Box 650
Indian Springs, NV 89070

25 4. Respondent (s): Brian Williams - Warden

26 Counsel:

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

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

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

5 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: Yes

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

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

10 9. Date Commenced in District Court: July 5, 2019

11 10. Brief Description of the Nature of the Action: Unknown

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

13 11. Previous Appeal: Yes

14 Supreme Court Docket Number(s): 79735, 80738, 84377, 84480

15 12. Child Custody or Visitation: N/A

16 13. Possibility of Settlement: Unknown

17 Dated This 19 day of July 2022.

18 Steven D. Grierson, Clerk of the Court

19
20
21 /s/ Heather Ungermann

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

25 cc: Justin Porter
26
27
28

CASE SUMMARY

CASE NO. A-19-798035-W

Justin Porter, Plaintiff(s)
vs.
Brian Williams, Defendant(s)

§
§
§
§
§
§
§

Location: **Department 17**
 Judicial Officer: **Vacant, DC 17**
 Filed on: **07/05/2019**
 Case Number History:
 Cross-Reference Case Number: **A798035**
 Supreme Court No.: **79735**
80738
84480

CASE INFORMATION

Related Cases

01C174954 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Statistical Closures

02/05/2021 Other Manner of Disposition

Case Status: **02/05/2021 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-19-798035-W
 Court Department 17
 Date Assigned 07/18/2022
 Judicial Officer Vacant, DC 17

PARTY INFORMATION

Plaintiff

Porter, Justin

Lead Attorneys

Pro Se

Defendant

Williams, Brian


Wolfson, Steven B
Retained
 702-455-5320(W)


DATE


EVENTS & ORDERS OF THE COURT


INDEX


EVENTS

07/05/2019  Inmate Filed - Petition for Writ of Habeas Corpus
 Party: Plaintiff Porter, Justin
[1] Petition for Writ of Habeas Corpus

07/23/2019  Order for Petition for Writ of Habeas Corpus
[2] Order for Petition for Writ of Habeas Corpus

07/25/2019  Notice of Hearing
 Filed By: Plaintiff Porter, Justin
[5]















09/27/2019  Notice of Appeal (Criminal)
[6] Notice of Appeal

10/01/2019  Case Appeal Statement
 Filed By: Plaintiff Porter, Justin
[7] Case Appeal Statement










CASE SUMMARY
CASE NO. A-19-798035-W

11/13/2019	 Motion Filed By: Plaintiff Porter, Justin <i>[8] Motion for Respondent to Petitioner's Habeas Corpus (Post Conviction)</i>
11/18/2019	 Clerk's Notice of Hearing <i>[9] Notice of Hearing</i>
11/19/2019	 NV Supreme Court Clerks Certificate/Judgment - Dismissed <i>[10] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed</i>
12/02/2019	 Response <i>[11] State's Response to Petitioner s Petition for Writ of Habeas Corpus, and Motion to Strike Petitioner s Rogue Filings</i>
12/04/2019	 Motion Filed By: Plaintiff Porter, Justin <i>[12] Motion</i>
12/05/2019	 Clerk's Notice of Hearing <i>[13] Notice of Hearing</i>
03/02/2020	 Notice of Appeal <i>[14] Notice of Appeal</i>
03/02/2020	 Notice of Appeal (Criminal) <i>[16] Notice of Appeal</i>
03/04/2020	 Case Appeal Statement Filed By: Plaintiff Porter, Justin <i>[15] Case Appeal Statement</i>
03/12/2020	 Case Appeal Statement Filed By: Plaintiff Porter, Justin <i>[17] Case Appeal Statement</i>
06/01/2020	 Findings of Fact, Conclusions of Law and Order <i>[18] Findings of Fact, Conclusions of Law, and Order</i>
06/04/2020	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Defendant Williams, Brian <i>[19] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
10/07/2020	 Request Filed by: Plaintiff Porter, Justin <i>[20] Request for Transcripts</i>
02/05/2021	 Order to Statistically Close Case <i>[21] Civil Order to Statistically Close Case</i>
08/24/2021	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>[22] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed</i>

CASE SUMMARY
CASE NO. A-19-798035-W

08/25/2021	 Motion Filed By: Plaintiff Porter, Justin <i>[23] Motion to Place on Calendar for Appointment of Counsel</i>
09/01/2021	 Opposition <i>[24] State s Opposition to Defendant s Motion to Place on Calendar for Appointment of Counsel</i>
09/07/2021	Case Reassigned to Department 17 <i>From Judge Jacqueline Bluth to Judge Michael Villani</i>
11/23/2021	 Writ of Habeas Corpus <i>[25] Writ of Habeas Corpus (Post Conviction)</i>
12/14/2021	 Order Denying Motion Filed By: Plaintiff Porter, Justin <i>[26] Order Denying Defendant's Motion for Appointment of Counsel</i>
12/23/2021	 Motion for Appointment of Attorney Filed By: Plaintiff Porter, Justin <i>[27] Motion for Appointment of Counsel</i>
03/01/2022	 Miscellaneous Filing <i>[29] N.R.S. 34.740 Petition: Expedition Judicial Examination</i>
03/29/2022	 Notice of Appeal Filed By: Plaintiff Porter, Justin <i>[30] Notice of Appeal</i>
03/31/2022	 Case Appeal Statement <i>[31] Case Appeal Statement</i>
04/04/2022	 Proof of Service <i>[32] Proof of Service</i>
04/07/2022	 Proof of Service <i>[33] Proof of Service</i>
04/07/2022	 Clerk's Notice of Hearing <i>[34] Notice of Hearing</i>
04/07/2022	 Request Filed by: Plaintiff Porter, Justin <i>[35] Hearing Requested</i>
04/29/2022	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Porter, Justin <i>[36] Post Conviction</i>
04/29/2022	 Memorandum of Points and Authorities Filed By: Plaintiff Porter, Justin <i>[37] Memorandum of Points and Authorities</i>

CASE SUMMARY
CASE NO. A-19-798035-W

04/29/2022	 Motion for Appointment of Attorney Filed By: Plaintiff Porter, Justin <i>[38] Motion for Appointment of Counsel</i>
05/02/2022	 Order for Petition for Writ of Habeas Corpus <i>[39] Order for Petition for Writ of Habeas Corpus</i>
05/04/2022	 Clerk's Notice of Hearing <i>[40] Notice of Hearing</i>
05/25/2022	 NV Supreme Court Clerks Certificate/Judgment - Dismissed <i>[41] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed</i>
06/01/2022	 Response Filed by: Plaintiff Porter, Justin <i>[42] State's Responds and Motion to Dismiss Petition for Writ of Habeas Corpus and Opposition to Motion to Appoint Counsel</i>
07/13/2022	 Findings of Fact, Conclusions of Law and Order <i>[43] Findings of Fact, Conclusions of Law, and Order</i>
07/18/2022	Administrative Reassignment - Judicial Officer Change <i>Cases Reassigned from Judge Michael Villani to Vacant, DC 17</i>
07/18/2022	 Notice of Appeal <i>[44] Notice of Appeal</i>
07/19/2022	 Notice of Entry of Findings of Fact, Conclusions of Law <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
07/19/2022	 Case Appeal Statement <i>Case Appeal Statement</i>

DISPOSITIONS

11/19/2019	Clerk's Certificate (Judicial Officer: Bluth, Jacqueline M.) Debtors: Justin Porter (Plaintiff) Creditors: Brian Williams (Defendant) Judgment: 11/19/2019, Docketed: 11/25/2019 Comment: Supreme Court No. 79735 Appeal Dismissed
08/24/2021	Clerk's Certificate (Judicial Officer: Bluth, Jacqueline M.) Debtors: Justin Porter (Plaintiff) Creditors: Brian Williams (Defendant) Judgment: 08/24/2021, Docketed: 08/24/2021 Comment: Supreme Court No 80738 - "APPEAL AFFIRMED"
05/25/2022	Clerk's Certificate (Judicial Officer: Villani, Michael) Debtors: Justin Porter (Plaintiff) Creditors: Brian Williams (Defendant) Judgment: 05/25/2022, Docketed: 05/25/2022 Comment: Supreme Court No. 84480 Appeal Dismissed

HEARINGS

10/02/2019	CANCELED Petition for Writ of Habeas Corpus (9:30 AM) (Judicial Officer: Bluth, Jacqueline M.) <i>Vacated - per Peremptory Challenge</i>
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CASE SUMMARY
CASE NO. A-19-798035-W

12/09/2019



Motion (9:30 AM) (Judicial Officer: Bluth, Jacqueline M.)

12/09/2019, 01/08/2020, 01/15/2020

PLAINTIFF'S MOTION FOR RESPONDENT TO PETITIONER'S HABEAS CORPUS (POST CONVICTION)

Continued;
Continued;
Continued;
Continued;
Continued;
Continued;
Continued;
Continued;
Continued;

Journal Entry Details:

Also present, Attorney Adam Gill. Ms. Luzaich advised she's not being served with the Defendant's motions in case C174954 and only knew of today's matter due to her Clerk. Colloquy regarding service of documents between Court, Defendant and Ms. Luzaich. Defendant advised he also has an Amended Motion To Dismiss; it's an amendment to the motion. Court noted the receipt of the supplement, which is additional information relating to the same argument. Ms. Luzaich stated she has neither and cannot proceed on the Defendant's Motion For Dismissal of Information. Colloquy regarding Plaintiff's- Motion For Respondent To Petitioner's Habeas Corpus (Post- Conviction). In regards to the petition in case A798035, Defendant advised he's not been to the Law Library in over a month and has not received a response. Ms. Luzaich stated it was mailed to the Defendant December 2nd and inquired if the Defendant still wanted to have an attorney appointed; which the State will not oppose. Defendant requested Mr. Gill be his attorney. Colloquy regarding Defendant's request for counsel and the responsibilities of counsel. Court stated the petition will be dealt with today, and at a later time the Defendant may want to have Mr. Gill back as counsel, but prior to that the Defendant would like to handle the petition himself. Defendant stated he would like counsel for the post conviction writ. Colloquy regarding continuation of motion and petition. Statement by Defendant. Colloquy between Court and State in regards to time needed to respond. COURT ORDERED, proceedings CONTINUED for argument; matter SET for status on the appointment of Mr. Gill as counsel; proceedings of December 30, 2019 CONTINUED. NDC 1-8-20 9:30 AM PLAINTIFF'S - MOTION FOR RESPONDENT TO PETITIONER'S HABEAS CORPUS (POST CONVICTION) ...STATUS CHECK: APPOINTMENT OF COUNSEL (A. GILL);

01/08/2020

Motion (9:30 AM) (Judicial Officer: Bluth, Jacqueline M.)

01/08/2020, 01/15/2020

Continued;
Continued;
Continued;
Continued;

01/08/2020

Status Check (9:30 AM) (Judicial Officer: Bluth, Jacqueline M.)

01/08/2020, 01/15/2020

Status Check: Appointment of Counsel (A. Gill)
Continued;
Matter Heard;
Continued;
Matter Heard;

01/08/2020



All Pending Motions (9:30 AM) (Judicial Officer: Bluth, Jacqueline M.)

Continued;
Journal Entry Details:

PLAINTIFF'S MOTION...PLAINTIFF'S MOTION FOR RESPONDENT TO PETITIONERS HABEAS CORPUS (POST CONVICTION) ...STATUS CHECK: APPOINTMENT OF COUNSEL (A. GILL). Present on behalf of the State, Deputy District Attorney Shanon Clowers. Also present, Standby Counsel Adam Gill. Mr. Gill advised Ms. Luzaich contacted him as she has a family medical emergency she's dealing with and requested a continuance; she asked for the Defendant to be contacted, which could not be done until this morning. Court

CASE SUMMARY

CASE NO. A-19-798035-W

stated contact was made by Ms. Luzaich and ORDERED, proceedings CONTINUED. Upon the inquiry of the Court, Mr. Gill stated he's met with the Defendant and discussed the pending motion getting him back on the case, which is kind of headed that way; there's motions he'll try to assist the Defendant with and if the Court will allow him to argue; would like to talk about the trial date. NDC 1-15-20 9:30 AM PLAINTIFF'S MOTION...PLAINTIFF'S MOTION FOR RESPONDENT TO PETITIONERS HABEAS CORPUS (POST CONVICTION) ...STATUS CHECK: APPOINTMENT OF COUNSEL (A. GILL). ;

01/15/2020



All Pending Motions (9:30 AM) (Judicial Officer: Bluth, Jacqueline M.)

Matter Heard;

Journal Entry Details:

PLAINTIFF'S MOTION...PLAINTIFF'S MOTION FOR RESPONDENT TO PETITIONER'S HABEAS CORPUS (POST-CONVICTION)...STATUS CHECK: APPOINTMENT OF COUNSEL (A. GILL) Record of items provided to the Court and Plaintiff by Ms. Luzaich. Mr. Gill advised the Plaintiff would like him to assist him this morning and stated he's standby counsel. Ms. Luzaich stated that's fine. Following arguments by Defendant and Ms. Luzaich in case C174954, COURT ORDERED, Motion To Suppress and Motion For Dismissal of Information DENIED. In regards to the Plaintiffs petition, Mr. Gill advised he was not served, the Plaintiff would like assistance arguing and stated if he gets back on the case he would like to argue this next time; it's 75 pages and it's not thought he'd been served. Ms. Luzaich stated that's fine and that a copy of the State's response will be provided. Plaintiff requested counsel take over the case. Court stated there will not be any flip flopping. Plaintiff so acknowledged. As to the trial setting in C174954, Mr. Gill stated the Court's position is understood, Defendant's talked about an alibi witness which has been discussed with the investigator and is being followed up on; ready, but at risk of not having these people. Colloquy regarding potential continuation of the 3 week or more trial, depending on who represents the Defendant in C174954. Court stated findings and ORDERED, Adam Gill APPOINTED as counsel, proceedings in A798035 CONTINUED. NDC 1-30-20 9:00 AM PLAINTIFF'S MOTION...PLAINTIFF'S MOTION FOR RESPONDENT TO PETITIONER'S HABEAS CORPUS (POST-CONVICTION);

02/03/2020



Motion (9:30 AM) (Judicial Officer: Bluth, Jacqueline M.)

Petition for Writ of Habeas Corpus

Matter Heard;

Journal Entry Details:

CONFERENCE AT BENCH. Mr. Gill stated Ms. Luzaich is in trial, Defendant's been told that's the case, there were e-mails the Defendant was not privy too, objected to a continuance of the trial in C174954 and requested a 2 week continuance for rescheduling of the trial in C174954 when Ms. Luzaich is here. Upon the inquiry of the Court, Defendant requested Mr. Gill be reappointed as counsel. To make it clear, Court stated there will not be any ping ponging back and forth and ORDERED, Adam Gill APPOINTED; objection to the continuance noted; trial in C174954 VACATED; proceedings SET for status check for arguing of the Writ and scheduling of trial in C174954. NDC 2-19-20 9:30 AM STATUS CHECK: ARGUMENT OF PETITION FOR WRIT OF HABEAS CORPUS;

02/19/2020



Status Check (9:30 AM) (Judicial Officer: Bluth, Jacqueline M.)

Status Check: Argument Petition For Writ of Habeas Corpus

Matter Heard;

Journal Entry Details:

CONFERENCE AT BENCH. Mr. Gill stated he's been reappointed, has all the documentation filed and is ready to argue the writ. Ms. Luzaich advised a motion to dismiss the writ was filed and requested the Court first rule on that, presented argument and requested the petition be dismissed without getting to the merits. Court noted difficulty with the procedural bar and successiveness. Argument in support of petition by Mr. Gill; it's not successive or time bared. Court stated findings and ORDERED, State's Motion To Dismiss Petition For Writ of Habeas Corpus GRANTED. NDC ;

07/01/2020

CANCELED Appointment of Counsel (10:15 AM) (Judicial Officer: Bluth, Jacqueline M.)

Vacated - per Secretary

Appointment of Appellate Counsel






07/08/2020



Appointment of Counsel (10:15 AM) (Judicial Officer: Holthus, Mary Kay)

CASE SUMMARY

CASE NO. A-19-798035-W

	<p><i>Appointment of Appellate Counsel</i> Confirmed; Journal Entry Details: <i>Present via video, Attorney Betsy Allen. Ms. Allen CONFIRMED as counsel and requested 30 days to get the file sorted out. COURT SO ORDERED; proceedings SET for status check. 8-5-20 10:15 AM STATUS CHECK ;</i></p>
08/05/2020	<p> Status Check (10:15 AM) (Judicial Officer: Herndon, Douglas W.) Matter Continued; Journal Entry Details: <i>Ms. Allen requested a continuance, Ms. Luzaich voiced no opposition. COURT ORDERED, matter CONTINUED. CONTINUED TO: 10/7/2020 9:30 AM;</i></p>
10/07/2020	<p> Status Check (10:15 AM) (Judicial Officer: Jones, Tierra) Off Calendar; Journal Entry Details: <i>Ms. Allen stated she's spoken with the State regarding the case history, understands where she fits in, requested proceedings be taken off calendar and advised she's appointed to do the appeal for the third petition filed by the Defendant up before the Supreme Court which is being briefed; no more status checks are needed. Ms. Luzaich concurred. COURT ORDERED, proceedings OFF CALENDAR. NDC;</i></p>
10/07/2021	<p> Minute Order (3:00 AM) (Judicial Officer: Villani, Michael) Minute Order - No Hearing Held; Journal Entry Details: <i>COURT ORDERED, Matter set for October 7, 2021 (CHAMBERS) is CONTINUED to October 14, 2021(CHAMBERS). CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 10/7/2021;</i></p>
10/14/2021	<p> Motion for Appointment of Attorney (3:00 AM) (Judicial Officer: Villani, Michael) <i>Defendant's Motion to Place on Calendar for Appointment of Counsel</i> Per Law Clerk See Minute Order dated 10/7/2021 Denied; Journal Entry Details: <i>Petitioner s Motion for Appointment of Counsel came before this Court on the October 14, 2021 Chambers Calendar. After considering all pleadings and arguments, the Court renders its decision as follows: The Court adopts the procedural history as set forth in the State s Opposition. Petitioner has filed three prior petitions. The instant Petition fails to provide good cause as to why an attorney needs to be appointed now after the prior petitions. Moreover, Petitioner had Counsel during his appeal and previous petition. Accordingly, no good cause has been shown explaining why the issues the Petitioner presented in his current Petition could not have been brought up in the prior petition. COURT ORDERED, Petitioner s Motion for Appointment of Counsel is DENIED. Counsel for the State is directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and be approved as to form and content by all parties. Status Check for the Order will be set for October 28, 2021 (Chambers). Status Check will be vacated if the Order is filed before the hearing date. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 10/14/2021;</i></p>
10/28/2021	<p> Status Check: Status of Case (3:00 AM) (Judicial Officer: Villani, Michael) 10/28/2021, 12/02/2021 <i>Status Check: Order</i> Matter Continued; Matter continued to Chambers Matter Continued; Order Filed Journal Entry Details: <i>No order filed or received. COURT ORDERED, matter continued to December 16, 2021</i></p>

CASE SUMMARY

CASE NO. A-19-798035-W

(Chambers). CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 12/6/2021;

Matter Continued;

Matter continued to Chambers

Matter Continued;

Order Filed

Journal Entry Details:

Status Check for Findings of Fact Conclusions of Law & Order came before this Court on the October 28, 2021 Chamber Calendar. COURT NOTES, no Order was filed or received.

COURT ORDERED, matter continued to November 16, 2021 9:00 A.M. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 10/28/2021;

11/15/2021



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

Minute Order - No Hearing Held;

Journal Entry Details:

COURT NOTES, Status Check: Order set for November 16, 2021 at 9:00 AM; COURT NOTES, an Order has not been filed nor submitted. COURT ORDERED, matter continued to December 2, 2021 (Chambers). CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 11/15/2021;

05/09/2022



Hearing (8:30 AM) (Judicial Officer: Villani, Michael)

Plaintiff/Inmate's Hearing Requested

Moot;

Journal Entry Details:

Plaintiff not present. COURT ORDERED, matter MOOT as the Petition was set for hearing on July 6th; Petition for Writ of Habeas Corpus STANDS. NDC;

07/06/2022

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

Denied;

07/06/2022

Motion for Appointment of Attorney (8:30 AM) (Judicial Officer: Villani, Michael)

Plaintiff's Motion for Appointment of Counsel

Denied;

07/06/2022



All Pending Motions (8:30 AM) (Judicial Officer: Villani, Michael)

Matter Heard;

Journal Entry Details:

PETITION FOR WRIT OF HABEAS CORPUS...PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL Defendant not present. Court noted Defendant filed a sixth Petition which was not set on calendar and he then filed a seventh Petition. State requested the Court dismiss the sixth and seventh Petition. Court noted it had reviewed the seventh Petition and would review the sixth Petition. COURT ORDERED, matter TAKEN UNDER ADVISEMENT with a written decision to issue this afternoon. Court advised it was basing its decision on the pleadings on file herein and not accepting oral argument. NDC;

07/07/2022



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

Minute Order - No Hearing Held;

Journal Entry Details:

Petition for Writ of Habeas Corpus came before the Court and was taken under advisement. The Court did not accept oral argument. The Court incorporates by reference the procedural history as set forth in the State's Response and Motion to Dismiss Petition for Writ of Habeas Corpus and Opposition to Motion to Appoint Counsel. The Petition is time barred as it was filed after the one-year deadline in NRS 34.716(1). The Nevada Supreme Court affirmed Petitioner's Judgment of Conviction on November 8, 2010, and Remittitur issued on December 3, 2010. Petitioner had until December 3, 2011 to file a post-conviction petition. The instant petition was filed on April 29, 2022, over 10 years after the time allowed. The Petition is successive and an abuse of the writ. This is Petitioner's seventh habeas petition. Petitioner appealed each denial of his respective petitions, and every denial was affirmed by the Supreme Court. Petitioner has clearly had the opportunity to raise the grounds he now alleges in each of these prior Petitions. There is no good cause to overlook the procedural bars. Claim of

CASE SUMMARY

CASE NO. A-19-798035-W

Actual Innocence Petitioner s claims do not establish factual innocence. State s Countermotion to Dismiss the Seventh Petition pursuant to Laches Petitioner s claims do not overcome prejudice to State. An evidentiary hearing is unnecessary as an expansion of the record is not needed. Petitioner s Motion for Appointment of Counsel the issues here are not complex and that all of the grounds for relief were or should have been brought up in the six previous petitions. Petitioner s Sixth Petition the Sixth petition is identical to the Seventh petition, and the reasoning set forth above also apply to the Seventh Petition. Petitioner fails to meet any of the Strickland elements. Further, errors, if any, in this case do not rise to the level of cumulative error which would warrant relief. Therefore, COURT ORDERED Petitioner s Writ of Habeas Corpus and Motion for Appointment of Attorney are DENIED. The State is directed to submit a proposed Findings of Fact and Conclusions of Law consistent with the foregoing within fourteen (14) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Findings of Fact and Conclusion of Law should set forth a synopsis of the supporting reasons proffered to the Court in briefing. Status Check for the pleadings will be set for the July 28, 2022 (Chambers) Calendar. Status Check will be vacated if the Findings of Facts and Conclusion of Law is filed before the hearing date. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 7/7/2022;

07/13/2022



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

Minute Order - No Hearing Held;

Journal Entry Details:

Status Check: Findings of Fact and Conclusion of Law set to come before the Court on the July 28, 2022 (Chambers) Calendar. COURT NOTES, Findings of Fact, Conclusions of Law and Order received on July 11, 2022. COURT ORDERED, matter VACATED. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 7/13/2022;

07/28/2022

CANCELED Status Check: Status of Case (3:00 AM) (Judicial Officer: Vacant, DC 17)

Vacated

Status Check: Findings of Facts and Conclusion of Law

DISTRICT COURT CIVIL COVER SHEET

A-19-798035-W
Dept: VI

County, Nevada

Case No. _____
(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): <div style="text-align: center;">Justin Porter # 1042449</div> <div style="text-align: center;">P.O. Box 650</div> <div style="text-align: center;">Indian Springs, NV 89070</div>	Defendant(s) (name/address/phone): <div style="text-align: center;">Brian Williams</div>
Attorney (name/address/phone):	Attorney (name/address/phone):

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

Civil Case Filing Types

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

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

7/5/2019

Date

Prepared by Clerk #27
Signature of initiating party or representative

See other side for family-related case filings.

A-19-798035-W
CCS
Civil Cover Sheet
4847376



Heaven & Son

CLERK OF THE COURT

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN AFSHAR
Deputy District Attorney
Nevada Bar #014408
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

DISTRICT COURT
CLARK COUNTY, NEVADA

JUSTIN PORTER,
#7035217

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: **A-19-798035-W**
01C174954

DEPT NO: **XVII**

FINDINGS OF FACT, CONCLUSIONS

OF LAW, AND ORDER

DATE OF HEARING: **JULY 6, 2022**

TIME OF HEARING: **8:30 AM**

THIS CAUSE having presented before the Honorable MICHAEL VILLANI, District Judge, on the 6th day of July, 2022; Petitioner not present, IN PROPER PERSON; Respondent represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through LISA LUZAICH, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, and documents on file herein, and having taking the matter under advisement, the Court makes the following Findings of Fact and Conclusions of Law:

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On May 8, 2009, a jury found Petitioner guilty of Second Degree Murder with Use of
4 a Deadly Weapon.

5 On September 30, 2009, the Court sentenced Petitioner to the Nevada Department of
6 Corrections for 120 months to Life, plus a consecutive term of 120 months to Life for the use
7 of a deadly weapon, with 3,338 days credit for time served. The Judgment of Conviction was
8 filed on October 13, 2009. On October 29, 2009, Petitioner filed a Notice of Appeal. On
9 November 8, 2010, the Nevada Supreme Court affirmed the Judgment of Conviction.
10 Remittitur issued December 3, 2010.

11 On February 10, 2012, Petitioner filed his first pro per Post-Conviction Petition for Writ
12 of Habeas Corpus.¹ The State filed its Response and Motion to Dismiss on March 21, 2012.
13 On April 23, 2012, the Court denied Petitioner's first Petition as untimely. The Findings of
14 Fact, Conclusions of Law, and Order were filed on June 11, 2012. Petitioner appealed the
15 denial of his first Petition on May 8, 2012, and on March 11, 2013, the Nevada Supreme Court
16 affirmed the denial. Remittitur issued on March 19, 2013.

17 On August 26, 2013, Petitioner filed his second pro per Post-Conviction Petition for
18 Writ of Habeas Corpus, and a separate Motion to Appoint Counsel.² The State filed its
19 Response and Motion to Dismiss on January 3, 2014. On January 13, 2014, the Court denied
20 Petitioner's second Petition as time-barred. Petitioner filed a Notice of Appeal from the denial
21 of his second Petition on February 7, 2014, and on June 11, 2014, the Nevada Supreme Court
22 affirmed the denial. Remittitur issued on July 15, 2014.

23 On October 26, 2015, Petitioner filed his third pro per Post-Conviction Petition for Writ
24 of Habeas Corpus.³ The State responded on January 26, 2016, and the Court issued the findings
25 denying the Petition on March 22, 2016. On August 17, 2016, the Nevada Supreme Court
26 affirmed the district court's ruling. Remittitur issued on January 24, 2017.

27
28

¹ In case 01C174954.

² Also in case 01C174954.

³ Also in case 01C174954.

1 On July 5, 2019, Petitioner filed a fourth pro per Post-Conviction Petition for Writ of
2 Habeas Corpus.⁴ The State responded to the fourth petition on December 2, 2019, and the
3 Court issued a findings denying the fourth Petition on June 1, 2020. The Nevada Supreme
4 Court affirmed the denial of the fourth petition, and remittitur issued August 23, 2021.

5 On August 12, 2019, Petitioner filed a fifth petition for writ of habeas corpus in
6 C174954. On May 28, 2020, the Court filed findings denying this petition.

7 On November 23, 2021, Petitioner filed a Sixth Petition for writ of habeas corpus (post-
8 conviction).⁵ On April 29, 2022, petitioner filed a Seventh Petition for writ of habeas corpus,
9 a memorandum of points and authorities, and a motion for appointment of counsel.⁶ This court
10 ordered the state to respond to the Seventh Petition on May 2, 2022. The State's response to
11 the petition, the motion for appointment of counsel, and countermotion to dismiss pursuant to
12 laches was filed on June 1, 2022. Petitioner did not file a response or opposition to the State's
13 Motion to Dismiss pursuant to laches.

14 On July 6, 2022, this Court denied the Petitions. This Court's Findings of Fact,
15 Conclusions of Law and Order now follows.

16 ANALYSIS

17 **I. PETITIONER'S SIXTH AND SEVENTH PETITIONS ARE TIMEBARRED**

18 Petitioner's Sixth Petition is identical to the Seventh Petition, and is denied for the same
19 reasons that follow.

20 The mandatory provision of NRS 34.726(1) states:

21 Unless there is good cause shown for delay, a petition that challenges
22 the validity of a judgment or sentence must be filed *within 1 year after*
23 *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. For the purposes of this subsection, good cause for delay
exists if the petitioner demonstrates to the satisfaction of the court:

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

27 //

28 ⁴ In case A798035.

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(emphasis added). “[T]he statutory rules regarding procedural default are mandatory and cannot be ignored when properly raised by the State.” State v. Dist. Court (Riker), 121 Nev. 225, 233, 112 P.3d 1070, 1075 (2005).

The one-year time bar prescribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998); see Pellegrini v. State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding that NRS 34.726 should be construed by its plain meaning).

In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two days late, pursuant to the “clear and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the importance of filing the petition with the District Court within the one-year mandate, absent a showing of “good cause” for the delay in filing. Gonzales, 118, Nev. at 593, 590 P.3d at 902. The one-year time bar is therefore strictly construed. In contrast with the short amount of time to file a notice of appeal, a prisoner has a full year to file a post-conviction habeas petition, so there is no injustice in a strict application of NRS 34.726(1), despite any alleged difficulties with the postal system. Id. at 595, 53 P.3d at 903.

In the instant case, Petitioner’s Sixth and Seventh Petitions are beyond the one-year time bar. The Nevada Supreme Court affirmed Petitioner’s judgment of conviction on November 8, 2010, and Remittitur issued on December 3, 2010. As such, Petitioner had until December 3, 2011 to file a post-conviction petition for writ of habeas corpus. The instant Petitions were filed on November 23, 2021, and April 29, 2022, over ten years after the time allowed by statute. Therefore, the Petitions must be denied as time-barred pursuant to NRS 34.726(1).

A. The Sixth and Seventh Petitions are successive and an abuse of the writ

Petitioner’s Sixth and Seventh Petitions are also procedurally barred because they are successive and an abuse of the writ. NRS 34.810(2) reads:

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

5 (emphasis added). Second or successive petitions are petitions that either fail to allege new or
6 different grounds for relief and the grounds have already been decided on the merits or that
7 allege new or different grounds, but a judge or justice finds that the petitioner's failure to assert
8 those grounds in a prior petition would constitute an abuse of the writ. Second or successive
9 petitions will only be decided on the merits if the petitioner can show good cause and prejudice.
10 NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

11 The Nevada Supreme Court has stated: "Without such limitations on the availability of
12 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
13 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
14 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
15 The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require
16 a careful review of the record, successive petitions may be dismissed based solely on the face
17 of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,
18 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
19 the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991).
20 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

21 These are Petitioner's sixth and seventh habeas petitions. Petitioner appealed each
22 denial of his previous petitions, and every denial was affirmed by the Nevada Supreme Court.
23 Petitioner has clearly had the opportunity to raise the grounds he now alleges in each of these
24 prior Petitions. Therefore, the Sixth and Seventh Petitions are successive and constitutes and
25 abuse of the writ; as such, they must be denied pursuant to NRS 34.810(2).

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1 **B. Petitioner’s claim of “actual innocence” is insufficient**

2 The United States Supreme Court has held that actual innocence is “not itself a
3 constitutional claim, but instead a gateway through which a habeas petitioner must pass to
4 have his otherwise barred constitutional claim considered on the merits.” Schlup v. Delo, 513
5 U.S. 298, 327, 115 S. Ct. 851, 867 (1995). In order for a petitioner to obtain a reversal of his
6 conviction based on a claim of actual innocence, he must prove that “‘it is more likely than
7 not that *no* reasonable juror would have convicted him in light of the ‘new evidence’ presented
8 in habeas proceedings.” Calderon v. Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503
9 (1998) (emphasis added) (quoting Schlup). “Actual innocence” means factual innocence, not
10 mere legal insufficiency. Mitchell v. State, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006)
11 (internal quotation marks and brackets omitted).

12 Petitioner asserts that he has good cause to overcome the procedural bars based on an
13 alleged “Brady/Napue” claim related to an asserted warrantless arrest in 2000. Memorandum
14 at 3-6 Brady v. Maryland, requires prosecutors to disclose exculpatory evidence which a
15 defendant cannot obtain through the exercise of due diligence, but Petitioner does not identify
16 any evidence that was not disclosed. 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).
17 Instead, his claim is that he was arrested over twenty years ago in Chicago, IL, without a
18 warrant. His Napue claim, similarly, relates to testimony at trial wherein a witness said he was
19 arrested pursuant to a warrant. Petitioner’s claim is unsubstantiated and is belied by the record.
20 See Criminal Bindover, filed April 30, 2001, at 298 (declaration of arrest showing defendant
21 was arrested in, and extradited from, Chicago pursuant to a warrant), 299 (arrest warrant
22 abstract), 301 (arrest warrant, signed August, 2000, by the Honorable Judge Lippis), 308-316
23 (request for, and declaration of, warrant for arrest.) Petitioner’s Napue claim fails because the
24 testimony was not false. Even if either claim had merit, a warrantless arrest is legal
25 insufficiency, not factual innocence sufficient to overcome the procedural bars.

26 Petitioner’s related prosecutorial misconduct claim is, therefore, timebarred,
27 successive, an abuse of the writ, and meritless. Memorandum at 7-11. Likewise, his related
28 IAC claim is procedurally barred and meritless. Id. at 12.

1 Accordingly, Petitioner fails to demonstrate good cause to overcome the procedural
2 bars and his Sixth and Seventh petitions must be denied.

3 **II. THE SIXTH AND SEVENTH PETITION ARE DISMISSED PURSUANT TO**
4 **LACHES**

5 NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
6 exceeding five years [elapses] between the filing of a judgment of conviction, an order
7 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
8 conviction and the filing of a petition challenging the validity of a judgment of conviction...”
9 The Nevada Supreme Court observed in Groesbeck v. Warden, “[P]etitions that are filed many
10 years after conviction are an unreasonable burden on the criminal justice system. The necessity
11 for a workable system dictates that there must exist a time when a criminal conviction is final.”
12 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the statute requires the State
13 plead laches in its motion to dismiss the petition. NRS 34.800(2). The State affirmatively
14 pleads laches in the instant case.

15 The Sixth and Seventh Petitions were filed over ten years after the verdict, the
16 sentencing hearing, and after the Nevada Supreme Court affirmed the judgment of conviction.
17 Because these time periods exceed five (5) years, the State is entitled to a rebuttable
18 presumption of prejudice. NRS 34.800(2). Petitioner did not file a response or opposition to
19 the State’s motion to dismiss, and has failed to overcome the presumption of prejudice to the
20 State.

21 **III. THE MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR**
22 **AN EVIDENTIARY HEARING ARE DENIED**

23 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
24 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
25 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
26 Supreme Court similarly observed that “[t]he Nevada Constitution...does not guarantee a right
27 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right to
28 counsel provision as being coextensive with the Sixth Amendment to the United States

1 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)
2 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
3 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
4 164, 912 P.2d at 258.

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

8 A petition may allege that the Defendant is unable to pay the costs of
9 the proceedings or employ counsel. If the court is satisfied that the
10 allegation of indigency is true and the petition *is not dismissed*
11 *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:

12 (a) The issues presented are difficult;

13 (b) The petitioner is unable to comprehend the proceedings; or

14 (c) Counsel is necessary to proceed with discovery.

15 (emphasis added).

16 Petitioner’s Sixth and Seventh Petition are procedurally barred and subject to laches.
17 None of the issues are difficult, Petitioner fails to demonstrate that he cannot comprehend the
18 proceedings, and no discovery is necessary. To the extent Petitioner requests an evidentiary
19 hearing, that request is denied because there is no need to expand the record. Petitioner fails
20 to meet *any* of the Strickland elements, and the errors, if any, in this case do not rise to the
21 level of cumulative error which would warrant relief.

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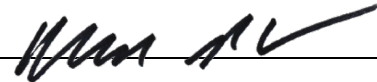
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ORDER

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Sixth and Seventh Petitions for Writ of Habeas Corpus are DENIED in their entirety, Petitioner's motion for appointment of counsel and request for an evidentiary hearing are DENIED, and the State's countermotion to dismiss pursuant to laches is GRANTED.

Dated this 13th day of July, 2022



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

E8B DDC 4D42 9AE5
Michael Villani
District Court Judge

BY



LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056

hjc/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Justin Porter, Plaintiff(s)

CASE NO: A-19-798035-W

7 vs.

DEPT. NO. Department 17

8 Brian Williams, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

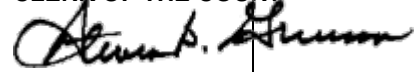
14 Service Date: 7/13/2022

15 Elissa Luzaich

luzaici@co.clark.nv.us

16 BETSY ESQ.

BETSYALLENESQ@YAHOO.COM



NEFF

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JUSTIN PORTER,

Petitioner,

vs.

BRIAN WILLIAMS,

Respondent,

Case No: A-19-798035-W

Dept No: XVII

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

PLEASE TAKE NOTICE that on July 13, 2022, 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 July 19, 2022.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 19 day of July 2022, 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:

Justin Porter # 1042449
P.O. Box 650
Indian Springs, NV 89070

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

Heaven S. Linn

CLERK OF THE COURT

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN AFSHAR
Deputy District Attorney
Nevada Bar #014408
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
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Attorney for Respondent

DISTRICT COURT
CLARK COUNTY, NEVADA

JUSTIN PORTER,
#7035217

Petitioner,

-vs-

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01C174954

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FINDINGS OF FACT, CONCLUSIONS

OF LAW, AND ORDER

DATE OF HEARING: **JULY 6, 2022**

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2 **PROCEDURAL HISTORY**

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16 ANALYSIS

17 **I. PETITIONER'S SIXTH AND SEVENTH PETITIONS ARE TIMEBARRED**

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(emphasis added). “[T]he statutory rules regarding procedural default are mandatory and cannot be ignored when properly raised by the State.” State v. Dist. Court (Riker), 121 Nev. 225, 233, 112 P.3d 1070, 1075 (2005).

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In the instant case, Petitioner’s Sixth and Seventh Petitions are beyond the one-year time bar. The Nevada Supreme Court affirmed Petitioner’s judgment of conviction on November 8, 2010, and Remittitur issued on December 3, 2010. As such, Petitioner had until December 3, 2011 to file a post-conviction petition for writ of habeas corpus. The instant Petitions were filed on November 23, 2021, and April 29, 2022, over ten years after the time allowed by statute. Therefore, the Petitions must be denied as time-barred pursuant to NRS 34.726(1).

A. The Sixth and Seventh Petitions are successive and an abuse of the writ

Petitioner’s Sixth and Seventh Petitions are also procedurally barred because they are successive and an abuse of the writ. NRS 34.810(2) reads:

//

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

5 (emphasis added). Second or successive petitions are petitions that either fail to allege new or
6 different grounds for relief and the grounds have already been decided on the merits or that
7 allege new or different grounds, but a judge or justice finds that the petitioner's failure to assert
8 those grounds in a prior petition would constitute an abuse of the writ. Second or successive
9 petitions will only be decided on the merits if the petitioner can show good cause and prejudice.
10 NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

11 The Nevada Supreme Court has stated: "Without such limitations on the availability of
12 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
13 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
14 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
15 The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require
16 a careful review of the record, successive petitions may be dismissed based solely on the face
17 of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,
18 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
19 the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991).
20 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

21 These are Petitioner's sixth and seventh habeas petitions. Petitioner appealed each
22 denial of his previous petitions, and every denial was affirmed by the Nevada Supreme Court.
23 Petitioner has clearly had the opportunity to raise the grounds he now alleges in each of these
24 prior Petitions. Therefore, the Sixth and Seventh Petitions are successive and constitutes and
25 abuse of the writ; as such, they must be denied pursuant to NRS 34.810(2).

26 //

27 //

28 //

1 **B. Petitioner’s claim of “actual innocence” is insufficient**

2 The United States Supreme Court has held that actual innocence is “not itself a
3 constitutional claim, but instead a gateway through which a habeas petitioner must pass to
4 have his otherwise barred constitutional claim considered on the merits.” Schlup v. Delo, 513
5 U.S. 298, 327, 115 S. Ct. 851, 867 (1995). In order for a petitioner to obtain a reversal of his
6 conviction based on a claim of actual innocence, he must prove that “‘it is more likely than
7 not that *no* reasonable juror would have convicted him in light of the ‘new evidence’ presented
8 in habeas proceedings.” Calderon v. Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503
9 (1998) (emphasis added) (quoting Schlup). “Actual innocence” means factual innocence, not
10 mere legal insufficiency. Mitchell v. State, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006)
11 (internal quotation marks and brackets omitted).

12 Petitioner asserts that he has good cause to overcome the procedural bars based on an
13 alleged “Brady/Napue” claim related to an asserted warrantless arrest in 2000. Memorandum
14 at 3-6 Brady v. Maryland, requires prosecutors to disclose exculpatory evidence which a
15 defendant cannot obtain through the exercise of due diligence, but Petitioner does not identify
16 any evidence that was not disclosed. 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).
17 Instead, his claim is that he was arrested over twenty years ago in Chicago, IL, without a
18 warrant. His Napue claim, similarly, relates to testimony at trial wherein a witness said he was
19 arrested pursuant to a warrant. Petitioner’s claim is unsubstantiated and is belied by the record.
20 See Criminal Bindover, filed April 30, 2001, at 298 (declaration of arrest showing defendant
21 was arrested in, and extradited from, Chicago pursuant to a warrant), 299 (arrest warrant
22 abstract), 301 (arrest warrant, signed August, 2000, by the Honorable Judge Lippis), 308-316
23 (request for, and declaration of, warrant for arrest.) Petitioner’s Napue claim fails because the
24 testimony was not false. Even if either claim had merit, a warrantless arrest is legal
25 insufficiency, not factual innocence sufficient to overcome the procedural bars.

26 Petitioner’s related prosecutorial misconduct claim is, therefore, timebarred,
27 successive, an abuse of the writ, and meritless. Memorandum at 7-11. Likewise, his related
28 IAC claim is procedurally barred and meritless. Id. at 12.

1 Accordingly, Petitioner fails to demonstrate good cause to overcome the procedural
2 bars and his Sixth and Seventh petitions must be denied.

3 **II. THE SIXTH AND SEVENTH PETITION ARE DISMISSED PURSUANT TO**
4 **LACHES**

5 NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
6 exceeding five years [elapses] between the filing of a judgment of conviction, an order
7 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
8 conviction and the filing of a petition challenging the validity of a judgment of conviction...”
9 The Nevada Supreme Court observed in Groesbeck v. Warden, “[P]etitions that are filed many
10 years after conviction are an unreasonable burden on the criminal justice system. The necessity
11 for a workable system dictates that there must exist a time when a criminal conviction is final.”
12 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the statute requires the State
13 plead laches in its motion to dismiss the petition. NRS 34.800(2). The State affirmatively
14 pleads laches in the instant case.

15 The Sixth and Seventh Petitions were filed over ten years after the verdict, the
16 sentencing hearing, and after the Nevada Supreme Court affirmed the judgment of conviction.
17 Because these time periods exceed five (5) years, the State is entitled to a rebuttable
18 presumption of prejudice. NRS 34.800(2). Petitioner did not file a response or opposition to
19 the State’s motion to dismiss, and has failed to overcome the presumption of prejudice to the
20 State.

21 **III. THE MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR**
22 **AN EVIDENTIARY HEARING ARE DENIED**

23 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
24 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
25 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
26 Supreme Court similarly observed that “[t]he Nevada Constitution...does not guarantee a right
27 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right to
28 counsel provision as being coextensive with the Sixth Amendment to the United States

1 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)
2 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
3 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
4 164, 912 P.2d at 258.

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

8 A petition may allege that the Defendant is unable to pay the costs of
9 the proceedings or employ counsel. If the court is satisfied that the
10 allegation of indigency is true and the petition *is not dismissed*
11 *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:

12 (a) The issues presented are difficult;

13 (b) The petitioner is unable to comprehend the proceedings; or

14 (c) Counsel is necessary to proceed with discovery.

15 (emphasis added).

16 Petitioner’s Sixth and Seventh Petition are procedurally barred and subject to laches.
17 None of the issues are difficult, Petitioner fails to demonstrate that he cannot comprehend the
18 proceedings, and no discovery is necessary. To the extent Petitioner requests an evidentiary
19 hearing, that request is denied because there is no need to expand the record. Petitioner fails
20 to meet *any* of the Strickland elements, and the errors, if any, in this case do not rise to the
21 level of cumulative error which would warrant relief.

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24 //

25 //

26 //

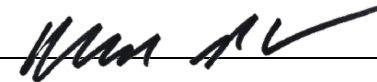
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28 //

ORDER

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Sixth and Seventh Petitions for Writ of Habeas Corpus are DENIED in their entirety, Petitioner's motion for appointment of counsel and request for an evidentiary hearing are DENIED, and the State's countermotion to dismiss pursuant to laches is GRANTED.

Dated this 13th day of July, 2022



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

E8B DDC 4D42 9AE5
Michael Villani
District Court Judge

BY



LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056

hjc/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Justin Porter, Plaintiff(s)

CASE NO: A-19-798035-W

7 vs.

DEPT. NO. Department 17

8 Brian Williams, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 7/13/2022

15 Elissa Luzaich

luzaici@co.clark.nv.us

16 BETSY ESQ.

BETSYALLENESQ@YAHOO.COM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

December 09, 2019

A-19-798035-W	Justin Porter, Plaintiff(s)
	vs.
	Brian Williams, Defendant(s)

December 09, 2019 9:30 AM Motion

HEARD BY: Bluth, Jacqueline M. **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT:	Luzaich, Elissa	Attorney
	Porter, Justin	Plaintiff

JOURNAL ENTRIES

- Also present, Attorney Adam Gill. Ms. Luzaich advised she's not being served with the Defendant's motions in case C174954 and only knew of today's matter due to her Clerk. Colloquy regarding service of documents between Court, Defendant and Ms. Luzaich. Defendant advised he also has an Amended Motion To Dismiss; it's an amendment to the motion. Court noted the receipt of the supplement, which is additional information relating to the same argument. Ms. Luzaich stated she has neither and cannot proceed on the Defendant's Motion For Dismissal of Information. Colloquy regarding Plaintiff's- Motion For Respondent To Petitioner's Habeas Corpus (Post- Conviction). In regards to the petition in case A798035, Defendant advised he's not been to the Law Library in over a month and has not received a response. Ms. Luzaich stated it was mailed to the Defendant December 2nd and inquired if the Defendant still wanted to have an attorney appointed; which the State will not oppose. Defendant requested Mr. Gill be his attorney. Colloquy regarding Defendant's request for counsel and the responsibilities of counsel. Court stated the petition will be dealt with today, and at a later time the Defendant may want to have Mr. Gill back as counsel, but prior to that the Defendant would like to handle the petition himself. Defendant stated he would like counsel for the post conviction writ. Colloquy regarding continuation of motion and petition. Statement by Defendant. Colloquy between Court and State in regards to time needed to respond. COURT ORDERED, proceedings CONTINUED for argument; matter SET for status on the appointment of Mr. Gill as

counsel; proceedings of December 30, 2019 CONTINUED.

NDC

1-8-20 9:30 AM PLAINTIFF'S - MOTION FOR RESPONDENT TO PETITIONER'S HABEAS
CORPUS (POST CONVICTION) ...STATUS CHECK: APPOINTMENT OF COUNSEL (A. GILL)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 08, 2020

A-19-798035-W	Justin Porter, Plaintiff(s)
	vs.
	Brian Williams, Defendant(s)

January 08, 2020 9:30 AM All Pending Motions

HEARD BY: Bluth, Jacqueline M. **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT: Porter, Justin Plaintiff

JOURNAL ENTRIES

- PLAINTIFF'S MOTION...PLAINTIFF'S MOTION FOR RESPONDENT TO PETITIONERS HABEAS CORPUS (POST CONVICTION) ...STATUS CHECK: APPOINTMENT OF COUNSEL (A. GILL).

Present on behalf of the State, Deputy District Attorney Shanon Clowers. Also present, Standby Counsel Adam Gill. Mr. Gill advised Ms. Luzaich contacted him as she has a family medical emergency she's dealing with and requested a continuance; she asked for the Defendant to be contacted, which could not be done until this morning. Court stated contact was made by Ms. Luzaich and ORDERED, proceedings CONTINUED. Upon the inquiry of the Court, Mr. Gill stated he's met with the Defendant and discussed the pending motion getting him back on the case, which is kind of headed that way; there's motions he'll try to assist the Defendant with and if the Court will allow him to argue; would like to talk about the trial date.

NDC

1-15-20 9:30 AM PLAINTIFF'S MOTION...PLAINTIFF'S MOTION FOR RESPONDENT TO PETITIONERS HABEAS CORPUS (POST CONVICTION) ...STATUS CHECK: APPOINTMENT OF COUNSEL (A. GILL).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus**COURT MINUTES****January 15, 2020**

A-19-798035-W Justin Porter, Plaintiff(s)
 vs.
 Brian Williams, Defendant(s)

January 15, 2020 9:30 AM All Pending Motions

HEARD BY: Bluth, Jacqueline M. **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT:	Gill, Adam L	Attorney
	Luzaich, Elissa	Attorney
	Porter, Justin	Plaintiff

JOURNAL ENTRIES

- PLAINTIFF'S MOTION...PLAINTIFF'S MOTION FOR RESPONDENT TO PETITIONER'S HABEAS CORPUS (POST-CONVICTION)...STATUS CHECK: APPOINTMENT OF COUNSEL (A. GILL)

Record of items provided to the Court and Plaintiff by Ms. Luzaich. Mr. Gill advised the Plaintiff would like him to assist him this morning and stated he's standby counsel. Ms. Luzaich stated that's fine. Following arguments by Defendant and Ms. Luzaich in case C174954, COURT ORDERED, Motion To Suppress and Motion For Dismissal of Information DENIED. In regards to the Plaintiffs petition, Mr. Gill advised he was not served, the Plaintiff would like assistance arguing and stated if he gets back on the case he would like to argue this next time; it's 75 pages and it's not thought he'd been served. Ms. Luzaich stated that's fine and that a copy of the State's response will be provided. Plaintiff requested counsel take over the case. Court stated there will not be any flip flopping. Plaintiff so acknowledged. As to the trial setting in C174954, Mr. Gill stated the Court's position is understood, Defendant's talked about an alibi witness which has been discussed with the investigator and is being followed up on; ready, but at risk of not having these people. Colloquy regarding potential continuation of the 3 week or more trial, depending on who represents the Defendant in

C174954. Court stated findings and ORDERED, Adam Gill APPOINTED as counsel, proceedings in A798035 CONTINUED.

NDC

1-30-20 9:00 AM PLAINTIFF'S MOTION...PLAINTIFF'S MOTION FOR RESPONDENT TO PETITIONER'S HABEAS CORPUS (POST-CONVICTION)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

February 03, 2020

A-19-798035-W	Justin Porter, Plaintiff(s)
	vs.
	Brian Williams, Defendant(s)

February 03, 2020 9:30 AM Motion

HEARD BY: Bluth, Jacqueline M. **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT:	Gill, Adam L	Attorney
	Overly, Sarah	Attorney
	Porter, Justin	Plaintiff

JOURNAL ENTRIES

- CONFERENCE AT BENCH. Mr. Gill stated Ms. Luzaich is in trial, Defendant's been told that's the case, there were e-mails the Defendant was not privy too, objected to a continuance of the trial in C174954 and requested a 2 week continuance for rescheduling of the trial in C174954 when Ms. Luzaich is here. Upon the inquiry of the Court, Defendant requested Mr. Gill be reappointed as counsel. To make it clear, Court stated there will not be any ping ponging back and forth and ORDERED, Adam Gill APPOINTED; objection to the continuance noted; trial in C174954 VACATED; proceedings SET for status check for arguing of the Writ and scheduling of trial in C174954.

NDC

2-19-20 9:30 AM STATUS CHECK: ARGUMENT OF PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

February 19, 2020

A-19-798035-W Justin Porter, Plaintiff(s)
vs.
Brian Williams, Defendant(s)

February 19, 2020 9:30 AM Status Check

HEARD BY: Bluth, Jacqueline M. **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT: Gill, Adam L Attorney
Luzaich, Elissa Attorney
Porter, Justin Plaintiff

JOURNAL ENTRIES

- CONFERENCE AT BENCH. Mr. Gill stated he's been reappointed, has all the documentation filed and is ready to argue the writ. Ms. Luzaich advised a motion to dismiss the writ was filed and requested the Court first rule on that, presented argument and requested the petition be dismissed without getting to the merits. Court noted difficulty with the procedural bar and successiveness. Argument in support of petition by Mr. Gill; it's not successive or time bared. Court stated findings and ORDERED, State's Motion To Dismiss Petition For Writ of Habeas Corpus GRANTED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 08, 2020

A-19-798035-W Justin Porter, Plaintiff(s)
vs.
Brian Williams, Defendant(s)

July 08, 2020 10:15 AM Appointment of Counsel

HEARD BY: Holthus, Mary Kay **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT: Cole, Madilyn M. Attorney

JOURNAL ENTRIES

- Present via video, Attorney Betsy Allen. Ms. Allen CONFIRMED as counsel and requested 30 days to get the file sorted out. COURT SO ORDERED; proceedings SET for status check.

8-5-20 10:15 AM STATUS CHECK

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

August 05, 2020

A-19-798035-W Justin Porter, Plaintiff(s)
vs.
Brian Williams, Defendant(s)

August 05, 2020 10:15 AM Status Check

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Rem Lord

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT: Allen, Betsy Attorney
Luzaich, Elissa Attorney

JOURNAL ENTRIES

- Ms. Allen requested a continuance, Ms. Luzaich voiced no opposition. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 10/7/2020 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

October 07, 2020

A-19-798035-W Justin Porter, Plaintiff(s)
vs.
Brian Williams, Defendant(s)

October 07, 2020 10:15 AM Status Check

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT: Allen, Betsy Attorney
Luzaich, Elissa Attorney

JOURNAL ENTRIES

- Ms. Allen stated she's spoken with the State regarding the case history, understands where she fits in, requested proceedings be taken off calendar and advised she's appointed to do the appeal for the third petition filed by the Defendant up before the Supreme Court which is being briefed; no more status checks are needed. Ms. Luzaich concurred. COURT ORDERED, proceedings OFF CALENDAR.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

October 07, 2021

A-19-798035-W Justin Porter, Plaintiff(s)
vs.
Brian Williams, Defendant(s)

October 07, 2021 3:00 AM Minute Order

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

COURT CLERK: Samantha Albrecht

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, Matter set for October 7, 2021 (CHAMBERS) is CONTINUED to October 14, 2021(CHAMBERS).

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 10/7/2021

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

October 14, 2021

A-19-798035-W	Justin Porter, Plaintiff(s)
	vs.
	Brian Williams, Defendant(s)

October 14, 2021	3:00 AM	Motion for Appointment of Attorney
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HEARD BY: Villani, Michael	COURTROOM: Chambers
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COURT CLERK: Samantha Albrecht

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Petitioner s Motion for Appointment of Counsel came before this Court on the October 14, 2021 Chambers Calendar. After considering all pleadings and arguments, the Court renders its decision as follows:

The Court adopts the procedural history as set forth in the State s Opposition. Petitioner has filed three prior petitions. The instant Petition fails to provide good cause as to why an attorney needs to be appointed now after the prior petitions. Moreover, Petitioner had Counsel during his appeal and previous petition. Accordingly, no good cause has been shown explaining why the issues the Petitioner presented in his current Petition could not have been brought up in the prior petition.

COURT ORDERED, Petitioner s Motion for Appointment of Counsel is DENIED. Counsel for the State is directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and be approved as to form and content by all parties. Status Check for the Order will be set for October 28, 2021 (Chambers). Status Check will be vacated if the Order is filed before the hearing date.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey
File & Serve/ SA 10/14/2021

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

October 28, 2021

A-19-798035-W Justin Porter, Plaintiff(s)
vs.
Brian Williams, Defendant(s)

**October 28, 2021 3:00 AM Status Check: Status of
Case**

HEARD BY: Villani, Michael

COURTROOM: Chambers

COURT CLERK: Samantha Albrecht

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Status Check for Findings of Fact Conclusions of Law & Order came before this Court on the October 28, 2021 Chamber Calendar. COURT NOTES, no Order was filed or received. COURT ORDERED, matter continued to November 16, 2021 9:00 A.M.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 10/28/2021

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

November 15, 2021

A-19-798035-W Justin Porter, Plaintiff(s)
vs.
Brian Williams, Defendant(s)

November 15, 2021 3:00 AM Minute Order

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

COURT CLERK: Samantha Albrecht

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT NOTES, Status Check: Order set for November 16, 2021 at 9:00 AM; COURT NOTES, an Order has not been filed nor submitted. COURT ORDERED, matter continued to December 2, 2021 (Chambers).

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 11/15/2021

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

December 02, 2021

A-19-798035-W Justin Porter, Plaintiff(s)
vs.
Brian Williams, Defendant(s)

**December 02, 2021 3:00 AM Status Check: Status of
Case**

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

COURT CLERK: Samantha Albrecht

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- No order filed or received. COURT ORDERED, matter continued to December 16, 2021 (Chambers).

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey
File & Serve/ SA 12/6/2021

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

May 09, 2022

A-19-798035-W Justin Porter, Plaintiff(s)
vs.
Brian Williams, Defendant(s)

May 09, 2022 8:30 AM Hearing

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Samantha Albrecht

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT: Luzaich, Elissa Attorney

JOURNAL ENTRIES

- Plaintiff not present.

COURT ORDERED, matter MOOT as the Petition was set for hearing on July 6th; Petition for Writ of Habeas Corpus STANDS.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 06, 2022

A-19-798035-W Justin Porter, Plaintiff(s)
vs.
Brian Williams, Defendant(s)

July 06, 2022 8:30 AM All Pending Motions

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Samantha Albrecht

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT: Luzaich, Elissa Attorney

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS...PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL

Defendant not present.

Court noted Defendant filed a sixth Petition which was not set on calendar and he then filed a seventh Petition. State requested the Court dismiss the sixth and seventh Petition. Court noted it had reviewed the seventh Petition and would review the sixth Petition. COURT ORDERED, matter TAKEN UNDER ADVISEMENT with a written decision to issue this afternoon. Court advised it was basing its decision on the pleadings on file herein and not accepting oral argument.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 07, 2022

A-19-798035-W Justin Porter, Plaintiff(s)
vs.
Brian Williams, Defendant(s)

July 07, 2022 3:00 AM Minute Order

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

COURT CLERK:
Samantha Albrecht

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Petition for Writ of Habeas Corpus came before the Court and was taken under advisement. The Court did not accept oral argument.

The Court incorporates by reference the procedural history as set forth in the State's Response and Motion to Dismiss Petition for Writ of Habeas Corpus and Opposition to Motion to Appoint Counsel.

The Petition is time barred as it was filed after the one-year deadline in NRS 34.716(1). The Nevada Supreme Court affirmed Petitioner's Judgment of Conviction on November 8, 2010, and Remittitur issued on December 3, 2010. Petitioner had until December 3, 2011 to file a post-conviction petition. The instant petition was filed on April 29, 2022, over 10 years after the time allowed.

The Petition is successive and an abuse of the writ. This is Petitioner's seventh habeas petition. Petitioner appealed each denial of his respective petitions, and every denial was affirmed by the Supreme Court. Petitioner has clearly had the opportunity to raise the grounds he now alleges in each of these prior Petitions. There is no good cause to overlook the procedural bars.

Claim of Actual Innocence Petitioner's claims do not establish factual innocence.

State's Countermotion to Dismiss the Seventh Petition pursuant to Laches. Petitioner's claims do not overcome prejudice to State.

An evidentiary hearing is unnecessary as an expansion of the record is not needed.

Petitioner's Motion for Appointment of Counsel. The issues here are not complex and that all of the grounds for relief were or should have been brought up in the six previous petitions.

Petitioner's Sixth Petition. The Sixth petition is identical to the Seventh petition, and the reasoning set forth above also apply to the Seventh Petition.

Petitioner fails to meet any of the Strickland elements. Further, errors, if any, in this case do not rise to the level of cumulative error which would warrant relief.

Therefore, COURT ORDERED Petitioner's Writ of Habeas Corpus and Motion for Appointment of Attorney are DENIED. The State is directed to submit a proposed Findings of Fact and Conclusions of Law consistent with the foregoing within fourteen (14) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Findings of Fact and Conclusion of Law should set forth a synopsis of the supporting reasons proffered to the Court in briefing. Status Check for the pleadings will be set for the July 28, 2022 (Chambers) Calendar. Status Check will be vacated if the Findings of Facts and Conclusion of Law is filed before the hearing date.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 7/7/2022

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 13, 2022

A-19-798035-W Justin Porter, Plaintiff(s)
vs.
Brian Williams, Defendant(s)

July 13, 2022 3:00 AM Minute Order

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

COURT CLERK:
Samantha Albrecht

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Status Check: Findings of Fact and Conclusion of Law set to come before the Court on the July 28, 2022 (Chambers) Calendar. COURT NOTES, Findings of Fact, Conclusions of Law and Order received on July 11, 2022. COURT ORDERED, matter VACATED.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 7/13/2022

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER;
DISTRICT COURT MINUTES

JUSTIN PORTER,

Plaintiff(s),

vs.

BRIAN WILLIAMS - WARDEN,

Defendant(s),

Case No: A-19-798035-W

Dept No: XVII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 19 day of July 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk