

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Aug 17 2022 02:55 p.m.
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 2

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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1 (c) Ground THREE:

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

1 (d) Ground FOUR:

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

BEFORE, 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 17 day of the month of April, 2022.

Justin D. Porter
* Justin D. Porter #1042449
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.

Justin D. Porter
* Justin D. Porter #1042449
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.

Justin D. Porter
* Justin D. Porter #1042449
High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

CERTIFICATE OF SERVICE BY MAIL

I, Justin D. Porter, hereby certify pursuant to N.R.C.P. 5(b), that on this 17 day of the month of April, 2022, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

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

Justin D. Porter
* Justin D. Porter #1042449
High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

Justin D. Porter

* Print your name and NDOC back number and sign

Postage and Fees Paid
P.O. Box 3762 (4-5510)
Las Vegas, NV 89070

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STEVEN D. GRIFFIN, CLERK OF COURT
JUDICIAL BRANCH
LAS VEGAS, NV 89103-1160

2541 mail

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

Legal Mail



216 56 004
0116012450

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3762

STEVEN D. GREENSON, CLERK OF
200 LEWIS AVENUE 3RD FL
LAS VEGAS, NV 89155-1160

Justin D. Porter #1042449
P.O. Box 650 (HDSF)
Indian Springs, NV89070

FILED

APR 29 2022

CLERK OF COURT

Eighth Judicial District Court
CLARK County, NEVADA

JUSTIN D. PORTER,
Petitioner,

CASE NO.

Dept. NO.

VS.

CALVIN JOHNSON, Warden,
Respondent(s).

A-19-798035-W
Dept. 17

MEMORANDUM WITH POINTS AND AUTHORITIES.

COMES NOW, Petitioner, Justin D. Porter in propria personam, and files this writ of HABEAS CORPUS Post-conviction. 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, to this Memorandum.

Dated April 17, 2022.

Justin D. Porter #1042449
P.O. Box 650 (HDSF)
Indian Springs, NV89070
Justin D. Porter

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 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 ^{PCC-133} Exhibit-C) ~~(see Exhibit-C)~~
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 Luzzi 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 NAPOE v. ILLINOIS, 360
18 U.S. 264, 2 LE2d 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 *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, 341 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 illegally arrested without an
15 arrest warrant, while Petitioner was in his
16 home. ~~and~~ 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 Proceedings. 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 encompasses 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 falsey, 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 ~~the~~ 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 ~~harrad~~
17 (CA 9 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 22 day of November, 2021-
24

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

EXHIBIT #A

~~CONFIDENTIAL~~ 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 #8

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 Day 762/6224 cc JBS

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 similar 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 remember 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 states 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 70100 J.R. King 962 10/10/00

12 Aug 00 14 Aug 00 Jrd

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 person's 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 scissors. Porter also denies taking anything 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 2020 Sgt R. King 9/2 H. H. H. H. H.

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

FILED

APR 29 2022

John L. Blum
CLERK OF COURT

Case No. A-19-798035-W

Dept. No. Dept. 17

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

Justin D. PORTER, #
Petitioner,

**MOTION FOR THE APPOINTMENT
OF COUNSEL**

-vs-

CALVIN JOHNSON-Warden

~~Respondents~~
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 ~~25~~ day of ~~March~~ ~~2022~~.
DATED this day of April, 2022.

Justin Porter
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 ~~25~~ day of ~~March~~ ~~2022~~. 20 ~~2022~~. 2022.

Justin Porter
Petitioner, pro per.

CERTIFICATE OF SERVICE BY MAILING

I, Justin D. Porter, hereby certify, pursuant to NRCP 5(b), that on this 17
day of April, 2022 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, CLERK OF COURT
200 LEWIS AVENUE 3RD FLOOR
LAS VEGAS, NV 89155-1160

STEVEN B. WOLFSON,
200 LEWIS AVENUE
P.O. BOX 552212
LAS VEGAS, NV 89155-2212

CC: FILE

DATED: this 17 day of April, 2022.

Justin Porter
Justin D. Porter #1042479
In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018 89070
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Petition For writ OF HABEAS CORPUS Post-conviction
(Title of Document)

filed in District Court Case number 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.


Signature

4-17-2022
Date

Justin D. Porter
Print Name

Title

Heather L. Smith
CLERK OF THE COURT

1 PPOW

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

5 Justin Porter,

6 Petitioner,

7 vs.

8 Brian Williams,

9 Respondent,

Case No: A-19-798035-W
Department 17

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

10
11 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on
12 April 29, 2022. The Court has reviewed the Petition and has determined that a response would assist the
13 Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good
14 cause appearing therefore,

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

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

19 July 6, 2022 at 8:30 A.M.

20 Calendar on the _____ day of _____, 20____, at the hour of

21 _____ o'clock for further proceedings.

22
23 Dated this 2nd day of May, 2022

24 *Michael Villani*

25 District Court Judge

26 **D98 78B 9F78 EF9E**
27 **Michael Villani**
28 **District Court Judge**

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

14 Service Date: 5/2/2022

15 Elissa Luzaich

luzaici@co.clark.nv.us

16
17 If indicated below, a copy of the above mentioned filings were also served by mail
18 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 5/3/2022

19 Betsy Allen

Law Offices of Betsy Allen
P. O. Box 46991
Las Vegas, NV, 89114
20
21
22
23
24
25
26
27
28

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
5/4/2022 1:13 PM
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's Motion for Appointment of Counsel in the above-entitled matter is set for hearing as follows:

Date: July 06, 2022

Time: 8:30 AM

Location: RJC Courtroom 11A
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN D. PORTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 84480
District Court Case No. A798035; ~~C-174954~~

FILED

MAY 25 2022

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

Elizabeth A. Brown
CLERK OF COURT

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

JUDGMENT

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

"ORDER this appeal DISMISSED."

Judgment, as quoted above, entered this 29th day of April, 2022.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this May 24, 2022.

Elizabeth A. Brown, Supreme Court Clerk

By: Andrew Lococo
Deputy Clerk

A-19-798035-W
CCJD
NV Supreme Court Clerks Certificate/Judgm
4993489



IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN D. PORTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84480

FILED

APR 29 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK


ORDER DISMISSING APPEAL

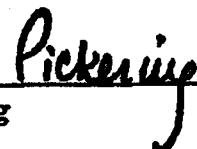
This is a pro se appeal from an order denying a "motion for appointment of counsel." Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Because no statute or court rule permits an appeal from this order, we lack jurisdiction. *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). Accordingly, we

ORDER this appeal DISMISSED.

 C.J.
Parraguirre

 J.
Silver

 J.
Pickering

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

SUPREME COURT
OF
NEVADA

JD 107A

22-13708

JUSTIN D. PORTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 84480
District Court Case No. A798035:0174954

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: May 24, 2022

Elizabeth A. Brown, Clerk of Court

By: Andrew Lococo
Deputy Clerk

cc (without enclosures):

Justin D. Porter
Clark County District Attorney \ Alexander G. Chen
Hon. Michael Villani, District Judge

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on MAY 25 2022.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS
MAY 25 2022

1

22-16517

CLERK OF THE COURT



1 **RSPN**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **JOHN AFSHAR**
6 **Deputy District Attorney**
7 **Nevada Bar #14408**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

9 **JUSTIN PORTER,**
10 **#7035217**

11 **Petitioner,**

12 **-vs-**

CASE NO: A-19-798035-W

DEPT NO: XVII

13 **BRIAN WILLIAMS,**

14 **Respondent.**

15 **STATE'S RESPONSE AND MOTION TO DISMISS PETITION FOR WRIT OF**
16 **HABEAS CORPUS AND OPPOSITION TO MOTION TO APPOINT COUNSEL**

17 **DATE OF HEARING: JULY 6, 2022**
18 **TIME OF HEARING: 8:30 AM**

19 **COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County**
20 **District Attorney, through JOHN AFSHAR, Deputy District Attorney, and hereby submits the**
21 **attached Points and Authorities in Response to Petitioner's Petition for Writ Of Habeas**
22 **Corpus, and in support of its Motion to Dismiss Pursuant to Laches.**

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

26 **//**

27 **//**

28 **//**

3

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

1 On May 8, 2009, a jury found Petitioner guilty of Second-Degree Murder with Use of
2 a Deadly Weapon.

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

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

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

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

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27
28 ¹ In case 01C174954.

² Also in case 01C174954.

³ Also in case 01C174954.

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

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

7 On November 23, 2021, Petitioner filed a sixth petition for writ of habeas corpus (post-
8 conviction).⁵ On April 29, 2022, petitioner filed a seventh petition for writ of habeas corpus, a
9 memorandum of points and authorities, and a motion for appointment of counsel. ("Seventh
10 Petition")⁶ This court ordered the state to respond to the seventh petition on May 2, 2022. The
11 State's response to the petition, the motion for appointment of counsel, and countermotion to
12 dismiss pursuant to laches follows.

13 ARGUMENT

14 **I. PETITIONER'S SEVENTH PETITION DOES NOT ENTITLE PETITIONER** 15 **TO HABEAS RELIEF**

16 **A. The Seventh Petition is time-barred**

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

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

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

24 (emphasis added). "[T]he statutory rules regarding procedural default are mandatory and
25 cannot be ignored when properly raised by the State." State v. Dist. Court (Riker), 121 Nev.
26 225, 233, 112 P.3d 1070, 1075 (2005).

27
28 ⁴ In case A798035.

⁵ Also in case A798035.

⁶ Also in case A798035.

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

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

15 In the instant case, Petitioner’s instant Petition is beyond the one-year time bar. The
16 Nevada Supreme Court affirmed Petitioner’s judgment of conviction on November 8, 2010,
17 and Remittitur issued on December 3, 2010. As such, Petitioner had until December 3, 2011
18 to file a post-conviction petition for writ of habeas corpus. The instant Petition was filed on
19 April 29, 2022, nearly ten years after the time allowed by statute. Therefore, the instant Petition
20 must be denied as time-barred pursuant to NRS 34.726(1).

21 **B. The Seventh Petition is successive and an abuse of the writ**

22 Petitioner’s Seventh Petition is also procedurally barred because it is successive. NRS
23 34.810(2) reads:

24 A second or successive petition *must* be dismissed if the judge or justice
25 determines that it fails to allege new or different grounds for relief and that the
26 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

27 (emphasis added). Second or successive petitions are petitions that either fail to allege new or
28 different grounds for relief and the grounds have already been decided on the merits or that

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

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

15 This is petitioner's seventh habeas petition. Petitioner appealed each denial of his
16 respective petitions, and every denial was affirmed by the Nevada Supreme Court. Petitioner
17 has clearly had the opportunity to raise the grounds he now alleges in each of these prior
18 Petitions. Therefore, the instant Petition is successive and constitutes an abuse of the writ; as
19 such, it must be denied pursuant to NRS 34.810(2).

20 **C. Petitioner's claim of "actual innocence" is insufficient**

21
22 The United States Supreme Court has held that actual innocence is "not itself a
23 constitutional claim, but instead a gateway through which a habeas petitioner must pass to
24 have his otherwise barred constitutional claim considered on the merits." Schlup v. Delo, 513
25 U.S. 298, 327, 115 S. Ct. 851, 867 (1995). In order for a petitioner to obtain a reversal of his
26 conviction based on a claim of actual innocence, he must prove that "it is more likely than
27 not that *no* reasonable juror would have convicted him in light of the 'new evidence' presented
28 in habeas proceedings." Calderon v. Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503

1 (1998) (emphasis added) (quoting Schlup). "Actual innocence" means factual innocence, not
2 mere legal insufficiency. Mitchell v. State, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006)
3 (internal quotation marks and brackets omitted).

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

18 Petitioner's related prosecutorial misconduct claim is, therefore, time barred,
19 successive, an abuse of the writ, and meritless. Memorandum at 7-11. Likewise, his related
20 IAC claim is procedurally barred and meritless. Id. at 12.

21 Accordingly, Petitioner fails to demonstrate good cause to overcome the procedural
22 bars and his Seventh petition must be denied.

23 II. THE SEVENTH PETITION SHOULD BE DISMISSED PURSUANT TO 24 LACHES

25 NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period
26 exceeding five years [elapses] between the filing of a judgment of conviction, an order
27 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
28 conviction and the filing of a petition challenging the validity of a judgment of conviction..."

1 The Nevada Supreme Court observed in Groesbeck v. Warden, “[P]etitions that are filed many
2 years after conviction are an unreasonable burden on the criminal justice system. The necessity
3 for a workable system dictates that there must exist a time when a criminal conviction is final.”
4 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the statute requires the State
5 plead laches in its motion to dismiss the petition. NRS 34.800(2). The State affirmatively
6 pleads laches in the instant case.

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

11 III. THE MOTION FOR APPOINTMENT OF COUNSEL SHOULD BE DENIED

12 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
13 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
14 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
15 Supreme Court similarly observed that “[t]he Nevada Constitution... does not guarantee a right
16 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right to
17 counsel provision as being coextensive with the Sixth Amendment to the United States
18 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)
19 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
20 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
21 164, 912 P.2d at 258.

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

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

(a) The issues presented are difficult;

1 (b) The petitioner is unable to comprehend the proceedings; or
2 (c) Counsel is necessary to proceed with discovery.

3 (emphasis added).

4 Petitioner's Seventh Petition should be summarily dismissed because it is procedurally
5 barred and subject to laches. None of the issues are difficult, Petitioner fails to demonstrate
6 that he cannot comprehend the proceedings, and no discovery is necessary.

7 **CONCLUSION**

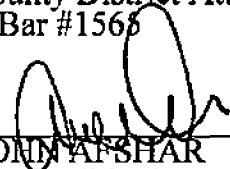
8 For the forgoing reasons, the State respectfully requests that Petitioner's Seventh
9 Petition for Writ of Habeas Corpus be DENIED in its entirety, that his motion for appointment
10 of counsel be DENIED, and that the State's countermotion to dismiss pursuant to laches be
11 GRANTED..

12 DATED this 1st day of June, 2022.

13 Respectfully submitted,

14 STEVEN B. WOLFSON
15 Clark County District Attorney
16 Nevada Bar #1568

17 BY


18 JOHN AFSHAR
19 Deputy District Attorney
20 Nevada Bar #14408

#10539 for

21
22
23
24
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27
28 C174954/JA/mlb/SVU

1 (b) The petitioner is unable to comprehend the proceedings; or
2 (c) Counsel is necessary to proceed with discovery.

3 (emphasis added).

4 Petitioner's Seventh Petition should be summarily dismissed because it is procedurally
5 barred and subject to laches. None of the issues are difficult, Petitioner fails to demonstrate
6 that he cannot comprehend the proceedings, and no discovery is necessary.

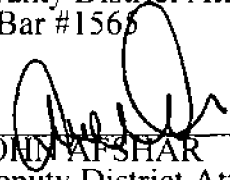
7 **CONCLUSION**

8 For the forgoing reasons, the State respectfully requests that Petitioner's Seventh
9 Petition for Writ of Habeas Corpus be DENIED in its entirety, that his motion for appointment
10 of counsel be DENIED, and that the State's counter motion to dismiss pursuant to laches be
11 GRANTED..

12 DATED this 1st day of June, 2022.

13 Respectfully submitted,

14 STEVEN B. WOLFSON
15 Clark County District Attorney
16 Nevada Bar #1565

17 BY  #10539 for
18 JOHN AFSHAR
19 Deputy District Attorney
20 Nevada Bar #14408

21 **CERTIFICATE OF ELECTRONIC FILING**

22 I hereby certify that service of State's Response And Motion To Dismiss Petition For
23 Writ Of Habeas Corpus And Opposition To Motion To Appoint Counsel, was made this 1st
24 day of June, 2022, by Electronic Filing to:

25 BETSY ALLEN, ESQ.
26 betsyallenesq@yahoo.com

27 
28 Secretary for the District Attorney's Office

C174954/JA/mlb/SVU

Heather S. Hume

CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

JUSTIN PORTER,
#7035217

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

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

DEPT NO: **XVII**

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

DATE OF HEARING: **JULY 6, 2022**
TIME OF HEARING: **8:30 AM**

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

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

2 **PROCEDURAL HISTORY**

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

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

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

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

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

27
28

¹ In case 01C174954.

² Also in case 01C174954.

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

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

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

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

16 ANALYSIS

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

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

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

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

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

27 //

28 ⁴ In case A798035.

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

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

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

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

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

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

//

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

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

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

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

26 //

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28 //

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

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

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

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

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

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

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

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

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

23 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
24 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
25 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
26 Supreme Court similarly observed that “[t]he Nevada Constitution...does not guarantee a right
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5 However, the Nevada Legislature has given courts the discretion to appoint post-
6 conviction counsel so long as “the court is satisfied that the allegation of indigency is true and
7 the petition is not dismissed summarily.” NRS 34.750. NRS 34.750 reads:

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

12 (a) The issues presented are difficult;

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

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

15 (emphasis added).

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

22 //

23 //

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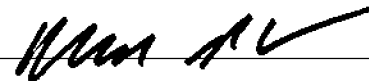
27 //

28 //

ORDER

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

Dated this 13th day of July, 2022



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

E8B DDC 4D42 9AE5
Michael Villani
District Court Judge

BY



LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056

hjc/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Justin Porter, Plaintiff(s)

CASE NO: A-19-798035-W

7 vs.

DEPT. NO. Department 17

8 Brian Williams, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 7/13/2022

15 Elissa Luzaich

luzaici@co.clark.nv.us

16 BETSY ESQ.

BETSYALLENESQ@YAHOO.COM

Steven D. Grierson

Justin D. Porter #1042449

In Proper Person

P.O. Box 650 H.D.S.P. ~~89010~~
Indian Springs, Nevada ~~89018~~

8th JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

Justin D. Porter,

Petitioner,

-v-

CALVIN JOHNSON-WARDEN,

Respondent.

Case No. A-19-798035-W

Dept. No. 17

Docket _____

NOTICE OF APPEAL

Notice is hereby given that the Petitioner, Justin D. Porter, by and through himself in proper person, does now appeal to the Supreme Court of the State of Nevada, the decision of the District Court Denying Petitioner's Petition for writ of Habeas Corpus (Post conviction) on the day of JULY 6, 2022.

Dated this date, July 14, 2022.

Respectfully Submitted,

Justin Porter

In Proper Person

RECEIVED

JUL 18 2022

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

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

NOTICE OF APPEAL.

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

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

DATED: this 14 day of July, 2022.

Justin Porter # 1042449
JUSTIN D. PORTER # 1042449
/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs, Nevada 89251 89070

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

'NOTICE OF APPEAL'

(Title of Document)

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

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

-OR-

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

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

(State specific law)

-or-

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

Justin Porter
Signature

7-14-2022
Date

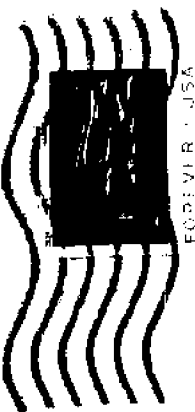
Justin D. Porter
Print Name

NOTICE OF APPEAL
Title

Justin D. Porter #1042419
P.O. Box 650 (HDSF)
Indian Springs, NV 89070

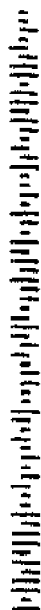
LAS VEGAS NV 890

15 JUL 2022 PM 5 L



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

Legal Mail



000000-10168

UNIT 5 NB

JUL 23 2022

ELIOT DESERT STATE PRISON



NEFF

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JUSTIN PORTER,

Petitioner,

Case No: A-19-798035-W

Dept No: XVII

vs.

BRIAN WILLIAMS,

Respondent,

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

PLEASE TAKE NOTICE that on July 13, 2022, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on July 19, 2022.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 19 day of July 2022, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

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

☒ The United States mail addressed as follows:

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

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

Heather S. Hume

CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

JUSTIN PORTER,
#7035217

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

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

DEPT NO: **XVII**

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

DATE OF HEARING: **JULY 6, 2022**
TIME OF HEARING: **8:30 AM**

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

//

//

//

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

2 **PROCEDURAL HISTORY**

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

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

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

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

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

27
28

¹ In case 01C174954.

² Also in case 01C174954.

³ Also in case 01C174954.

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

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

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

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

16 ANALYSIS

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

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

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

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

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

27 //

28 ⁴ In case A798035.

⁵ Also in case A798035.

⁶ Also in case A798035.

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

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

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

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

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

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

//

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

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

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

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

26 //

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (a) The issues presented are difficult;

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

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

15 (emphasis added).

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

22 //

23 //

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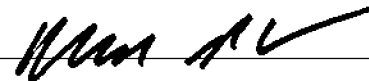
27 //

28 //

ORDER

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

Dated this 13th day of July, 2022



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

E8B DDC 4D42 9AE5
Michael Villani
District Court Judge

BY



LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056

hjc/SVU

1 **CSERV**

2
3 **DISTRICT COURT**
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 Findings of Fact, Conclusions of Law and Order was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 7/13/2022

15 Elissa Luzaich

luzaici@co.clark.nv.us

16 BETSY ESQ.

BETSYALLENESQ@YAHOO.COM



1 ASTA

2
3
4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

10 JUSTIN PORTER,

11 Plaintiff(s),

12 vs.

13 BRIAN WILLIAMS - WARDEN,

14 Defendant(s),
15

Case No: A-19-798035-W

Dept No: XVII

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Justin Porter

20 2. Judge: Michael Villani

21 3. Appellant(s): Justin Porter

22 Counsel:

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

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

26 Counsel:

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

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

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

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

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

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

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

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

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

13 11. Previous Appeal: Yes

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

15 12. Child Custody or Visitation: N/A

16 13. Possibility of Settlement: Unknown

17 Dated This 19 day of July 2022.

18
19 Steven D. Grierson, Clerk of the Court

20
21 /s/ Heather Ungermann

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

25 cc: Justin Porter
26
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus**COURT MINUTES****December 09, 2019**

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

December 09, 2019 9:30 AM Motion

HEARD BY: Bluth, Jacqueline M.**COURTROOM:** RJC Courtroom 10C**COURT CLERK:** Keith Reed**RECORDER:** De'Awna Takas**REPORTER:****PARTIES**

PRESENT: Luzaich, Elissa Attorney
 Porter, Justin Plaintiff

JOURNAL ENTRIES

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

PRINT DATE: 08/17/2022

Page 1 of 22

Minutes Date: December 09, 2019

counsel; proceedings of December 30, 2019 CONTINUED.

NDC

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 08, 2020

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

January 08, 2020 9:30 AM All Pending Motions

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

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT: Porter, Justin Plaintiff

JOURNAL ENTRIES

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

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

NDC

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

PRINT DATE: 08/17/2022

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Minutes Date: December 09, 2019

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

January 15, 2020 9:30 AM All Pending Motions

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

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

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

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Minutes Date: December 09, 2019

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

NDC

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

February 03, 2020

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

February 03, 2020 9:30 AM Motion

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

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

NDC

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus**COURT MINUTES****February 19, 2020**

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

February 19, 2020 9:30 AM Status Check

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

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 08, 2020

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

July 08, 2020 10:15 AM Appointment of Counsel

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

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT: Cole, Madilyn M. Attorney

JOURNAL ENTRIES

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

8-5-20 10:15 AM STATUS CHECK

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

August 05, 2020

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

August 05, 2020 10:15 AM Status Check

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

COURT CLERK: Rem Lord

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT: Allen, Betsy Attorney
 Luzaich, Elissa Attorney

JOURNAL ENTRIES

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

October 07, 2020

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

October 07, 2020 10:15 AM Status Check

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

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT: Allen, Betsy Attorney
 Luzaich, Elissa Attorney

JOURNAL ENTRIES

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

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

October 07, 2021

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

October 07, 2021 3:00 AM Minute Order

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

COURT CLERK: Samantha Albrecht

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus**COURT MINUTES****October 14, 2021**

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

**October 14, 2021 3:00 AM Motion for Appointment of
Attorney**

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 for October 28, 2021 (Chambers). Status Check will be vacated if the Order is filed before the hearing date.

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

October 28, 2021

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

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

HEARD BY: Villani, Michael

COURTROOM: Chambers

COURT CLERK: Samantha Albrecht

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

November 15, 2021

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

November 15, 2021 3:00 AM Minute Order

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

COURT CLERK: Samantha Albrecht

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

December 02, 2021

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

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

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

COURT CLERK: Samantha Albrecht

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

May 09, 2022

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

May 09, 2022 8:30 AM Hearing

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

COURT CLERK: Samantha Albrecht

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT: Luzaich, Elissa Attorney

JOURNAL ENTRIES

- Plaintiff not present.

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

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 06, 2022

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

July 06, 2022 8:30 AM All Pending Motions

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

COURT CLERK: Samantha Albrecht

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT: Luzaich, Elissa Attorney

JOURNAL ENTRIES

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

Defendant not present.

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

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus**COURT MINUTES****July 07, 2022**

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

July 07, 2022 3:00 AM Minute Order

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

COURT CLERK:
 Samantha Albrecht

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

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

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

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

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

PRINT DATE: 08/17/2022

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Minutes Date: December 09, 2019

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

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

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

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

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 13, 2022

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

July 13, 2022 3:00 AM Minute Order

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

COURT CLERK:
Samantha Albrecht

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

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

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated July 29, 2022, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises two volumes with pages numbered 1 through 348.

JUSTIN PORTER,

Plaintiff(s),

vs.

BRIAN WILLIAMS - WARDEN,

Defendant(s),

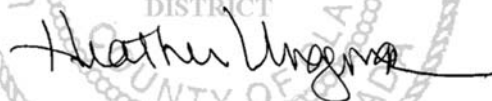
Case No: A-19-798035-W

Dept. No: VI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 17 day of August 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

