

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

JUSTIN D. PORTER,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: A-19-798035-W

Docket No: 85063

RECORD ON APPEAL VOLUME 1

ATTORNEY FOR APPELLANT
JUSTIN PORTER # 1042449,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

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

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

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FILED

JUL 05 2019

1 Case No. C-174954
2 Dept. No. 6

John L. Williams
CLERK OF COURT

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

5 Justin Porter
6 Petitioner,

7 v.

8 PETITION FOR WRIT
9 OF HABEAS CORPUS
10 (POSTCONVICTION)

A-19-798035-W
Dept: VI

11 Brian Williams - Warden
12 Respondent.

13 INSTRUCTIONS:

- 14 (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
15 (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to
16 support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted,
17 they should be submitted in the form of a separate memorandum.
18 (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in
19 Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of
20 money and securities on deposit to your credit in any account in the institution.
21 (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific
22 institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific
23 institution of the Department but within its custody, name the Director of the Department of Corrections.
24 (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence.
25 Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction
26 and sentence.
27 (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction
28 or sentence. Failure to allege specific facts 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 the attorney-
client privilege for the proceeding in which you claim your counsel was ineffective.
(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. 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
the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all
particulars to the original submitted for filing.

29 PETITION

30 1. Name of institution and county in which you are presently imprisoned or where and how you are presently
31 restrained of your liberty: High Desert State Prison, CLARK COUNTY

32 2. Name and location of court which entered the judgment of conviction under attack: 8th
33 Judicial District Court, County of Clark, State of Nevada

34 3. Date of judgment of conviction: Oct. 13th, 2009

35 4. Case number: C-174954

36 5. (a) Length of sentence: 10 yrs. to life with a consecutive 10 yrs. to life

A-19-798035-W
IPWHC
Inmate Filed - Petition for Writ of Habeas
4847377

RECEIVED

JUL 05 2019

CLERK OF THE COURT

(b) If sentence is death, state any date upon which execution is scheduled:.... N/A

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

Yes No ☒

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

~~N/A~~

7. Nature of offense involved in conviction being challenged: Homocide

8. What was your plea? (check one)

(a) Not guilty ☒

(b) Guilty

(c) Guilty but mentally ill

(d) Nolo contendere

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: N/A

10. If you were found guilty or guilty but mentally ill 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

13. If you did appeal, answer the following:

(a) Name of court: SUPREME COURT OF NEVADA

(b) Case number or citation: 54866

(c) Result: AFFIRMED

(d) Date of result: December 3rd, 2010

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

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

~~NA~~

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 your answer to No. 15 was "yes," give the following information:

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

(2) Nature of proceeding: Petition for writ of Habeas Corpus - Post-Conviction

(3) Grounds raised:

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

(5) Result: Denied

(6) Date of result: April 23, 2012

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

Findings of Facts and Conclusions of Law Filed June 11, 2012

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

(1) Name of court: 8th J.D.C.

(2) Nature of proceeding: Petition for writ of Habeas Corpus Post-Conviction

(3) Grounds raised:

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

(5) Result: Denied

(6) Date of result: JANUARY 13, 2014

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

"Time Barred"

(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.

C. THIRD PETITION

- (1) NAME OF COURT: 8th, J.D.C.
- (2) NATURE OF PROCEEDING: Petition For writ of Habeas CORPUS, POST-CONVICTION.
- (3) Grounds Raised:
- (4) Did You receive AN EVIDENTIARY HEARING ON Your Petition? ~~NO~~
- (5) Result: DENIED
- (6) DATE OF RESULT: MARCH 10th, 2016
- (7) IF KNOWN, CITATIONS OF ANY WRITTEN OPINION OR DATE OF orders entered PURSUANT to such Result:

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

(1) First petition, application or motion? Yes ☒ No ☐

Citation or date of decision: MARCH 11, 2013

(2) Second petition, application or motion? Yes ☒ No ☐

Citation or date of decision: JUNE 11, 2014

(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.) Petitioner was denied appointment of counsel. Petitioner is layman to the law. DENIAL OF FAIR PROCEDURES.

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 postconviction proceeding? If so, identify: NO

(a) Which of the grounds is the same: N/A

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

(c) Briefly explain why you are again raising these grounds. (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.) N/A

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (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.) Petitioner was denied effective

1 ASSISTANCE OF TRIAL and APPELLATE COUNSEL / SEE MEMORANDUM ATTACHED HERETO

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

6 effective Assistance of Counsel at Trial and on Appeal. See memorandum attached hereto

7 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment
8 under attack? Yes No ☒

9 If yes, state what court and the case number: N/A

10
11 21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on
12 direct appeal:

13
14 22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under
15 attack? Yes No ☒

16 If yes, specify where and when it is to be served, if you know: N/A

17
18 23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the
19 facts supporting each ground. If necessary you may attach pages stating additional grounds and facts
20 supporting same.

1 (a) Ground ONE: Petitioner is ACTUALLY INNOCENT. DENIAL
2 OF DUE PROCESS OF LAW, 14th amendment to the U.S.C.,
3 AND ARTICLE ONE sec. 9 of the Nevada state
4 constitution.

5 Supporting FACTS (Tell your story briefly without citing cases or law.): See Petitioners
6 memorandum with Points and Authorities, Attached
7 to this Petition.
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1 (b) Ground TWO: INEFFECTIVE ASSISTANCE OF TRIAL
2 COUNSEL. (DENIAL of the 6th Amendment to
3 the U.S.C.)
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5 Supporting FACTS (Tell your story briefly without citing cases or law.): See Petitioners
6 MEMORANDUM with POINTS AND AUTHORITIES
7 Attached to this Petition.
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1 (c) Ground THREE: INEFFECTIVE ASSISTANCE OF
2 APPELLATE COUNSEL, (DENIAL of the 6th
3 Amendment to the U.S.C.)
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5 Supporting FACTS (Tell your story briefly without citing cases or law.): See Petitioners
6 MEMORANDUM with Points and Authorities
7 Attached to this Petition -
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1 (d) Ground FOUR: PROSECUTORIAL MISCONDUCT,
2 (violating the 5th, 6th, AND 14th Amendment(s)
3 to the U.S.C.)
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5 Supporting FACTS (Tell your story briefly without citing cases or law.): See Petitioners
6 MEMORANDUM with Points AND Authorities
7 Attached to this Petition.
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1 23. (b) GROUND ^{FIVE!} TRIAL COURT ABUSED ITS
2 DISCRETION, (violating the 5th AND 14th
3 amendments to the U.S.C.)
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5 23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): See
6 Petitioners memorandum with Points and
7 AUTHORITIES Attached to this Petition.
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WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 28 day of the month of June, 2019.

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

VERIFICATION

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

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number C-174954 Does not contain the social security number of any person.

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

CERTIFICATE OF SERVICE BY MAIL

I, Justin Porter, hereby certify pursuant to N.R.C.P. 5(b), that on this 28 day of the month of June, 2019, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

D.W. Neven, Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

* Print your name and NDOC back number and sign

JUSTIN PORTER # 1042449

P.O. Box 650

INDIAN SPRINGS, NV. 89070

8th Judicial District Court

CLARK County, Nevada

JUSTIN PORTER

Petitioner

CASE NO. 6174954

DEPT. NO. 0

- VS -

WARDEN BRIAN Williams

Respondent(s).

"MEMORANDUM WITH POINTS AND AUTHORITIES"

COMES NOW, Petitioner, AFORE-NAMED, for the above captioned cause, who submits this MEMORANDUM IN SUPPORT OF his ACCOMPANYING PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION).

PURSUANT TO N.R.S. CHAPTER 34, Article 1, Sec., 5 AND Article 1, Sec., 8 of the NEVADA CONSTITUTION, The Fifth, Sixth, AND Fourteenth Amendment to the UNITED STATES CONSTITUTION, Article 1, Sec., 9 AND Article 6 PARAGRAPH 2, OF the UNITED STATES CONSTITUTION, AND the Eighth JUDICIAL DISTRICT COURT RULE(S), Attached Points and Authorities, Exhibits, Affidavits, AND All Papers, Pleadings AND Documents ON file herein

DATED this 28 DAY OF June, 2019

Submitted by: Justin Porter

POINTS AND AUTHORITIES

A. Procedural Background, in Pertinate Part(s).

ON OR ABOUT THE 26 DAY OF APRIL, 2001, Petitioner WAS ILLEGALLY charged with murder. ON OR ABOUT THE 30 DAY OF APRIL, 2004 the state filed it's Third Amended Information, charging Petitioner with: COUNT 1- Burglary while in Possession of a Deadly Weapon; COUNT 2- Attempt Robbery with use of a Deadly Weapon, AND COUNT 3- murder with use of a Deadly Weapon.

ON MAY 8, 2009, A JURY ILLEGALLY found Petitioner guilty of Count 3, of second Degree murder with use of a Deadly Weapon. Petitioner was found Not Guilty of counts 1 and 2.

ON September 30, 2009 This Court sentenced Petitioner to the Nevada Department of Corrections for 120 months to life, Plus a consecutive term of 120 months to life for the use of a Deadly Weapon, with 3,338 days credit for time served. Judgment of conviction was filed on Oct. 13, 2009.

~~On October 13, 2009, the Nevada Department of Corrections filed a Notice of Appeal with the Nevada Supreme Court.~~

Petitioner filed Notice of Appeal ON Oct. 29, 2009, ON Nov. 8, 2010. The Nevada Supreme Court Affirmed the Judgment of conviction, AND ISSUED it's Remittur ON December 3, 2010.

ON Feb. 10, 2012 Petitioner filed his first Pro. Per. Post-conviction Petition for Writ of Habeas Corpus. The state filed its Response and motion to Dismiss on March 21, 2012. On April 23, 2012 the state District Court denied Petitioner's Petition as untimely. Findings of fact, conclusions of law and order were filed on June 11, 2012. Petitioner appealed the denial of his first Petition on May 8, 2012 and on March 11, 2013, the Nevada Supreme Court affirmed the denial. Remittitur issued on March 19, 2013.

On August 26, 2013 Petitioner filed his second Pro. Per. Post-conviction Petition for Writ of Habeas Corpus, and a separate motion to appoint counsel. The state filed its Response and motion to Dismiss on Jan. 3, 2014. On Jan. 13, 2014, the court denied Petitioner's Second Petition as time-barred. Petitioner filed Notice of Appeal from the Denial of His Second Petition on Feb. 7, 2014 and on June 11, 2014 the Nevada Supreme Court affirmed the denial. Remittitur issued on July 15, 2014.

On Oct. 26, 2015 Petitioner filed his third Pro. Per. Post-conviction Petition for Writ of Habeas Corpus. The state filed its Response and motion to Dismiss on Jan. 26, 2016. On March 10, 2016 the court denied Petitioner's Petition. On April 20, 2016 Petitioner filed Notice of Appeal. Pro. Per. and on Aug. 17, 2016, Court of Appeals

for the State of Nevada, ISSUES IT'S ORDER
OF AFFIRMANCE.

THAT ON OR ABOUT THE 31 DAY OF December, 2018
Petitioner met AN INMATE, who Prepared
the INSTANT Petition for Writ of Habeas
CORPUS, POST-CONVICTION.

Dated this 28 DAY OF JUNE, 2019.

BY: Justin Porter 6/28/2019
JUSTIN PORTER-Petitioner-PRO. PER.

POINTS AND AUTHORITIES

B. GROUNDS AND SUPPORTING FACT(S).

THE EVIDENCE OF ACTUAL INNOCENCE AND INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL REFERRED TO AND EVIDENCED HEREIN CONSTITUTES "GOOD CAUSE" TO OVERCOME ANY PROCEDURAL BAR., to wit:

1. N.R.S. 34.726 states the following:

(1.) UNLESS there is good cause shown for delay, a petition that challenges the validity of a judgment or a sentence must be filed within one (1) year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within one year after the Supreme Court enters its remittitur.

For the purpose of this subsection, good cause for delay exists if the Petitioner demonstrates to the satisfaction of the Court [that]:

(A) the delay is not the fault of the Petitioner; AND
(b) dismissal of the Petition will unduly prejudice the Petitioner.

The precedent for which to determine whether the one (1) year filing time for this Petition should be waived pursuant to N.R.S. 34.726 has been decided and given by the Supreme Court of our state, in *Pellegrini v. State*, 117 Nev. 860 (2001),

wherein it was rightly reasoned that:

TO SHOW GOOD CAUSE, the Petitioner must demonstrate that an impediment external to the defense prevented him from raising his claims earlier. (see Pellegrini v. State at 863) AND see MARTINEZ V. RYAN, 132 S.Ct. 1309, 182 L.Ed. 2d. 272, 80 U.S.L.W. 4216 (2012).

Wherein, ON MARCH 20, 2012, the UNITED STATES SUPREME COURT decided MARTINEZ V. RYAN, SUPRA.

Therein the Court stated:

"... When a State requires a Prisoner to raise an ineffective-assistance-of-trial-counsel claim in a collateral proceeding, a Prisoner may establish cause for a default of an ineffective-assistance claim in two circumstances ~~one~~ is where the state courts did not appoint counsel in the initial-review collateral proceeding for a claim of ineffective-assistance at trial.

" id. 132 S.Ct. at 1318, 182 L.Ed. 2d. at 286 (emphasis added).

AS NOTED ANTE, Petitioner WAS NOT APPOINTED COUNSEL IN HIS INITIAL-REVIEW COLLATERAL PROCEEDING, despite His efforts. Petitioner so submits, see WALKER V. MCCAUGHTRY, 72 F.Supp. 2d. 1025

(E.D.Wis. 1999) (DENIAL OF APPEALATE COUNSEL RESULTED IN AUTOMATIC PREJUDICE AND REQUIRED REINSTATEMENT

OF State Appeal); Wisc. Ex Rel Toliver V. McCaugh-
TRY, 72 F. SUPP. 960, ____ (E.D. Wisc. 1999) (Denial
OF Right to Counsel / on the first direct Appeal /
WARRANTED Conditionally granting The WRIT
AND ORDERING That Toliver be Released
Within 120 days unless the State Re-instates
The Direct Appeal AND Providing Toliver with
Appointed Counsel (within 120 days). See Also, U.S. v.
Wadsworth, 830 F.2d. 1500 ____ (9th. Cir. 1987)
(The Trial Court's denial of the defendant's
Rights to Counsel, is Per Se Reversal).

Nevertheless, Failure to Properly Present
Constitutional Issues by Habeas Counsel
will Also constitute Ineffective Assistance
of Counsel as well. See GRIFFIN V. Delo,
961 F.2d 793, 794 (8th. Cir. 1992).

DEMONSTRATION OF A SUBSTANTIAL CLAIM (ReJUNICE)

In MARTINEZ, SUPRA, the Court Stated:

"To overcome the default, A Prisoner
must Also demonstrate that the underlying ineffective-
Assistance-of-Trial-Counsel Claim is a Substantial one,
which is to say that the Prisoner must demonstrate
that the Claim has Some merit. (citation Omitted)"
id. 132 S.Ct. At 1318, 182 L.Ed. 2d. At 286

In DOUGLAS V. CALIFORNIA, 372 U.S. 353,
357, 85 S.Ct. 814, 816 (1963) The Court Stated:

"When an indigent is forced to RUN this GANTER OF A Preliminary Showing of merit, the Right to APPEAL DOES NOT COMPORT with the FAIR Procedure" id.

MARTINEZ, Also Acknowledges that the initial-Review Collateral Proceeding is in many ways the equivalent of a Prisoners First Appeal AS A Right (direct Appeal), AS to the Precluded ineffective-Assistance Claim. id. 132 S. Ct. At 1315-1317.

Petitioner believes that the Required Showing of "Some merit" CLEARLY RUN AFOUL of the Authority of DOUGLAS, Regarding His Right to AN APPEAL ON His ineffective-Assistance-of-Trial-Counsel-claims.

Petitioner, further states that the State Scheme of Precluding ineffective Assistance of Counsel Claims on Direct Appeal, Heightening the Standard to Present and obtain counsel in the initial-Review Collateral Proceeding, is contrary to the Jurisprudence underlying His Right to APPEAL, (direct Appeal), NOTED in DOUGLAS, ANTE, which does not COMPORT with a Fair Procedure.

AGAIN; WALKER V. McCaughtry, 72

F. Supp. 2d 1025, _____ (E.D. Wisc. 1999) (Denial of Appellate Counsel Resulted in Automatic Prejudice and Required Reinstatement of State Appeal); Wisc. Ex Rel Toliver V. Mc CAUGHTRY, 72 F. Supp. 2d 960, _____ (E.D. Wisc. 1999) (Denial of the Right to Counsel on the First direct Appeal Warranted Conditionally granting the Writ and ordering that Toliver be Released within 120 days unless the state Reinstates the direct Appeal and Providing Toliver with Appointed Counsel within 120 days). See Also, U.S. V. WADSWORTH, 830 F.2d. 1500, _____, (9th. Cir. 1987) (The TRIAL COURTS DENIAL OF THE DEFENDANT'S RIGHT TO COUNSEL IS PER SE REVERSAL).

IN the Case NOW at bar, the Petitioner, "PORTER", was Found GUILTY of 2nd Degree murder, ON MAY 8th, 2009, AND more than one (1) Year has Passed from his being so convicted, until the Filing of this Petition, AND the Instant Petition is a Successive Petition. However... good Cause EXISTS, For the delay of over A Year, AND For the Successive Petition, because:

The Cause of this Action is based UPON

Petitioners ACTUAL INNOCENCE OF
2nd. Degree murder AND...
INEFFECTIVE ASSISTANCE OF trial
COUNSEL;

That Dismissal of this Petition will
unduly Prejudice the Petitioner,
[Porter], because:

If this Petition is dismissed, Porter
will be convicted wrongfully, for
crimes he is "ACTUALLY INNOCENT" of,
and will never have had an opportunity
to show the court his innocence.

That Petitioner's conviction will be
the result of INEFFECTIVE ASSISTANCE
OF TRIAL COUNSEL.

Wherein the INCOMPETANCE OF TRIAL
COUNSEL did ACT AS AN IMPEDIMENT
EXTERNAL to Petitioner's defense, did deny
Petitioner's Theory of His defense to be
Presented to the JURY, in a JURY
INSTRUCTION, (INVOLUNTARY MANSLAUGHTER)

That IF this Petition is DISMISSED
Petitioner would NOT have the OPPORTUNITY

to Present the Afore-stated Claims to the Court, AND...

SUCH PreJUDICE is BeNEATH the DIGNITY OF this Honorable COURT to condone; AND,

Petitioner's conviction will be the Result of MANIFEST INJUSTICE to Petitioner, AS there is A sufficient basis to show good CAUSE to excuse the "Procedural BAR(S)" OR CONCLUDE that A "Fundamental/ MISCARRIAGE OF Justice" will OCCUR from the Failure to consider his claims for Relief on the merits, Per. Rule ANNOUNCED in Pellegrini v. State, 117 Nev. 860 (2001) AND MURRAY V. CARRIER, 477 U.S. 478, 489. 91 L. Ed. 2d. 397, 106 S. Ct. 2639 AND see MARTINEZ V. RYAN, 132 S. Ct. 1309, 182 L. Ed. 2d. 272, 80 U.S. L.W. 4216 (2012).

N.R.S. 34.810(3) states in part: Pursuant to Subsections 1 and 2 [34.810], the Petitioner has the burden of Pleading AND Proving specific facts that demonstrate: (A) GOOD CAUSE FOR... Presenting the claim AGAIN; AND (b) Actual PreJUDICE to the Petitioner...

IN the foregoing Petition, Porter is now stating a colorable claim of ACTUAL INNOCENCE. The Supreme Court of our State has recognized that the standards in N.R.S. 34.810(3)(A)(b), above, can be met where the Petitioner "MAKES A colorable showing that he is ACTUALLY INNOCENT of the crime". (see *Pellegrini v. State*, *id*; at 863).

more over, binding federal Authority, as related by the Supreme Court of our UNITED STATES in BOUSELY v. UNITED STATES, citing MURRAY v. CARRIER, Holds:

Procedural hurdles can be overcome if the Petitioner can demonstrate either, "CAUSE AND ACTUAL PreJUDICE", e.g.; MURRAY v. CARRIER, or that He is "ACTUALLY INNOCENT" (see BOUSELY v. UNITED STATES, 523 U.S. 614 (1998)).

Accordingly, it is clear by demonstrations above that:

Petitioner's claims concerning ineffective Assistance of trial Counsel, are actionable because they are being raised herein as a Direct Result of Being Denied Appointed Counsel in His Initial-Review-Collateral

Proceeding for a claim of Ineffective
Assistance at Trial, MARTINEZ V.
RYAN, SUPRA

Petitioner's claims of Actual Innocence
are actionable because they are beyond
Procedural Bars Pursuant to state
and federal binding Authorities.

These claims should be considered herein
on their merits without regard to ANY
Procedural bar. ("Truth is not only violated
by falsehood's it may be equally outraged
by silence") (Henri Fredric Amiel: Swiss
Philosopher, Amiel's Journal, 1883")

POINTS AND AUTHORITIES

B. GROUNDS AND SUPPORTING FACTS

GROUND ONE: Petitioner is ACTUALLY INNOCENT.
Denial of Due Process of Law, 14th. Amendment to
the U. S. C., AND Article one sec. 3 of the
NEVADA CONSTITUTION.

SUPPORTING FACTS:

Petitioner Asserts that there is NO evidence in
the instant case to support his unlawful conviction
for second degree murder.

That He, [Petitioner] is ACTUALLY AND FACTUALLY
INNOCENT of the complained of second degree

murder conviction. That a cursory glance into the Record of this case will demonstrate, _____, that Your Petitioner did not exercise felonious intent, nor willful, deliberate, nor premeditation to murder, nor malicious intent, nor malice aforethought, The ESSENTIAL ELEMENTS AND... NECESSARY GRAVEMAN to obtain and sustain a second degree murder conviction, [lawfully], see Due Process of Law clause(s) of the 5th and 14th Amendment(s) to the UNITED STATES CONSTITUTION. And see IN-Voluntary Statement of Petitioner, [JUSTIN PORTER], on file with this court, entered into the Record of this case at trial, marked as exhibit #104, attached hereto by reference, therein, Petitioner asserted, in his IN-Voluntary statement that "He entered a apartment, believed by himself, to be unoccupied, while attempting to evade police, when out of the dark, a person suddenly advanced towards him, frightening Petitioner, and causing Petitioner to shoot his firearm, out of pure fear for his safety. See Bailey V. State, 100 Nev. 562, 688 P.2d. 320; 1984 Nev. Lexis 424 NO. 14 827 Oct. 4, 1984. In Bailey supra, The High COURT OF OUR Great State of NEVADA, Rightly.

Reasoned that "IN VOLUNTARY MANSLAUGHTER
IS BY DEFINITION AN UNINTENTIONAL KILLING".

see N.R.S. 200.070; see also PARSON V. STATE, 74 Nev. 302, 329 P.2d. 1070 (1958).

is That before this Honorable Court
is an UNLAWFUL CONVICTION FOR Second
degree murder, wherein all the evidence
adduced at TRIAL SUPPORTED ONLY A
CONVICTION FOR IN VOLUNTARY murder,
Thus Giving Rise to Petitioners Lawful
claim(s) of ACTUAL AND FACTUAL INNOCENT.

That this "WRIT" is the Proper Remedy
For Petitioners ACTUAL INNOCENT claim,
Per. SNOW V. NEVADA, 105 Nev. 521 (1989).

That although it has been more than 1 yr.
since Petitioners Remittor was filed, and
Petitioner's Instant Petition may be considered
successive, The Procedural Hurdles Afore-
cited, can be overcome [IF] the Petitioner
can demonstrate either "CAUSE AND ACTUAL
PREJUDICE", E.g.; MURRAY V. CARRIER, 477
U.S. 478, 489, 91 L.Ed 2d. 397, 106 S.Ct.
2639 OR... that he is "ACTUALLY INNOCENT".
Id.; at 496, Bousley V. UNITED STATES,
523 U.S. 614 (1998).

Therefore in the Instant Case, A
conviction obtained absent Constitutional
Guarantees of the 6th Amendment to the UNITED

states Constitution, I.E., EFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL AND THE 5th Amendment to the UNITED STATES CONSTITUTION, AND THE 14th Amendment to the UNITED STATES CONSTITUTION, the Due Process of Law Clause(s), I.E., ACTUAL INNOCENCE, "THEN"... Provides A WAIVER FOR BOTH, THE TIME AND SUCCESSIVE, PROCEDURAL BAR(S).

IN BOUSLEY, THE PETITIONER PLED TO A COUNT OF USING AND CARRYING A GUN DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME, UPON THE REINTERPRETATION, OF THIS LAW; IN BAILEY V. UNITED STATES, 516 U.S. 137 (1995), DEFENDANTS' PLEA WAS ALLOWED TO BE SET ASIDE, DESPITE THE FACT THAT SUCH AN ACTION WOULD BE PROCEDURAL BARRED. [THE] SUPREME COURT STATED THAT PETITIONER'S CLAIM MAY STILL BE REVIEWED IN THIS COLLATERAL PROCEEDING IF HE CAN ESTABLISH THAT THE CONSTITUTIONAL ERROR HAS; "PROBABLY RESULTED IN THE CONVICTION OF ONE WHO IS ACTUALLY INNOCENT"; MURRAY V. CARRIER, 477 U.S. 496.

TO ESTABLISH ACTUAL INNOCENCE, PETITIONER MUST DEMONSTRATE THAT "IN LIGHT OF ALL THE EVIDENCE, IT IS MORE LIKELY THAN NOT THAT NO REASONABLE JUROR WOULD HAVE CONVICTED HIM". SCHUP V. DELA, 513 U.S. 298 327-328, 130 L. ED 2d. 808, 115 S. CT. 851 (1995). (QUOTING FRIENDLY); IS

INNOCENCE Irrelevant Collateral Attack
ON CRIMINAL Judgment(s) 38 U. Chi.
L. Rev. 142, 160 (1970).

IN that case the Supreme Court held there
WAS NO Procedural default IF, good cause
existed, OR there WAS error that resulted
in the conviction OF AN INNOCENT Person.

FINALLY, THERE IS NO evidence to support
the complained of, UNLAWFUL conviction for
second degree murder. To the CONTRARY
the evidence adduced AT TRIAL clearly
ONLY supported A INVOLUNTARY
MANSLAUGHTER conviction, I.E., "A Killing
without malice aforethought"

see AGAIN, IN-VOLUNTARY statement of
Petitioner, [JUSTIN PORTER], on file with
this Court, entered into the Record of this
case AT TRIAL, MARKED AS exhibit #104, attached
Hereto by Reference.

The Administration of Justice, will Require
that the INSTANT conviction be VACATED, OR
IN the ALTERNATIVE, Remand the same for AN
"EVIDENTIARY HEARING", to give Petitioner A
lawful OPPORTUNITY to Prove the facts
supporting his claim(s).

POINTS AND AUTHORITIES

B. GROUNDS AND SUPPORTING FACTS

GROUND TWO: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL. (Denial of the 6th Amendment to the U.S.C.)

SUPPORTING FACTS.

The HIGH COURT... of our Great COUNTRY, has articulated the meritorious ineffective ASSISTANCE OF COUNSEL CLAIM has TWO COMPONENTS; First, the Petitioner must show that the Counsel's PERFORMANCE WAS DEFICIENT, falling well below A PROFESSIONAL STANDARD OF REASONABLENESS... Second, the Petitioner must show that the deficient PERFORMANCE PREJUDICED PETITIONER.

ON the DEFICIENCY PRONG, because of the difficulties inherent in making the evaluation, A court must indulge a strong presumption that COUNSEL'S CONDUCT FALLS WITHIN the wide RANGE OF REASONABLENESS, PROFESSIONAL ASSISTANCE" I.E.; The Petitioner must overcome the presumption that under the CIRCUMSTANCES, the CHALLENGED ACTION(S) might be considered SOUND STRATEGY.

" HERE THE FACT(S), AS ALLEGED BY PETITIONER, OVERCOME THAT PRESUMPTION."

I d, EST;

A. Petitioner's ATTORNEY(S) of Record, CLARK COUNTY Public Defender Philip J. Kohn, did, by AND through his DEPUTY(S), CURTIS BROWN, ESQ., AND

JOSEPH ABOOD, ESQ., DELIBERATELY, AND KNOWINGLY, ACT AS AN IMPEDIMENT EXTERNAL TO PETITIONER'S DEFENSE, DID REFUSE AND OR FAILED TO INSTRUCT THE JURY ON PETITIONER'S THEORY OF THE CASE.

THAT THE FAILURE OF TRIAL COUNSEL TO PROFER THE JURY INSTRUCTION OF/ON IN VOLUNTARY MANSLAUGHTER, IS INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

YOUR PETITIONER MAINTAINS THAT THERE IS NOTHING PROFESSIONAL OR STRATEGIC ABOUT FAILING AND OR REFUSING TO PROFER PETITIONER'S THEORY OF THE CASE, TO THE JURY IN AN JURY INSTRUCTION, WHICH WAS/IS SUPPORTED BY CONVINCING EVIDENCE IN THE CASE. (SEE PETITIONER'S JUSTIN PORTER'S, IN-VOLUNTARY STATEMENT).

ON THE PREJUDICE PRONG, THE FACTS ALLEGED BY PETITIONER HEREIN, SHOW THAT THERE IS A REASONABLE PROBABILITY THAT BUT FOR COUNSEL'S UNPROFESSIONAL, UNETHICAL, DEFICIENT, INEFFECTIVE ASSISTANCE OF COUNSEL, THE RESULTS OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT.

PETITIONER ASSERTS THAT HE IS ACTUALLY AND FACTUALLY INNOCENT OF SECOND DEGREE MURDER AND WOULD NOT HAVE THE ILLEGAL CONVICTION COMPLAINED OF HEREIN, ABSANT INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, SEE Williams V. State, 99 NEV. 530; 663 P.2d. 260; 1983 NEV. LEXIS 481 NO. 13911 JUNE 22, 1983.

Petitioner PRAYS this Honorable Court VACATE the Illegal CONVICTION(S) complained of Herein, OR IN the ALTERNATIVE, Remand this CAUSE FOR AN EVIDENTIARY HEARING, to Give Petitioner a lawful OPPORTUNITY to Prove the FACTS SUPPORTING His CLAIMS.

B. Petitioner's ATTORNEY(S) OF RECORD, CLARK COUNTY Public Defender, Philip J. Kohn, did, by and through his Deputy(s), Curtis BROWN, ESQ., and Joseph Aboud, ESQ., deliberately, and KNOWINGLY, ACT AS AN IMPEDIMENT EXTERNAL to Petitioner's defense, did Relieve the state of its Duty, to Prove Petitioner's Guilt of second Degree murder, beyond A Reasonable Doubt, by CONCESSING to, and Directing the JURY to Find Petitioner GUILTY of Second Degree murder. See TRIAL Transcripts, DAY 5 of TRIAL, PG. NO. 33 LINE 16 and see ALSO PG. NO. 43 LINE(S) 3 thru 5. , Attached Hereto by Reference. Thus... Petitioner WAS deprived of Due Process of Law and a FAIR TRIAL.

That the Performance evidenced Herein by Petitioner's TRIAL Counsel, Philip J. Kohn, His DEPUTIES, Fall well below an objective standard of Reasonableness, and but for the complained

OF UNPROFESSIONAL, INEFFECTIVE ASSISTANCE OF COUNSEL, SUFFERED BY PETITIONER DURING HIS TRIAL, THE OUTCOME OF TRIAL WOULD HAVE BEEN DIFFERENT, THAT NO RATIONAL TRIER OF FACT WOULD HAVE FOUND PETITIONER GUILTY BEYOND A REASONABLE DOUBT OF SECOND DEGREE MURDER.

PETITIONER PRAYS THIS HONORABLE COURT VACATE THE ILLEGAL CONVICTION(S) COMPLAINED OF HEREIN, OR IN THE ALTERNATIVE, REMAND THIS CAUSE FOR AN EVIDENTIARY HEARING, TO GIVE PETITIONER A LAWFUL OPPORTUNITY TO PROVE THE FACTS SUPPORTING HIS CLAIMS.

C. PETITIONER'S ATTORNEY(S) OF RECORD, CLARK COUNTY PUBLIC DEFENDER, PHILIP J. KOHN, DID BY AND THROUGH HIS DEPUTY(S), CURTIS BROWN, ESQ. AND JOSEPH ABOOD, ESQ., DELIBERATELY AND KNOWINGLY, ACT AS AN IMPEDIMENT EXTERNAL TO PETITIONER'S DEFENSE, DID RELIEVE/FAILED TO SUBJECT PROSECUTION'S CASE TO A MEANINGFUL ADVERSE TESTING PROCESS. SEE TRIAL TRANSCRIPTS, DAY NO. 5, FRIDAY, MAY 8TH, 2009, PG. NO. 33 LINE NO. 16 "THEY SUPPORT SECOND DEGREE MURDER" AND ALSO SEE TRIAL TRANSCRIPTS, DAY NO. 5, FRIDAY, MAY 8TH, 2009 PG. NO. 43, LINE(S) 3 THRU 5 "PORTER DESERVES A THOROUGH DELIBERATION PROCESS AND AS TRAGIC

AS this is, the FACTS SUPPORT second degree murder and second degree murder should be Your Verdict."

see U.S. V. CRONIC, 466 U.S. 648, 80 L.Ed. 2d. 657, 104 S.Ct. 2039 (1984).

IN CRONIC SUPRA, the HIGH COURT stated that "TRIAL Counsel's failure to subject the Prosecution's case to a meaningful adversary testing process may constitute a denial of due process and establish a per se violation of defendant's right to effective Assistance of Counsel."

Further, Defense Counsel's Performance was not only ineffective, but Counsel's abandonment of the required duty of loyalty to his client was also abridged; Counsel did not simply make poor strategic or tactical choices; He acted with reckless disregard for his client's best interest, and... There is because of which, no need for a showing of prejudice as ineffective Assistance of Trial Counsel has been/is/was herein the Record of this case, established, per se.

The Same Requires reversal of conviction, or in the Alternative, an Cvidentiary Hearing wherein Petitioner can establish his Factual Allegations.

1
2 D. Petitioner's Attorney(s) of Record, Clark
3 County Public Defender, Philip J. Kohn, did by
4 and through his Deputy(s), Curtis Brown, Esq.
5 AND Joseph Aboud, Esq. deliberately, AND
6 knowingly, Act AS AN IMPEDIMENT External
7 to Petitioner's DEFENSE. COUNSEL'S Failed
8 to PROTECT and PRESERVE Petitioner's 4th, 5th
9 6th AND 14th U.S. Const. Amendment Rights,
10 When Counsel's Allowed the prosecution to
11 use inadmissible evidence, Petitioner's
12 INVOLUNTARY STATEMENT, the Coerced
13 Confession is the result of A Warrantless
14 Arrest OF MR. Porter your Petitioner.

15 ON the day of August 12, 2000, Chicago Police
16 Dept ARRESTED the Petitioner at his home,
17 by violating Petitioner Fourth Amendment
18 Right. Because OF the Police entered
19 Petitioner's dwelling without A WARRANT,
20 the Petitioner was "ILLEGALLY SEIZED"
21 Without Probable Cause. PAYTON V. NEW YORK,
22 445 U.S. 573, 63 L Ed 2d 639, 100 S Ct 1371 (1980).
23 The arrest warrant procedure serves to insure
24 that the deliberate, impartial judgment of a
25 judicial officer will be interposed between
26 the citizen and the Police, to assess the
27 weight and credibility of the information

1 Which the complaining officer adduces as Probable
2 Cause. A vague suspicion cannot be transformed
3 into Probable cause for arrest by reason of
4 the suspect's ambiguous conduct which the
5 arresting officers themselves have provoked.
6 The essence of the constitutional provision
7 prohibiting unreasonable searches and seizures
8 is not merely - that evidence so acquired
9 shall not be used before a court but that it
10 shall not be used at all. The rule excluding
11 evidence obtained by an unlawful search
12 bars from trial not only physical, tangible materials
13 obtained either during or as a direct result
14 of an unlawful invasion, but also verbal
15 evidence, such as declarations made by accused.
16 *WONG SUN V. UNITED STATES*, 371 US 471, 9 L Ed 2d
17 441, 83 S Ct 407 (1963); *ARTERBURN V. STATE*, 111
18 Nev, 1121; 901 P.2d 668, (1995).

19 Petitioner PRAYS this Honorable Court vacate
20 the illegal conviction(s) complained of herein, OR
21 in the Alternative, Remand this cause for an
22 Evidentiary Hearing, to give Petitioner A
23 lawful opportunity to PROVE the FACTS
24 supporting his claims.

POINTS AND AUTHORITIES

B. GROUNDS AND SUPPORTING FACTS

GROUND THREE: INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. (Denial of THE 6th Amendment to the U.S.C.) SUPPORTING FACTS.

Herein Your Petitioner asserts that Appellate's counsel, MR. Howard S. BROOKS, rendered INEFFECTIVE ASSISTANCE OF COUNSEL, ON APPEAL / DIRECT APPEAL. IN degradation to long standing, well established law. See EVITTS V. LUCEY, 469 U.S. 387, 83 L. Ed. 2d. 821, 105 S.Ct. 830 (1985).

That MR. Howard S. BROOKS, (Appellate Counsel), did Refuse and/or did fail to RAISE ISSUE(s) OF Prosecutorial misconduct in Petitioner's Direct Appeal.

That before this Honorable Court is A "VAST" AMOUNT OF EVIDENCE, Testimonial evidence, witnessing the UN-questionable fact(s) that the Prosecution did ACQUIRE Admission(s) / Confession(s), from "Petitioner" / JUSTIN PORTER, who, at that time was just 17yrs. old, who was/is "BORDERLINE RETARDED", UNDENIABLY "SEVERELY IMPAIRED", that He, "DR. PAGLINI", (Forensic Psychologist) also administered Achievement tests to "PORTER" and discovered his Reading Skills were equivalent to a Second grader's Skills. See transcripts OF HEARINGS to SUPPRESS Admissions or Confessions,

(VII:1403) AND...

At same, Afore-said Hearing(s), DR. GREGORY BROWN, A Forensic Psychiatrist, testified that, After evaluating the tests performed by DR. PAGLINI AND the Transcripts of the Interviews Porter Had with Police, And the tests He administered to ASCERTAIN whether Porter could Comprehend AND understand MIRANDA Rights, which were Allegedly administered to Him (VII:1426), DR. BROWN OPINED that PORTER Had "significant difficulties with VOCABULARY, Reading, Verbal Processing" (VII:1433) DR. BROWN CONCLUDED by stating, "To a Reasonable degree of Psychiatric certainty it's my Professional opinion that He [PORTER] would have had significant difficult understanding the MIRANDA Rights, both with regards to the VOCABULARY AND the comprehension." (VII:1434)

Here, Your Petitioner Did NOT understand His Miranda Rights, therefore He could NOT make A "Voluntary, Knowing, AND intelligent" waiver of those rights, See UNITED STATES V. MALE JUVENILE, 121 F.3d. 34 (2d. Cir. NY 1997).

Clearly, The "TOTALITY OF THE CIRCUMSTANCES" [Test] see DAVIS V. UNITED STATES, 512 U.S. 452 (1994), Has been Abandoned AND... Redress of the same by the High Court

OF OUR GREAT STATE OF NEVADA,
[IS], WAS, REQUIRED in order to
Preserve and Protect our "Fifth
AMENDMENT Privileges AGAINST SELF-
INCrimination".

APPELLATE COUNSEL'S FAILURE TO
RAISE AND ARGUE THE PROSECUTORIAL
MISCONDUCT EVIDENCED HEREIN
PETITIONER'S UNLAWFUL CONVICTION
ACQUIRED THROUGH PLAIN, OVERT VIOLATIONS
OF THE 6th AND 5th AMENDMENTS TO
THE U.S.C., IS THE PROXIMATE CAUSE
OF THE ILLEGAL CONVICTION(S) AND
SUBSEQUENT INSTANT PETITION FOR WRIT
OF HABEAS CORPUS.

THAT A REVERSAL OF PETITIONER'S CONVICTION(S)
IS REQUIRED OR IN THE ALTERNATIVE,
AN EVIDENTIARY HEARING, TO EXPAND
THE RECORD, AND PROVE PETITIONER'S
FACTUAL ALLEGATIONS.

1
2 Further, Appellate Counsel is also
3 INEFFECTIVE ON APPEAL, IN THAT [HE] Refused
4 AND OR FAILED TO RAISE AND ARGUE
5 INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
6 Claims, Where TRIAL Counsel;
7 1. Omitted his Professional Duty(ies), to Profer
8 A JURY INSTRUCTION ON Petitioners Theory of His
9 Defense Which Was/IS INVOLUNTARY manslaughter.
10 See INVOLUNTARY STATEMENT OF Petitioner
11 [Justin Porter], ON file with this Court, Entered
12 into the Record of this Case At trial, MARKED
13 AS EXHIBIT #104, Attached Hereto by Reference,
14 Therein Petitioner Asserted that "He Entered A
15 Apartment, believed by Himself, to be UNOCCUPIED,
16 While attempting to Evade Police, When out of
17 the DARK, A person suddenly Advanced towards
18 Him, Frightening Petitioner, and Causing him to
19 Shoot his Firearm, out of Pure Fear for his safety.
20 The same is an ARTICULATION by Petitioner OF
21 INVOLUNTARY manslaughter. see Bailey supra, and
22 see U.S. EX REL. BARNARD V. LANE, 819 F.2d, 798
23 (7th. Cir. 1987).

24
25 2. Further, Appellate Counsel, MR. HOWARD S.
26 BROOKS, Failed to Protect and Preserve Petitioner's
27 4th, 5th, 6th and 14th U.S. Const. Amendment Rights,

1 When Appellate Counsel did Refuse and OR did
2 Fail to Raise Issue of Petitioner being
3 "ILLEGALLY SEIZED" Without Probable Cause,
4 And the inadmissible evidence allowed to
5 be used by prosecution by TRIAL Counsel's.
6 ARTERBURN V. STATE, 111 Nev, 1121, 901 P.2d 668 (1995).
7 Petitioner Prays this Court vacate the illegal convictions
8 Herein, OR in the alternative, Remand this cause for
9 an Evidentiary Hearing, to give Petitioner A lawful
10 Opportunity to Prove the Facts Supporting his Claims.

11
12 3. Relieved the state OF its Duty to Prove to the
13 Jury beyond A Reasonable Doubt that Petitioner
14 was Guilty OF second degree murder, By...
15 CONceding to, AND Directing the Jury to Find
16 Petitioner Guilty OF Second Degree murder. See
17 Trial Transcripts, Day NO. 5 OF TRIAL, Pg. NO. 33 Line
18 NO. 16 ALSO see Pg. NO. 43 Line(s) 3 thru 5, Attached
19 Hereto by Reference.

20 That Appellant's Counsel's Failure to RAISE
21 INeffective Assistance OF trial counsel claim(s)
22 ON _____

DIRECT APPEAL APPEAL CONSTITUTES "CAUSE" FOR
PROCEDURAL DEFAULT(S). SEE MARTINEZ SUPRA,

Here, PETITIONER HAS ARTICULATED
SEVERAL COLORABLE INEFFECTIVE ASSISTANCE
OF APPELLATE COUNSEL CLAIMS, WHICH ARE
TRUE AND ENTITLE HIM TO, AT A
MINIMUM, AN EVIDENTIARY HEARING
WHEREIN PETITIONER CAN EXPAND THE
RECORD AND PROVE HIS FACTUAL
ALLEGATIONS.

POINTS AND AUTHORITIES

B. GROUNDS AND SUPPORTING FACTS,

GROUND FOUR: PROSECUTORIAL
MISCONDUCT, (VIOLATION(S) OF THE 5th, 6th AND 14th AMENDMENTS TO THE U.S.C.)
SUPPORTING FACTS,

HEREIN YOUR PETITIONER ASSERTS THAT THE
STATE OF NEVADA, ITS AGENT(S), THE CLARK
COUNTY DISTRICT ATTORNEY, HIS AGENT(S),
DET. CHRIS KATO, DET. BARRY JENSEN AND
DET. JAMES LAROCHELLE, DID UNLAWFULLY OBTAIN,
A "IN-VOLUNTARY" STATEMENT/ADMISSION(S)/CONFESSION,
FROM A 17 YR OLD, MENTALLY CHALLENGED, JUVENILE, UNDER
THE THREAT OF DEATH, BEATING(S), INTIMIDATION AND
THROUGH COERCION, IN DEGRADATION TO FUNDAMENTAL
FAIRNESS, IN VIOLATION TO WELL ESTABLISHED LAW

see HOLYFIELD V. TOWNSELL, 101 Nev.
793, 711 P.2d. 845 (1985), AND see
MIRANDA V. ARIZONA, 384 U.S. 436 (1966).

That the Afore-stated Illegally
obtained, IN Voluntary Statement / admission /
CONFESSIO^N, WAS TAKEN FROM YOUR PETITIONER
AUGUST 12, 2000, Illegally Admitted into
evidence, AT PETITIONER'S TRIAL ON DAY
NO. 4.

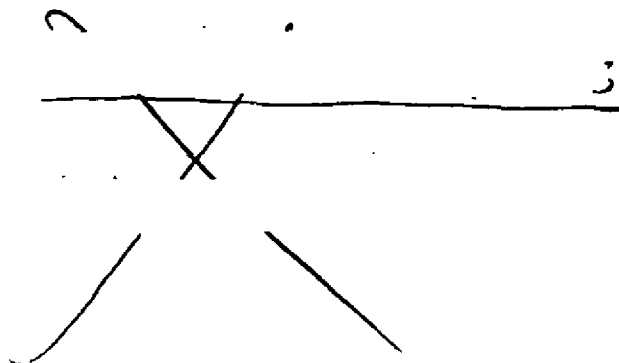
That Appellate Counsel's Failure to RAISE AND
ARGUE Prosecutorial misconduct amounts to
violations of the 6th amendment to the
U.S.C., AND the Due Process of Law clauses
of the 5th and 14th amendments to the
U.S.C., ALSO see AFFIDAVIT OF PETITIONER
JUSTIN PORTE, attached Hereto by Reference.

That Absent the complained of
INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL,
the outcome of Petitioner's DIRECT APPEAL
WOULD HAVE BEEN different.

Here Your Petitioner Requests the Reversal of
His UNLAWFUL CONVICTION, Acquired by UNLAWFUL
means, OR in the Alternative, AN ORDER
FOR AN EVIDENTIARY HEARING, wherein the
FACTS Alleged Herein CAN be Proven.

2. Herein your Petitioner Asserts that the District Attorney Violated Petitioner's 4th, 5th, 6th and 14th U.S. Const. Amendment Rights, When Using at trial inadmissible evidence, Petitioner's INVOLUNTARY STATEMENT Obtained by an UNLAWFUL Searches and Seizures. *WONG SUN V. UNITED STATES*, 371 US 471, 9 L Ed 2d 441, 83 S Ct 407 (1963); *ARTERBURN V. STATE*, 111 Nev, 1121, 901 P.2d 668, (1995). Petitioner was arrested on the day of August 12, 2000, Without A Warrant.

Petitioner Prays this Honorable Court Vacate the illegal Conviction(s) complained of herein, OR in the alternative, Remand this Cause for an Evidentiary Hearing, to give Petitioner A lawful Opportunity to Prove the FACTS Supporting his Claims.



POINTS AND AUTHORITIES

B. GROUNDS AND SUPPORTING FACTS

GROUND FIVE: TRIAL COURT

ABUSED IT'S DISCRETION, (VIOLATING the 5th AND 14th Amendment(s) to the U.S.C.)

SUPPORTING FACTS,

That ON OR ABOUT the 19th DAY OF Dec. 2006, THE DISTRICT COURT, (8th Judicial DISTRICT COURT), CLARK COUNTY, NEVADA, DEPT. NO. Did, by AND through the Honorable Judge JOHN McGROARTY, Abuse IT'S DISCRETION, Did UNLAWFULLY DENY Petitioner's 'MOTION TO SUPPRESS DEFENDANTS CONFESSION(S), AND ADMISSION(S).

That At the time Petitioner IN-VOLUNTARILY GAVE the Respondent(s), the Admission(s), AND/OR CONFESSION(S) in question, [HE], Petitioner WAS ONLY 17 years old - A Juvenile, NOT LEGALLY ABLE TO WAIVE HIS MIRANDA RIGHTS,

Further...

AS EVIDENCED IN the INSTANT CASE, Your Petitioner WAS then AND WAS thereAFTER, 6 1/2 years later, "OPINIONED" BY EXPERT, DR. JOHN PAGLINI, A FORENSIC PSYCHOLOGIST, who Tested Petitioner, That, "HE [PORTER] HAD A Verbal I.Q. of 78, which Placed Him in the 7th Percentile of People His AGE. (VII:1402). His Perception I.Q. WAS 80 (9th Percentile) AND His Full Scale I.Q. WAS

77 (6th Percentile), (VII:1402). DR. Paglini ALSO OPINED that "PORTER" WAS NOT MENTALLY RETARDED, BUT... HAD "SEVERELY IMPAIRED" SCORES WHICH EVIDENCED A BORDERLINE INTELLIGENCE.

EXPERT TESTIMONIAL EVIDENCE
BY DR. GREGORY BROWN, A FORENSIC PSYCHIATRIST, WHO EVALUATED THE TESTS PERFORMED BY DR. PAGLINI AND THE TRANSCRIPTS OF THE INTERVIEWS "PORTER" HAD WITH POLICE, AND THE TESTS HE, DR. BROWN ADMINISTERED, TO ASCERTAIN WHETHER PORTER COULD COMPREHEND AND UNDERSTAND THE MIRANDA RIGHTS WHICH WERE ALLEGEDLY ADMINISTERED TO PORTER, I.E., DR. BROWN CONCLUDED BY STATING "TO A REASONABLE DEGREE OF PSYCHIATRIC CERTAINTY IT'S MY PROFESSIONAL OPINION THAT HE [PORTER] WOULD HAVE HAD SIGNIFICANT DIFFICULT UNDERSTANDING THE MIRANDA RIGHTS, BOTH WITH REGARDS TO THE VOCABULARY AND THE COMPREHENSION"
PETITIONER [JUSTIN PORTER] DID NOT "VOLUNTARY, KNOWING, NOR INTELLIGENTLY WAIVE HIS MIRANDA RIGHTS, BECAUSE...
HE, [JUSTIN PORTER] COULD NOT

"VOLUNTARILY, KNOWINGLY, NOR INTELLIGENTLY WAIVE HIS MIRANDA RIGHTS".

AGAIN PLEASE SEE TESTIMONIAL EVIDENCE OF DR. PAGLINI "HIS [PORTER] READING SKILLS WERE EQUIVALENT TO A SECOND GRADER'S SKILLS (VII:1402). WITH SPELLING, HE SCORED IN THE ONE FIFTH OF ONE PERCENTILE AND HAD THE SKILLS OF A BEGINNING FIRST GRADER".

CHICAGO DETECTIVES NEVER DISCUSSED THE MIRANDA RIGHTS OR WARNINGS WITH PETITIONER [PORTER] AND... HAS VEGAS DETECTIVES MAV "HAVE READ THE MIRANDA WARNINGS TO HIM BUT... HE DID NOT UNDERSTAND WHAT IT MEANT." (VII:1450) HE DID NOT KNOW HE HAD A RIGHT TO AN ATTORNEY, NOR DID HE UNDERSTAND HE DID NOT HAVE TO TALK TO THE DETECTIVES. (VII:1451).

UNDER THE AFORE-STATED CIRCUMSTANCES, THE DISTRICT COURT ERRORED, BY DENYING DEFENDANT (PETITIONERS), "MOTION TO SUPPRESS THE STATEMENTS MADE TO POLICE OFFICERS."

STATE COURTS, EQUALLY WITH FEDERAL COURTS, ARE UNDER AN OBLIGATION TO GUARD AND ENFORCE EVERY RIGHT SECURED BY THE FEDERAL CONSTITUTION, SEE 5TH AND 14TH AMENDMENTS TO THE U.S.C.

THE DISTRICT COURT VIOLATED PORTER'S FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION, BY ALLOWING THE STATE TO PRESENT EVIDENCE OF INVOLUNTARY STATEMENTS ALLEGEDLY MADE BY PORTER TO POLICE DETECTIVES. see MIRANDA SUPRA.

THE STATE'S ENTIRE CASE WAS built ON THE ALLEGED STATEMENTS OF JUSTIN PORTER TO LAS VEGAS POLICE DETECTIVES. AND... ABSENT THOSE UNLAWFULLY ACQUIRED AND ILLEGALLY ADMITTED STATEMENTS - NO RATIONAL TRIER OF FACT WOULD HAVE FOUND PETITIONER GUILTY BEYOND A REASONABLE DOUBT OF SECOND DEGREE MURDER.

FUNDAMENTAL FAIRNESS REQUIRES THAT THE COMPLAINED OF STATEMENTS, MADE UNDER EXTREME DURESS, INVOLUNTARILY, UNKNOWINGLY, AND UNINTELLIGENTLY BE SUPPRESSED, AND... BE CAUSE THE SUBSEQUENTLY ILLEGAL CONVICTION UNDER ATTACK HEREIN IS... THE FRUIT OF A POISONOUS TREE, HERE PETITIONER ALSO PRAYS THE VACATION OF HIS UNLAWFUL CONVICTION, OR... IN THE ALTERNATIVE, AN EVIDENTIARY HEARING, TO GIVE PETITIONER A LAWFUL AND FAIR OPPORTUNITY TO PROVE THE FACTS SUPPORTING HIS CLAIMS.

"AFFIDAVIT OF Justin Porter"

STATE OF NEVADA)

COUNTY OF CLARK)
SS.-

I, Justin Porter, being First duly Sworn upon Oath, deposes And Swears to the Following:

That I Am the Affiant Herein, that I Am of Sound mind, good Physical Health and Above the Age of 21 yrs. old, therefore Qualified to testify to ALL matters Herein.

That I MAKE this AFFIDAVIT in support of ANY motion, Pleading, Petition, OR Document Filed by OR ON behalf of the STATE OF NEVADA. That ON OR About the 12 DAY OF August, 2000 Police Officers ILLEGALLY search and seized ME From My home, And did threaten to take me to the Dock's AND OR Beat me with A Phone Book.

That I was in Fear of my life From Officers.

THAT I ASKed OFFICERS severial times to Let me talk to my mother. That ON OR About the 12 DAY OF August 2000, OFFICERS From Las Vegas, Did manipulate Coerce and Force me to speak in violation of my 4th U.S. Const. Amendment Right to them AGAINst my will, without my mother, Legal GUARDIAN being Present.

FURTHER AFFIANT SAYS NOUGHT

SUBSCRIBED AND SWORN TO UNDER THE
PENALTIES AND PAINS OF PERJURY, WITHOUT THE
BENEFIT OF NOTARY PUBLIC, PURSUANT TO
N.R.S. 208.165

DATED THIS 28 DAY OF JUNE, 2019

By: Justin Porter 6-28-19
JUSTIN PORTER - PETITIONER - PRO. PER.

EVIDENTIARY HEARING

Petitioner herein maintains that he has Presented Several Colorable Claims in his Post-conviction Petition for a Writ of Habeas Corpus.

That he has Alleged Specific Facts, that if true, would entitle Petitioner to Relief, Requiring, At a minimum, AN EVIDENTIARY HEARING.

INCORPORATION BY REFERENCE

Petitioner INCORPORATES by Reference, the following, All Supporting document(s), INCLUDING All Supporting exhibits Previously filed and ~~or~~ Received by this Court, and All document(s) Submitted CONTEMPORANEOUSLY by Reference herein Petitioner's Petition for Writ of Habeas Corpus - Post Conviction.

PRAYER FOR RELIEF

Wherefore, the reasons set forth herein, AND in the documents INCORPORATED by Reference, Petitioner Respectfully Requests that the COURT: (1) GRANT Petitioner's Writ of Habeas Corpus - Post Conviction, REVERSE Petitioner's CONVICTION(S), and ORDER A NEW TRIAL

(2) ORDER AN EVIDENTIARY HEARING; AND

(3) GRANT All other Appropriate relief.

DATED THIS ²⁸ DAY OF JUNE 2019

BY: Justin Porter
JUSTIN PORTER - PETITIONER - PROVER.

Case No. C-174954

Dept. No. 6

IN THE 8TH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK.

Justin D. PORTER, et
Petitioner,

**MOTION FOR THE APPOINTMENT
OF COUNSEL**

-VS-

BRIAN Williams-WARDEN
Respondents.

REQUEST FOR EVIDENTIARY HEARING

COMES NOW, the Petitioner, Justin D. PORTER, proceeding pro se, within the
above entitled cause of action and respectfully requests this Court to consider the appointment of counsel
for Petitioner for the prosecution of this action.

This motion is made and based upon the matters set forth here, N.R.S. 34.750(1)(2), affidavit of
Petitioner, the attached Memorandum of Points and Authorities, as well as all other pleadings and
documents on file within this case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

This action commenced by Petitioner Justin D. PORTER, in state custody,
pursuant to Chapter 34, et seq., petition for Writ of Habeas Corpus (Post-Conviction).

II. STATEMENT OF THE FACTS

To support the Petitioner's need for the appointment of counsel in this action, he states the
following:

1. The merits of claims for relief in this action are of Constitutional dimension, and
Petitioner is likely to succeed in this case.

2. Petitioner is incarcerated at the _____ Petitioner is unable to undertake the ability, as an attorney would or could, to investigate crucial facts involved within the Petition for Writ of Habeas Corpus.
3. The issues presented in the Petition involves a complexity that Petitioner is unable to argue effectively.
4. Petitioner does not have the current legal knowledge and abilities, as an attorney would have, to properly present the case to this Court coupled with the fact that appointed counsel would be of service to the Court, Petitioner, and the Respondents as well, by sharpening the issues in this case, shaping the examination of potential witnesses and ultimately shortening the time of the prosecution of this case.
5. Petitioner has made an effort to obtain counsel, but does not have the funds necessary or available to pay for the costs of counsel, see Declaration of Petitioner.
6. Petitioner would need to have an attorney appointed to assist in the determination of whether he should agree to sign consent for a psychological examination.
7. The prison severely limits the hours that Petitioner may have access to the Law Library, and as well, the facility has very limited legal research materials and sources.
8. While the Petitioner does have the assistance of a prison law clerk, he is not an attorney and not allowed to plead before the Courts and like Petitioner, the legal assistants have limited knowledge and expertise.
9. The Petitioner and his assisting law clerks, by reason of their imprisonment, have a severely limited ability to investigate, or take depositions, expand the record or otherwise litigate this action.
10. The ends of justice will be served in this case by the appointment of professional and competent counsel to represent Petitioner.

II. ARGUMENT

Motions for the appointment of counsel are made pursuant to N.R.S. 34.750, and are addressed to the sound discretion of the Court. Under Chapter 34.750 the Court may request an attorney to represent any

such person unable to employ counsel. On a Motion for Appointment of Counsel pursuant to N.R.S. 34.750, the District Court should consider whether appointment of counsel would be of service to the indigent petitioner, the Court, and respondents as well, by sharpening the issues in the case, shaping examination of witnesses, and ultimately shortening trial and assisting in the just determination.

In order for the appointment of counsel to be granted, the Court must consider several factors to be met in order for the appointment of counsel to be granted; (1) The merits of the claim for relief; (2) The ability to investigate crucial factors; (3) whether evidence consists of conflicting testimony effectively treated only by counsel; (4) The ability to present the case; and (5) The complexity of the legal issues raised in the petition.

III. CONCLUSION

Based upon the facts and law presented herein, Petitioner would respectfully request this Court to weigh the factors involved within this case, and appoint counsel for Petitioner to assist this Court in the just determination of this action

Dated this 28 day of June, 20 19


Petitioner.

VERIFICATION

I declare, affirm and swear under the penalty of perjury that all of the above facts, statements and assertions are true and correct of my own knowledge. As to any such matters stated upon information or belief, I swear that I believe them all to be true and correct.

Dated this 28 day of June, 20 19


Petitioner, pro per.

Case No. C-174954

Dept. No. 6

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

Justin D. Porter
Petitioner,

-vs-

BRIAN Williams-Warden
Respondents.

ORDER APPOINTING COUNSEL

Petitioner, Justin Porter, has filed a proper person REQUEST FOR APPOINTMENT OF COUNSEL, to represent him on his Petition for Writ of Habeas Corpus (Post-Conviction), in the above-entitled action.

The Court has reviewed Petitioner's Request and the entire file in this action, and Good Cause Appearing, IT IS HEREBY ORDERED, that petitioner's Request for Appointment of Counsel is GRANTED.

IT IS FURTHER ORDERED that _____, Esq., is appointed to represent Petitioner on his Post-Conviction for Writ of Habeas Corpus.

Dated this _____ day of _____, 20____.

Submitted by:

DISTRICT COURT JUDGE

Justin Porter
Petitioner, In Proper Person

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs. Justin D. Porter,
Defendant,

Case No. C-174954
Dept. No. 66
Docket _____

ORDER

Upon reading the motion of defendant, _____, requesting
withdrawal of counsel, _____, Esq., of the Clark county Public
Defender's Office, and Good Cause Appearing,

IT IS HEREBY ORDERED that defendant's Motion for Withdrawal of Counsel is
GRANTED.

IT IS HEREBY FURTHER ORDERED that Counsel deliver to defendant at his address, all
documents, papers, pleadings, discovery and any other tangible property in the above-entitled case.

DATED and DONE this ____ day of _____, 20__.

DISTRICT COURT JUDGE

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion for

the Appointment of Counsel/Request for Evidentiary Hearing.
(Title of Document)

filed in District Court Case No. C-174954

☒ 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 Porter
(Signature)

6-28-19
(Date)

CERTIFICATE OF SERVICE BY MAILING


I, Justin Porter, hereby certify, pursuant to NRCP 5(b), that on this 28
day of June, 2019, I mailed a true and correct copy of the foregoing, "Petition
For writ of Habeas Corpus (Post-conviction)"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Steven D Grierson,
200 Lewis Ave, 3rd Fl.
Las Vegas, NV 89155-1160

Steven D. Grierson
200 Lewis Ave
Las Vegas, NV 89155-2212

CC:FILE

DATED: this ___ day of ___, 2019.


/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

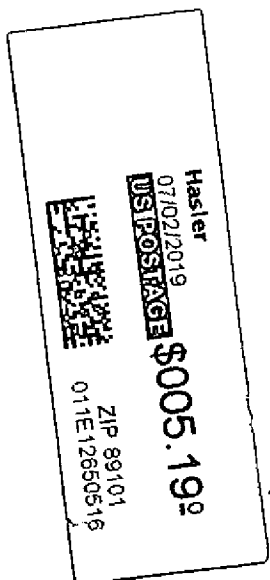
Justin Porter #1042449
P.O. Box 650 (HDSF)
Indian Springs, NV 89670

3762

EGAL MAIL

CONFIDENTIAL

Steven Grierson, Clerk
200 Lewis Ave, 3rd Floor
Las Vegas, NV 89155-1160



RECEIVED
JUN 28 2019
HIGH DESERT STATE PRISON
LAW LIBRARY

27

FILED

JUL 23 2019

[Signature]
CLERK OF COURT

1 PPOW

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 Justin Porter,
6 Petitioner,
7 vs.
8 Brian Williams,
9 Respondent,
10 _____

Case No: A-19-798035-W
Department 6

ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

11 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on
12 July 05, 2019. The Court has reviewed the Petition and has determined that a response would assist the
13 Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good
14 cause appearing therefore,

15 IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order,
16 answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS
17 34.360 to 34.830, inclusive.

18 IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

19 Calendar on the 23rd day of September, 2019, at the hour of
20 9:00 a.m.
21 o'clock for further proceedings.
22

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25 RECEIVED
26 JUL 22 2019
27 CLERK OF THE COURT
28

[Signature]
District Court Judge

[Signature]

A - 19 - 798035 - W
OPWH
Order for Petition for Writ of Habeas Corpu
4850464



1 Justin D. Porter #1042449
2 / In Propria Personam
3 Post Office Box 650 [HDSP]
4 Indian Springs, Nevada ~~89310~~ 89070

FILED

JUL 25 2019 7

Ann L. Quinn
CLERK OF COURT

5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7
8 Justin D. Porter
9 Defendant
10 vs.
11 THE STATE OF NEVADA
12 Plaintiff
13

Case No. **A-19-798035-W**
Dept. VI
Dept No. _____
Docket _____

14 **NOTICE OF ~~HEARING~~ HEARING.**

15 **YOU WILL PLEASE TAKE NOTICE, that** Petition For writ of
16 Habeas Corpus

17 will come on for hearing before the above-entitled Court on the September 23, 2019
18 at the hour of ____ o'clock ____ M. In Department ____, of said Co. 9:00 AM

19
20 CC:FILE

21
22 **DATED:** this ____ day of ____, 20__.

23
24
25 BY: Justin D. Porter #1042449
26 Justin D. Porter #
27 /In Propria Personam
28

RECEIVED
JUL 25 2019

CLERK OF THE COURT

Steven D. Grierson

1 Justin D. Porter #1042449

2 In Proper Person

3 P.O. Box 650 H.D.S.P.

4 Indian Springs, Nevada ~~89070~~
5 89070

6 8th DISTRICT COURT

7 CLARK COUNTY, NEVADA

8 JUSTIN D. Porter,

9 Petitioner,

10 -v-

11 Brian Williams,

12 Respondent.

Case No. A-19-798035-W

Dept.No. 6

Docket _____

13
14 NOTICE OF APPEAL

15 Notice is hereby given that the Petitioner, Justin D. Porter

16 _____, by and through himself in proper person, does now appeal

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

18 Court. Denial OF Petitioner's Petition For writ OF Habeas

19 Corpus. Petitioner's Supplement to Habeas Corpus

20 as well was dismiss to.

21 Dated this date, September 24, 2019.

22
23 Respectfully Submitted,

24 Justin Porter #1042449

In Proper Person

RECEIVED

SEP 27 2019

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

I, Justin D. Porter, hereby certify, pursuant to NRCP 5(b), that on this 24
day of September, 20 19, 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. Grieserson
200 Lewis Ave, 3rd Fl.
L73 Vegas, NV 89155-1160

DATED: this 24 day of September, 20 19.

Justin Porter #1042449

Justin Porter #
/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs, Nevada 89918-89070

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

(Title of Document)

filed in District Court Case number _____

☒ 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

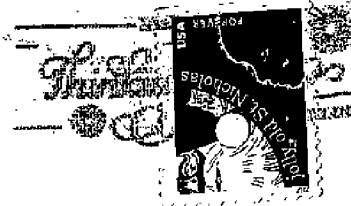
9-24-19
Date

Justin D. Porter
Print Name

Notice of Appeal
Title

Justin Porter #1042449
P.O. BOX 650 (H.D.S.P)
Indian Springs, NV 89070

25 SEP 2019 PM 5:1



(Legal Mail)

Steven D. Grierson, Clerk of Court
2200 Lewis Ave, 3rd Floor
Las Vegas, NV 89155-1160

00101-630066

RECEIVED
SEP 24 2008
UNIT 4



1 ASTA

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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),

Case No: A-19-798035-W

Dept No: VI

15
16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Justin Porter

19 2. Judge: Jacqueline M. Bluth

20 3. Appellant(s): Justin Porter

21 Counsel:

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

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

26 Counsel:

27 Aaron D. Ford, Attorney General
28 555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101-1068

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

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

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

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

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

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

8 **Expires 1 year from date filed

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

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

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

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 1 day of October 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: Justin Porter
27
28

Justin D. Porter #1042449
P.O. BOX 650 CHDSP)
Indian Springs, NV 89070

27
FILED

NOV 13 2019

John L. Blum
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Justin D. Porter,
Petitioner,

VS.

Brian Williams,
Respondent.

CASE NO: A-19-798035-W

Dept NO. 6

Motion For Respondent to Petitioner's Habeas
Corpus (Post-conviction)

Comes Now, Petitioner Justin D. Porter, in Pro se, and
moves this Honorable Court to grant this motion for
Respondent to Petitioner's Habeas Corpus (Post-conviction).
This motion is based upon all papers, pleadings and
documents on file and points of authorities contained
herein.

DATED This 12 day of November, 2019

Respectfully submitted

Justin Porter

Justin D. Porter #1042449
Petitioner

RECEIVED

NOV 13 2019

CLERK OF THE COURT



Points of Authorities

"The Privilege of the writ of Habeas Corpus shall not be suspended, unless when in cases of Rebellion or Invasion the Public Safety may require it. Article I section 9; Boumediene v. Bush, 553 U.S. 723, 128 S. Ct. 2229, 171 L. Ed. 2d 41 (2008); See also Fay v. Noia, 372 U.S. 291, 83 S. Ct. 822, 9 L. Ed. 2d 827 (1963).

On the day of July 5, 2019, Petitioner filed a Petition for writ of Habeas Corpus (Post-conviction Relief).

The matter of the Habeas Corpus was placed on the Court's calendar on the day of September 23, 2019, but was continued for the day of October 2, 2019.

No decision has been made on the Petition.

Conclusion

Petitioner Prays for Relief that's suppose to be granted, decision on the Habeas Corpus.

Respectfully Submitted

Justin Porter

Justin D. Porter # 1042449

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

Legal mail

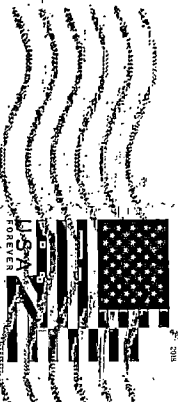
LEGAL MAIL

69101-630000

Steven D. Grierson, Clerk of Court
300 Lewis Avenue, 3RD Floor
Las Vegas, NV 89155-1160

NOV 11 2010
UNIT 4 C/H

NOV 11 2010



DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
11/18/2019 2:17 PM
Steven D. Grierson
CLERK OF THE COURT



Justin Porter, Plaintiff(s)

vs.

Brian Williams, Defendant(s)

Case No.: A-19-798035-W

Department 6

NOTICE OF HEARING

Please be advised that the Plaintiff's - Motion for Respondent to Petitioner's Habeas Corpus (Post Conviction) in the above-entitled matter is set for hearing as follows:

Date: December 09, 2019

Time: 9:30 AM

Location: RJC Courtroom 10C
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

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN D. PORTER,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

Supreme Court No. 79735
District Court Case No. A798035

FILED

NOV 19 2019

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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:

"ORDERS this appeal DISMISSED."

Judgment, as quoted above, entered this 18 day of October, 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
November 14, 2019.

Elizabeth A. Brown, Supreme Court Clerk

By: Danielle Friend
Administrative Assistant

A-19-798035-W
CCJD
NV Supreme Court Clerks Certificate/Judgm
4876822



IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN D. PORTER,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 79735

FILED

OCT 18 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a purported district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

This court's review of this appeal reveals a jurisdictional defect. No decision had been made on the petition when appellant filed the appeal on September 27, 2019. Thus, the notice of appeal is premature. See NRS 177.015(3). Accordingly, this court

ORDERS this appeal DISMISSED.

[Signature], J.
Hardesty

[Signature], J.
Stiglich

[Signature], J.
Silver

cc: Hon. Jacqueline M. Bluth, District Judge
Justin D. Porter
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

CERTIFIED COPY

This document is a full, true and correct copy of the original on file and of record in my office.

DATE: November 14, 2019

Supreme Court Clerk, State of Nevada

By D. [Signature] Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN D. PORTER,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

Supreme Court No. 79735
District Court Case No. A798035

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: November 14, 2019

Elizabeth A. Brown, Clerk of Court

By: Danielle Friend
Administrative Assistant

cc (without enclosures):
Hon. Jacqueline M. Bluth, District Judge
Justin D. Porter
Clark County 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 NOV 19 2019.

Deputy HEATHER UNGERMANN
District Court Clerk

RECEIVED
APPEALS

NOV 18 2019

CLERK OF THE COURT



RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN D. PORTER,
#1682627

Defendant.

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

DEPT NO: **VI**

**STATE'S RESPONSE AND MOTION TO DISMISS PETITION FOR WRIT OF
HABEAS CORPUS AND MOTION TO STRIKE ROGUE FILINGS**

DATE OF HEARING: **DECEMBER 9, 2019**
TIME OF HEARING: **9:30 AM**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through LISA LUZAICH, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in this State's Response to Petitioner's Petition for Writ of Habeas Corpus, and Motion to Strike Petitioner's Rogue Filings.

This response and motion is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

//

//

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On April 26, 2001, the State of Nevada, by way of Information, charged Justin Porter
4 (hereinafter "Petitioner") with over 40 felony counts, including sexual assault, kidnapping,
5 murder, burglary, and robbery, related to 9 events over a 4-month period, involving 12 victims.
6 On May 2, 2001, an Amended Information was filed in open court to correct a typographical
7 error. On October 11, 2001, a Second Amended Information was filed reducing the total
8 charges to 38 counts. Counts 30, 31 and 32 alleged Burglary while in Possession of a Deadly
9 Weapon; Attempt Robbery with Use of a Deadly Weapon; and Murder with Use of a Deadly
10 Weapon (Open Murder), respectively. These three counts involved a single victim.

11 On May 15, 2008, Petitioner filed a Motion to Sever Counts 30-32 from the remainder
12 of the charges. On June 12, 2008, the State filed its Opposition. On June 18, 2008, the Court
13 granted Petitioner's Motion to Sever, and ordered the murder event be tried separately. The
14 State subsequently filed a Third Amended Information in the instant case on April 30, 2009,
15 charging Petitioner with: Count 1 – Burglary While in Possession of a Deadly Weapon (Felony
16 – NRS 205.060, 193.165); Count 2 – Attempt Robbery With Use of a Deadly Weapon (Felony
17 – NRS 193.330, 200.380, 193.165), and Count 3 – Murder With Use of a Deadly Weapon
18 (Open Murder) (Felony – NRS 200.010, 200.030, 193.165).

19 On May 8, 2009, a jury found Petitioner guilty on Count 3 of Second Degree Murder
20 with Use of a Deadly Weapon. Petitioner was found not guilty of Counts 1 and 2.

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

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

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

13 On October 26, 2015, Petitioner filed his third pro per Post-Conviction Petition for Writ
14 of Habeas Corpus. On August 17, 2016, the Nevada Supreme Court affirmed the district
15 court's ruling. Remittitur issued on January 24, 2017.

16 On July 5, 2019, Petitioner filed the instant pro per Post-Conviction Petition for Writ
17 of Habeas Corpus (the "instant Petition"). Petitioner then filed a "Supplement" to his Petition
18 on July 16, 2019. Petitioner filed another "Petition" on July 25, 2019.

19 On September 27, 2019, Petitioner filed a Notice of Appeal in the instant case. The
20 Nevada Supreme Court dismissed the appeal on October 18, 2019, as there was no order to be
21 appealed from. Remittitur issued on November 19, 2019. While the appeal was pending,
22 Petitioner filed a "Motion for Respondent to Petitioner's Habeas Corpus (Post-Conviction)."

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ARGUMENT

I. PETITIONER'S INSTANT PETITION DOES NOT ENTITLE PETITIONER TO HABEAS RELIEF

A. The instant Petition is time-barred

The mandatory provision of NRS 34.726(1) states:

Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed *within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after 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:

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

(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).

Per the language, 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.

1 In the instant case, Petitioner's instant Petition is beyond the one-year time bar. The
2 Nevada Supreme Court affirmed Petitioner's judgment of conviction on November 8, 2010,
3 and Remittitur issued on December 3, 2010. As such, Petitioner had until December 3, 2011
4 to file a post-conviction petition for writ of habeas corpus. The instant Petition was filed on
5 July 5, 2019, nearly eight (8) years after the time allowed by statute. Therefore, the instant
6 Petition must be denied as time-barred pursuant to NRS 34.726(1).

7 **B. The instant Petition is successive and an abuse of the writ**

8 Petitioner's instant Petition is also procedurally barred because it is successive. NRS
9 34.810(2) reads:

10 A second or successive petition *must* be dismissed if the judge or justice
11 determines that it fails to allege new or different grounds for relief and that the
12 prior determination was on the merits or, if new and 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.

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

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

1 On February 10, 2012, Petitioner filed his first petition for habeas relief, which was
2 denied as untimely because the district court concluded that Petitioner did not demonstrate
3 good cause to overcome the time-bar. On August 26, 2013, Petitioner filed his second petition
4 for habeas relief, which was once again denied as untimely. Petitioner filed a third petition for
5 habeas relief on October 26, 2015, which the district court denied as procedurally barred under
6 NRS 34.726(1), finding that Petitioner's actual innocence claims were insufficient to
7 overcome those procedural bars. Petitioner appealed each denial of his respective petitions,
8 and every denial was affirmed by the Nevada Supreme Court. Petitioner has clearly had the
9 opportunity to raise the grounds he now alleges are "new and different" in each of these prior
10 Petitions. Therefore, the instant Petition is successive and constitutes an abuse of the writ; as
11 such, it must be denied pursuant to NRS 34.810(2).

12 **C. The instant Petition is subject to Laches**

13 NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period
14 exceeding five years [elapses] between the filing of a judgment of conviction, an order
15 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
16 conviction and the filing of a petition challenging the validity of a judgment of conviction..."
17 The Nevada Supreme Court observed in Groesbeck v. Warden, "[P]etitions that are filed many
18 years after conviction are an unreasonable burden on the criminal justice system. The necessity
19 for a workable system dictates that there must exist a time when a criminal conviction is final."
20 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the statute requires the State
21 plead laches in its motion to dismiss the petition. NRS 34.800(2). The State affirmatively
22 pleads laches in the instant case.

23 The instant Petition was filed over ten (10) years after the verdict and the sentencing
24 hearing, and almost nine (9) years after the Nevada Supreme Court affirmed the judgment of
25 conviction. Because these time periods exceed five (5) years, the State is entitled to a rebuttable
26 presumption of prejudice. NRS 34.800(2).

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1 **D. Petitioner’s claim of “actual innocence” is not, itself, a cognizable claim for**
2 **habeas relief**

3 Petitioner’s first claim is that he is “actually innocent” of those crimes for which he was
4 convicted at trial. Instant Petition at 13. The United States Supreme Court has held that actual
5 innocence is “not itself a constitutional claim, but instead a gateway through which a habeas
6 petitioner must pass to have his otherwise barred constitutional claim considered on the
7 merits.” Schlup v. Delo, 513 U.S. 298, 327, 115 S. Ct. 851, 867 (1995). In order for a petitioner
8 to obtain a reversal of his conviction based on a claim of actual innocence, he must prove that
9 ““it is more likely than not that *no* reasonable juror would have convicted him in light of the
10 ‘new evidence’ presented in habeas proceedings.” Calderon v. Thompson, 523 U.S. 538, 560,
11 118 S. Ct. 1489, 1503 (1998) (emphasis added) (quoting Schlup).

12 Petitioner seems to acknowledge that his “actual innocence” claim is merely a vehicle
13 for overcoming the other procedural bars to the instant Petition. Instant Petition at 13.
14 However, the substance of this claim is merely a challenge to the sufficiency of the evidence
15 used to convict Petitioner at trial. Id. Petitioner does not offer any evidence that could be
16 considered “new” or that could support the requisite showing under Calderon. Therefore,
17 Petitioner has failed to demonstrate that “actual innocence” establishes good cause enough to
18 overcome his procedural defaults, and the instant Petition should be dismissed.

19 **E. Petitioner fails to demonstrate good case or prejudice for failing to timely raise**
20 **his claims of ineffective assistance of counsel**

21 To avoid procedural default, under NRS 34.726, a petitioner has the burden of pleading
22 and proving specific facts that demonstrate good cause for his failure to present his claim in
23 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be
24 unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); see Hogan v. Warden, 109
25 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep’t of Prisons, 104 Nev.
26 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a habeas petition if it presents
27 claims that either were or could have been presented in an earlier proceeding, unless the court
28 finds both cause for failing to present the claims earlier or for raising them again *and* actual

prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646–47, 29 P.3d 498, 523 (2001) (emphasis added).

1. Petitioner has failed to establish good cause.

“To establish good cause, appellants *must* show that an impediment external to the defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. “A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003). The Court continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at 526. Examples of good cause include interference by State officials and the previous unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

Petitioner has failed to even address good cause to overcome this late filing, instead relying upon allegations of “actual innocence” to excuse the procedural bars to the instant Petition. As addressed in Section I(D), *supra.*, Petitioner fails to meet the standard under Calderon. Petitioner does not assert good cause and so fails to overcome the mandatory procedural bar.

2. Petitioner has failed to establish prejudice.

In addition, Petitioner cannot establish prejudice necessary to ignore the procedural default because the underlying claims of ineffective assistance of counsel are meritless.

The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.” The United States Supreme Court has long recognized that “the right to counsel is the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

1 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
2 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of
3 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063–64. See also Love, 109 Nev. at 1138, 865
4 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
5 representation fell below an objective standard of reasonableness, and second, that but for
6 counsel's errors, there is a reasonable probability that the result of the proceedings would have
7 been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison
8 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).
9 “[T]here is no reason for a court deciding an ineffective assistance claim to approach the
10 inquiry in the same order or even to address both components of the inquiry if the defendant
11 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

12 The court begins with the presumption of effectiveness and then must determine
13 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
14 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
15 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
16 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
17 537 P.2d 473, 474 (1975).

18 Counsel cannot be ineffective for failing to make futile objections or arguments. See
19 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
20 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
21 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
22 (2002).

23 Based on the above law, the role of a court in considering allegations of ineffective
24 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
25 whether, under the particular facts and circumstances of the case, trial counsel failed to render
26 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
27 (1978). This analysis does not mean that the court should “second guess reasoned choices
28 between trial tactics nor does it mean that defense counsel, to protect himself against

1 allegations of inadequacy, must make every conceivable motion no matter how remote the
2 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
3 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
4 cannot create one and may disserve the interests of his client by attempting a useless charade.”
5 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

6 “There are countless ways to provide effective assistance in any given case. Even the
7 best criminal defense attorneys would not defend a particular client in the same way.”
8 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
9 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
10 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
11 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s
12 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
13 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

14 Even if a defendant can demonstrate that his counsel’s representation fell below an
15 objective standard of reasonableness, he must still demonstrate prejudice and show a
16 reasonable probability that, but for counsel’s errors, the result of the trial would have been
17 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
18 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
19 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
20 694, 104 S. Ct. at 2064–65, 2068).

21 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
22 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
23 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
24 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
25 be supported with specific factual allegations, which if true, would entitle the petitioner to
26 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”
27 allegations are not sufficient, nor are those belied and repelled by the record. Id. “A claim is
28 ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the

claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002). NRS 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed.” (emphasis added).

Here, Petitioner alleges his trial counsel was ineffective in four ways: (1) failing to instruct the jury on Petitioner’s theory of the case; (2) conceding guilty as to second degree murder; (3) failing to subject prosecution’s case to a meaningful adverse testing process; and (4) failing to object to Petitioner’s statement as involuntary. Instant Petition at 19-24. However, Petitioner’s allegations are subject to the law of the case doctrine, as they have been previously raised, and rejected, in earlier petitions.

“The law of a first appeal is law of the case on all subsequent appeals in which the facts are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at 799. Under the law of the case doctrine, issues previously decided on direct appeal may not be reargued in a habeas petition. Pellegrini v. State, 117 Nev. at 879, 34 P.3d at 532 (citing McNelson v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot overrule the Nevada Supreme Court. NEV. CONST. Art. VI § 6.

i. Failure to Instruct the Jury on Petitioner’s Theory of the Case

Petitioner raised the allegation that trial counsel failed to proffer proper jury instructions in his third Petition. The district court determined that this allegation was without merit in that Petition, and the district court’s determination was upheld on appeal. See, Findings of Fact, Conclusions of Law and Order, filed on March 14, 2016 in Case Number 01C174954 (“3/14/16 FCL”) at 5; see also, Order of Affirmance, filed on August 17, 2016 in Supreme Court Case 70206 (“8/17/16 Affirmance”). Therefore, this issue has already been raised and addressed and is therefore subject to the law of the case doctrine.

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1 **ii. Conceding Second Degree Murder**

2 Petitioner raised the allegation that trial counsel improperly conceded the issue of guilt
3 as to second degree murder in his second Petition. See Third Petition at 7. The district court
4 rejected this allegation and dismissed Petitioner’s third Petition, a ruling that was also upheld
5 on appeal. See generally, 2/14/14 FCL; see also, 6/11/14 Affirmance. Because Petitioner
6 already unsuccessfully raised this allegation, and because there are no new facts that would
7 affect the Nevada Supreme Court’s earlier determination of this issue, it is subject to the law
8 of the case doctrine and cannot demonstrate prejudice.

9 **iii. Failure to Subject Prosecution’s Case to a Meaningful Adverse Testing**
10 **Process**

11 Petitioner’s third allegation in support of his claim of ineffective assistance of trial
12 counsel relies on the same actions of trial counsel as addressed in Section I(E)(2)(ii), *supra*. –
13 namely, that trial counsel conceded the issue of guilt as to second degree murder. As addressed
14 above, this claim has already been substantively addressed, and Petitioner’s position has been
15 rejected by both the district court and the Nevada Supreme Court. Because both courts have
16 already ruled on this specific issue, it is subject to the law of the case doctrine. Furthermore,
17 because it has no merit, it cannot demonstrate prejudice.

18 **iv. Failure to Object to Petitioner’s Statement as Involuntary**

19 Petitioner initially raised trial counsel’s alleged failure to object to his statement to
20 police as involuntary on his direct appeal. See, Appellant’s Opening Brief, filed on April 21,
21 2010 in Supreme Court Case 54866 at 7-10. However, the Nevada Supreme Court expressly
22 rejected the notion that Petitioner’s statement to police was involuntary or unknowing, instead
23 concluding “[t]he totality of the circumstances reveals that Porter voluntarily, knowingly, and
24 intelligently waived his Miranda rights... and the district court therefore did not err in
25 admitting his confession.” 11/08/2010 Affirmance at 2. Because the Nevada Supreme Court
26 found the issue of voluntariness to be without merit, trial counsel could not be ineffective for
27 failing to raise the issue.

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1 Petitioner's allegation is further belied by a review of the district court record. On
2 September 26, 2002, trial counsel filed a "Motion to Suppress Defendant's Confessions and
3 Admissions to Metro and Chicago Detectives Based on Violation of his Miranda Rights and
4 Involuntariness and Request for Jackson v. Denno Hearing." Because Petitioner's allegation
5 is belied by the record and subject to the law of the case doctrine, it cannot demonstrate
6 prejudice to overcome the procedural bars to the instant Petition.

7 Petitioner further alleges his appellate counsel was ineffective in two ways: (1) failing
8 to raise prosecutorial misconduct on appeal; and (2) failing to allege ineffective assistance of
9 trial counsel on appeal, both of which have also been addressed and rejected.

10 ***i. Failure to Raise Issue of Prosecutorial Misconduct on Direct Appeal***

11 Petitioner's argument that his appellate counsel was ineffective for not alleging
12 prosecutorial misconduct is based on Petitioner's argument that mental disability rendered his
13 voluntary statement to detectives inadmissible, and that the statement should not have been
14 used at trial. See, Instant Petition at 26. This claim was, in fact, substantively raised on direct
15 appeal, and was rejected by the Nevada Supreme Court as being without merit. 11/08/2010
16 Affirmance at 2. Because this claim was previously substantively raised, and rejected, it is
17 subject to the law of the case doctrine. It further cannot be used to overcome the procedural
18 bars precluding the instant Petition from being reviewed on its merits.

19 ***ii. Failure to Raise Issue of Ineffective Assistance of Trial Counsel***

20 Petitioner repeats his earlier four arguments regarding ineffectiveness of trial counsel,
21 and argues that appellate counsel was ineffective for failing to raise these issues on appeal.
22 Aside from the same conclusory statements made in support of his earlier claims, which were
23 all addressed and rejected on Petitioner's direct appeal, or in one of Petitioner's numerous
24 habeas petitions since, Petitioner fails to support his claim, and fails to show how any of these
25 justify overcoming the procedural bars to the instant Petition.

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1 **F. Petitioner’s remaining claims of Prosecutorial Misconduct and Abuse of**
2 **Discretion are subject to the law of the case doctrine**

3 Petitioner also claims that admission of his statement to detectives at trial amounted to
4 prosecutorial misconduct, and that the trial court abused its discretion when it allowed the
5 statement to be used at trial. Instant Petition at 30-36. However, these claims are substantively
6 the same as Petitioner’s claims regarding ineffective assistance of trial and appellate counsel,
7 as they all rely on Petitioner’s argument that mental or cognitive handicaps prevented his
8 knowing and/or voluntary waiver of his Miranda rights. As addressed, *supra.*, Petitioner
9 substantively raised this issue on direct appeal. The Nevada Supreme Court rejected the claim,
10 concluding that the totality of the circumstances supported the notion that Petitioner’s
11 statement was knowing and voluntary. 11/08/2010 Affirmance at 2. Therefore, pursuant to
12 Hall, these claims are subject to the law of the case doctrine.

13 Because Petitioner’s substantive claims are subject to the law of the case doctrine, and
14 further, because Petitioner fails to demonstrate good cause or prejudice to overcome the
15 procedural bars to the instant Petition, the instant Petition is ripe only for summary dismissal.

16 **II. PETITIONER’S SUPPLEMENT AND SUBSEQUENT “PETITION” SHOULD**
17 **BE STRICKEN**

18 NRS 34.750(5) precludes the filing of any supplemental pleadings to a post-conviction
19 petition for writ of habeas corpus without leave of the court. The instant Petition was filed on
20 July 5, 2019. On July 16, 2019, absent any order or leave of the court, Petitioner filed a
21 “Supplement to Habeas Corpus Postconviction.” Then, on July 25, 2019, again without order
22 or leave of the court, Petitioner filed another “Petition for Writ of Habeas Corpus.” Petitioner
23 was not granted, nor did he even seek, leave of the court to supplement the instant Petition.
24 Therefore, the subsequent filings should be stricken as rogue and improper.

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1 **CONCLUSION**

2 For the forgoing reasons, the State respectfully requests that Petitioner's July 16, 2019
3 and July 25, 2019 filings be stricken, and that the instant Petition for Writ of Habeas Corpus
4 be DENIED in its entirety.

5 DATED this 2nd day of December, 2019.

6 Respectfully submitted,

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

10 BY /s/ LISA LUZAICH
11 LISA LUZAICH
12 Chief Deputy District Attorney
13 Nevada Bar #005056
14
15
16
17

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that service of the above and foregoing was made this 2nd day of
20 DECEMBER, 2019, to:

21 JUSTIN PORTER, BAC#1042449
22 HIGH DESERT STATE PRISON
23 P.O. BOX 650
24 INDIAN SPRINGS, NV 89070

25 BY /s/ HOWARD CONRAD
26 Secretary for the District Attorney's Office
27 Special Victims Unit

28 hjc/SVU

Justin D. Porter #1042449
P.O. BOX 650 (H DSP)
Indian Springs, NV 89070

FILED

DEC 04 2019

Ally H. H. H.
CLERK OF COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

Justin D. Porter,
Petitioner,

vs.

Brian Williams,

Respondent.

CASE NO. A-19-798035-W

Dept NO. 6, IV

HEARING REQUESTED.

Comes now, Petitioner Justin D. Porter, in pro se, and
moves this Honorable Court to GRANT this Hearing
Requested. This Hearing Requested is based upon
all papers, Pleadings and Documents on file.

DATED this 28 day of November, 2019-

Respectfully submitted

Justin Porter

Justin D. Porter #1042449

Petitioner

CLERK OF THE COURT

DEC 04 2019

RECEIVED

A-19-798035-W
MOT
Motion
4880075



Points of Authorities

"The Privilege of the writ of Habeas Corpus shall not be suspended, unless when in cases of Rebellion or Invasion the Public Safety may require it. Article I section 9; Boumediene v. Bush, 553 U.S. 723, 128 S. Ct. 2229, 171 L. Ed. 2d 41 (2008); see also Fay v. Noia, 372 U.S. 291, 83 S. Ct. 822, 9 L. Ed. 2d 827 (1963).

On the day of July 5, 2019, Petitioner Filed a Petition For writ of Habeas corpus (Post-conviction Relief).

The matter of the Habeas corpus was placed on the Court's calendar on the day of September 23, 2019, but was continued for the day of October 2, 2019.

No decision has been made on the petition.

Conclusion

Petitioner Prays for Relief that's suppose to be granted, decision on the Habeas corpus.

Respectfully submitted

Justin Porter

Justin D. Porter #1042449

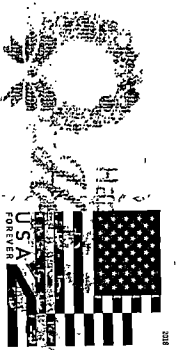
Justin D. Barker #1042449
P.O. Box 650 (HDSB)
Indian Springs, NV 89070

(11 PM 12/29/19)

89101-630000

To: Steven D. Garrierson, Clerk of Court
200 Lewis Avenue, 3RD Floor
Las Vegas, NV 89153-1166

LAS VEGAS NV 890
02 DEC 2019 PM 4 1



DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
12/5/2019 1:57 PM
Steven D. Grierson
CLERK OF THE COURT



Justin Porter, Plaintiff(s)

vs.

Brian Williams, Defendant(s)

Case No.: A-19-798035-W

Department 6

NOTICE OF HEARING

Please be advised that the Plaintiff's Motion in the above-entitled matter is set for hearing as follows:

Date: December 30, 2019

Time: 9:30 AM

Location: RJC Courtroom 10C
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

Steven D. Grierson

Justin Porter #1042449
In Proper Person
P.O. Box 650 H.D.S.P.
Indian Springs, Nevada 89018 89070

8th Judicial DISTRICT COURT
CLARK COUNTY NEVADA

Justin D. Porter
Petitioner

-v-

BRIAN Williams-Warden.
Respondent

Case No. A-19-798035-W
Dept. No. VI
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 Denial of Petitioner's Petition For writ of
Habeas corpus Postconviction on the day of
February 19, 2020

Dated this date, February 28, 2020.

Respectfully Submitted,

Justin Porter
In Proper Person

RECEIVED

MAR - 2 2020

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

I, Justin D. Porter, hereby certify, pursuant to NRCP 5(b), that on this 28
day of February, 2020, 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
200 Lewis Avenue 3RD Floor
Las Vegas, NV 89155-1160

DATED: this 28 day of February, 2020.

Justin Porter
Justin Porter #1042449
/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs Nevada 89020

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 _____

☒ 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

2/28/2020
Date

Justin D. Porter
Print Name

Appeal
Title

Justin D. Porter #10-12449
P.O. Box 650 (HDSB)
Indian Springs, NV 89070

Legal Mail

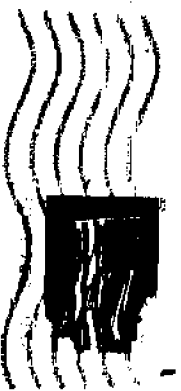
89101-630000

Steven Grierson, Clerk
200 Lewis Avenue 3rd Floor
Las Vegas, NV 89155-1160

200 Lewis Avenue

HIGH DESERT STATE PRISON
Legal Mail
101 - 121212

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



FILED

MAR -2 2020

Elizabeth A. Brown
CLERK OF COURT

1 Justin D. Porter #1042449

2 In Proper Person

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

5 IN THE SUPREME COURT OF
6 THE STATE OF NEVADA.

7
8 Justin D. Porter,

9 Petitioner,

10 -v-

11 Brian Williams - Warden,

12 Respondent.

Case No. A-19-798035-W

Dept. No. _____

Docket _____

13
14 NOTICE OF APPEAL

15 Notice is hereby given that the Petitioner, Justin D. Porter

16 _____, by and through himself in proper person, does now appeal

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

18 Court Denial of Petitioner's Petition for writ of

19 Habeas corpus Postconviction on the day of

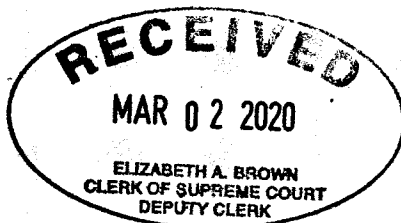
20 February 19, 2020

21 Dated this date, February 28, 2020.

22
23 Respectfully Submitted,

24
25 *Justin Porter*

26 In Proper Person



CERTIFICATE OF SERVICE BY MAILING

I, Justin D. Porter, hereby certify, pursuant to NRCP 5(b), that on this 28
day of February, 2020, 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:

Supreme Court of Nevada
2015. Carson Street, Suite 201
Carson City, Nevada 89701

DATED: this 28 day of February, 2020.

Justin Porter
Justin Porter #1042449
/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs Nevada 89018

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-W

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

-OR-

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

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

(State specific law)

-or-

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

Justin Porter
Signature

2/28/2020
Date

Justin D. Porter
Print Name

Appeal
Title

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

LAS VEGAS NV 890

28 FEB 2020 PM 4 L

FOREVER USA

(Legal Mail)
12627

SUPREME COURT OF NEVADA
OFFICE of the CLERK
201 S. Carson Street, Suite 201
Carson, City, Nevada 89701

89701-475725

HIGH DESERT STATE PRISON

FEB 21 2020

UNIT 4 C/D

Legal Mail



1 ASTA

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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),

Case No: A-19-798035-W

Dept No: VI

15
16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Justin Porter

19 2. Judge: Jacqueline M. Bluth

20 3. Appellant(s): Justin Porter

21 Counsel:

22 Justin Porter #1042449
23 P.O. Box 650
24 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: 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: July 5, 2019

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

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

14 11. Previous Appeal: Yes

15 Supreme Court Docket Number(s): 79735

16 12. Child Custody or Visitation: N/A

17 13. Possibility of Settlement: Unknown

18 Dated This 4 day of March 2020.

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: Justin Porter
27
28



1 ASTA

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4
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6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**

9 JUSTIN PORTER,

10 Plaintiff(s),

11 vs.

12 BRIAN WILLIAMS - WARDEN,

13 Defendant(s),

Case No: A-19-798035-W

Dept No: VI

14
15
16 **CASE APPEAL STATEMENT**

17 1. Appellant(s): Justin Porter

18 2. Judge: Jacqueline M. Bluth

19 3. Appellant(s): Justin Porter

20 Counsel:

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

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

25 Counsel:

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

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

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

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

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

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

8 **Expires 1 year from date filed

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

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

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

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

14 11. Previous Appeal: Yes

15 Supreme Court Docket Number(s): 79735, 80738

16 12. Child Custody or Visitation: N/A

17 13. Possibility of Settlement: Unknown

18 Dated This 12 day of March 2020.

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: Justin Porter
27
28



OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN D. PORTER,
#1682627

Defendant.

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

DEPT NO: **VI**

FINDINGS OF FACT, CONCLUSIONS OF

LAW, AND ORDER

DATE OF HEARING: **FEBRUARY 19, 2020**
TIME OF HEARING: **9:30 AM**

THIS CAUSE having presented before the Honorable JACQUELINE BLUTH, District Court Judge, on the 19th day of February, 2020; Petitioner present, represented by ADAM GILL, ESQ.; 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, the Court makes the following Findings of Fact and Conclusions of Law:

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FINDINGS OF FACT, CONCLUSIONS OF LAW

STATEMENT OF THE CASE

On April 26, 2001, the State of Nevada, by way of Information, charged Justin Porter (hereinafter "Petitioner") with over 40 felony counts, including sexual assault, kidnapping, murder, burglary, and robbery, related to 9 events over a 4-month period, involving 12 victims. On May 2, 2001, an Amended Information was filed in open court to correct a typographical error. On October 11, 2001, a Second Amended Information was filed reducing the total charges to 38 counts. Counts 30, 31 and 32 alleged Burglary while in Possession of a Deadly Weapon; Attempt Robbery with Use of a Deadly Weapon; and Murder with Use of a Deadly Weapon (Open Murder), respectively. These three counts involved a single victim.

On May 15, 2008, Petitioner filed a Motion to Sever Counts 30-32 from the remainder of the charges. On June 12, 2008, the State filed its Opposition. On June 18, 2008, the Court granted Petitioner's Motion to Sever, and ordered the murder event be tried separately. The State subsequently filed a Third Amended Information in the instant case on April 30, 2009, charging Petitioner with: Count 1 – Burglary While in Possession of a Deadly Weapon (Felony – NRS 205.060, 193.165); Count 2 – Attempt Robbery With Use of a Deadly Weapon (Felony – NRS 193.330, 200.380, 193.165), and Count 3 – Murder With Use of a Deadly Weapon (Open Murder) (Felony – NRS 200.010, 200.030, 193.165).

On May 8, 2009, a jury found Petitioner guilty on Count 3 of Second Degree Murder with Use of a Deadly Weapon. Petitioner was found not guilty of Counts 1 and 2.

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

1 //

2 //

3 On February 10, 2012, Petitioner filed his first pro per Post-Conviction Petition for
4 Writ of Habeas Corpus. The State filed its Response and Motion to Dismiss on March 21,
5 2012. On April 23, 2012, the Court denied Petitioner's first Petition as untimely. The
6 Findings of Fact, Conclusions of Law, and Order were filed on June 11, 2012. Petitioner
7 appealed the denial of his first Petition on May 8, 2012, and on March 11, 2013, the Nevada
8 Supreme Court affirmed the denial. Remittitur issued on March 19, 2013.

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

15 On October 26, 2015, Petitioner filed his third pro per Post-Conviction Petition for
16 Writ of Habeas Corpus. On August 17, 2016, the Nevada Supreme Court affirmed the
17 district court's ruling. Remittitur issued on January 24, 2017.

18 On July 5, 2019, Petitioner filed the instant pro per Post-Conviction Petition for Writ
19 of Habeas Corpus (the "instant Petition"). Petitioner then filed a "Supplement" to his Petition
20 on July 16, 2019. Petitioner filed another "Petition" on July 25, 2019.

21 On September 27, 2019, Petitioner filed a Notice of Appeal in the instant case. The
22 Nevada Supreme Court dismissed the appeal on October 18, 2019, as there was no order to
23 be appealed from. Remittitur issued on November 19, 2019. While the appeal was pending,
24 Petitioner filed a "Motion for Respondent to Petitioner's Habeas Corpus (Post-Conviction)."

25 On December 2, 2019, the State filed its Response and Motion to Dismiss Petitioner's
26 Petition for Writ of Habeas Corpus, and Motion to Strike Petitioner's Rogue Filings. The
27 matter came before this Court on December 9, 2019, at which time it was continued for the
28 appointment of counsel for Petitioner.

1 On February 19, 2020, this matter came before this Court for argument. After hearing
2 representations of the parties, this Court now finds and concludes as follows:

3 ANALYSIS

4 I. PETITIONER'S INSTANT PETITION DOES NOT ENTITLE PETITIONER 5 TO HABEAS RELIEF

6 A. The instant Petition is time-barred

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

8 Unless there is good cause shown for delay, a petition that challenges
9 the validity of a judgment or sentence must be filed *within 1 year after*
10 *entry of the judgment of conviction or, if an appeal has been taken from*
11 *the judgment, within 1 year after the Supreme Court issues its*
12 *remittitur.* For the purposes of this subsection, good cause for delay
13 exists if the petitioner demonstrates to the satisfaction of the court:

14 (a) That the delay is not the fault of the petitioner; and

15 (b) That dismissal of the petition as untimely will unduly
16 prejudice the petitioner.

17 (emphasis added). “[T]he statutory rules regarding procedural default are mandatory and
18 cannot be ignored when properly raised by the State.” State v. Dist. Court (Riker), 121 Nev.
19 225, 233, 112 P.3d 1070, 1075 (2005).

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

25 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada
26 Supreme Court rejected a habeas petition that was filed two days late, pursuant to the “clear
27 and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
28 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 instant Petition is 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 Petition was filed on July 5, 2019, nearly eight (8) years after the time allowed by statute. Therefore, this Court finds the instant Petition is time-barred pursuant to NRS 34.726(1).

B. The instant Petition is successive and an abuse of the writ

Petitioner's instant Petition is also procedurally barred because it is successive. NRS 34.810(2) reads:

A second or successive petition *must* be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and 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.

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

The Nevada Supreme Court has stated: "Without such limitations on the availability of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-conviction remedies. In addition, meritless, successive and untimely petitions clog the court system and undermine the finality of convictions." *Lozada*, 110 Nev. at 358, 871 P.2d at 950. The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require a careful review of the record, successive petitions may be dismissed based solely on

1 the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In
2 other words, if the claim or allegation was previously available with reasonable diligence, it
3 is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,
4 497-498 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231,
5 112 P.3d at 1074.

6 On February 10, 2012, Petitioner filed his first petition for habeas relief, which was
7 denied as untimely because the district court concluded that Petitioner did not demonstrate
8 good cause to overcome the time-bar. On August 26, 2013, Petitioner filed his second
9 petition for habeas relief, which was once again denied as untimely. Petitioner filed a third
10 petition for habeas relief on October 26, 2015, which the district court denied as procedurally
11 barred under NRS 34.726(1), finding that Petitioner’s actual innocence claims were
12 insufficient to overcome those procedural bars. Petitioner appealed each denial of his
13 respective petitions, and every denial was affirmed by the Nevada Supreme Court. Petitioner
14 has clearly had the opportunity to raise the grounds he now alleges are “new and different” in
15 each of these prior Petitions. Therefore, this Court finds the instant Petition is successive and
16 constitutes an abuse of the writ; as such, it is subject to denial pursuant to NRS 34.810(2).

17 **C. The instant Petition is subject to Laches**

18 NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
19 exceeding five years [elapses] between the filing of a judgment of conviction, an order
20 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
21 conviction and the filing of a petition challenging the validity of a judgment of conviction...”
22 The Nevada Supreme Court observed in Groesbeck v. Warden, “[P]etitions that are filed
23 many years after conviction are an unreasonable burden on the criminal justice system. The
24 necessity for a workable system dictates that there must exist a time when a criminal
25 conviction is final.” 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the
26 statute requires the State plead laches in its motion to dismiss the petition. NRS 34.800(2).
27 The State affirmatively pleads laches in the instant case.
28

1 The instant Petition was filed over ten (10) years after the verdict and the sentencing
2 hearing, and almost nine (9) years after the Nevada Supreme Court affirmed the judgment of
3 conviction. Because these time periods exceed five (5) years, this Court finds the State is
4 entitled to a rebuttable presumption of prejudice. NRS 34.800(2).

5 //

6 **D. Petitioner's claim of "actual innocence" is not, itself, a cognizable claim for**
7 **habeas relief**

8 Petitioner's first claim is that he is "actually innocent" of those crimes for which he
9 was convicted at trial. Instant Petition at 13. The United States Supreme Court has held that
10 actual innocence is "not itself a constitutional claim, but instead a gateway through which a
11 habeas petitioner must pass to have his otherwise barred constitutional claim considered on
12 the merits." Schlup v. Delo, 513 U.S. 298, 327, 115 S. Ct. 851, 867 (1995). In order for a
13 petitioner to obtain a reversal of his conviction based on a claim of actual innocence, he must
14 prove that "'it is more likely than not that *no* reasonable juror would have convicted him in
15 light of the 'new evidence' presented in habeas proceedings." Calderon v. Thompson, 523
16 U.S. 538, 560, 118 S. Ct. 1489, 1503 (1998) (emphasis added) (quoting Schlup).

17 Petitioner seems to acknowledge that his "actual innocence" claim is merely a vehicle
18 for overcoming the other procedural bars to the instant Petition. Instant Petition at 13.
19 However, the substance of this claim is merely a challenge to the sufficiency of the evidence
20 used to convict Petitioner at trial. Id. Petitioner does not offer any evidence that could be
21 considered "new" or that could support the requisite showing under Calderon. Therefore, this
22 Court concludes that Petitioner has failed to demonstrate that "actual innocence" establishes
23 good cause enough to overcome his procedural defaults, and the instant Petition is therefore
24 subject to dismissal.

25 **E. Petitioner fails to demonstrate good case or prejudice for failing to timely**
26 **raise his claims of ineffective assistance of counsel**

27 To avoid procedural default, under NRS 34.726, a petitioner has the burden of
28 pleading and proving specific facts that demonstrate good cause for his failure to present his

1 claim in earlier proceedings or to otherwise comply with the statutory requirements, *and* that
2 he will be unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); *see Hogan v.*
3 *Warden*, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); *Phelps v. Nevada Dep’t of*
4 *Prisons*, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a habeas
5 petition if it presents claims that either were or could have been presented in an earlier
6 proceeding, unless the court finds both cause for failing to present the claims earlier or for
7 raising them again *and* actual prejudice to the petitioner.” *Evans v. State*, 117 Nev. 609, 646–
8 47, 29 P.3d 498, 523 (2001) (emphasis added).

9 1. Petitioner has failed to establish good cause.

10 “To establish good cause, appellants *must* show that an impediment external to the
11 defense prevented their compliance with the applicable procedural rule.” *Clem v. State*, 119
12 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); *see Hathaway v. State*, 119 Nev.
13 248, 251, 71 P.3d 503, 506 (2003); *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537. “A qualifying
14 impediment might be shown where the factual or legal basis for a claim was not reasonably
15 available at the time of default.” *Clem v. State*, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003).
16 The Court continued, “appellants cannot attempt to manufacture good cause[.]” *Id.* at 621, 81
17 P.3d at 526. Examples of good cause include interference by State officials and the previous
18 unavailability of a legal or factual basis. *See State v. Huebler*, 128 Nev. Adv. Op. 19, 275
19 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the
20 petitioner. NRS 34.726(1)(a).

21 Petitioner has failed to address good cause to overcome this late filing, instead relying
22 upon allegations of “actual innocence” to excuse the procedural bars to the instant Petition.
23 As addressed in Section I(D), *supra.*, Petitioner fails to meet the standard under *Calderon*.
24 Thus, this Court finds that Petitioner does not assert good cause and so fails to overcome the
25 mandatory procedural bar.

26 2. Petitioner has failed to establish prejudice.
27
28

1 In addition, this Court finds Petitioner does not establish prejudice necessary to ignore
2 the procedural default because the underlying claims of ineffective assistance of counsel are
3 meritless.

4 The Sixth Amendment to the United States Constitution provides that, “[i]n all
5 criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel
6 for his defense.” The United States Supreme Court has long recognized that “the right to
7 counsel is the right to the effective assistance of counsel.” Strickland v. Washington, 466
8 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138,
9 865 P.2d 322, 323 (1993).

10 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
11 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test
12 of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138,
13 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
14 representation fell below an objective standard of reasonableness, and second, that but for
15 counsel's errors, there is a reasonable probability that the result of the proceedings would
16 have been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada
17 State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland
18 two-part test). “[T]here is no reason for a court deciding an ineffective assistance claim to
19 approach the inquiry in the same order or even to address both components of the inquiry if
20 the defendant makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct.
21 at 2069.

22 The court begins with the presumption of effectiveness and then must determine
23 whether the defendant has demonstrated by a preponderance of the evidence that counsel
24 was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective
25 counsel does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the
26 range of competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev.
27 430, 432, 537 P.2d 473, 474 (1975).

1 Counsel cannot be ineffective for failing to make futile objections or arguments. See
2 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
3 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
4 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
5 (2002).

6 Based on the above law, the role of a court in considering allegations of ineffective
7 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
8 whether, under the particular facts and circumstances of the case, trial counsel failed to
9 render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708,
10 711 (1978). This analysis does not mean that the court should “second guess reasoned
11 choices between trial tactics nor does it mean that defense counsel, to protect himself against
12 allegations of inadequacy, must make every conceivable motion no matter how remote the
13 possibilities are of success.” Id. To be effective, the constitution “does not require that
14 counsel do what is impossible or unethical. If there is no bona fide defense to the charge,
15 counsel cannot create one and may disserve the interests of his client by attempting a useless
16 charade.” United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19
17 (1984).

18 “There are countless ways to provide effective assistance in any given case. Even the
19 best criminal defense attorneys would not defend a particular client in the same way.”
20 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
21 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
22 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
23 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
24 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
25 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

26 Even if a defendant can demonstrate that his counsel's representation fell below an
27 objective standard of reasonableness, he must still demonstrate prejudice and show a
28 reasonable probability that, but for counsel's errors, the result of the trial would have been

1 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
2 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
3 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-
4 89, 694, 104 S. Ct. at 2064–65, 2068).

5 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
6 disputed factual allegations underlying his ineffective-assistance claim by a preponderance
7 of the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
8 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief
9 must be supported with specific factual allegations, which if true, would entitle the petitioner
10 to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and
11 “naked” allegations are not sufficient, nor are those belied and repelled by the record. Id. “A
12 claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the
13 time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).
14 NRS 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the
15 claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may
16 cause your petition to be dismissed.” (emphasis added).

17 Here, Petitioner alleges his trial counsel was ineffective in four ways: (1) failing to
18 instruct the jury on Petitioner’s theory of the case; (2) conceding guilt as to second degree
19 murder; (3) failing to subject prosecution’s case to a meaningful adverse testing process; and
20 (4) failing to object to Petitioner’s statement as involuntary. Instant Petition at 19-24.
21 However, Petitioner’s allegations are subject to the law of the case doctrine, as they have
22 been previously raised, and rejected, in earlier petitions.

23 “The law of a first appeal is law of the case on all subsequent appeals in which the
24 facts are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975)
25 (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the
26 law of the case cannot be avoided by a more detailed and precisely focused argument
27 subsequently made after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at
28 799. Under the law of the case doctrine, issues previously decided on direct appeal may not

1 be reargued in a habeas petition. Pellegrini v. State, 117 Nev. at 879, 34 P.3d at 532 (citing
2 McNelson v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this
3 Court cannot overrule the Nevada Supreme Court. NEV. CONST. Art. VI § 6.

4 *i. Failure to Instruct the Jury on Petitioner's Theory of the Case*

5 Petitioner raised the allegation that trial counsel failed to proffer proper jury
6 instructions in his third Petition. The district court determined that this allegation was
7 without merit in that Petition, and the district court's determination was upheld on appeal.
8 See, Findings of Fact, Conclusions of Law and Order, filed on March 14, 2016 in Case
9 Number 01C174954 ("3/14/16 FCL") at 5; see also, Order of Affirmance, filed on August
10 17, 2016 in Supreme Court Case 70206 ("8/17/16 Affirmance"). Therefore, this Court finds
11 this issue has already been raised and addressed and that it is therefore subject to the law of
12 the case doctrine.

13 *ii. Conceding Second Degree Murder*

14 Petitioner raised the allegation that trial counsel improperly conceded the issue of
15 guilt as to second degree murder in his second Petition. See Third Petition at 7. The district
16 court rejected this allegation and dismissed Petitioner's third Petition, a ruling that was also
17 upheld on appeal. See generally, 2/14/14 FCL; see also, 6/11/14 Affirmance. Because
18 Petitioner already unsuccessfully raised this allegation, and because there are no new facts
19 that would affect the Nevada Supreme Court's earlier determination of this issue, this Court
20 finds this claim is subject to the law of the case doctrine and cannot demonstrate prejudice.

21 *iii. Failure to Subject Prosecution's Case to a Meaningful Adverse Testing*
22 *Process*

23 Petitioner's third allegation in support of his claim of ineffective assistance of trial
24 counsel relies on the same actions of trial counsel as addressed in Section I(E)(2)(ii), *supra*.
25 – namely, that trial counsel conceded the issue of guilt as to second degree murder. As
26 addressed above, this claim has already been substantively addressed, and Petitioner's
27 position has been rejected by both the district court and the Nevada Supreme Court. Because
28 both courts have already ruled on this specific issue, this Court finds this claim is subject to

1 the law of the case doctrine. Furthermore, because it has no merit, this Court further finds
2 this claim cannot demonstrate prejudice.

3 *iv. Failure to Object to Petitioner's Statement as Involuntary*

4 Petitioner initially raised trial counsel's alleged failure to object to his statement to
5 police as involuntary on his direct appeal. See, Appellant's Opening Brief, filed on April 21,
6 2010 in Supreme Court Case 54866 at 7-10. However, the Nevada Supreme Court expressly
7 rejected the notion that Petitioner's statement to police was involuntary or unknowing,
8 instead concluding "[t]he totality of the circumstances reveals that Porter voluntarily,
9 knowingly, and intelligently waived his Miranda rights... and the district court therefore did
10 not err in admitting his confession." 11/08/2010 Affirmance at 2. Because the Nevada
11 Supreme Court found the issue of voluntariness to be without merit, trial counsel could not
12 be ineffective for failing to raise the issue.

13 Petitioner's allegation is further belied by a review of the district court record. On
14 September 26, 2002, trial counsel filed a "Motion to Suppress Defendant's Confessions and
15 Admissions to Metro and Chicago Detectives Based on Violation of his Miranda Rights and
16 Involuntariness and Request for Jackson v. Denno Hearing." Because Petitioner's allegation
17 is belied by the record and subject to the law of the case doctrine, this Court finds this claim
18 cannot demonstrate prejudice to overcome the procedural bars to the instant Petition.

19 Petitioner further alleges his appellate counsel was ineffective in two ways: (1) failing
20 to raise prosecutorial misconduct on appeal; and (2) failing to allege ineffective assistance of
21 trial counsel on appeal, both of which have also been addressed and rejected.

22 *i. Failure to Raise Issue of Prosecutorial Misconduct on Direct Appeal*

23 Petitioner's argument that his appellate counsel was ineffective for not alleging
24 prosecutorial misconduct is based on Petitioner's argument that mental disability rendered
25 his voluntary statement to detectives inadmissible, and that the statement should not have
26 been used at trial. See, Instant Petition at 26. This claim was, in fact, substantively raised on
27 direct appeal, and was rejected by the Nevada Supreme Court as being without merit.
28 11/08/2010 Affirmance at 2. Because this claim was previously substantively raised, and

1 rejected, this Court finds it is subject to the law of the case doctrine. It further cannot be used
2 to overcome the procedural bars precluding the instant Petition from being reviewed on its
3 merits.

4 *ii. Failure to Raise Issue of Ineffective Assistance of Trial Counsel*

5 Petitioner repeats his earlier four arguments regarding ineffectiveness of trial counsel,
6 and argues that appellate counsel was ineffective for failing to raise these issues on appeal.
7 Aside from the same conclusory statements made in support of his earlier claims, which
8 were all addressed and rejected on Petitioner's direct appeal, or in one of Petitioner's
9 numerous habeas petitions since, Petitioner fails to support his claim, and fails to show how
10 any of these justify overcoming the procedural bars to the instant Petition. Therefore, this
11 Court finds that Petitioner's claim is subject to the procedural bars.

12 //

13 //

14 **F. Petitioner's remaining claims of Prosecutorial Misconduct and Abuse of**
15 **Discretion are subject to the law of the case doctrine**

16 Petitioner also claims that admission of his statement to detectives at trial amounted to
17 prosecutorial misconduct, and that the trial court abused its discretion when it allowed the
18 statement to be used at trial. Instant Petition at 30-36. However, these claims are
19 substantively the same as Petitioner's claims regarding ineffective assistance of trial and
20 appellate counsel, as they all rely on Petitioner's argument that mental or cognitive
21 handicaps prevented his knowing and/or voluntary waiver of his Miranda rights. As
22 addressed, *supra.*, Petitioner substantively raised this issue on direct appeal. The Nevada
23 Supreme Court rejected the claim, concluding that the totality of the circumstances supported
24 the notion that Petitioner's statement was knowing and voluntary. 11/08/2010 Affirmance at
25 2. Therefore, this Court finds that, pursuant to Hall, these claims are subject to the law of the
26 case doctrine.

27 Because Petitioner's substantive claims are subject to the law of the case doctrine, and
28 further, because Petitioner fails to demonstrate good cause or prejudice to overcome the

1 procedural bars to the instant Petition, this Court concludes the instant Petition is ripe only
2 for summary dismissal.

3 **II. PETITIONER'S SUPPLEMENT AND SUBSEQUENT "PETITION" ARE**
4 **STRICKEN**

5 NRS 34.750(5) precludes the filing of any supplemental pleadings to a post-
6 conviction petition for writ of habeas corpus without leave of the court. The instant Petition
7 was filed on July 5, 2019. On July 16, 2019, absent any order or leave of this Court,
8 Petitioner filed a "Supplement to Habeas Corpus Postconviction." Then, on July 25, 2019,
9 again without order or leave of this Court, Petitioner filed another "Petition for Writ of
10 Habeas Corpus." Petitioner was not granted, nor did he even seek, leave of this Court to
11 supplement the instant Petition. NRS 37.750(5). Therefore, this Court concludes the
12 subsequent filings should be stricken as rogue and improper.

13 //

14 //

15 **CONCLUSION**

16 THEREFORE, **COURT ORDERED**, the State's Motion to Dismiss Pursuant to
17 Laches shall be and is GRANTED.

18 **IT IS FURTHER ORDERED**, Petitioner Justin Porter's Petition for Writ of Habeas
19 Corpus (Post-Conviction) shall be and is DISMISSED.

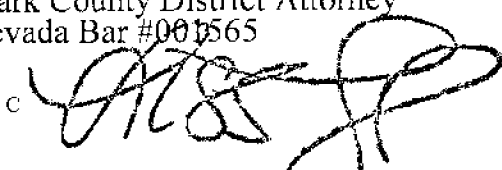
20 **IT IS FURTHER ORDERED**, Petitioner Justin Porter's July 16, 2019 Supplement
21 to Habeas Corpus Petition and July 25, 2019 Petition for Writ of Habeas Corpus shall be and
22 are STRICKEN.

23 DATED this 21st day of May, 2020.

24 
25 _____
26 DISTRICT COURT JUDGE *Kj*

27 Respectfully submitted,

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



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2 BY

LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056

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1 NEFF

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 JUSTIN PORTER,

5
6 Petitioner,

Case No: A-19-798035-W

Dept No: VI

7 vs.

8 BRIAN WILLIAMS,

9 Respondent,

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

10
11 PLEASE TAKE NOTICE that on June 1, 2020, the court entered a decision or order in this matter, a
true and correct copy of which is attached to this notice.

12 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
13 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
14 mailed to you. This notice was mailed on June 4, 2020.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

17
18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 4 day of June 2020, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

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

23 ☒ The United States mail addressed as follows:

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

Adam L. Gill, Esq.
723 S. 3rd St.
Las Vegas, NV 89101

26
27 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk



OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN D. PORTER,
#1682627

Defendant.

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

DEPT NO: **VI**

FINDINGS OF FACT, CONCLUSIONS OF

LAW, AND ORDER

DATE OF HEARING: **FEBRUARY 19, 2020**
TIME OF HEARING: **9:30 AM**

THIS CAUSE having presented before the Honorable JACQUELINE BLUTH, District Court Judge, on the 19th day of February, 2020; Petitioner present, represented by ADAM GILL, ESQ.; 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, the Court makes the following Findings of Fact and Conclusions of Law:

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FINDINGS OF FACT, CONCLUSIONS OF LAW

STATEMENT OF THE CASE

On April 26, 2001, the State of Nevada, by way of Information, charged Justin Porter (hereinafter "Petitioner") with over 40 felony counts, including sexual assault, kidnapping, murder, burglary, and robbery, related to 9 events over a 4-month period, involving 12 victims. On May 2, 2001, an Amended Information was filed in open court to correct a typographical error. On October 11, 2001, a Second Amended Information was filed reducing the total charges to 38 counts. Counts 30, 31 and 32 alleged Burglary while in Possession of a Deadly Weapon; Attempt Robbery with Use of a Deadly Weapon; and Murder with Use of a Deadly Weapon (Open Murder), respectively. These three counts involved a single victim.

On May 15, 2008, Petitioner filed a Motion to Sever Counts 30-32 from the remainder of the charges. On June 12, 2008, the State filed its Opposition. On June 18, 2008, the Court granted Petitioner's Motion to Sever, and ordered the murder event be tried separately. The State subsequently filed a Third Amended Information in the instant case on April 30, 2009, charging Petitioner with: Count 1 – Burglary While in Possession of a Deadly Weapon (Felony – NRS 205.060, 193.165); Count 2 – Attempt Robbery With Use of a Deadly Weapon (Felony – NRS 193.330, 200.380, 193.165), and Count 3 – Murder With Use of a Deadly Weapon (Open Murder) (Felony – NRS 200.010, 200.030, 193.165).

On May 8, 2009, a jury found Petitioner guilty on Count 3 of Second Degree Murder with Use of a Deadly Weapon. Petitioner was found not guilty of Counts 1 and 2.

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

1 //

2 //

3 On February 10, 2012, Petitioner filed his first pro per Post-Conviction Petition for
4 Writ of Habeas Corpus. The State filed its Response and Motion to Dismiss on March 21,
5 2012. On April 23, 2012, the Court denied Petitioner's first Petition as untimely. The
6 Findings of Fact, Conclusions of Law, and Order were filed on June 11, 2012. Petitioner
7 appealed the denial of his first Petition on May 8, 2012, and on March 11, 2013, the Nevada
8 Supreme Court affirmed the denial. Remittitur issued on March 19, 2013.

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

15 On October 26, 2015, Petitioner filed his third pro per Post-Conviction Petition for
16 Writ of Habeas Corpus. On August 17, 2016, the Nevada Supreme Court affirmed the
17 district court's ruling. Remittitur issued on January 24, 2017.

18 On July 5, 2019, Petitioner filed the instant pro per Post-Conviction Petition for Writ
19 of Habeas Corpus (the "instant Petition"). Petitioner then filed a "Supplement" to his Petition
20 on July 16, 2019. Petitioner filed another "Petition" on July 25, 2019.

21 On September 27, 2019, Petitioner filed a Notice of Appeal in the instant case. The
22 Nevada Supreme Court dismissed the appeal on October 18, 2019, as there was no order to
23 be appealed from. Remittitur issued on November 19, 2019. While the appeal was pending,
24 Petitioner filed a "Motion for Respondent to Petitioner's Habeas Corpus (Post-Conviction)."

25 On December 2, 2019, the State filed its Response and Motion to Dismiss Petitioner's
26 Petition for Writ of Habeas Corpus, and Motion to Strike Petitioner's Rogue Filings. The
27 matter came before this Court on December 9, 2019, at which time it was continued for the
28 appointment of counsel for Petitioner.

1 On February 19, 2020, this matter came before this Court for argument. After hearing
2 representations of the parties, this Court now finds and concludes as follows:

3 ANALYSIS

4 I. PETITIONER'S INSTANT PETITION DOES NOT ENTITLE PETITIONER
5 TO HABEAS RELIEF

6 A. The instant Petition is time-barred

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

8 Unless there is good cause shown for delay, a petition that challenges
9 the validity of a judgment or sentence must be filed *within 1 year after*
10 *entry of the judgment of conviction or, if an appeal has been taken from*
11 *the judgment, within 1 year after the Supreme Court issues its*
12 *remittitur.* For the purposes of this subsection, good cause for delay
13 exists if the petitioner demonstrates to the satisfaction of the court:

14 (a) That the delay is not the fault of the petitioner; and

15 (b) That dismissal of the petition as untimely will unduly
16 prejudice the petitioner.

17 (emphasis added). “[T]he statutory rules regarding procedural default are mandatory and
18 cannot be ignored when properly raised by the State.” State v. Dist. Court (Riker), 121 Nev.
19 225, 233, 112 P.3d 1070, 1075 (2005).

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

25 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada
26 Supreme Court rejected a habeas petition that was filed two days late, pursuant to the “clear
27 and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
28 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 instant Petition is 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 Petition was filed on July 5, 2019, nearly eight (8) years after the time allowed by statute. Therefore, this Court finds the instant Petition is time-barred pursuant to NRS 34.726(1).

B. The instant Petition is successive and an abuse of the writ

Petitioner's instant Petition is also procedurally barred because it is successive. NRS 34.810(2) reads:

A second or successive petition *must* be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and 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.

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

The Nevada Supreme Court has stated: "Without such limitations on the availability of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-conviction remedies. In addition, meritless, successive and untimely petitions clog the court system and undermine the finality of convictions." *Lozada*, 110 Nev. at 358, 871 P.2d at 950. The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require a careful review of the record, successive petitions may be dismissed based solely on

1 the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In
2 other words, if the claim or allegation was previously available with reasonable diligence, it
3 is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,
4 497-498 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231,
5 112 P.3d at 1074.

6 On February 10, 2012, Petitioner filed his first petition for habeas relief, which was
7 denied as untimely because the district court concluded that Petitioner did not demonstrate
8 good cause to overcome the time-bar. On August 26, 2013, Petitioner filed his second
9 petition for habeas relief, which was once again denied as untimely. Petitioner filed a third
10 petition for habeas relief on October 26, 2015, which the district court denied as procedurally
11 barred under NRS 34.726(1), finding that Petitioner’s actual innocence claims were
12 insufficient to overcome those procedural bars. Petitioner appealed each denial of his
13 respective petitions, and every denial was affirmed by the Nevada Supreme Court. Petitioner
14 has clearly had the opportunity to raise the grounds he now alleges are “new and different” in
15 each of these prior Petitions. Therefore, this Court finds the instant Petition is successive and
16 constitutes an abuse of the writ; as such, it is subject to denial pursuant to NRS 34.810(2).

17 **C. The instant Petition is subject to Laches**

18 NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
19 exceeding five years [elapses] between the filing of a judgment of conviction, an order
20 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
21 conviction and the filing of a petition challenging the validity of a judgment of conviction...”
22 The Nevada Supreme Court observed in Groesbeck v. Warden, “[P]etitions that are filed
23 many years after conviction are an unreasonable burden on the criminal justice system. The
24 necessity for a workable system dictates that there must exist a time when a criminal
25 conviction is final.” 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the
26 statute requires the State plead laches in its motion to dismiss the petition. NRS 34.800(2).
27 The State affirmatively pleads laches in the instant case.
28

1 The instant Petition was filed over ten (10) years after the verdict and the sentencing
2 hearing, and almost nine (9) years after the Nevada Supreme Court affirmed the judgment of
3 conviction. Because these time periods exceed five (5) years, this Court finds the State is
4 entitled to a rebuttable presumption of prejudice. NRS 34.800(2).

5 //

6 **D. Petitioner's claim of "actual innocence" is not, itself, a cognizable claim for**
7 **habeas relief**

8 Petitioner's first claim is that he is "actually innocent" of those crimes for which he
9 was convicted at trial. Instant Petition at 13. The United States Supreme Court has held that
10 actual innocence is "not itself a constitutional claim, but instead a gateway through which a
11 habeas petitioner must pass to have his otherwise barred constitutional claim considered on
12 the merits." Schlup v. Delo, 513 U.S. 298, 327, 115 S. Ct. 851, 867 (1995). In order for a
13 petitioner to obtain a reversal of his conviction based on a claim of actual innocence, he must
14 prove that "'it is more likely than not that *no* reasonable juror would have convicted him in
15 light of the 'new evidence' presented in habeas proceedings." Calderon v. Thompson, 523
16 U.S. 538, 560, 118 S. Ct. 1489, 1503 (1998) (emphasis added) (quoting Schlup).

17 Petitioner seems to acknowledge that his "actual innocence" claim is merely a vehicle
18 for overcoming the other procedural bars to the instant Petition. Instant Petition at 13.
19 However, the substance of this claim is merely a challenge to the sufficiency of the evidence
20 used to convict Petitioner at trial. Id. Petitioner does not offer any evidence that could be
21 considered "new" or that could support the requisite showing under Calderon. Therefore, this
22 Court concludes that Petitioner has failed to demonstrate that "actual innocence" establishes
23 good cause enough to overcome his procedural defaults, and the instant Petition is therefore
24 subject to dismissal.

25 **E. Petitioner fails to demonstrate good case or prejudice for failing to timely**
26 **raise his claims of ineffective assistance of counsel**

27 To avoid procedural default, under NRS 34.726, a petitioner has the burden of
28 pleading and proving specific facts that demonstrate good cause for his failure to present his

claim in earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); see Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep’t of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again *and* actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646–47, 29 P.3d 498, 523 (2001) (emphasis added).

1. Petitioner has failed to establish good cause.

“To establish good cause, appellants *must* show that an impediment external to the defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. “A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003). The Court continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at 526. Examples of good cause include interference by State officials and the previous unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

Petitioner has failed to address good cause to overcome this late filing, instead relying upon allegations of “actual innocence” to excuse the procedural bars to the instant Petition. As addressed in Section I(D), *supra.*, Petitioner fails to meet the standard under Calderon. Thus, this Court finds that Petitioner does not assert good cause and so fails to overcome the mandatory procedural bar.

2. Petitioner has failed to establish prejudice.

1 In addition, this Court finds Petitioner does not establish prejudice necessary to ignore
2 the procedural default because the underlying claims of ineffective assistance of counsel are
3 meritless.

4 The Sixth Amendment to the United States Constitution provides that, “[i]n all
5 criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel
6 for his defense.” The United States Supreme Court has long recognized that “the right to
7 counsel is the right to the effective assistance of counsel.” Strickland v. Washington, 466
8 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138,
9 865 P.2d 322, 323 (1993).

10 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
11 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test
12 of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063–64. See also Love, 109 Nev. at 1138,
13 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
14 representation fell below an objective standard of reasonableness, and second, that but for
15 counsel's errors, there is a reasonable probability that the result of the proceedings would
16 have been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada
17 State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland
18 two-part test). “[T]here is no reason for a court deciding an ineffective assistance claim to
19 approach the inquiry in the same order or even to address both components of the inquiry if
20 the defendant makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct.
21 at 2069.

22 The court begins with the presumption of effectiveness and then must determine
23 whether the defendant has demonstrated by a preponderance of the evidence that counsel
24 was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective
25 counsel does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the
26 range of competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev.
27 430, 432, 537 P.2d 473, 474 (1975).

1 Counsel cannot be ineffective for failing to make futile objections or arguments. See
2 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
3 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
4 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
5 (2002).

6 Based on the above law, the role of a court in considering allegations of ineffective
7 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
8 whether, under the particular facts and circumstances of the case, trial counsel failed to
9 render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708,
10 711 (1978). This analysis does not mean that the court should “second guess reasoned
11 choices between trial tactics nor does it mean that defense counsel, to protect himself against
12 allegations of inadequacy, must make every conceivable motion no matter how remote the
13 possibilities are of success.” Id. To be effective, the constitution “does not require that
14 counsel do what is impossible or unethical. If there is no bona fide defense to the charge,
15 counsel cannot create one and may disserve the interests of his client by attempting a useless
16 charade.” United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19
17 (1984).

18 “There are countless ways to provide effective assistance in any given case. Even the
19 best criminal defense attorneys would not defend a particular client in the same way.”
20 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
21 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
22 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
23 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
24 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
25 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

26 Even if a defendant can demonstrate that his counsel's representation fell below an
27 objective standard of reasonableness, he must still demonstrate prejudice and show a
28 reasonable probability that, but for counsel's errors, the result of the trial would have been

1 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
2 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
3 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-
4 89, 694, 104 S. Ct. at 2064–65, 2068).

5 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
6 disputed factual allegations underlying his ineffective-assistance claim by a preponderance
7 of the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
8 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief
9 must be supported with specific factual allegations, which if true, would entitle the petitioner
10 to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and
11 “naked” allegations are not sufficient, nor are those belied and repelled by the record. Id. “A
12 claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the
13 time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).
14 NRS 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the
15 claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may
16 cause your petition to be dismissed.” (emphasis added).

17 Here, Petitioner alleges his trial counsel was ineffective in four ways: (1) failing to
18 instruct the jury on Petitioner’s theory of the case; (2) conceding guilt as to second degree
19 murder; (3) failing to subject prosecution’s case to a meaningful adverse testing process; and
20 (4) failing to object to Petitioner’s statement as involuntary. Instant Petition at 19-24.
21 However, Petitioner’s allegations are subject to the law of the case doctrine, as they have
22 been previously raised, and rejected, in earlier petitions.

23 “The law of a first appeal is law of the case on all subsequent appeals in which the
24 facts are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975)
25 (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the
26 law of the case cannot be avoided by a more detailed and precisely focused argument
27 subsequently made after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at
28 799. Under the law of the case doctrine, issues previously decided on direct appeal may not

1 be reargued in a habeas petition. Pellegrini v. State, 117 Nev. at 879, 34 P.3d at 532 (citing
2 McNelson v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this
3 Court cannot overrule the Nevada Supreme Court. NEV. CONST. Art. VI § 6.

4 *i. Failure to Instruct the Jury on Petitioner's Theory of the Case*

5 Petitioner raised the allegation that trial counsel failed to proffer proper jury
6 instructions in his third Petition. The district court determined that this allegation was
7 without merit in that Petition, and the district court's determination was upheld on appeal.
8 See, Findings of Fact, Conclusions of Law and Order, filed on March 14, 2016 in Case
9 Number 01C174954 ("3/14/16 FCL") at 5; see also, Order of Affirmance, filed on August
10 17, 2016 in Supreme Court Case 70206 ("8/17/16 Affirmance"). Therefore, this Court finds
11 this issue has already been raised and addressed and that it is therefore subject to the law of
12 the case doctrine.

13 *ii. Conceding Second Degree Murder*

14 Petitioner raised the allegation that trial counsel improperly conceded the issue of
15 guilt as to second degree murder in his second Petition. See Third Petition at 7. The district
16 court rejected this allegation and dismissed Petitioner's third Petition, a ruling that was also
17 upheld on appeal. See generally, 2/14/14 FCL; see also, 6/11/14 Affirmance. Because
18 Petitioner already unsuccessfully raised this allegation, and because there are no new facts
19 that would affect the Nevada Supreme Court's earlier determination of this issue, this Court
20 finds this claim is subject to the law of the case doctrine and cannot demonstrate prejudice.

21 *iii. Failure to Subject Prosecution's Case to a Meaningful Adverse Testing*
22 *Process*

23 Petitioner's third allegation in support of his claim of ineffective assistance of trial
24 counsel relies on the same actions of trial counsel as addressed in Section I(E)(2)(ii), *supra*.
25 – namely, that trial counsel conceded the issue of guilt as to second degree murder. As
26 addressed above, this claim has already been substantively addressed, and Petitioner's
27 position has been rejected by both the district court and the Nevada Supreme Court. Because
28 both courts have already ruled on this specific issue, this Court finds this claim is subject to

1 the law of the case doctrine. Furthermore, because it has no merit, this Court further finds
2 this claim cannot demonstrate prejudice.

3 *iv. Failure to Object to Petitioner's Statement as Involuntary*

4 Petitioner initially raised trial counsel's alleged failure to object to his statement to
5 police as involuntary on his direct appeal. See, Appellant's Opening Brief, filed on April 21,
6 2010 in Supreme Court Case 54866 at 7-10. However, the Nevada Supreme Court expressly
7 rejected the notion that Petitioner's statement to police was involuntary or unknowing,
8 instead concluding "[t]he totality of the circumstances reveals that Porter voluntarily,
9 knowingly, and intelligently waived his Miranda rights... and the district court therefore did
10 not err in admitting his confession." 11/08/2010 Affirmance at 2. Because the Nevada
11 Supreme Court found the issue of voluntariness to be without merit, trial counsel could not
12 be ineffective for failing to raise the issue.

13 Petitioner's allegation is further belied by a review of the district court record. On
14 September 26, 2002, trial counsel filed a "Motion to Suppress Defendant's Confessions and
15 Admissions to Metro and Chicago Detectives Based on Violation of his Miranda Rights and
16 Involuntariness and Request for Jackson v. Denno Hearing." Because Petitioner's allegation
17 is belied by the record and subject to the law of the case doctrine, this Court finds this claim
18 cannot demonstrate prejudice to overcome the procedural bars to the instant Petition.

19 Petitioner further alleges his appellate counsel was ineffective in two ways: (1) failing
20 to raise prosecutorial misconduct on appeal; and (2) failing to allege ineffective assistance of
21 trial counsel on appeal, both of which have also been addressed and rejected.

22 *i. Failure to Raise Issue of Prosecutorial Misconduct on Direct Appeal*

23 Petitioner's argument that his appellate counsel was ineffective for not alleging
24 prosecutorial misconduct is based on Petitioner's argument that mental disability rendered
25 his voluntary statement to detectives inadmissible, and that the statement should not have
26 been used at trial. See, Instant Petition at 26. This claim was, in fact, substantively raised on
27 direct appeal, and was rejected by the Nevada Supreme Court as being without merit.
28 11/08/2010 Affirmance at 2. Because this claim was previously substantively raised, and

1 rejected, this Court finds it is subject to the law of the case doctrine. It further cannot be used
2 to overcome the procedural bars precluding the instant Petition from being reviewed on its
3 merits.

4 *ii. Failure to Raise Issue of Ineffective Assistance of Trial Counsel*

5 Petitioner repeats his earlier four arguments regarding ineffectiveness of trial counsel,
6 and argues that appellate counsel was ineffective for failing to raise these issues on appeal.
7 Aside from the same conclusory statements made in support of his earlier claims, which
8 were all addressed and rejected on Petitioner's direct appeal, or in one of Petitioner's
9 numerous habeas petitions since, Petitioner fails to support his claim, and fails to show how
10 any of these justify overcoming the procedural bars to the instant Petition. Therefore, this
11 Court finds that Petitioner's claim is subject to the procedural bars.

12 //

13 //

14 **F. Petitioner's remaining claims of Prosecutorial Misconduct and Abuse of**
15 **Discretion are subject to the law of the case doctrine**

16 Petitioner also claims that admission of his statement to detectives at trial amounted to
17 prosecutorial misconduct, and that the trial court abused its discretion when it allowed the
18 statement to be used at trial. Instant Petition at 30-36. However, these claims are
19 substantively the same as Petitioner's claims regarding ineffective assistance of trial and
20 appellate counsel, as they all rely on Petitioner's argument that mental or cognitive
21 handicaps prevented his knowing and/or voluntary waiver of his Miranda rights. As
22 addressed, *supra.*, Petitioner substantively raised this issue on direct appeal. The Nevada
23 Supreme Court rejected the claim, concluding that the totality of the circumstances supported
24 the notion that Petitioner's statement was knowing and voluntary. 11/08/2010 Affirmance at
25 2. Therefore, this Court finds that, pursuant to Hall, these claims are subject to the law of the
26 case doctrine.

27 Because Petitioner's substantive claims are subject to the law of the case doctrine, and
28 further, because Petitioner fails to demonstrate good cause or prejudice to overcome the

1 procedural bars to the instant Petition, this Court concludes the instant Petition is ripe only
2 for summary dismissal.

3 **II. PETITIONER'S SUPPLEMENT AND SUBSEQUENT "PETITION" ARE**
4 **STRICKEN**

5 NRS 34.750(5) precludes the filing of any supplemental pleadings to a post-
6 conviction petition for writ of habeas corpus without leave of the court. The instant Petition
7 was filed on July 5, 2019. On July 16, 2019, absent any order or leave of this Court,
8 Petitioner filed a "Supplement to Habeas Corpus Postconviction." Then, on July 25, 2019,
9 again without order or leave of this Court, Petitioner filed another "Petition for Writ of
10 Habeas Corpus." Petitioner was not granted, nor did he even seek, leave of this Court to
11 supplement the instant Petition. NRS 37.750(5). Therefore, this Court concludes the
12 subsequent filings should be stricken as rogue and improper.

13 //

14 //

15 **CONCLUSION**

16 THEREFORE, **COURT ORDERED**, the State's Motion to Dismiss Pursuant to
17 Laches shall be and is GRANTED.

18 **IT IS FURTHER ORDERED**, Petitioner Justin Porter's Petition for Writ of Habeas
19 Corpus (Post-Conviction) shall be and is DISMISSED.

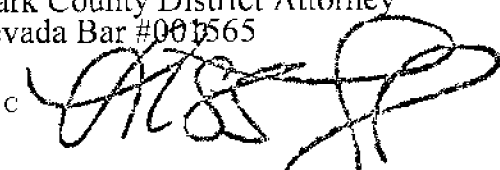
20 **IT IS FURTHER ORDERED**, Petitioner Justin Porter's July 16, 2019 Supplement
21 to Habeas Corpus Petition and July 25, 2019 Petition for Writ of Habeas Corpus shall be and
22 are STRICKEN.

23 DATED this 21st day of May, 2020.

24 
25 _____
26 DISTRICT COURT JUDGE *Kj*

27 Respectfully submitted,

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



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2 BY

LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056

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BETSY ALLEN, ESQ

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P.O. Box 46991

Las Vegas, Nevada 89114

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betsyallenesq@yahoo.com

Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

JUSTIN PORTER,)	Case No.: A-19-798035-W
)	Dept No.: IV
)	
Petitioner,)	
)	
vs.)	
)	
BRIAN WILLIAMSN, WARDEN,)	
)	
Respondent.)	

REQUEST FOR TRANSCRIPT OF PROCEEDINGS

TO: Court Recorder for District Court 6.

Defendant requests preparation of a transcript of the proceedings before the district court, as follows:

Judge or officer hearing the proceeding: Judge Jacquelyn Bluth

Date or dates of the proceeding: 12/9/19, 01/13/14, 04/23/12

Portions of the transcript requested: All

Number of copies required: 1

///

///

1 I hereby certify that on this date, I ordered this transcript from the court
2 recorder named above.

3
4 DATED this _7th_ day of October, 2020.
5

6 Respectfully Submitted,

7
8 /s/ Betsy Allen

9 **BETSY ALLEN, ESQ**
10 Nevada Bar No. 6878
11 Law Office of Betsy Allen
12 P.O. Box 46991
13 Las Vegas, NV 89114
14 (702) 386-9700
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Steven D. Grierson

OSCC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JUSTIN PORTER, PLAINTIFF(S)
VS.

CASE NO.: A-19-798035-W

BRIAN WILLIAMS, DEFENDANT(S)

DEPARTMENT 6

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 3rd day of February, 2021.

J. Bluth

JACQUELINE M. BLUTH
DISTRICT COURT JUDGE

Jf

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN D. PORTER,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

Supreme Court No. 80738
District Court Case No. A798035; C474054

FILED

AUG 24 2021

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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 29th day of July, 2021.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
August 23, 2021.

Elizabeth A. Brown, Supreme Court Clerk

By: Rory Wunsch
Deputy Clerk

A-19-798036-W
CCJA
NV Supreme Court Clerks Certificate/Judgm
4964842



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUSTIN D. PORTER,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 80738-COA

FILED

JUL 29 2021

ELIZABETH A. DROWN
CLERK OF SUPREME COURT
BY *E. Drown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Justin D. Porter appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Porter argues the district court erred by denying his petition as procedurally barred without first conducting an evidentiary hearing. Porter filed his petition on July 5, 2019, more than eight years after issuance of the remittitur on direct appeal on December 3, 2010. *Porter v. State*, Docket No. 54866 (Order of Affirmance, November 8, 2010). Thus, Porter's petition was untimely filed. *See* NRS 34.726(1). Moreover, Porter's petition was successive because he had previously filed several postconviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Porter's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS

¹*Porter v. State*, Docket No. 70206-COA (Order of Affirmance, August 11, 2016); *Porter v. State*, Docket No. 64996 (Order of Affirmance, July 14, 2014); *Porter v. State*, Docket No. 60843 (Order of Affirmance, February 13, 2013).

34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Further, because the State specifically pleaded laches, Porter was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2). To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations that are not belied by the record and, if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046, 194 P.3d 1224, 1233-34 (2008).


First, Porter appeared to argue he had good cause because postconviction counsel was not appointed to assist him with his first petition. The appointment of postconviction counsel in this matter was not statutorily or constitutionally required. See *Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014). Thus, the failure to appoint postconviction counsel did not provide good cause to overcome the procedural bars in this matter. Moreover, claims stemming from the proceedings concerning Porter's first petition were reasonably available to be raised within one year after the Nevada Supreme Court issued the remittitur on appeal from the order denying that petition, and Porter did not explain why he waited more than six years to raise such claims. See *Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (holding a good-cause claim must be raised within one year of its becoming available). Therefore, Porter was not entitled to relief based upon this claim.


Next, Porter argues on appeal that he has good cause because he has a low IQ, was a juvenile when he entered the prison system, does not understand the legal process, and believed trial counsel would pursue postconviction relief. However, Porter did not raise these fact-based, good-cause claims in his petition, and we decline to consider them in the first instance on appeal. See *McNellon v. State*, 115 Nev. 396, 416, 990 P.2d


1263, 1276 (1999). We take no position as to whether these issues can be raised in a future petition.

Porter thus did not demonstrate good cause to overcome the procedural bars. In addition, Porter fails to demonstrate the district court erred by concluding he failed to overcome the presumption of prejudice to the State. Therefore, Porter fails to demonstrate the district court erred by denying the petition without conducting an evidentiary hearing. *See Rubio*, 124 Nev. at 1046 n.53, 194 P.3d at 1234 n.53 (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars). Accordingly, we

ORDER the judgment of the district court **AFFIRMED**.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge
Law Office of Betsy Allen
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN D. PORTER,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

Supreme Court No. 80738
District Court Case No. A798035; ~~C174954~~

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: August 23, 2021

Elizabeth A. Brown, Clerk of Court

By: Rory Wunsch
Deputy Clerk

cc (without enclosures):
Chief Judge, Eighth Judicial District Court
Clark County District Attorney
Law Office of Betsy Allen

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 AUG 24 2021.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS

AUG 24 2021

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21-24458

CLERK OF THE COURT



MOT
BETSY ALLEN, ESQ
Nevada Bar No. 6878
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Attorneys for Defendant
JUSTIN PORTER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	Case No.: A-19-798035-W
)	Dept. No. VI
Plaintiff,)	
)	
vs.)	
)	
JUSTIN D. PORTER,)	
)	
Defendant.)	
)	
)	

MOTION TO PLACE ON CALENDAR FOR APPOINTMENT OF COUNSEL

COMES NOW, the Defendant, JUSTIN PORTER, by and through his attorney, BETSY ALLEN, ESQ. and hereby moves this Honorable Court to place this matter on calendar to appoint counsel.

This Motion is based upon the pleading and papers on file herein, the following Points and Authorities and any argument at the hearing on this matter.

DATED this 25th of August, 2021

/s/ Betsy Allen
Betsy Allen, Esq.
Nevada Bar No. 6878
Attorney for Defendant
JUSTIN PORTER

1
2
3 **POINTS AND AUTHORITIES**

4 **STATEMENT OF THE CASE**

5 Counsel was appointed to pen an appeal, based upon the petition filed by Mr.
6 Porter. The COA did deny the appeal but did leave open the possibility of a issue that
7 should be raised. (See attached Exhibit "A").

8 As a result, counsel for Mr. Porter believes that counsel should be appointed to
9 address these issues.

10 DATED _25th _ day of August, 2021

11
12 /s/ Betsy Allen
13 Betsy Allen, Esq.
14 Nevada Bar No. 6878
15 Attorneys for Defendant
16 JUSTIN D. PORTER

17 **Certificate of Service**

18 I hereby certify that I provided the Clark County District Attorney a true and correct
19 copy of the foregoing motion on the 25th day of August, 2021 via email to:

20 motions@clarkcountyda.com

21
22 /s/Betsy Allen
23 Betsy Allen, Esq.



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUSTIN D. PORTER,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 80738-COA

FILED

JUL 29 2021

ELIZABETH A. GROWN
CLERK OF SUPREME COURT
BY *E. Grown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Justin D. Porter appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Porter argues the district court erred by denying his petition as procedurally barred without first conducting an evidentiary hearing. Porter filed his petition on July 5, 2019, more than eight years after issuance of the remittitur on direct appeal on December 3, 2010. *Porter v. State*, Docket No. 54866 (Order of Affirmance, November 8, 2010). Thus, Porter's petition was untimely filed. *See* NRS 34.726(1). Moreover, Porter's petition was successive because he had previously filed several postconviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Porter's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS

¹*Porter v. State*, Docket No. 70206-COA (Order of Affirmance, August 11, 2016); *Porter v. State*, Docket No. 64996 (Order of Affirmance, July 14, 2014); *Porter v. State*, Docket No. 60843 (Order of Affirmance, February 13, 2013).

34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Further, because the State specifically pleaded laches, Porter was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2). To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations that are not belied by the record and, if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046, 194 P.3d 1224, 1233-34 (2008).

First, Porter appeared to argue he had good cause because postconviction counsel was not appointed to assist him with his first petition. The appointment of postconviction counsel in this matter was not statutorily or constitutionally required. See *Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014). Thus, the failure to appoint postconviction counsel did not provide good cause to overcome the procedural bars in this matter. Moreover, claims stemming from the proceedings concerning Porter's first petition were reasonably available to be raised within one year after the Nevada Supreme Court issued the remittitur on appeal from the order denying that petition, and Porter did not explain why he waited more than six years to raise such claims. See *Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (holding a good-cause claim must be raised within one year of its becoming available). Therefore, Porter was not entitled to relief based upon this claim.


Next, Porter argues on appeal that he has good cause because he has a low IQ, was a juvenile when he entered the prison system, does not understand the legal process, and believed trial counsel would pursue postconviction relief. However, Porter did not raise these fact-based, good-cause claims in his petition, and we decline to consider them in the first instance on appeal. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d


1263, 1276 (1999). We take no position as to whether these issues can be raised in a future petition.

Porter thus did not demonstrate good cause to overcome the procedural bars. In addition, Porter fails to demonstrate the district court erred by concluding he failed to overcome the presumption of prejudice to the State. Therefore, Porter fails to demonstrate the district court erred by denying the petition without conducting an evidentiary hearing. *See Rubio*, 124 Nev. at 1046 n.53, 194 P.3d at 1234 n.53 (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars). Accordingly, we


ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge
Law Office of Betsy Allen
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk



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

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN D. PORTER,
#1682627

Defendant.

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

DEPT NO: **VI**

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO PLACE
ON CALENDAR FOR APPOINTMENT OF COUNSEL

DATE OF HEARING: **OCTOBER 5, 2021**
TIME OF HEARING: **9:30 AM**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through KAREN MISHLER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in this State's Opposition to Defendant's Motion to Place on Calendar for Appointment of Counsel.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On April 26, 2001, Defendant Justin Porter ("Defendant") was charged by way of
4 Information with over forty (40) felonies, including sexual assault, kidnapping, murder,
5 burglary, and robbery, related to nine (9) events over a four (4)-month period, involving twelve
6 (12) victims. An Amended Information was filed on May 2, 2001, to correct a typographical
7 error. On October 11, 2001, following the partial granting of a pre-trial habeas petition, the
8 State filed a Second Amended Information with a total of thirty-eight (38) counts.

9 On May 15, 2008, Defendant filed a Motion to Sever Counts 30, 31, and 32, which
10 alleged Burglary While in Possession of a Deadly Weapon, Attempt Robbery with Use of a
11 Deadly Weapon, and Murder with Use of a Deadly Weapon, respectively, all against the same
12 victim. After the district court allowed severance of those counts, the State filed a Third
13 Amended Information in the instant underlying case on April 30, 2009, charging Defendant
14 with the aforementioned crimes as Counts 1-3.

15 On May 8, 2009, after five days of trial, the jury found Defendant guilty of second-
16 degree murder with use of a deadly weapon. The jury found Defendant not guilty as to the
17 remaining counts. On September 30, 2009, Defendant was sentenced to one hundred twenty
18 (120) months to life imprisonment for second degree murder, with a consecutive one hundred
19 twenty (120) months to life for the use of a deadly weapon. The Judgment of Conviction was
20 filed on October 13, 2009.

21 On October 29, 2009, Defendant filed a Notice of Appeal. On November 8, 2010, the
22 Nevada Supreme Court affirmed the Judgment of Conviction. Remittitur issued on December
23 3, 2010.

24 On February 10, 2012, Defendant filed his first pro per Post-Conviction Petition for
25 Writ of Habeas Corpus. The State filed its Response and Motion to Dismiss on March 21,
26 2012. On April 23, 2012, the Court denied Defendant's first Petition as untimely. The Findings
27 of Fact, Conclusions of Law, and Order were filed on June 11, 2012. Defendant appealed the
28 denial of his first Petition on May 8, 2012, and on March 11, 2013, the Nevada Supreme Court

1 affirmed the denial. Remittitur issued on March 19, 2013.

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

8 On October 26, 2015, Defendant filed his third pro per Post-Conviction Petition for
9 Writ of Habeas Corpus. On August 17, 2016, the Nevada Supreme Court affirmed the district
10 court's ruling. Remittitur issued on January 24, 2017.

11 On July 5, 2019, Defendant filed his fourth Post-Conviction Petition for Writ of Habeas
12 Corpus. Following the appointment of counsel, this Court denied Defendant's fourth petition
13 as procedurally defaulted. The Findings of Fact, Conclusions of Law were filed on June 1,
14 2020. The denial was affirmed by the Nevada Court of Appeals on July 29, 2021.¹

15 On August 25, 2021, Defendant filed, through counsel, the instant Motion to Place on
16 Calendar for Appointment of Counsel ("Motion"). The State opposes as follows.

17 **ARGUMENT**

18 **I. DEFENDANT IS NOT ENTITLED TO THE APPOINTMENT OF COUNSEL**

19 Defendant has not met the required burden for appointment of counsel. In Coleman v.
20 Thompson, 501 U.S. 722, 752, 111 S.Ct. 2546, 2566 (1991), the United States Supreme Court
21 ruled that the Sixth Amendment provides no right to counsel in post-conviction proceedings.
22 The Nevada Supreme Court has similarly observed that "[t]he Nevada Constitution . . . does
23 not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada
24 Constitution's right to counsel provision as being coextensive with the Sixth Amendment to
25 the United States Constitution." McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258
26 (1996).

27 //

28 _____
¹It is this affirmance that Defendant has attached as an Exhibit to the instant Motion.

1 NRS 34.750 provides that a court has discretion to appoint post-conviction counsel:

2 [a] petition may allege that the Defendant is unable to pay the costs of
3 the proceedings or employ counsel. If the court is satisfied that the
4 allegation of indigency is true *and the petition is not dismissed*
5 *summarily*, the court may appoint counsel at the time the court orders
the filing of an answer and a return. In making its determination, the
court may consider, among other things, the severity of the
consequences facing the petitioner and whether:

6 (a) The issues are difficult;

7 (b) The Defendant is unable to comprehend the proceedings;

8 or

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

10 (emphasis added).

11 Factors a court may consider when making such a determination include the severity
12 of the consequences facing the petitioner, difficulty of the presented issues, the defendant's
13 ability to comprehend the proceedings, and whether counsel is necessary to proceed with
14 discovery. NRS 34.750(1). Additionally, the Nevada Supreme Court has concluded a
15 petitioner "must show that the requested review is not frivolous before he may have an attorney
16 appointed." Peterson v. Warden, 87 Nev. 134, 136, 483 P.2d 204, 205 (1971) (citing former
17 statute NRS 177.345(2)).

18 Here, Defendant has not met this burden. He has failed to demonstrate that his request
19 is not frivolous. He has shown no need for the appointment of counsel in order to seek post-
20 conviction relief. No post-conviction petition or other form of post-conviction vehicle is
21 pending in this case. Is insufficient for Defendant to simply imply that there may be another
22 post-conviction claim that he may raise in the future. Without a post-conviction pleading being
23 before this Court, this Court cannot determine if the above-listed factors warrant the
24 appointment of counsel. Further, as Defendant has previously filed three pro per post-
25 conviction petitions, he clearly does not require counsel in order to seek post-conviction relief.
26 Additionally, in his most recent Petition, Defendant has already received the assistance of
27 counsel, both in pursuing post-conviction relief and appealing this Court's denial of the
28 Petition.

1 Defendant attempts to again obtain the benefit of counsel, by claiming that, in affirming
2 this Court's denial of the most recent Petition, the Nevada Court of Appeals left open the
3 possibility of an issue that should be raised. This claim is disingenuous at best. The Affirmance
4 in no way suggested that Defendant has a viable post-conviction claim. Rather, the Nevada
5 Court of Appeals noted that on appeal, Defendant raised good cause claims that he failed to
6 raise before this Court when litigating his Petition. The Court of Appeals reiterated the
7 longstanding appellate rule that new claims cannot be considered in the first instance on
8 appeal. Porter v. State, Docket No. 80738-COA (Order of Affirmance, July 29, 2021), at 02-
9 03. The Court of Appeals explicitly stated that it "take[s] no position as to whether these issues
10 can be raised in a future petition." Id. at 3.

11 Importantly, the "issue" being discussed by the Court of Appeals is not in itself a
12 cognizable habeas claim, but a potential good cause claim. Defendant would be required to
13 prevail on a good cause claim in order to raise a cognizable habeas claim, because any future
14 petition he files will be extremely untimely and successive. See NRS 34.726; NRS 34.810(2).
15 Defendant would also be required to demonstrate both good cause *and* prejudice in order to
16 overcome the procedural bars. NRS 34.726(1)(b). He has given no indication as to how he
17 would attempt to demonstrate prejudice, or what cognizable habeas claim he intends to raise
18 if he manages to demonstrate both sufficient good cause and prejudice to overcome the
19 procedural bars.

20 Finally, it is highly doubtful that Defendant could succeed at demonstrating good cause
21 by raising the good cause claims he attempted to raise on appeal. The Nevada Supreme Court
22 has previously found that claims of limited intelligence, lack of legal knowledge, and lack of
23 assistance with filing a postconviction petition do not constitute good cause. Phelps v. Dir.,
24 Nev. Dep't of Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), *superseded by statute*
25 *on other grounds as stated in* State v. Haberstroh, 119 Nev. 173, 180-81, 69 P.3d 676, 681
26 (2003).

27 It is Defendant's burden to demonstrate that his request for counsel is not frivolous. His
28 bare-bones pleading does not suffice. Accordingly, his request must be denied.

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CONCLUSION

For the foregoing reasons, the State respectfully requests that Defendant's Motion to Place on Calendar for Appointment of Counsel be denied.

DATED this 1st day of September, 2021.

Respectfully submitted,

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

BY /s/ Karen Mishler
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 1st day of SEPTEMBER 2021, to:

JUSTIN PORTER, BAC#1042449
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

BY /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

Heather S. Gustin
CLERK OF THE COURT

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

Eighth Judicial District Court
Clark County, NEVADA

Justin D. Porter,
Petitioner,

VS.

Warden Calvin Johnson,
Respondent(s).

Case NO. A-19-798035-W/
C-174954

Dept. NO.

WRIT OF HABEAS CORPUS (Postconviction).

COMES NOW, Petitioner, Justin D. Porter in Propria
Persona, and files this WRIT OF HABEAS CORPUS.
This Habeas Corpus is Pursuant to the Constitution of
the UNITED STATES, Article 1 Sec. 9 AND Article 6
Paragraph 2, and the Fifth, Sixth and fourteenth
Amendment to the UNITED STATES Constitution, AND
Pursuant to NRS. 34.724, Article 1 Sec. 5 and Article
1 Sec. 8 of the NEVADA Constitution.
This HABEAS CORPUS is based upon the Points and
Authorities, and the Attach Exhibits.

DATED: This 3 day OF November, 2021.

By: *Justin Porter*

RECEIVED

NOV - 8 2021

Justin D. Porter #1042449
Petitioner in Pro se

Page
CLERK OF THE COURT

Statement of the case

1 On or About the 26 day of April, 2001, Petitioner was
2 charged with murder. On or about the 30 day of April,
3 2009 the State filed its third Amended information,
4 charging Petitioner with: Count 1- Burglary with A
5 deadly weapon; Count 2- Attempt Robbery with A
6 deadly weapon, and 3 Count 3- Murder with A deadly
7 weapon. On May 8, 2009 A Jury Found Petitioner
8 Guilty of Second Degree murder with A deadly
9 weapon, Counts 1 and 2 not Guilty. Petitioner
10 was Sentenced to two 10 years to life. On
11 December 3, 2010 the Supreme court issued its
12 Remittur. On Feb. 10, 2012 Petitioner filed first
13 Post Petition, April 23, 2012 District Court
14 dismissed as untimely, and Petitioner Appealed
15 NEVADA Supreme court issued Remittur March 19,
16 2013. Petitioner filed (4) Petitions for writ of
17 Habeas Corpus. And the last writ for habeas
18 Corpus was filed Jul. 5, 2019 and was dismissed
19 as untimely. And the Petitioner Appealed to the
20 Nevada Supreme court, and on the day of
21 Jul. 29, 2021 the Affirmance was issued.

Points and Authorities

1 A. GROUNDs and SUPPORTING FACTS.

2

3 GROUND ONE: Petitioner is Asserting the Prosecuting
4 Attorney committed a "BRADY violation"/"NAPUE claim",
5 due to the "Brady"/"Napue" violation Petitioner must overcome
6 the procedural Bar.

7

8 NRS 34.726 states:

9 1. unless there is good cause shown for delay, a petition
10 that challenges the validity of a judgment or sentence
11 must be within 1 year after entry of the judgment of
12 conviction OR, if an appeal has been taken from the
13 judgment, within 1 year after the supreme court issues
14 its remittitur. For the purposes of this subsection, good
15 cause for delay exists if the petitioner demonstrates to the
16 satisfaction of the court: (a) That the delay is not
17 the fault of the petitioner; and (b) That dismissal of
18 the petition as untimely will unduly prejudice
19 the petitioner.

20

21 The Petitioner, Justin D. Porter is now Alleging a
22 sufficient basis to show good cause and actual Prejudice
23 to EXCUSE the procedural Bar, and that a failure
24 to consider the Petitioner's claims for Relief on
25 the merits will be a fundamental Miscarriage
26 of Justice. Pellegrini v. State, 117 Nev. 860, 34 P.3d
27 519 (2001); Coleman v. Thompson, 501 U.S. 722, 111 S.Ct.
28 115 L.Ed.2d 640 (1991).

1 The Prosecuting Attorney Ms. Lisa Luzzich committed
2 A "BRADY violation" / "NAPUE" ERROR, at the Petitioner's
3 Trial. By withholding the fact that on the day of
4 August 12, 2000, while petitioner was in his home, the
5 Chicago Police, on behalf of the Las Vegas Police illegally
6 arrested him without an warrant for his arrest.
7 And The Prosecutor lied ~~about~~ about their being an
8 arrest warrant for the Petitioner at Trial, also
9 the state's witness MR. Edward Cunningham
10 gave false / Perjured testimony that on the day
11 of August 12, 2000 he was aware there was a
12 warrant for Petitioner's arrest. (see ^{Page - 133} Exhibit - C) ~~see~~
13 By introducing at the Petitioner's Trial, Petitioner's
14 coerced confession, that also obtain through an
15 tactic of threats of Physical Harm toward
16 the Petitioner. The coerced confession was the
17 "fruit of the Poisonous Tree", and inadmissible at
18 ~~the~~ Trial. see Wong sun V. United States, 371
19 U.S. 471 (1962); see also Mapp V. Ohio, 367
20 U.S. 643 (1961). Attorney ADAM L. GILL Mailed
21 to Petitioner all discovery pertaining to the Arrest.
22 (see Exhibit - A) Petitioner went through it and
23 notice it never was an arrest warrant on August
24 12, 2000. The Chicago Police Dept. did a General
25 Progress Report, and it never state anything of an Arrest
26 warrant, only Las Vegas faxed that the Petitioner was
27 an suspect in six incidents. In the Progress Report
28 was nothing about an arrest warrant for the Petitioner.

1 (see Exhibit-B). The warrantless arrest of Petitioner
2 while in his home was illegal. The holding in Payton
3 was based on the increased protection individuals enjoy
4 in their homes under the Fourth Amendment. The court
5 noted that an entry to arrest and an entry to search
6 for and to seize property implicate the same interest
7 in preserving the privacy and the sanctity of the
8 home. See Payton v. N.Y., 445 U.S. 573, 590 (1980). This
9 protection also extends to an overnight guest in a
10 host's home. See Minn. v. Olson, 495 U.S. 91, 96-98 (1990).
11 Prosecutor MS. Lisa Luzzich lied and withheld
12 facts, there was not an arrest warrant for
13 the petitioner, and also allowed a state's witness
14 to commit perjury and not step forward to
15 correct Detective MR. Edward Cunningham
16 false testimony. BRADY v. Maryland, 373 U.S. 83,
17 87 (1963); And also NAPUE v. ILLINOIS, 360
18 U.S. 264, 2 LEd. 2d 1217, 79 S.Ct. 1173 (1959); Also
19 Giglio v. U.S., 405 U.S. 150, 152-55 (1972).

20
21 Due to the "Brady/Napue" violation the petitioner is
22 showing good cause and actual prejudice to excuse
23 the procedural bar, and failure to consider the
24 claims will result in a fundamental miscarriage
25 of justice. Petitioner had a right to impeach
26 the state's witness MR. Edward Cunningham, false
27 testimony at trial. But the prosecutor withheld the
28 fact that there was not an arrest warrant.

1 The Purpose for the suppressing the illegally Arrest
2 without an warrant, was so ~~that~~ that the petitioner
3 could not impeach the coerced confession, and
4 also state's witness MR. Edward Cunningham.
5 The coerced confession was the "Fruit of the
6 Poisonous Tree," and the court clarified the "Fruit
7 of the Poisonous Tree" Doctrine, which excludes
8 evidence gathered as a result of an illegal
9 arrest or search, and Refused to allow evidence
10 of statements made during an illegal arrest
11 at Trial. see ^{Id.} Wong Sun V. United States, 371 U.S.
12 471 (1962). Similarly, Mapp Court established
13 that illegally obtained evidence cannot be
14 produced at Trial in a state court to
15 substantiate criminal charges against a
16 defendant, and that the exclusionary Rule had
17 to be applied universally to all criminal
18 proceeding. see Mapp V. Ohio, 367 U.S. 643 (1961).

19
20 Due to the prosecuting Attorney committing
21 the "Brady" and also "Napue". Petitioner is
22 showing cause, Prejudice, and Fundamental
23 miscarriage of Justice, to the Procedural
24 Bar. Coleman V. Thompson, 301 U.S. 722, 111 S.Ct.
25 115 L. Ed. 2d 640 (1991); Pellegrini V. State, 117
26 Nev. 860, 34 P.3d 519 (2001). When ADAM L. Gill, Esq.
27 mailed the discover on August 10, 2021, it was Petitioner first
28 time noticing that it never was an warrant. (See Exhibit-A, and B)

Points and Authorities

1 B. GROUNDS and SUPPORTING FACTS

2 GROUND TWO: The PROSECUTOR'S duty in a criminal
3 Prosecution is to seek justice. Therefore, the ~~Prosecutor~~
4 Prosecutor should "Prosecute with earnestness and
5 Vigor" but may not use "improper methods calculated
6 to produce a wrongful conviction. Berger v. United
7 States, 295 U.S. 78, 55 S.Ct. 629, 79 L.Ed. 1314 (1935).

8 The Petitioner's coerced confession at trial was illegal.

9 Supporting Facts: the Prosecuting Attorney
10 Ms. Lisa Luzach committed A "BRADY violation",
11 and also A "Napue violation", at the Petitioner's
12 TRIAL by suppressing the evidence that
13 on the day of August 12, 2000 Justin D. Porter,
14 Petitioner was illegal arrested without an
15 arrest warrant, while Petitioner was in his
16 home. ~~see~~ An Arrest warrant protects an individual
17 from an unreasonable seizure and may only be
18 issued upon a showing of Probable Cause to
19 believe a suspect is committing or has committed
20 an offense. The fourth Amendment Purposes, an
21 arrest warrant founded on Probable Cause implicitly
22 carries with it the limited authority to enter
23 a dwelling in which the suspect lives when
24 there is reason to believe the suspect is within.
25 For the reason "searches and seizures" inside a
26 home without a warrant are Presumptively
27 unreasonable. See Payton v. New York, 445 U.S.
28 573, (1980).

1 The Purpose for the Suppressing the illegally arrest
2 without an warrant, was so that the petitioner
3 could not impeach the coerced confession, that
4 was the "fruit of the Poisonous tree". The Courts
5 Clarified the fruit of the Poisonous tree Doctrine,
6 which excludes evidence gathered as a result of
7 an illegal arrest or search, and Refused to allow
8 evidence of statements made during an illegal
9 arrest at trial. See *Wong Sun v. United States*,
10 371 U.S. 471 (1962). Similarly, in *Mapp* the court
11 established that illegally obtained evidence
12 cannot be produced at trial in a state court to
13 substantiate criminal charges against a
14 defendant, and that the exclusionary Rule had
15 to be applied universally to all criminal
16 proceeding. See *Mapp v. Ohio*, 367 U.S. 643 (1961).
17 A BRADY violation occurs when (1) evidence is
18 favorable to the accused because it is exculpatory
19 OR impeaching; (2) evidence was suppressed by the
20 prosecution, either willfully or inadvertently; and
21 (3) Prejudice ensued. Failure to turn over such
22 evidence violates DUE PROCESS. *BRADY v. Maryland*,
23 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963).
24 The Prosecutor's duty to disclose material
25 evidence favorable to the defense is applicable
26 even though there has been no Request by the
27 accused, and encompassse impeachment
28 evidence as well as exculpatory evidence.

1 under Brady v. Maryland, evidence is material
2 if there is a reasonable probability that, had
3 the evidence been disclosed to the defense,
4 the result of the proceeding would have been
5 different. A reasonable probability is a ~~substantial~~
6 probability sufficient to undermine confidence
7 in the outcome. See Browning v. Baker, 871
8 F.3d 942, (9th Cir. Nev., 2017); Brady v. Maryland, 373
9 U.S. 83, 87 (1963). Petitioner's Confession was impeaching evidence.

10 ALSO the prosecuting Attorney MS. Lisa Luzach
11 allow state's witness MR. Edward Cunningham to
12 committed perjury by testifying falsely, under
13 oath, at the Petitioner's Trial that the Chicago
14 Police had an arrest warrant from Las Vegas for
15 the arrest of Petitioner, on the day of August 12, 2000.
16 The Chicago Police Department General Progress
17 Report outlines the fact Las Vegas Police Dept.
18 only had faxed six incidents that Petitioner was
19 ~~DA~~ A suspect, not an arrest warrant as the
20 Prosecutor and state's witness lied about.
21 (See Exhibit-B the General Progress Report);
22 (Also see Exhibit-C JURY TRIAL-DAY 3, Wednesday,
23 MAY 6, 2009, Page 133 lines 4 Through 22).
24 MS. Lisa Luzach knew that was a lie and
25 allow state's witness MR. Edward Cunningham to
26 perjure himself. Prosecuting Attorney MS. Lisa
27 Luzach did nothing to correct MR. Edward
28 Cunningham perjured testimony.

1 MS. Lisa Luzaich did nothing to correct the
2 perjury testimony by state's witness, because
3 she did not want the petitioner to impeach the
4 state's witness MR. Edward Cunningham, and the
5 coerced confession that was the "fruit of
6 the poisonous tree." If false testimony surfaces
7 during a trial and the government has
8 knowledge of it, ... the government has a duty
9 to step forward and correct it. **NAPUE V.**
10 **ILLINOIS**, 360 U.S. 264, 2 L.Ed.2d 1217, 79 S.Ct. 1173
11 (1959); **Giglio V. U.S.**, 405 U.S. 150, 152-55 (1972).

12 It is a fundamental principle of the
13 American criminal justice system that "deliberate
14 deception of a court and jurors by the presentation
15 of known false evidence is incompatible with the
16 rudimentary demands justice." **Giglio V. United States**,
17 405 U.S. 150, 153, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972).
18 (internal quotation marks omitted).

19 When the government obtains a criminal
20 conviction and deprives an individual of his
21 life or liberty on the basis of evidence that
22 it knows to be false, it subverts its fundamental
23 obligation, embodied in the **DUE PROCESS CLAUSES**
24 of the **FIFTH** and **FOURTEENTH** Amendments, to
25 provide every criminal defendant with a fair
26 and impartial trial. The supreme court has
27 accordingly held that the government may
28 not knowingly suppress evidence that is

1 exculpatory or capable of impeaching government
2 witnesses. see *BANKS V. DRETKE*, 540 U.S. 668, 691,
3 124 S.Ct. 1256, 157 L.Ed.2d 1166 (2004). Similarly, it
4 has held that the government is obligated to
5 correct any evidence introduced at trial that
6 it knows to be false, regardless of whether or
7 not the evidence was solicited by it. see *NAPUE*
8 *V. ILLINOIS*, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d
9 1217 (1952). These duties provide fundamental
10 protections that are vital to the successful
11 operation *1182* of an adversarial system of
12 criminal justice; they embody the state's obligation
13 not to obtain the accused's conviction at all
14 costs, but rather to do justice by furthering
15 the truth-finding function of the court and
16 jury. see *Phillips V. ORNOSKI*, 673 F.3d 1168 (CA 9
17 2012). Petitioner's coerced confession at trial was impeaching.

18 Conclusion of this fact

19 wherefore, the reason set forth herein, and
20 respectfully request that this court grant ~~petitioner's~~
21 Petitioner's Habeas Corpus. Due to the conduct
22 of the Prosecuting Attorney ms-Lisa Luzaich
23 violating the Petitioner's Due Process rights to
24 a fair trial justifies reversing the conviction,
25 and OR order a Evidentiary Hearing.

26 Points and Authorities

27 C. GROUNDS and SUPPORTING FACTS:

28

1 GROUND THREE: The Sixth Amendment guarantees
2 the right to effective assistance of counsel in
3 criminal prosecutions.

4
5 SUPPORTING FACTS: The Petitioner's Trial
6 Counsel, Joseph Aboud and Curtis Brown was
7 Ineffective Assistance of Counsel. Counsel
8 failed to investigate the fact that on the day
9 of August 12, 2000 Petitioner was illegally Arrested
10 without an warrant, for his arrest, while in his
11 home. Strickland V. Washington, 466 U.S. 668, 688
12 (1984). Because of counsel failure to investigate
13 the illegally arrest of Petitioner while in his ~~home~~
14 home without an warrant for his arrest. A illegal
15 Coerced Confession ~~at~~ that was inadmissible,
16 and that was the "fruit of the Poisonous Tree"
17 was allowed in the Petitioner's trial. See
18 Wong Sun V. United States, 371 U.S. 471 (1962).
19 Evidence obtained by search and seizure in
20 violation of the fourth Amendment is inadmissible
21 in state criminal trials. Mapp V. Ohio, 367 U.S.
22 643 (1961). Counsel ineffectiveness Violated
23 Petitioner's right to effective assistance of
24 Counsel. see Strickland V. Washington, 466 U.S.
25 668, 688 (1984). The arrest of Petitioner while in his
26 home without an warrest was illegal. See Payton
27 V. New York, 445 U.S. 573, (1980).

28

1
2 CONCLUSION
3

4 Wherefore the Reason set forth herein, this
5 WRIT OF HABEAS CORPUS Postconviction, and Respectfully
6 Request that this Court Grant this writ of habeas
7 corpus, and Reverse the Conviction, and OR order
8 A Evidentiary Hearing.
9
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23 DATED This day of November, 2021.
24

25 By: Justin D. Porter
26 Justin D. Porter #1042449
27 Petitioner
28

EXHIBIT #A

~~EXHIBIT~~ EXHIBIT #A

Aisen, Gill & Associates, LLP

723 S. Third Street, Las Vegas, NV 89101, Phone: 702.750.1590 Fax: 702.548.6884
Michael N. Aisen, Esq. Adam L. Gill, Esq.

Justin Porter, ID 1042449
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070-0650

Dear Mr. Porter,

On August 10, 2021 our office mailed you all discovery pertaining to your arrest in Chicago.

Regards,
Aisen, Gill & Associates
723 S. 3rd Street
Las Vegas, Nevada 89101
By Phone (702) 750-1590
By Fax (702) 548-6884

EXHIBIT #B

Exhibit #B

GENERAL PROGRESS REPORT
DETECTIVE DIVISION

Las Vegas Warrant

12 Aug 00 14 Aug 00 3rd

5431

INTERVIEWED: PORTER, Justin M/B/17 YOA Date of birth: 13 Dec 82
1251 S. KILDARE 2nd flr. 5-10, 170 lbs., med. compl. SS#606 75 8324

Date of Arrest: 12 Aug 00, 0045 hrs., Location: 1251 S. kildare 2nd flr.

R/D after locating Justin Porter at 1251 S. Kildare, interviewed same at Area Four Violent Crimes. R/D advised Porter of his rights and after stating he understood those rights, Porter agreed to speak to R/D. R/D was in the company of Det. Cunningham#21159 when this interview was conducted. Las VEGAS POLICE DEPT. had faxed six incidents that Justin Porter was the suspected offender. These six incidents were the subject of the interview.

R/D informed Porter of the date of the incident(7 Jun 00) and Porter stated he did not remember the incident by the date. R/D then informed Porter of one item that was taken and Porter stated the following.

The door of the apartment was ajar and that he only pushed it open with minimum force.

The lady inside the apartment was afraid and told Justin that she would do anything if he promised not to harm her. Porter states he became sexually excited at this statement and felt that the woman was attracted to him. Porter states that he told her to take her clothes off and after she complied, he then had vaginal sex with her.

Porter denied entering the apartment with a knife but may have picked a knife up from the kitchen. Porter states that he then left the apartment with a TV and a CD player. Porter placed these items in a baby stroller and pushed the items down the street. Porter states that he left the stroller and items next to a building for a few minutes. Porter says when he returned the stroller and TV and CD player were gone. Porter states that he has no more knowledge of this incident.

KKato 20200 LPR

762/6222 cc 1231-

GENERAL PROGRESS REPORT
DETECTIVE DIVISION CHICAGO POLICE

2

12 Aug 00 14 Aug 00

Las Vegas Warrant

5431

Interview of Justin Porter cont'd:

The next incident happened on 16 May 00, Porter states he remembers the incident before the 7 Jun 00 incident. Porter states that he believed that this apartment door was partially open and the woman inside the apartment had similiar reaction to the 7 Jun 00 lady. Porter states that he asks the woman to take her clothes off and after she complies, he had vaginal sex with her one time. Porter states that afterwards he took five dollars off of her dresser. Porter denies having a meat cleaver and describes his weapon as a small steak knife that he obtained from the kitchen. Porter could add nothing more to this incident.

R/D gave Porter the date of 4 Apr 00 and Porter did not remeber the date. R/D then supplied Porter with the age of the victim and Porter stated that the lady reminded him of his mother and that he felt bad.

~~Porter stated that he pushed on her apartment door and that the door was ajar. Porter stated that he believed broke the chain that was secured from the inside. Porter relates that the woman was very nice and when they sat down on the bed and the lady said she would do anything he wanted, Porter pulled out his penis. The lady performed oral sex and Porter state that he did not like it.~~

Porter states that he remembered that this lady lived right by the Show Boat and on the 2nd fl Porter relates that he obtained a knife from the kitchen and that the lady gave him fifty dollars. Porter also states that she took off her ring and gave it to him. Porter states that he did not like the ring and threw it away as soon as he got outside the apartment. Porter states that when she gave him the fifty dollars, the lady gave him her car keys. Porter asked the lady what kind of a car and she describes a white car. Porter locates the car and drives the car approx. a half a block away. Porter states he realized what he had just done and becomes afraid. Porter states that he pulled the car over and parked same. Porter could not add anything more to this incident.

Kato 70500 [Signature] 462 [Signature]

12 Aug 00 14 Aug 00 3rd

Las Vegas Warrant

5231

Interview of Justin Porter cont'd:

(25 Mar 00 incident)

The next incident Porter remembered the incident when R/D described the woman to be of Spanish descent. Porter states that her apartment door was open and that he believed that this lady was attracted to him. Porter states that they had vaginal sex one time. PORTER denies taking his persons car and that he obtained a knife from the kitchen. Porter could not add anything more.

The 7 Mar 00 incident was recalled by Porter when R/D described the fire. Porter states that he had vaginal sex one time with the lady and he believed that it was consensual sex. Porter states that he had used her phone before and was allowed entry into her apartment. Porter relates that when he wanted to have sex a second time the lady acted like she no longer was attracted to him. Porter became angry and obtained a knife from the kitchen. Porter states that he poked her with the knife he believed two times. Porter relates that he observed a little blood but did not think she was cut bad. Porter states that the lady became sick and ran to the bathroom. Porter states he panics and lights a match and burns a blanket that was on the bed in the bedroom. Porter relates he then throws the match on the rug. Porter then leaves the apartment. Porter denies choking the victim and denies ever possessing any scirrors. Porter also denies taking any thing from the apartment. Porter could not add anything further.

The 1 Feb 00 incident, Porter could not recall. R/D along with Det. Cunningham, terminated the interview.

K. Kato 20200 Sgt R. G. 962 H. H. 25.0

EXHIBIT # C

Exhibit #C

COPY

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

COPY

THE STATE OF NEVADA

Plaintiff,

vs.

JUSTIN PORTER,

Defendant.

CASE NO. C-174954

DEPT. NO. 6

Transcript of
Proceedings

CLERK OF COURT

JAN 27 2010

FILED

BEFORE THE HONORABLE ELISSA CADISH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 3

WEDNESDAY, MAY 6, 2009

APPEARANCES:

FOR THE PLAINTIFF:

LISA LUZAICH, ESQ.
Chief Deputy District Attorney

JOSH TOMSHECK, ESQ.
Deputy District Attorney

FOR THE DEFENDANT:

CURTIS BROWN, ESQ.
JOSEPH ABOOD, ESQ.
Deputy Public Defenders

ALSO PRESENT:

RICARDO PICO
Spanish Interpreter

COURT RECORDER:

JESSICA RAMIREZ
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Littleton, CO 80120
(303) 915-1677

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 indoor swap meet in the first part of 2000?

2 A Yes, sir.

3 Q After you got those outfits, did you wear them
4 together more than once?

5 A Well, we didn't, like, wear the whole outfit at
6 the same time. But we did wear it again, numerous of times,
7 yes.

8 Q Okay. The shoes that you just described being the
9 Saucony brand shoes, did you see the defendant wearing them
10 after Valentine's Day in the year 2000? After they were
11 purchased?

12 A Yes.

13 MR. TOMSHECK: I'll pass the witness, Judge.

14 THE COURT: Cross.

15 MR. ABOOD: No questions, Your Honor.

16 THE COURT: Thank you, ma'am, you're all done.

17 THE WITNESS: Oh, thank you.

18 MS. LUZAICH: Ed Cunningham.

19 (Pause in proceedings)

20 THE MARSHAL: Okay, sir, step up into the box,
21 remain standing, raise your right hand.

22 EDWARD CUNNINGHAM, PLAINTIFF'S WITNESS, SWORN

23 THE CLERK: Thank you. Please be seated.

24 THE WITNESS: Thank you.

25 THE CLERK: Please state your complete name,

1 spelling both your first and last name for the record, please.

2 THE WITNESS: Detective Edward Cunningham. E-d-
3 w-a-r-d, C-u-n-n-i-n-g-h-a-m.

4 MS. LUZAICH: May I?

5 THE COURT: Yes.

6 DIRECT EXAMINATION

7 BY MS. LUZAICH:

8 Q Sir, you're not from Las Vegas, are you?

9 A No, ma'am.

10 Q And where you from?

11 A Chicago, Illinois.

12 Q What do you do in Chicago?

13 A I'm a detective.

14 Q Okay.

15 A Police detective, Chicago Police Department.

16 Q How long have you been with the Chicago Police
17 Department?

18 A Almost 24 years.

19 Q How long you been a detective?

20 A Almost 13.

21 Q And sometimes as a detective with the Chicago
22 Police Department, are you called upon to aid other agencies
23 from other jurisdictions with things that may occur in your
24 jurisdiction?

25 A Yes.

1 Q I'm going to take you back to August of 2000.

2 Were you working as a police officer in August of 2000?

3 A Yes.

4 Q And were you and some other individuals you work

5 with asked to help the Las Vegas Metropolitan Police

6 Department in August of 2000?

7 A Yes.

8 Q Were you -- and when I say "you", maybe not you
9 personally, but you or your commander or supervising officer,
10 were you guys contacted by the Las Vegas Metropolitan Police
11 Department about a suspect of theirs that may be located in
12 your jurisdiction?

13 A Yes.

14 Q And did they give you a name and an address where
15 this person may be located?

16 A Yes.

17 Q What was the name of the person?

18 A Justin Porter.

19 Q And do you remember the address that you were
20 given that he may be located at?

21 A 1251 South Kildare (phonetic), I believe it was.

22 Q That's in Chicago, Illinois?

23 A Yes.

24 Q And did you, in fact, go to that address?

25 A Yes.

1 Q What time of day was it that you went there?

2 A It was about 12:45 in the morning.

3 Q Do you remember what day it was?

4 A It was August 12th was the date when we actually
5 went there.

6 Q Okay. So like 45 minutes into the 12th?

7 A Correct.

8 Q Okay. And when you saw "we went there", how many
9 of you went there?

10 A Oh, there was several detectives. I'm not sure
11 all of who was here, but I know a few of the detectives that
12 were there, though.

13 Q Okay. About how many, how's that?

14 A Probably six to eight.

15 Q When you went there, did you actually have an
16 arrest warrant for Justin Porter?

17 A I was aware there was a warrant for his arrest,
18 that's correct.

19 Q Was one sent to your agency?

20 A Yes.

21 Q And was it a warrant for violent offenses?

22 A Correct.

23 Q And were you aware at the time that you went there
24 that a gun was involved with the violent offenses?

25 A Yes.

1 Q When you went to that address, how were you guys
2 dressed? Like today, you're in court, you're wearing a
3 jacket, a tie, pants. How were you dressed when you went to
4 that home on Kildare?

5 A Similarly, without the jacket, though. A shirt
6 and a tie and dress pants.

7 Q What were you wearing --

8 A And a vest.

9 Q -- items that were readily identifiable as --

10 A Yeah, a vest and a badge and gun, that kind of
11 thing.

12 Q Okay. And when you -- the building that you went
13 to, is it a house or an apartment?

14 A Apartment building.

15 Q And you went to a specific apartment that was
16 given to you by the Las Vegas Metropolitan Police Department?

17 A Yes, the second floor apartment.

18 Q So did you guys knock on the door?

19 A Yes.

20 Q Was the door answered?

21 A Yes.

22 Q Tell us what happened when the door was answered?

23 A We -- when the door was knocked on, they asked who
24 it was. We identified it was the police, Chicago police. A
25 woman answered the door. She was asked is Justin Porter here.

1 She didn't respond verbally, but she stepped back away from
2 the door and kind of nodding with her head, like this, and
3 with her eyes, you know, to indicate that he -- where he was
4 at.

5 Q Like, nodded with her head and her eyes in a
6 particular direction?

7 A Correct.

8 Q But she did not respond verbally?

9 A No, ma'am.

10 Q So when she did that with her head and her eyes,
11 what did you guys do?

12 A We entered the apartment and the couch was moved
13 away from the wall by one of the detectives and Mr. Porter was
14 hiding behind the couch.

15 Q And as you said that, you kind pointed in the
16 front. Do you see the person that was hiding behind the couch
17 here in court today?

18 A Yes. The young man in the yellow shirt in the
19 middle of the defense table there.

20 MS. LUZAICH: Record reflect the identification
21 of the defendant.

22 THE COURT: Yes.

23 BY MS. LUZAICH:

24 Q When you found the defendant hiding behind the
25 couch, did somebody get him out from behind the couch?

1 A Yes.

2 Q What happened then?

3 A Well, he was directed, he put his hands behind his
4 back, he was handcuffed and he was transported into our
5 office.

6 Q When you guys knocked on the door and the door was
7 opened, when you identified yourselves as police, was that, at
8 least, fairly loud?

9 A Yes.

10 Q You didn't whisper or anything?

11 A No, ma'am.

12 Q Okay. So he was taken back to the police station.
13 And was he put into a room?

14 A Yes, ma'am.

15 Q Was the Las Vegas Police Department notified that
16 he was in your custody?

17 A Yes, ma'am.

18 Q And did the Las Vegas police, Metropolitan Police
19 Department detectives come to Chicago?

20 A Yes, ma'am.

21 Q Do you know about how long it was that he was at
22 your station until the police detectives from Vegas got there?

23 A He got into our station probably right around 1:00
24 in the morning. I think they arrived somewhere probably 5:00
25 that afternoon or thereabouts. I'm not sure of the exact

1 time.

2 Q Okay. And while he was at your police station,
3 was he in a room, like an interview type room?

4 A Yeah, we call it an interview room, yes.

5 Q Was he handcuffed while he was in there?

6 A No, ma'am.

7 Q Thank you.

8 MS. LUZAICH: I would pass the witness.

9 THE COURT: Cross.

10 CROSS-EXAMINATION

11 BY MR. ABOOD:

12 Q Welcome to Las Vegas, sir.

13 A Thank you.

14 Q I have a couple quick questions for you. This
15 apartment that you responded to, was it your understanding
16 that it was Justin's father's apartment?

17 A It was -- from what I recall, it was some
18 relative's apartment, yes. But I --

19 Q Okay. And the woman -- I'm sorry.

20 A But I don't recall what the relationship was, no.

21 Q Okay. So were you aware that the woman who
22 answered the door was his stepmother? Is that something that
23 you were aware of at the time?

24 A I assumed that that's who it was, but I don't
25 recall having a conversation asking her who she was exactly,

1 no.

2 Q Okay. Thank you very much.

3 MR. ABOOD: Thank you, Your Honor.

4 THE COURT: Anything further?

5 MS. LUZAICH: No, nothing further.

6 THE COURT: Okay, sir, thank you. You're all
7 done.

8 THE WITNESS: Thank you, Judge.

9 MR. TOMSHECK: State would call Maria Thomas,
10 also known as Maria Lopez.

11 (Pause in proceedings)

12 THE MARSHAL: Okay, step up into the box and
13 raise your right hand and remain standing just one second.

14 MARIA LOPEZ, PLAINTIFF'S WITNESS, SWORN

15 THE CLERK: Thank you. Please be seated. Please
16 state your complete name, spelling both your first and last
17 name for the record.

18 THE WITNESS: Maria Lopez, M-a-r-i-a, L-o-p-e-z.

19 THE CLERK: Thank you.

20 MR. TOMSHECK: May I approach the clerk before I
21 start?

22 THE COURT: Yes.

23 BY MR. TOMSHECK:

24 Q Can you tell us how you're presently employed?

25 A Yes. I'm, a crime scene investigator with

CERTIFICATE OF SERVICE BY MAIL

I, Justin D. Porter, hereby certify that on this
day of November, 2021, I mailed a true
and correct copy of the foregoing, "WRIT OF HABEAS
CORPUS (Postconviction)."

by depositing it in the H.D.S.P. Mail Box
~~Indian Springs Law Library~~, First-Class
Postage, fully prepaid, addressed as follows:

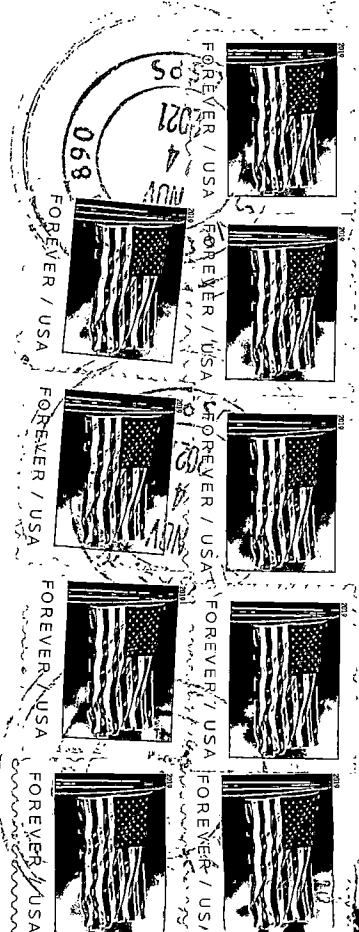
STEVEN D. GRIERSON, CLERK
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS, NV 89155-1160

Dated this 3 day of November, 2021.

Justin D. Porter
~~Indian Springs Conditional Center~~
~~Indian Springs, NV~~
Justin D. Porter #1042447
P.O. BOX 650 (HDSP)
Indian Springs, NV 89070

Justin D. Porter #1042444
 P.O. Box 650 (HDSB)
 Indian Springs, NV 89070

(New Mail)



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

HIGH SCHOOL
 T. E. PRISON

1160
 12607

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISCHLER
Chief Deputy District Attorney
Nevada Bar #013730
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JUSTIN D. PORTER,
#1682627

Defendant.

CASE NO: A-19-798035-W

DEPT NO: XVII

**ORDER DENYING DEFENDANT'S MOTION FOR APPOINTMENT OF
COUNSEL**

DATE OF HEARING: 10/14/2021
TIME OF HEARING: 3:00 P.M.

THIS MATTER having come on for hearing before the above-entitled Court on the 14th day of October, 2021, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through KAREN MISCHLER, Chief Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

///

///

///

///

///

1 IT IS HEREBY ORDERED that the Defendant's Motion, shall be, and it is DENIED.
2 Such Order should set forth a synopsis of the supporting reasons proffered to the Court in
3 briefing and be approved as to form and content by all parties.

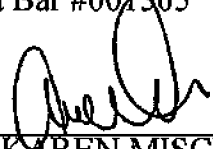
4 DATED this _____ day of December, 2021.

Dated this 14th day of December, 2021



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

5EB F3E ED37 EBD5
Michael Villani
District Court Judge

10 BY  #10539 for
11 KAREN MISCHLER
12 Chief Deputy District Attorney
13 Nevada Bar #013730
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28 mlb/SVU

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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 Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/14/2021

15 Elissa Luzaich

luzaici@co.clark.nv.us

Heather Shinn
CLERK OF THE COURT

Justin D. Porter #1042449
P.O. Box 650 (HDSP)

1 Indian Springs, NV 89070

2

3

DISTRICT COURT

4

CLARK COUNTY, NEVADA

5

6 JUSTIN D. PORTER,
Petitioner,

CASE NO. A-19-798035-W

7

Dept. NO.

8

VS.

9

Warden - Calvin Johnson,

10

Respondent(s).

11

12

13

MOTION FOR THE APPOINTMENT OF COUNSEL

14

15

COMES NOW, the Petitioner, Justin Porter, by and

16

through PRO SE, and hereby moves this Honorable Court

17

to Appointment Counsel for Petitioner for writ of

18

Habeas Corpus Postconviction.

19

This motion is made and based upon the Points and Authorities.

20

21

DATED this 7 of December, 2021.

22

Justin Porter

23

Justin D. Porter #1042449

24

P.O. Box 650 (HDSP)

25

Indian Springs, NV 89070

26

Petitioner in pro se

27

28

RECEIVED
DEC 13 2021
CLERK OF THE COURT

POINTS and AUTHORITIES

1

2 To support the Petitioner's need for the appointment of
3 counsel in this action, he states the following:

4 1). The merits of claims for relief in this action are of
5 constitutional dimension, and Petitioner is likely to succeed
6 in this case. 2). Petitioner is incarcerated at the to

7 undertake the ability, as an attorney would or could, to
8 investigate crucial facts involved within the Petitioner's

9 for writ of Habeas Corpus. 3). The issues presented in the
10 petition involves a complexity that Petitioner is unable

11 to argue effectively. 4). Petitioner does not have the current
12 legal knowledge and abilities, as an attorney would have, to

13 properly present the case to this court coupled with the

14 fact that appointed counsel would be of service to the court,

15 Petitioner, and the Respondents as well, by sharpening the

16 issues in this case, shaping the examination of potential

17 witnesses and ultimately shortening the ~~prosecution~~

18 ~~prosecution~~ time of the prosecution of this case. Petitioner

19 does not have the funds to obtain counsel. 5). Petitioner

20 is requesting for the appointment of Attorney,

21 BETSY ALLEN, Esq, Nevada Bar NO. 6878. Attorney

22 Betsy Allen has some legal knowledge of the

23 case at hand. Also the Prison is not letting

24 me or any inmates go to the Prison Law Library,

25 due to the Pandemic. Betsy Allen, Nevada Bar NO. 6878

26 should be appointed because she has knowledge of

27 the case. ~~the~~

28

1 Another reason for the appointment of Attorney
2 Betsy Allen, ESQ. IS the ends of justice will
3 be served in this case by the appointment of
4 professional and competent counsel to represent
5 petitioner, in and for the writ of Habeas
6 corpus Post Conviction's N.R.S. 34-750.

7
8 Conclusion
9

10 Based upon the facts and law presented herein,
11 Petitioner would respectfully request that this
12 court to weigh the factors involved within this
13 case, and appoint Betsy Allen as counsel for
14 Petitioner to assist this court in the just
15 determination of this action.

16
17
18
19 Dated this 7 day of December, 2021.
20
21
22
23

24 *Justin Robble*
25 Justin D. Robble #1042419
26 P.O. Box 650 (HOSP)
27 Indian Springs, NV 89070
28 Petitioner, Pro Se

Justin D. Porter #1042444
P.O. Box 650 CHDSB
Indian Springs, NV 89070



Legal mail

6310135300 0075



STEVEN D. GRIERSON, Clerk of the Court
206 Lewis Avenue, 3RD Floor
Las Vegas, NV 89135-1160

NOV 12 2021

GRIERSON

DEC 07 2021

UNIT 5 C



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

February 16, 2022

Attorney: Adam L Gill
723 S 3rd ST
Las Vegas NV 89101

A-19-798035-W
Case Number: 01C174954
Department: Department 6

Defendant: Justin D Porter

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: **Nrs 34.740 Expeditious Judicial Examination**

Rule 3.70. Papers which May Not be Filed

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,
DC Criminal Desk # 27
Deputy Clerk of the Court

Justin D. PORTER #1042449
P.O. BOX 650 (HOSP)
Indian Springs, NV 89070

DISTRICT COURT
CLARK COUNTY, NEVADA

JUSTIN D. PORTER,
Petitioner,

CASE NO. A-19-798035-W

Dept. NO.

VS.

warden - Calvin Johnson,
Respondent(s).

NRS. 34.740. EXPEDITIOUS JUDICIAL EXAMINATION

COMES NOW, the Petitioner, Justin D. Porter, by and
through PRO SE, and hereby moves the Honorable Court
to examine Petitioner's writ of Habeas Corpus
Postconviction expeditiously. Pursuant to NRS. 34.740.
This Petition is made and based upon the Points and
Authorities.

DATED this 23 day of JANUARY, 2022.

RECEIVED

JAN 27 2022

CLERK OF THE COURT

Justin Porter

Justin D. Porter #1042449
P.O. BOX 650 (HOSP)

Indian Springs, NV 89070

PETITIONER - IN PRO SE

Point of Authorities

NRS 34.740. Petition: EXPEDITIOUS JUDICIAL EXAMINATION.

The original petition must be presented promptly to a district judge or a justice of the supreme court by the clerk of the court. The petition must be examined expeditiously by the judge or justice to whom it is assigned.

A) On the day of November 23, 2021, Petitioner Electronically filed A writ of Habeas Corpus Postconviction. It's been two months now and the petitioner has not had a district court judge to expeditiously examine his writ of Habeas Corpus Postconviction. The petitioner want his writ of Habeas Corpus Postconviction to be examine by a district judge expeditiously.

CONCLUSION

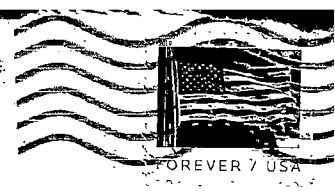
That the Petitioner's writ of Habeas Corpus Postconviction be EXPEDITIOUSLY EXAMINE by the judge it was assigned to.

DATED this 23 day of January, 2022

Petitioner: Justin Roberts #1042149
P.O. Box 650 (HDSB)
Indian Springs, NV 89070

Justin D. Porter #1042449
P.O. BOX 650 (HDS) (HDS)
Indian Springs, NV 89040

LAS VEGAS NV 890
24 JAN 2022 PM 5 L

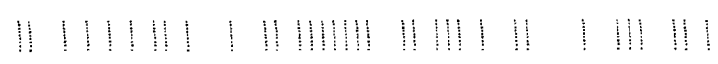
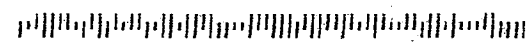


RECEIVED
JAN 27 2022
CLERK OF THE COURT

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

Legal mail

89101-630000



03/01/2022

Justin D. Porter #1042449
P.O. BOX 650 (HOSP)

Stewart S. Lavin

CLERK OF THE COURT

1 Indian Springs, NV 89070

2

3

Eighth Judicial District Court

4

Clark County, Nevada

5

6 Justin D. Porter,
Petitioner,

7

VS.

8

9 Warden-Calvin Johnson,

10

Respondent(s).

11

12 N.R.S. 34.740 Petition: Expedious Judicial Examination

13

14 Comes now, Petitioner, Justin D. Porter in Propria Persona,
15 and files this N.R.S. 34.740 Expeditious Judicial
16 Examination.

17

18 This Expeditious Judicial Examination is based upon
19 the Points and Authorities.

20

21

22

23 Dated this date, February 24, 2022.

24

25

26

27

28

Justin Porter
P.O. BOX 650 (HOSP)
Indian Springs, NV 89070

Points and Authorities

1

2 On the day of November 23, 2021 Petitioner
3 filed A WRIT OF HABEAS CORPUS (Post Conviction),
4 and the Habeas Corpus Post-conviction is to Promptly
5 be examined by the ~~Judge~~ Judge or Justice to
6 Whom it is assigned.

7 Pursuant N.R.S. 34.740:

8

9 The original Petition must be presented Promptly
10 to a district judge or a Justice of the Court by
11 the Clerk of the Court. The Petition must be
12 examined expeditiously by the Judge or Justice to
13 Whom it is assigned.

14

15

16

17

CONCLUSION

18

19 Wherefore the Reason set forth herein, ~~that~~ the
20 writ of Habeas Corpus Post Conviction that was
21 filed on November 23, 2021, is to be Promptly
22 examined by A Judge, Pursuant to NRS. 34.740.

23

24

25

26 Dated this date, February 24, 2022.

27 *Justin Porter*
P.O. BOX 650 (HDSF)

28 Indian Springs, NV 89070

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Expeditions Judicial Examination

~~Notice of Appeal~~

(Title of Document)

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

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

-OR-

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

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

(State specific law)

-or-

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


Signature

2-24-2022
~~2-23-2022~~
Date

Justin D. Porter
Print Name
NRS 34.740.
~~Notary Public~~
Title

CERTIFICATE OF SERVICE BY MAILING

I, Justin D. Porter, hereby certify, pursuant to NRCP 5(b), that on this 24
day of February, 2022, I mailed a true and correct copy of the foregoing, "NRS 34.740
NOTICE TO APPEAR EXPEDITIOUS JUDICIAL EXAMINATION"
by depositing it in the High Desert State Prison, MAIL BOX Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

CLERK OF THE COURT
200 Lewis Avenue, 3rd fl
LAS VEGAS, NV 89155-1160

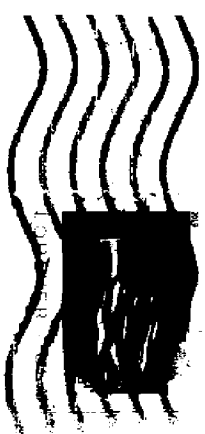
CC:FILE

DATED: this 24 day of February, 2022.

Justin Porter #1042449
Justin Porter #
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018 89070
IN FORMA PAUPERIS

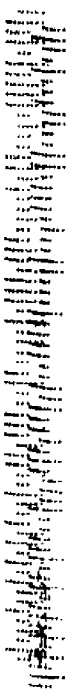
Justin Porter #10429161
P.O. Box 650 (HDSB)
Indian Springs, NV 89070

LAS VEGAS NV 890
25 FEB 2022 PM 3 L



STEVEN D. GRIERSON, CLERK OF COURT
300 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS, NV 89155-1160

99104 88888 8875
99104-88888



10/21/21
10/21/21

Heather J. Linn
CLERK OF THE COURT

1 JUSTIN D. PORTER #1042449

2 In Proper Person

3 P.O. Box 650 H.D.S.P.

4 Indian Springs, Nevada 8901889070

5 8th

DISTRICT COURT

6 CLERK

COUNTY NEVADA

7
8 Justin D. Porter

9 Petitioner

10 -v-

11 Brian Williams-WARDEN

12 Respondent

Case No. A-19-748035-W

Dept.No. 6

Docket _____

13
14 NOTICE OF APPEAL

15 Notice is hereby given that the Justin D. Porter, Petitioner

16 _____, by and through himself in proper person, does now appeal
17 to the Supreme Court of the State of Nevada, the decision of the District

18 Court Motion for Appointment of Attorney

19 That was Denied on October 14, 2021.

20 Said EXHIBIT #A.

21 Dated this date, MARCH 21, 2022

22
23 Respectfully Submitted,

24 Justin Porter

In Proper Person

RECEIVED

25
26
27
28
MAR 29 2022
CLERK OF THE COURT

EXHIBIT #A

**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

HEARD BY: Villani, Michael COURTROOM: Chambers

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

PRINT DATE: 03/02/2022

Page 2 of 6

Minutes Date: October 07, 2021

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

CERTIFICATE OF SERVICE BY MAILING

I, Justin D. Porter, hereby certify, pursuant to NRCP 5(b), that on this 21
day of MARCH, 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 Grierson, Clerk
200 Lewis Ave.
Las Vegas, NV 89155-1160

DATED: this 21 day of MARCH, 2022.

Justin D. Porter
Justin D. Porter #1092449
/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs, Nevada 89016-89070

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-W

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

-OR-

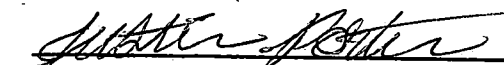
☐ Contains the social security number of a person as required by:

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

(State specific law)

-or-

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


Signature

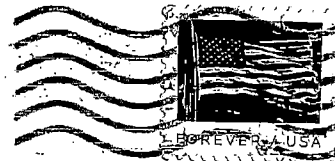
3-21-2022
Date

Print Name

Notice
Title

Justin D. Porter #1042449
P.O. BOX 650 (HDP5)
Indian Springs, NV 89070

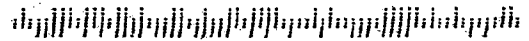
LAS VEGAS NV 890
22 MAR 2022 PM 3 L




Legal mail

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

89101-630000





1 ASTA

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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: Misc. Order

13 11. Previous Appeal: Yes

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

15 12. Child Custody or Visitation: N/A

16 13. Possibility of Settlement: Unknown

17 Dated This 31 day of March 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

04/04/2022

Heather S. Linn

CLERK OF THE COURT

Justin D. Porter #1042449
P.O. BOX 650 (HDSF)

1 Indian Springs, NV 89070

2

3

8th District Court

4

Clark County, Nevada

5

6 Justin D. Porter,

Supreme Court NO. 84377

7

District Court Case NO. A798035

8 VS.

9 Eighth Judicial District,
Respondents,

10

11 State of NEVADA,

12 Party of Real Interest.

13

14

PROOF OF SERVICE.

15

16 Comes, NOW Justin D. Porter, in Pro se, and
 17 serve this Court with, WRIT OF MANDAMUS,
 18 that was filed in the NEVADA SUPREME
 19 COURT, case number 84377.

20

21

22

23 Dated MARCH 21, 2022.

24 Justin D. Porter #1042449

25 P.O. BOX 650

26 ~~Indian~~ Indian Springs, NV 8907027 *Justin Porter*

28

RECEIVED

MAR 29 2022

CLERK OF THE COURT

NO. 84377

Justin D. Porter #1042449
PO. BOX 650 (H DSP)
Indian Springs, NV 89070

FILED

MAR 15 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

NEVADA SUPREME COURT

Justin D. Porter,
Petitioner,

Dist. Ct. No. A-19-798035-u

VS.

Eighth Judicial Dist. Ct.,
Respondent(s)

STATE OF NEVADA,

Party of Real Interest.

WRIT OF MANDAMUS.

This Petition is made by Petitioner, Justin D. Porter, in
proper Person, and moves this Honorable Court to
grant ~~the~~ writ of Mandamus. This writ is Pursuant
to Rule 21., and N.R.S. 34.170. Nevada State
Constitution, ART. 1 § 6. ART. 1 § 8, and 6. Sec. 4 of the Nevada
State Constitution.

This writ of mandamus is based upon the Points and
Authorities, and all Pleadings and Documents on File in
this case, as well as herein.

Dated this 26 day of February 2022.

Justin Porter
Justin D. Porter #1042449
PO. BOX 650 (H DSP)
Indian Springs, NV 89070

RECEIVED

MAR 03 2022

ELIZABETH A. BROWN

22-08305

Legal Argument

1 Petitions ~~to~~ for Extraordinary writs are addressed to the
2 sound discretion of the Supreme Court of Nevada and
3 may issue when there is no plain, speedy, and adequate
4 remedy at law. See, State v. Second Judicial District
5 Court ex. rel. County of Washoe, 11 P.3d 1209, Nev (2000).
6 A writ of mandamus is issued to compel performance of an
7 act which the law especially enjoins as a duty resulting
8 from an office, trust or station. See, Lewis v. Stewart,
9 619 P.2d 1212, 96 Nev. 846 (1980). A writ of mandamus may
10 issue to control arbitrary or capricious exercise
11 of discretion. See Barnes v. Eighth Judicial District
12 Court of the State of Nevada, In and For Clark County, 748 P.2d
13 483, 103 Nev. 679 (1987). This court has also held that the
14 action being sought to be compelled must be one already
15 required by law. See, Mineral County v. State, Department
16 of Conservation and Natural Resources, 20 P.3d 800, Nev
17 (2001). It has also been held that a writ of mandamus
18 is proper when the petitioner raises urgent and
19 important issue(s) of law requiring clarification.
20 See, Falcke v. Douglas County, 3 P.3d 661, Nev. (2000).

Points and Authorities

1 A. On November 23, 2021 Petitioner filed A WRIT OF
2 HABEAS CORPUS Post-conviction. Petitioner has A Right
3 to file A writ of Habeas corpus Post-conviction. Pursuant
4 to NRS. 34.724.

5
6
7 Pursuant to NRS. 34.740; Expeditious Judicial Examination
8 The Petition must be presented promptly to A district
9 judge by the clerk of the court. The Petition must
10 be examined expeditiously by the judge to
11 whom it is assigned.

12
13 On the day of November 23, 2021 Petitioner
14 filed A writ of Habeas corpus Post-conviction
15 and has not received A judicial determination
16 on Petitioner's Post-conviction of Habeas corpus,
17 for the past three months now. Petitioner has
18 A right to An judicial determination, pursuant to
19 NRS. 34.770. Judicial determination of need for
20 evidentiary hearing; Dismissal of Petition or ~~grant~~
21 granting of writ.

22
23 The Petitioner Right to the judicial determination
24 is based on NRS. 34.770. And has that Right to A
25 judicial determination, on Petitioner's Habeas corpus
26 Post-conviction. This writ of Mandamus Pursuant to
27 NRS. 34.170; And RULE 21, NRAP

1 CONCLUSION

2

3 wherefore the Reason set forth herein, this
4 WRIT OF MANDAMUS, and Respectfully Request
5 that this Court Grant this WRIT OF MANDAMUS, and
6 Order the District Court to give A Judicial
7 determination, to Petitioner's writ of Habeas
Corpus post-conviction.

DATED this 26 day of February 2022.

By: Justin Porter
Justin D. Porter #1042174
P.O. Box 650 (HDSP)
Indian Springs, NV 89021

"AFFIDAVIT OF Justin D. Porter."

2

3 STATE OF NEVADA)

4 SS,...

5 COUNTY OF CLARK)

6

7 I, Justin D. Porter, being first duly sworn upon
8 oath, depose and swear, to the following:
9

10 That I, Justin D. Porter, Filed an writ of
11 Habeas Corpus Post-conviction, on the day of
November 23, 2021, and have not received and A
judicial determination, to the day of this written
Affidavit. I am the Affiant herein, of sound
mind, age above 21 yrs. old, therefore qualified to
testify to all matters herein.

Further Affiant sayeth Nought.

Subscribed and sworn to, pursuant to NRS. 171.102
(2); and NRS. 208.165, under Penalty of Perjury.

Dated this 26 day of ~~Feb~~ February, 2022.

By: Justin Porter

Justin D. Porter #1042449
P.O. Box 650 (H DSP)

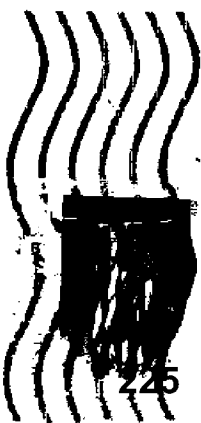
Indian Springs, NV 89070

27

28 Justin D. Porter - Affiant

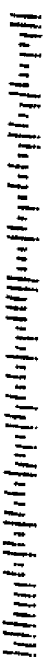
Justin P. Peckert #1043449
P.O. Box 650 (HDSR)
Indian Springs, NV 89070

LAS VEGAS NV 890
22 MAR 2022 PM 5 L



TO: STEVEN D. GRIFFIN, Clerk of Court
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS, NV 89155-1160

99101-630000



Legal Mail

04/07/2022

Heavenly. Lemin
CLERK OF THE COURT

Justin D. Porter #1042449
P.O. Box 650 (HDSP)

1 Indian Springs, NV 89070

2

3

8th District Court

4

Clark County, Nevada

5

6 Justin D. Porter,

7

Supreme Court NO. 84377

District Court Case NO. A798035

8 VS.

9 Eighth Judicial Dist. Ct.,
Respondents,

10

11 State of NEVADA,

12 Party of Real Interest.

13

14

PROOF OF SERVICE.

15

16 Comes, NOW Justin D. Porter, in Pro se, and
17 serve this Court with, WRIT OF MANDAMUS,
18 that was filed in the NEVADA SUPREME
19 COURT, case Number 84377.

20

21

22

23 Dated MARCH 21, 2022.

24 Justin D. Porter #1042449

25 P.O. Box 650

26 ~~Indian~~

Indian Springs, NV 89070

27 *Justin Porter*

28

RECEIVED

MAR 29 2022

CLERK OF THE COURT

NO. 84377

Justin D. Porter #1042419
P.O. BOX 650 (H DSP)
Indian Springs, NV 89070

FILED

MAR 15 2022

NEVADA SUPREME COURT

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

Justin D. Porter,
Petitioner,

Dist. Ct. No. A-19-798035-U

VS.

Eighth Judicial Dist. Ct.,
Respondent(s)

STATE OF NEVADA,

Party of Real Interest.

WRIT OF MANDAMUS.

This Petition is made by Petitioner, Justin D. Porter, in
Proper Person, and moves this Honorable Court to
grant ~~the~~ writ of Mandamus. This writ is Pursuant
to Rule 21, and N.R.S. 34.170. Nevada State
Constitution, ART. 1 § 6. ART. 1 § 8, and 6. Sec. 4 of the Nevada
State Constitution.

This writ of mandamus is based upon the Points and
Authorities, and all Pleadings and Documents on File in
this case, as well as herein.

Dated this 26 day of February 2022.

Justin Porter
Justin D. Porter #1042419
P.O. BOX 650 (H DSP)
Indian Springs, NV 89070

RECEIVED
MAR 03 2022
ELIZABETH A. BROWN

22-08305

Legal Argument

1 Petitions ~~to~~ for Extraordinary writs are addressed to the
2 sound discretion of the Supreme Court of Nevada and
3 may issue when there is no plain, speedy, and adequate
4 remedy at law. See, State v. Second Judicial District
5 Court ex. rel. County of Washoe, 11 P.3d 1209, Nev. (2000).
6 A writ of mandamus is issued to compel performance of an
7 act which the law especially enjoins as a duty resulting
8 from an office, trust or station. See, Lewis v. Stewart,
9 619 P.2d 1212, 96 Nev. 846 (1980). A writ of mandamus may
10 issue to control arbitrary or capricious exercise
11 of discretion. See Barnes v. Eighth Judicial District
12 Court of the State of Nevada, In and For Clark County, 748 P.2d
13 483, 103 Nev. 679 (1987). This court has also held that the
14 action being sought to be compelled must be one directly
15 required by law. See, Mineral County v. State, Department
16 of Conservation and Natural Resources, 20 P.3d 800, Nev.
17 (2001). It has also been held that a writ of mandamus
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19 important issue(s) of law requiring clarification
20 see, Falcke v. Douglas County, 3 P.3d 661, Nev. (2000).

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5
6
7 Pursuant to NRS. 34.740; Expeditious Judicial Examinatio
8 The Petition must be presented promptly to A distric
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15 and has not received A judicial determination
16 on Petitioner's Post-conviction of Habeas corpus,
17 for the Pass three months now. Petitioner has
18 A Right to An judicial determination, Pursuant to
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20 evidentiary hearing; Dismissal of Petition or ~~grant~~
21 granting of writ.

22
23 The Petitioner Right to the Judicial determinatio
24 is based on NRS. 34.770. And has that Right to A
25 Judicial determination, on Petitioner's Habeas corpus
26 Post-conviction. This writ of Mandamus Pursuant to
27 NRS. 34.170; And RULE 21, NRAP

1 CONCLUSION

2
3 wherefore the Reason set forth herein, this
4 WRIT OF MANDAMUS, and Respectfully Request
5 that this Court Grant this WRIT OF MANDAMUS, and
6 Order the District Court to give A Judicial
7 determination, to Petitioner's writ of Habeas
Corpus post-conviction.

DATED this 26 day of February 2022.

By: Justin D. Porter
Justin D. Porter #1042114
P.O. Box 650 (HDSP)
Indian Springs, NV 89021

"AFFIDAVIT OF Justin D. Porter."

2

3 STATE OF NEVADA)

4 SS,...

5 COUNTY OF CLARK)

6

7 I, Justin D. Porter, being first duly sworn upon
8 oath, deposes and swears, to the following:

9

10 That I, Justin D. Porter, Filed an writ of
11 Habeas Corpus Post-Conviction, on the day of
November 23, 2021, and have not received and A
judicial determination, to the day of this written
Affidavit. I am the Affiant herein, of sound
mind, age above 21 yrs. old, therefore qualified to
testify to all matters herein.

Further Affiant sayeth Nought.

Subscribed and sworn to, pursuant to NRS. 171-102
(2); and NRS. 208.165, under Penalty of Perjury.

Dated this 26 day of ~~Feb~~ February, 2022.

By: Justin Porter

Justin D. Porter #1042449

P.O. Box 650 (H DSP)

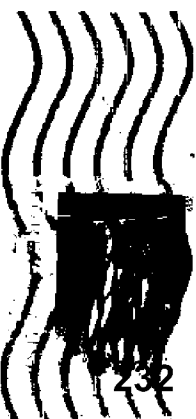
Indian Springs, NV 89070

27

28 Justin D. Porter - Affiant

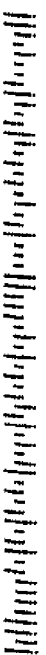
Justin D. Portz #1043449
P.O. Box 650 (HDSR)
Indian Springs, NV 89470

LAS VEGAS NV 890
22 MAR 2022 PM 5 L



TO: STEVEN D. GRIFFIN, Clerk of Court
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS, NV 89155-1160

69101-630000



Legislative

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Electronically Filed
4/7/2022 11:34 AM
Steven D. Grierson
CLERK OF THE COURT



Justin Porter, Plaintiff(s)

vs.

Brian Williams, Defendant(s)

Case No.: A-19-798035-W

Department 17

NOTICE OF HEARING

Please be advised that the Plaintiff/Inmate's Hearing Requested in the above-entitled matter is set for hearing as follows:

Date: May 09, 2022

Time: 8:30 AM

Location: RJC Courtroom 11A
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

Justin D. Porter #1042449
P.O. BOX 650 (HDSR)
1 Indian Springs, NV 89070

Electronically Filed
04/07/2022

Heather J. Hemin
CLERK OF THE COURT

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

6 Justin D. Porter,
7 Petitioner,

CASE NO: A-19-798035-41

8 VS.

Dept NO:

9 Warden - Calvin Johnson,

10 Respondent(s).

11
12 HEARING REQUESTED.
13

14 Comes now, Petitioner Justin D. Porter, in prose,
15 and moves this Honorable Court to GRANT this Hearing
16 Requested. This Hearing Requested is based upon
17 all Papers, Pleading and Documents on file.
18
19

20
21
22 Dated this 20 day of MARCH 2022.

23 Respectfully submitted

24 *Justin Porter*

25 Justin D. Porter #1042449

26 Petitioner
27
28

RECEIVED
MAR 29 2022
CLERK OF THE COURT

Points of Authorities

1

2 "The Privilege of the writ of HABEAS CORPUS
3 shall not be suspended, unless when in cases
4 of Rebellion or Invasion the Public Safety
5 may require it. ARTICLE 1 section 9; Boumediene
6 V. BUSH, 553 U.S. 723, 128 S.Ct. 2229, 171 L.Ed.2d
7 41 (2008); See also FAY V. MOIA, 372 U.S. 291, 83 S.Ct.
8 822, 9 L.Ed. 2d 827 (1963).

9

10 On the day of November 23, 2022, Petitioner
11 filed A writ of Habeas Corpus (Post conviction)
12 Relief. The Habeas Corpus has not had A
13 date set or placed on the Court's Calendar
14 for A Hearing for A decision.

15

16 Conclusion

17

18 ~~Prayer~~ Petitioner Prays for Relief that's suppose
19 to be granted, and have A decision made on the
20 Habeas Corpus.

21

22 Respectfully submitted Dated 20 Of March, 2022.

23 Justin Porter

24 Justin D. Porter #1042449

25 P.O. BOX 650

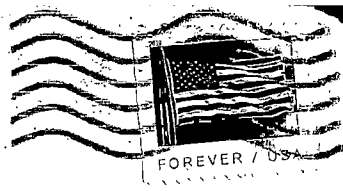
26 Indian Springs, NV 89070

27 In Pro Se

28

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

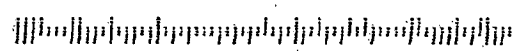
LAS VEGAS NV 890
23 MAR 2022 PM 4 L



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

Legal mail

89101-630000



HIGH DEBT STATE PRISON
MAR 22 2022
UNIT 6 C/D

A-19-798035-W
Dept. 17

FILED
APR 29 2022

John L. Blum
CLERK OF COURT

Case No.
Dept. No.....

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

Justin D. Porter
Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

Calvin Johnson-warden
Respondent.

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts 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 the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (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. 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 the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert State Prison, Clark County
2. Name and location of court which entered the judgment of conviction under attack: 8th Judicial District Court, of the State of Nevada in County of CLARK
3. Date of judgment of conviction: OCT. 13th, 2009
4. Case number: C-174954
5. (a) Length of sentence: 10 YRS. to Life with 2 consecutive 10 YRS. to Life.

CLERK OF THE COURT

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APR 25 2022

(b) If sentence is death, state any date upon which execution is scheduled:.... N/A

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

Yes No ☒

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

7. Nature of offense involved in conviction being challenged: ...HOMICIDE

8. What was your plea? (check one)

(a) Not guilty ☒

(b) Guilty

(c) Guilty but mentally ill

(d) Nolo contendere

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: N/A

10. If you were found guilty or guilty but mentally ill 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

13. If you did appeal, answer the following:

(a) Name of court: ...SUPREME COURT OF NEVADA

(b) Case number or citation: ...54866

(c) Result: ...AFFIRMED

(d) Date of result: ...DECEMBER 3, 2010

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

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

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 your answer to No. 15 was "yes," give the following information:

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

(2) Nature of proceeding: Petition for writ of Habeas Corpus
Post-conviction.

(3) Grounds raised:

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

(5) Result: Denied

(6) Date of result: April 23, 2012

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

Findings of Fact and Conclusion of Law Filed June 11, 2012

(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: Petition for writ of Habeas Corpus Post-conviction.

(3) Grounds raised:

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

(5) Result: Denied

(6) Date of result: January 13, 2014

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

Time Barred?

(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.

Q
C. THIRD PETITION

- (1) NAME OF COURT: 8th J.D.C.
- (2) NATURE OF PROCEEDING: Petition For writ of HABEAS CORPUS
Post-Conviction.
- (3) Grounds Raised:
- (4) Did you receive AN evidentiary hearing on you petition? X NO
- (5) Result: Denied
- (6) DATE OF RESULT: MARCH 10, 2016
- (7) IF KNOWN, Citations of any ~~written~~ written opinion or date of orders
Entered pursuant to such result: "Time Barred"

D.O.F.C. FOURTH PETITION

- (1) NAME OF COURT: 8th J.D.C.
- (2) NATURE OF PROCEEDING: Petition For writ of HABEAS CORPUS
Post-Conviction.
- (3) Grounds Raised:
- (4) Did you receive an evidentiary hearing on you petition? X NO
- (5) Result: Denied
- (6) DATE OF RESULT: February 19, 2020.
- (7) IF KNOWN, Citations of any written opinion or date of orders
Entered pursuant to such result: "Time Barred"

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion? YES - State of Nevada Supreme Court.

(1) First petition, application or motion? Yes ☒ No

Citation or date of decision: MARCH 11, 2013

(2) Second petition, application or motion? Yes ☒ No

Citation or date of decision: JUNE 11, 2014

(3) Third or subsequent petitions, applications or motions? Yes ☒ No

Citation or date of decision: AUGUST 17, 2016

(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.) Petitioner was and still is ~~unhappy~~ denied a

Fair Procedural of Law.

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 postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: N/A

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

(c) Briefly explain why you are again raising these grounds. (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.) N/A

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (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.) SEE MEMORANDUM

1 Attached hereto.

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

6 Prosecuting Attorney Suppressing Evidence / See memorandum.

7 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment
8 under attack? Yes ☒ No

9 If yes, state what court and the case number: A-19-798035-W Filed 11/23/2021.

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

14 22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under
15 attack? Yes No ☒

16 If yes, specify where and when it is to be served, if you know: N/A

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

(a) Ground ONE: Denial of Due Process to a Fair Trial,
Prosecutorial Misconduct Violated Petitioners'
due Process rights, Fifth^{6th} and Fourteenth
Amendments to the U.S.C., and Art. 1 sec. 8 of Nevada Constitution.

Supporting FACTS (Tell your story briefly without citing cases or law.): See Petitioners'
Memorandum with Points and Authorities, Attached
to this Petition.

1 (b) Ground TWO: Ineffective Assistance of Trial Counsel.
2 Denial of the 6th Amendment to the U.S.C.
3
4

5 Supporting FACTS (Tell your story briefly without citing cases or law.): See Petitioner's
6 memorandum with points and Authorities
7 Attached to this petition.
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**PLEADING
CONTINUES
IN NEXT
VOLUME**