



**EIGHTH JUDICIAL DISTRICT COURT  
CLERK OF THE COURT**

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Elizabeth A. Brown  
Clerk of Supreme Court

Steven D. Grierson  
Clerk of the Court

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Court Division Administrator

December 7, 2021

Elizabeth A. Brown  
Clerk of the Court  
201 South Carson Street, Suite 201  
Carson City, Nevada 89701-4702

RE: OSCAR GOMEZ vs. STATE OF NEVADA  
**S.C. CASE: 83690**  
D.C. CASE: A-20-815035-W

Dear Ms. Brown:

Pursuant to your Order Directing Entry and Transmission of Written Order and Suspending Briefing, dated November 4, 2021, enclosed is a certified copy of the Decision filed December 6, 2021 in the above referenced case. If you have any questions regarding this matter, please do not hesitate to contact me at (702) 671-0512.

Sincerely,  
STEVEN D. GRIERSON, CLERK OF THE COURT

A handwritten signature in black ink, appearing to read "Heather Ungermann", with a long horizontal flourish extending to the right.

Heather Ungermann, Deputy Clerk

1 DECN  
Judge Cristina D. Silva  
2 Eighth Judicial District Court  
Department IX  
3 Regional Justice Center  
200 Lewis Avenue  
4 Las Vegas, Nevada 89155

5 EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

6 OSCAR GOMEZ,

7 Petitioner,

8 -vs-

9 STATE OF NEVADA,

10 Respondent.

CASE NO: A-20-815035-W

DEPT NO: IX

11  
12 DECISION

13 On September 17, 2021, the Court orally pronounced its decision denying Omar Gomez's  
14 Post-Conviction Petition for Writ of Habeas Corpus and Memorandum of Points and Authorities<sup>1</sup>  
15 (hereinafter referred to generally as the "Petition"). The Court hereby issues this written Order  
16 reflecting the Court's decision.

17 I. Summary of Facts and Relevant Procedural History

18 As a threshold matter, the Court adopts the summary of facts set forth in the Pre-Sentence  
19 Investigation report. *See* PSR at 4.

20 On April 19, 2018, Petitioner pleaded guilty pursuant to a plea agreement to Murder (Second  
21 Degree) With Use of a Deadly Weapon. The State of Nevada retained the full right to argue at  
22 sentencing. *See* Guilty Plea Agreement ("GPA") at 1. The GPA set forth the potential penalties the  
23 Petitioner could face as a consequence of his plea. *Id.* at 2. The Defendant was sentenced on July 14,

24  
25 <sup>1</sup> Mr. Gomez filed the Memorandum of Points and Authorities as a supplement to his Post-Conviction Petition for Writ of Habeas Corpus

1 2018. During sentencing, the State of Nevada asked for the maximum potential sentence, this is 10 –  
2 life followed by another 8 – 20 for the deadly weapon enhancement. *See* Jul. 14, 2018 Sentencing  
3 Transcript at 2.

4 On June 14, 2018, Petitioner filed a Notice of Appeal in the underlying case. On May 15, 2019,  
5 the Nevada Court of Appeals affirmed Petitioner’s Judgment of Conviction. Remittur issued on  
6 June 20, 2019.<sup>2</sup>

7 On May 14, 2020, Petitioner filed, pro per, a post-conviction writ of habeas corpus. In sum,  
8 Petitioner set forth four grounds for post-conviction relief. First, he argued that his guilty plea was  
9 invalid due to counsel’s failure to investigate the case. *See generally* PWHC at 8. Second, Mr. Gomez  
10 argues that his guilty plea is invalid due to counsel’s failure to fully explain his guilty plea  
11 agreement. *Id.* at 10. Third, Petitioner argued his guilty plea was the product of coercion at the  
12 hands of his attorney’s actions, or lack thereof. *Id.* at 24. Fourth and related to the second ground set  
13 forth above, Petitioner finally claims that counsel was ineffective for failing to file a presentence  
14 Motion to Withdraw Guilty Plea. *Id.* at 30-31. The Petition requested an evidentiary hearing to  
15 address the allegations set forth therein.

16 On October 13, 2020, Judge Valerie Adair issued a minute order advising an evidentiary  
17 hearing would be scheduled on the sole issue of whether counsel failed to inform Mr. Gomez that he  
18 faced consecutive time for the deadly weapon enhancement. A review of the docket reveals due to  
19 transport and remote appearance issues, an evidentiary hearing on that issue did not occur in 2020.  
20 This Court appointed counsel to assist Mr. Gomez in March of 2021.<sup>3</sup> There were several attempts  
21 to schedule the evidentiary hearing throughout 2021, but factors including the Petitioner’s desire to  
22 appear in-person for the hearing, caused additional delay. On August 20, 2021, the Court held the  
23 evidentiary hearing. Mr. Gomez was present for the hearing via BlueJeans video-conferencing from  
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25 <sup>2</sup> *See Gomez v. State* Case No. 76487.

<sup>3</sup> This Court was reassigned this matter following Judge Adair’s retirement in January of 2021.

1 the Clark County Detention Center for the hearing. The Court heard testimony from Mr. Gomez,  
2 Mr. Gomez's former attorney, Monti Levy, Mr. Gomez's mother, and Mr. Gomez's sister. The  
3 following is a summary of the testimony from the evidentiary hearing.

4 *a. Monti Levy's Testimony*

5 Monti Levy has been an attorney for almost 19 years. Transcript (hereinafter "T.") at 7; 26.  
6 She has spent almost her entire career practicing criminal law. *Id.* Ms. Levy was appointed to Mr.  
7 Gomez's case sometime in 2016. *Id.* She met with the petitioner numerous times during the time she  
8 represented him, noting she visited with the Petitioner over 20 times between the time she was  
9 appointed to time Gomez was sentenced. T. at 8. She recalled numerous meetings during which she  
10 met with the Petitioner either with investigator or with another attorney from her office. *Id.* Ms.  
11 Levy noted she met with the Petitioner more times that she had with any other defendant during  
12 her career. T. at 23-24. During the course of her representation, she received plea offers from the  
13 State, which she conveyed to the Petitioner. *See generally* T. at 10-13. She specifically testified  
14 regarding reviewing an offer within after October of 2017, during which she went over potential  
15 sentencing ranges, including the 40% rule, and that she would quiz the Petitioner to make sure he  
16 understood the potential consequences of accepting the offer. T. at 10-11; 18; 22-23; 27. Ms. Levy also  
17 testified she discussed the potential defenses with Petitioner, the "best" argument they could  
18 present if the matter proceeded to trial, and the possible outcomes if convicted at trial. *See generally*  
19 T. at 14-18; 20-22. To the best of Ms. Levy's recollection, she was prepared to announce ready for  
20 trial at calendar call, but Petitioner changed his mind and accepted the State's offer. T. at 19. Ms.  
21 Levy testified that the Petitioner "absolutely understood" the terms of the plea agreement. T. at 23-  
22 24. Ms. Levy testified Mr. Gomez has been going back and forth on whether or not to accept the  
23 State's offer. T. at 24-25. She further testified that she and the prosecutor discussed the terms of the  
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1 plea with the Defendant in open court. T. at 25. Last, she noted that there was never a question  
2 about consecutive time. *Id.*

3 *b. Oscar Gomez's Testimony*

4 Mr. Gomez testified on his own behalf during the evidentiary hearing. Mr. Gomez agreed  
5 that Ms. Levy had met with him multiple times and that they had discussed a range of sentences. T.  
6 at 33-34. He testified that they discussed the potential sentence range for a plea to a 2<sup>nd</sup> degree  
7 murder with use a deadly woman charge, noting it was either a 10 – 25 year sentence, or 10 to life. T.  
8 at 34. He also testified he knew there was an enhancement for the deadly weapon enhancement. T.  
9 at 34. Mr. Gomez's testified Ms. Levy did not explain that the weapon's enhancement court run  
10 consecutive or concurrent. T. at 34. He further testified he that he would just have to do 10 years and  
11 then he would be eligible for "to go out on the streets." T. at 35. Petitioner recalled talking to the  
12 prosecutor about the offer in his case, and that he asked the prosecutor if he was willing to go down  
13 in terms of the offer, to which the prosecutor declined. T. at 37. Mr. Gomez denied that Ms. Levy  
14 ever quizzed him about sentencing ranges. T. at 36-37. Petitioner stated that he had a sentence of "10  
15 years" in his head. T. at 39. He also testified he recalled that he could get 11 years at the bottom of his  
16 sentence. T. at 38. Towards the end of his testimony, he stated he really did not know what was  
17 going on. *Id.*

18 *c. Laura Olivas' Testimony*

19 Laura Olivas is the Petitioner's mother. T. at 40. Ms. Olivas testified she was involved in  
20 speaking with Mr. Gomez's attorney since the first day. T. at 41. Ms. Olivas testified that prior to  
21 sentencing Ms. Levy never brought up what sort of sentence Mr. Gomez might be facing. *Id.*  
22 According to Ms. Olivas the first time she brought up a potential sentence as at sentencing. *Id.* Ms.  
23 Olivas thought Mr. Gomez testified would be sentenced to a term of 10 years and then he would  
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1 receive probation.<sup>4</sup> T. at 41; 42. She admitted that Mr. Gomez did not discuss the terms of the plea  
2 agreement with her. T. at 42. Ms. Gomez further testified that the weapons enhancement was not  
3 discussed with her. T. at 43.

4 *d. Isabel Gomez's Testimony*

5 Isabel Gomez is Petitioner's sister. T. at 45. Isabel testified she did not speak with Ms. Levy  
6 until the day of sentencing. *Id.* She further testified Ms. Levy told her Oscar would receive a "max"  
7 sentence of 10 years and at least 2 to 4 years for the gun enhancement. T. at 45. Isabel agreed that  
8 Ms. Levy conveyed two separate sentences. *Id.* She could not recall if Ms. Levy explained whether  
9 the time would run consecutively or concurrently. *Id.* During cross-examination, Isabel agreed Ms.  
10 Levy explained there would be a minimum of a 10 year sentence with possible additional time for  
11 the gun enhancement. T. at 47. The State of Nevada introduced a letter written by Isabel that  
12 discussed Mr. Gomez's potential sentence. T. at 48; *see also* State's Exhibit C. The letter explained it  
13 was her understanding that Mr. Gomez would be sentenced to 10 years, plus an added two years for  
14 gun enhancement charges. *Id.* Isabel testified both she and Mr. Gomez believed he would be  
15 sentenced to 10 years followed by an additional two years in prison. T. at 48-49.

16 *e. Maria Gomez's Testimony*

17 Ms. Gomez, who also goes by Ms. Castro, is the Petitioner's older sister. T. at 52. Maria  
18 testified that she was one of the primary persons who spoke with Ms. Levy about Petitioner's case.  
19 *Id.* Maria also testified that she and Ms. Levy did discuss potential sentences Mr. Gomez could  
20 receive. *Id.* One potential was "10 – 25, possibility of parole at 10" and for the gun charges Ms. Levy  
21 told her he could receive "2 to 4 years." *Id.* She further testified that the maximum Petitioner could  
22 receive was "12-14 years." *Id.*; T. at 53. Maria stated that understood to sentence would be 10 to 25  
23 years with the possibility of parole. T. at 53. When asked about the possibility of a second sentence  
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25 <sup>4</sup> The Court interprets the use of the word "probation" to mean parole.

1 for the gun enhancement, Maria testified she was told there was no evidence about the  
2 enhancement so she did not why that would be added to his sentence. *Id.* During cross-examination,  
3 Maria testified it was her understanding that his plea would require him to do 10 to 25 years, and  
4 then an additional 2-4 years. *Id.* at 54. She also testified she did not understand that he would up for  
5 parole around 12 or 14 years. *Id.* at 55-56.

### 6 III. Applicable Law

7 A claim of ineffective assistance of counsel presents a mixed question of law and fact.  
8 *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d  
9 1102, 1107 (1996). To establish that counsel's assistance was ineffective, a petitioner must satisfy a  
10 two-part test. *Strickland*, 466 U.S. at 687, 104 S.Ct. at 2064; *Warden v. Lyons*, 100 Nev. 430, 683 P.2d  
11 504 (1984) (adopting the two-part test). First, a petitioner must demonstrate that his trial or  
12 appellate counsel's performance was deficient. Specifically, a petitioner must show that counsel's  
13 petition fell below an objective standard of reasonableness. Second, the petitioner must show  
14 prejudice as a result of that deficient performance. Both parts of the test do not need to be  
15 considered if an insufficient showing is made on either one. *Strickland*, 466 U.S. at 697, 104 S. Ct. at  
16 2069.

17 Where the claim involves trial counsel, prejudice is demonstrated by showing that, but for  
18 trial counsel's errors, there is a reasonable probability that the result of the proceedings would have  
19 been different. *Id.* at 694; *See Love*, 109 Nev. at 1139, 865 P.2d at 323. A "reasonable probability" is a  
20 probability sufficient to undermine confidence in the outcome of trial. *Id.* at 687-89, 694; *see also*  
21 *Dawson v. State*, 108 Nev. 112, 115, 825 P.2d 593, 595 (1992). There is a strong presumption that  
22 counsel's performance was reasonable and fell within "the wide range of reasonable professional  
23 assistance." *See United States v. Aguirre*, 912 F.2d 555, 560 (2nd Cir. 1990), citing *Strickland*, 466 U.S. at  
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1 689. The defendant carries the affirmative burden of establishing prejudice. *Strickland v. Washington*,  
2 466 U.S. 668, 693, 104 S.Ct. 2052, 2067–68 (1984).

3 Nevada applies the “reasonably effective assistance” standard articulated in *Strickland v.*  
4 *Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984), to determine whether a defendant received effective  
5 assistance of counsel. *Warden v. Lyons*, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984). Specifically, a  
6 defendant who challenges the adequacy of counsel’s representation must prove that he was denied  
7 reasonably effective assistance by satisfying a two-pronged test. *Strickland*, 466 U.S. at 686-87, 104  
8 S.Ct. at 2063-64; *State v. Love*, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

9 Under the *Strickland* test, the defendant must first show that his counsel’s representation fell  
10 below an objective standard of reasonableness. Then, the defendant must show that but for  
11 counsel’s errors, there is a reasonable probability that the result of the proceedings would have been  
12 different. *Strickland*, 466 U.S. at 687-88, 104 S.Ct. at 2065. Counsel cannot be deemed ineffective for  
13 failing to make futile objections, file futile motions, or for failing to make futile arguments. *Ennis v.*  
14 *State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Moreover, this Court “need not consider both  
15 prongs of the test if the defendant makes an insufficient showing on either one.” *Molina v. State*, 120  
16 Nev. 185, 190, 87 P.3d 533, 537 (2004).

17 In considering whether trial counsel was effective, the Court must determine whether  
18 counsel made a “sufficient inquiry into the information . . . pertinent to his client’s case.” *Doleman v.*  
19 *State*, 112 Nev. 843, 848, 921 P.2d 278, 280 (1996) (citing *Strickland*, 466 U.S. at 690-91, 104 S.Ct. at  
20 2066). Then, the Court will consider whether counsel made “a reasonable strategic decision on how  
21 to proceed with his client’s case.” *Id.* Counsel’s strategic decision is a “tactical” decision and will be  
22 “virtually unchallengeable absent extraordinary circumstances.” *Id.*; see also *Howard v. State*, 106 Nev.  
23 713, 722, 800 P.2d 175, 180 (1990); *Strickland*, 466 U.S. at 691, 104 S.Ct. at 2066.



1 Even if a defendant can demonstrate that his counsel's representation fell below an objective  
2 standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability  
3 that, but for counsel's errors, the result of the trial would have been different. *McNelson v. State*, 115  
4 Nev. 396, 403, 990 P.2d 1263, 1268 (1999). "The defendant carries the affirmative burden of  
5 establishing prejudice." *Riley v. State*, 110 Nev. 638, 646, 878 P.2d 272, 278 (1994). "A reasonable  
6 probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S.  
7 at 694, 104 S.Ct. at 2068. "[O]verwhelming evidence of guilt is relevant to the question of whether a  
8 client had ineffective counsel." *Ford v. State*, 105 Nev. 850, 852, 784 P.2d 951, 952 (1989) (citing  
9 *Strickland*, 466 U.S. at 697, 10 S.Ct. at 2069).

10 Importantly, when raising a *Strickland* claim, the defendant bears the burden to demonstrate  
11 the underlying facts by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d  
12 25, 33 (2004). Moreover, claims asserted in a petition for post-conviction relief must be supported  
13 with specific factual allegations, which if true, would entitle the petitioner to relief. *Hargrove v. State*,  
14 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" or "naked" allegations are not sufficient, nor are  
15 those belied and repelled by the record. *Id.*

17 Additionally, in reference to appellate counsel, there is a strong presumption that appellate  
18 counsel's performance was reasonable and fell within "the wide range of reasonable professional  
19 assistance." See *United States v. Aguirre*, 912 F.2d 555, 560 (2nd Cir. 1990); citing *Strickland*, 466 U.S. at  
20 689, 104 S.Ct. at 2065. A claim of ineffective assistance of appellate counsel must satisfy the two-  
21 prong test set forth by *Strickland*. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). In order  
22 to satisfy *Strickland*'s second prong, the defendant must show that the omitted issue would have  
23 had a reasonable probability of success on appeal. *Id.*

24 ...

25 ...

1           IV.     Analysis

2           Mr. Gomez fails to demonstrate that trial counsel's representation fell below an objective  
3 standard of reasonableness. Ms. Levy testified that she discussed the various offers in this case to  
4 Mr. Gomez multiple times. T. at 10. Further, she testified during the time she represented him she  
5 would review potential sentencing ranges with him. *Id.* She testified that she explained the  
6 definition of a deadly weapon as it applied to the case against Mr. Gomez, and the fact a deadly  
7 weapon enhancement carried a consecutive sentence. *Id.* at 11. Not only did she explain the offer he  
8 ultimately accepted, which included the consecutive time for the deadly weapon enhancement, she  
9 testified other persons from her law office also explained the offer to him. *Id.* According to Ms.  
10 Levy, there was no question that Mr. Gomez understood the terms of the plea and the consequences  
11 thereof.

12           Ms. Levy's testimony is supported by witnesses Mr. Gomez called during the evidentiary  
13 hearing. Isabel and Maria Gomez both testified that the sentence for the murder charge would be at  
14 least 10 years, and both testified they understood there was a gun enhancement of at least two years.  
15 *Id.* at 19. The understanding that there would be an enhancement for gun was evidenced further by  
16 the letter written by Isabel. That letter, dated December 29, 2020, states that wrote it was Mr.  
17 Gomez well as his family's understanding that "he would be sentenced to ten years plus and [sic]  
18 added two for gun enhancement charges; which would then grant him eligibility for parole." See  
19 PWHC at Exhibit C.

20           The testimony of Ms. Levy, and Maria and Isabel Gomez, together undermines Mr. Gomez's  
21 argument that he did not understand the terms of the plea, to include the consecutive time for the  
22 deadly weapon enhancement. In fact, in a letter dated December 29, 2020, Isabel Gomez wrote it  
23 was Mr. Gomez and his family's understanding "that he would be sentenced to ten years plus and  
24 [sic] added two for gun enhancement charges; which would then grant him eligibility for parole."  
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1 See PWHC at Exhibit C. Moreover, during Gomez's change of plea hearing, the Court specifically  
2 advised him that the least amount of time he could be sentenced to at the bottom of the sentencing  
3 range was 11 years:

4 THE COURT: And, I mean, obviously nobody wants to plead guilty to second degree  
5 murder. And its full right to argue, is that right?

6 STATE: That's right.

7 THE COURT: And state the penalty –

8 STATE : With a deadly weapon, yeah.

9 THE COURT: -- state the range of penalty on the record,  
10 please.

11 STATE: Yes, Your Honor. It would be either 10 to 25 or  
12 10 to life on the underlying sentence with a consecutive 2 to 20 for the  
13 deadly weapon enhancement.

14 MS. LEVY: One to 20.

15 STATE: One to 20.

16 THE COURT: So --

17 MS. LEVY: One to 20 on the weapon enhancement.

18 THE COURT: One to 20? They keep changing everything all the time.

19 MS. LEVY: I believe it's 1 to 20.

20 THE COURT: So you understand it's up to the Court. The least amount of time the  
21 very least amount of time I could give you on the bottom end is 11 years. Do you  
22 understand that?

23 DEFENDANT GOMEZ: I -- I understand.

24 THE COURT: The most amount of time I could give you on the bottom end is 18  
25 years. Do you understand that?

DEFENDANT GOMEZ: I understand.

THE COURT: And I could give you -- the most amount of time on the top end I could  
give you is life plus 20 years. All right.

DEFENDANT GOMEZ: Okay.

1 THE COURT: The least amount of time I could give you on the bottom end is 25  
2 years plus 30 months.

3 DEFENDANT GOMEZ: Okay.

4 THE COURT: Do you understand that?

5 DEFENDANT GOMEZ: Yes.

6 THE COURT: That's the least amount of time. Now Mr. Palal can argue for the  
7 maximum time, which is a 10 to life and a consecutive 8 to 20. And obviously your  
8 lawyers are going to argue for the least amount of time. And then it's going to be up to  
me to look at everything and determine what, in my opinion, a fair sentence is. Do  
you understand that?

9 DEFENDANT GOMEZ: I understand.

10 THE COURT: So you understand that those are the ranges?

11 DEFENDANT GOMEZ: Yes.

12 Transcript of Change of Plea at 6-8.

13 The evidence before the Court also demonstrates that trial counsel adequately and  
14 reasonably investigated the case and discussed the potential outcomes with the Petitioner. "Where  
15 counsel and the client in a criminal case clearly understand the evidence and the permutations of  
16 proof and outcome, counsel is not required to unnecessarily exhaust all available public or private  
17 resources." *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). However, an attorney must  
18 reasonably investigate in preparing for trial or reasonably decide not to. *Strickland*, 466 U.S. at 691;  
19 *Kirksey v. State*, 112 Nev. 980, 992, 923 P.2d 1102, 1110 (1996) (emphasis added). Defense counsel's  
20 "particular decision not to investigate must be directly assessed for reasonableness in all the  
21 circumstances." *Strickland*, 466 U.S. at 691. *Dawson v. State*, 108 Nev. at 117, 825 P.2d at 596 ("Strategic  
22 choices made by counsel after thoroughly investigating the plausible options are almost  
23 unchallengeable.").  
24  
25

1 As a threshold matter, Mr. Gomez stated that Ms. Levy answered all of his questions  
2 sufficiently, and that she and her co-counsel spent sufficient time reviewing the case and discovery  
3 with him.

4 THE COURT: Okay. And did your lawyers answer all your  
5 questions to your satisfaction?

6 DEFENDANT GOMEZ: They did.

7 THE COURT: Okay. Do you feel like Ms. Levy and her co-counsel  
8 have spent enough time with you explaining the discovery and  
9 going over the evidence and everything like that in this case?

10 DEFENDANT GOMEZ: Yeah.

11 T. at 10.

12 Further, in the guilty plea agreement (“GPA”) he signed, Mr. Gomez acknowledged that he  
13 “discussed with my attorney any possible defenses, defense strategies and circumstances which  
14 might be in my favor” and that he was “satisfied with the services provided by my attorney.” GPA at  
15 4, 5. During the evidentiary hearing, Ms. Levy also testified that she discussed the potential defenses  
16 that could be raised if the case proceeded to trial. But in the Petition, Mr. Gomez admits that he was  
17 present during the shooting itself, and the shooting was on video. It calls into question the need to  
18 investigate an “alternate suspect,” and Mr. Gomez provides no explanation how the investigation  
19 into an alternate suspect would have been successful.<sup>5</sup> Mr. Gomez fails to explain how challenging  
20 the photo line-up would have changed the outcome of this case given he was identified and  
21 captured on video committing the murder. PWHC at 12.

22 There is no evidence to support Mr. Gomez’s claims that he was coerced into accepting the  
23 plea or that his attorney abandoned him during the time he decided to enter into the GPA. Mr.  
24 Gomez acknowledged that he was entering into the guilty plea both freely and voluntarily, and after

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25 <sup>5</sup> Mr. Gomez did not raise this issue on appeal and is now considered waived for the purposes of this petition. *See Bolden v. State*, 99 Nev. 181, 659 P.2d 886 (1983) (“a claim that could have been raised on direct appeal from a judgment of conviction, but was not, is considered waived for purposes of a subsequent proceeding for post-conviction relief”);

1 consultation with his attorney, during the plea hearing and when signing of the GPA. *See* GPA at 5.  
2 (“I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting  
3 under duress or coercion...”); T. at 11. Further, Mr. Gomez entered into the plea after discussing the  
4 GPA and other others with his counsel on several occasions, and after he had time to consider  
5 whether or not to accept it and to discuss potential defenses at the calendar call on April 19, 2018.

6 Finally, Mr. Gomez alleges that his counsel was ineffective for failing to file a motion to  
7 withdraw his guilty plea. There is no evidence that he requested Ms. Levy to file motion before  
8 sentencing in this case. At most, Mr. Gomez’s provided evidence that he made such a request after  
9 he was sentenced. In an undated and unaddressed letter, Mr. Gomez wrote he wanted to withdraw  
10 his plea. Mr. Gomez claims this letter was mailed to Ms. Levy. The Court approaches this letter  
11 with extreme caution for a number of reasons. First, it is not dated or signed. And second, it is  
12 unclear is how Mr. Gomez has a copy of this handwritten letter if it was mailed to Ms. Levy. Even if  
13 the Court accepts the representations in the suspect letter as true, it would not support his  
14 allegations that Ms. Levy was ineffective at the time he took the plea. The letter was allegedly  
15 mailed *after* sentencing because it states he had been transferred to Arizona. The letter reflects regret  
16 for entering into the plea, as well as bare, naked allegations he was hurried into doing so. This  
17 suspect letter is insufficient to warrant relief. *See Hargrove v. State*, 100 Nev. 502, 686 P.2d 222, 225  
18 (1984) (“bare” and “naked,” and are insufficient to warrant relief, as are those claims belied and  
19 repelled by the record).

20 Finally, Mr. Gomez alleges that trial counsel was ineffective for never filing a direct appeal of  
21 his Judgment of Conviction and was further ineffective for failing to challenge the terms of  
22 restitution on direct appeal. *See* Memorandum of Points and Authorities at 12-13. On July 18, 2018,  
23 appellate counsel filed a Notice of Appeal on behalf of Mr. Gomez. Mr. Gomez did not provide any  
24 legal authority for the proposition that he was entitled to have any particular attorney file his direct  
25

1 appeal. *Id.* at 12-13. Therefore, Mr. Gomez cannot demonstrate he was prejudiced by trial counsel's  
2 failure to file a notice of appeal on his behalf. Mr. Gomez's claim that appellate counsel was  
3 ineffective for failing to challenge the terms of restitution in Mr. Gomez's Judgment of Conviction  
4 also fails. Mr. Gomez cites no applicable authority to support his arguments that there is an error  
5 with his judgment of conviction that warrant the relief he is seeking.

6 Related to his arguments regarding the alleged defects in his judgment of conviction, this  
7 Court denies Mr. Gomez's requested relief based on his claim that he is subject to cruel and unusual  
8 punishment based on the aforementioned defects. The Nevada Court of Appeals already addressed  
9 Mr. Gomez's sentencing on direct appeal, noting he did not demonstrate his sentence was cruel and  
10 unusual. *See Order of Affirmance*, filed May 15, 2019 (Dkt. No. 76487-COA) at 2-3. Further, this  
11 allegation seems unrelated to trial counsel's performance, and therefore, falls outside the scope of  
12 habeas proceedings. *See* NRS 34.810(1)(a).

13 Accordingly, Mr. Gomez did not demonstrate that the aforementioned claims had a  
14 reasonable likelihood of success if it had been appealed. *Kirksey*, 112 Nev. at 998, 923 P.2d at 1114. As  
15 such, Petitioner did not meet his burden under *Strickland*.

## 16 V. Conclusion

17 Therefore, for the reasons set forth Omar Gomez's Post-Conviction Petition for Writ of  
18 Habeas Corpus and Memorandum of Points and Authorities is hereby DENIED.

Dated this 6th day of December, 2021

19  
20  
21 December 7, 2021



22  
23  
24  
25 CERTIFIED COPY  
ELECTRONIC SEAL (NRS 1.190(3))

Handwritten signature of Cristina D. Silva over a horizontal line.

EC

48A E35 EC78 9910  
Cristina D. Silva  
District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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5  
6 Oscar Gomez, Plaintiff(s)

CASE NO: A-20-815035-W

7 vs.

DEPT. NO. Department 9

8 State of Nevada, Defendant(s)

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10 **AUTOMATED CERTIFICATE OF SERVICE**

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

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