

Electronically Filed  
11/09/2021

*Ann S. Smith*  
CLERK OF THE COURT

*Caesar Sanchez Valenzuela #94307*  
In Proper Person  
P.O. Box 650 H.D.S.P.  
Indian Springs, Nevada 89018

Electronically Filed  
Nov 16 2021 11:16 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

*Jeff* DISTRICT COURT  
*Clark* COUNTY NEVADA

*Caesar Sanchez Valenzuela*  
*#94307*

Case No. *A 20-815616-1*  
Dept. No. \_\_\_\_\_  
Docket \_\_\_\_\_

*-v-*  
*THE STATE OF NEVADA*

NOTICE OF APPEAL

Notice is hereby given that the *Petitioner* *Caesar Sanchez*  
*Valenzuela #94307*, 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 *Denied Petition for Writ Habeas Corpus*

Dated this date, *11/26/2021*.

Respectfully Submitted,

*Caesar Sanchez Valenzuela*  
In Proper Person  
*Caesar Valenzuela #94307*

RECEIVED

NOV - 8 2021

CLERK OF THE COURT

**CERTIFICATE OF SERVICE BY MAILING**

I, Cesar Valender #94309, hereby certify, pursuant to NRCP 5(b), that on this 26th day of Oct, 2021, I mailed a true and correct copy of the foregoing, "Notice of Appeal to Supreme Court of Nevada" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

District Attorney  
300 Lewis Ave  
Las Vegas NV 89155

District Court Clerk  
300 Lewis Ave  
Las Vegas NV 89155

DATED: this 26th day of Oct, 2021.

Cesar Sanchez Valender  
Cesar /In Propria Persona # 94309  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding notice

of Appeal  
(Title of Document)

filed in District Court Case number

A-20-815616-W

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

-OR-

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

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

\_\_\_\_\_  
(State specific law)

-or-

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

[Signature]  
Signature

10-26-21  
Date

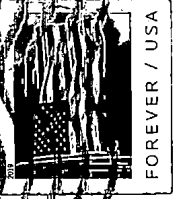
Cesar Sanchez Valverde  
Print Name

[Signature]  
Title

Cesar Sanchez Valenzuela #94367  
PO BOX 650  
Indian Springs NV 89000

LAS VEGAS NV 890

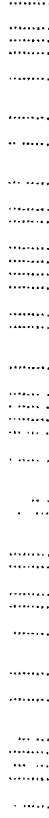
3 NOV 2021 PM 4 L



veg and bath for  
Marty bath for  
Condy bath for

5555555555

clerk of the court  
Deseret Court  
2501 Davis Ave 3rd Fl  
Las Vegas NV 89101-1160



HIGH DESERT STATE PRISON  
OCT 31 2021  
UNIT 5 A/B



1 ASTA  
2  
3  
4  
5  
6

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

10 CEASAR SANCHEZ VALENCIA,

11 Plaintiff(s),

12 vs.

13 JOHNSON WARDEN HIGH DESERT STATE  
14 PRISON; STATE OF NEVADA,

15 Defendant(s),  
16

Case No: A-20-815616-W

Dept No: II

17 **CASE APPEAL STATEMENT**  
18

19 1. Appellant(s): Ceasar Valencia

20 2. Judge: Carli Kierny

21 3. Appellant(s): Ceasar Valencia

22 Counsel:

23 Ceasar Valencia #94307  
24 P.O. Box 650  
25 Indian Springs, NV 89070

26 4. Respondent (s): Johnson Warden High Desert State Prison; State of Nevada

27 Counsel:

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

Las Vegas, NV 89155-2212

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

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

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

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

8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: N/A  
*\*\*Expires 1 year from date filed*

Appellant Filed Application to Proceed in Forma Pauperis: Yes,  
Date Application(s) filed: July 1, 2021

9. Date Commenced in District Court: May 28, 2020

10. Brief Description of the Nature of the Action: Civil Writ

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

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 75282, 81745

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 10 day of November 2021.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

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

cc: Ceasar Valencia

# CASE SUMMARY

## CASE NO. A-20-815616-W

Cesar Valencia, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

§  
§  
§  
§  
§  
§

Location: **Department 2**  
Judicial Officer: **Kierny, Carli**  
Filed on: **05/28/2020**  
Case Number History:  
Cross-Reference Case Number: **A815616**  
Supreme Court No.: **81745**

### CASE INFORMATION

#### Related Cases

C-16-315580-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

#### Statistical Closures

11/03/2021 Other Manner of Disposition  
08/19/2020 Other Manner of Disposition

Case Status: **11/03/2021 Closed**

### DATE

### CASE ASSIGNMENT

#### Current Case Assignment

Case Number A-20-815616-W  
Court Department 2  
Date Assigned 01/04/2021  
Judicial Officer Kierny, Carli

### PARTY INFORMATION

#### Plaintiff

Valencia, Cesar

Lead Attorneys

Pro Se

#### Defendant

Johnson, Warden of HDSP

State of Nevada

**Wolfson, Steven B**  
Retained  
702-671-2700(W)


### DATE

### EVENTS & ORDERS OF THE COURT


### INDEX

#### EVENTS


05/28/2020

 Inmate Filed - Petition for Writ of Habeas Corpus  
Party: Plaintiff Valencia, Cesar  
[1] Petition for Writ of Habeas Corpus (Postconviction)


05/28/2020

 Motion for Appointment of Attorney  
Filed By: Plaintiff Valencia, Cesar  
[2] Motion for the Appointment of Counsel; Request for Evidentiary Hearing


05/28/2020

 Application to Proceed in Forma Pauperis  
Filed By: Plaintiff Valencia, Cesar  
[3] Application to Proceed Informa Pauperis (Confidential)















06/01/2020

 Order for Petition for Writ of Habeas Corpus  
[4]

06/02/2020

 Notice of Change of Hearing  
[5]


**CASE SUMMARY**  
**CASE NO. A-20-815616-W**


08/07/2020	 Findings of Fact, Conclusions of Law and Order <i>[6]</i>
08/11/2020	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Defendant State of Nevada <i>[7] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
08/19/2020	 Order to Statistically Close Case <i>[8] Civil Order to Statistically Close Case</i>
09/02/2020	 Notice of Appeal Filed By: Plaintiff Valencia, Ceasar <i>[9]</i>
09/03/2020	 Case Appeal Statement Filed By: Plaintiff Valencia, Ceasar <i>[10]</i>
09/23/2020	 Motion to Reconsider Filed By: Plaintiff Valencia, Ceasar <i>[11] Motion for the Court to Reconsider Petition There is Good Cause and Undue Prejudice to Excuse Procedural Time Bar; Request for Evidentiary Hearing</i>
09/23/2020	 Notice of Motion Filed By: Plaintiff Valencia, Ceasar <i>[12]</i>
10/07/2020	 Motion Filed By: Plaintiff Valencia, Ceasar <i>[13] Motion and Order Court Appearance in the Alternative for Appearance by Telephone or Video Conference</i>
10/07/2020	 Notice of Motion Filed By: Plaintiff Valencia, Ceasar <i>[14] Notice of Motion</i>
01/04/2021	Case Reassigned to Department 2 <i>Judicial Reassignment to Judge Carli Kierny</i>
05/11/2021	 Notice of Hearing <i>[15] Notice of Hearing</i>
06/03/2021	 NV Supreme Court Clerks Certificate/Judgment -Remanded <i>[16] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Reversed and Remand</i>
06/15/2021	 Response <i>[17] State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)</i>
06/15/2021	 Opposition <i>[18] State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)</i>
07/01/2021	 Application to Proceed in Forma Pauperis




**CASE SUMMARY**  
**CASE NO. A-20-815616-W**


Filed By: Plaintiff Valencia, Ceasar  
*[19] Application to Proceed in Forma Pauperis*

07/01/2021  Motion for Appointment of Attorney  
Filed By: Plaintiff Valencia, Ceasar  
*[20] Motion for Appointment of Counsel*

11/03/2021  Findings of Fact, Conclusions of Law and Order  
Filed By: Plaintiff Valencia, Ceasar  
*[21] Findings of Fact, Conclusions of Law and Order*

11/08/2021  Notice of Entry  
*[22] Notice of Entry of Findings of Fact, Conclusions of Law and Order*


11/09/2021  Notice of Appeal  
Filed By: Plaintiff Valencia, Ceasar  
*[23] Notice of Appeal*


11/10/2021  Case Appeal Statement  
Filed By: Plaintiff Valencia, Ceasar  
*Case Appeal Statement*

**DISPOSITIONS**

06/03/2021 **Clerk's Certificate** (Judicial Officer: Kierny, Carli)  
Debtors: State of Nevada (Defendant), Johnson, Warden of HDSP (Defendant)  
Creditors: Ceasar Valencia (Plaintiff)  
Judgment: 06/03/2021, Docketed: 06/07/2021  
Comment: Supreme Court No. 81745; Reversed and REmanded

**HEARINGS**


07/28/2020  **Petition for Writ of Habeas Corpus** (10:15 AM) (Judicial Officer: Jones, David M)  
Denied;  
Journal Entry Details:  
*Deft. not present. The petition being improper as the aggregate total Sentence is correct, COURT ORDERED, petition DENIED. State to prepare the order. NDC;*


06/09/2021  **Status Check** (9:30 AM) (Judicial Officer: Kierny, Carli)  
*Status Check: Court of Appeals Order of Reversal and Remand*

**MINUTES**

Hearing Set;  
Journal Entry Details:  
*Colloquy regarding the Nevada Supreme Court Reversal & Remand from Judge Jones' decision. Court directed State to respond and ORDERED, Briefing Schedule set as follows: State's Response/Opposition DUE - 7/15/21; Petitioner's Reply DUE - 8/12/21 and matter set for decision. 8/19/21 12:30 p.m. Decision - Petition for Writ of Habeas Corpus;*

**SCHEDULED HEARINGS**

 **Decision** (08/19/2021 at 12:30 PM) (Judicial Officer: Craig, Christy)  
*Decision - Petition for Writ of Habeas Corpus*

08/19/2021  **Decision** (12:30 PM) (Judicial Officer: Craig, Christy)  
*Decision - Petition for Writ of Habeas Corpus*  
Continued;  
Journal Entry Details:  
*Petitioner not present. COURT ORDERED, matter CONTINUED for Judge Kierny to issue her ruling. CONTINUED TO: 9/9/21 - 12:30 PM;*

# CASE SUMMARY

## CASE NO. A-20-815616-W

09/09/2021

**Decision** (8:00 AM) (Judicial Officer: Kierny, Carli)

Decision: Petition for Writ of Habeas Corpus (Post-Conviction)

Denied;

Journal Entry Details:

*This matter is before the Court on Defendant's Petition for Writ of Habeas Corpus (Post-Conviction). The matter was previously denied by Judge David Jones as untimely; however, the Supreme Court remanded the matter back to this Court with instructions to consider the Petitioner's writ on its merits. The Court finds as follows: The Petition for Writ of Habeas Corpus is DENIED. Valencia's sole contention is that he received ineffective assistance of counsel; he gives twelve different grounds under this assertion. To demonstrate ineffective assistance of trial counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice resulted in that there was a reasonable probability of a different outcome in the absence of counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 2063 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the Strickland test). Both components deficient performance and prejudice must be shown. Strickland, 466 U.S. at 687, 104 S.Ct. at 2065. Importantly, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). NRS 34.735(6) states in relevant part, "[Petitioner] must allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed." (emphasis added). "Bare" and "naked" allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled by the record. Id. "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002). The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). Taking each allegation in turn, the Court finds as follows: 1. Valencia alleges that his Public Defender, Steven Lisk, was ineffective for not visiting him in jail, wanting him to take a plea, and not providing discovery to Valencia. Lisk was not Valencia's attorney at trial; that attorney was Gregory Coyer. Petitioner does not show how Lisk's performance in these preliminary matters affected Coyer's trial performance, or that the outcome of the trial would have been different but for Lisk's performance. Valencia has not satisfied the second prong of Strickland on this claim. 2. Valencia alleges Coyer failed to assist him with his civil forfeiture case, did not provide body camera footage to him, and acting as an "advocate for the State, not the defense." The civil forfeiture portion of the case is entirely separate from Valencia's criminal case and is irrelevant to this writ. Regarding the body cam allegation, Valencia fails to make any showing that not providing Valencia himself with body camera footage fell below an objective standard of reasonableness; it is unclear to the Court what Valencia would have done with this footage, or even how he would have viewed it on his own at the detention center. Valencia also fails to show how him having body cam footage could have resulted in a different trial outcome. Therefore, Valencia fails to meet both prongs of Strickland as to this allegation. Finally, Valencia's allegation regarding Coyer acting as an advocate for the State and not the defense is a conclusory statement with no specific facts supporting it; it is the exact type of "bare and naked allegation" that is insufficient to warrant post-conviction relief as explained in Hargrove. 3. Valencia alleges his counsel did not maintain adequate pretrial contact. Petitioner failed to provide any specificity as to how this alleged lack of communication amounted to deficient performance or prejudiced him at trial. Petitioner simply states he was "extremely prejudiced by the abandonment of counsel." No specific facts were presented. At trial, the record reveals Petitioner's counsel extensively cross-examined witnesses, presented a strong closing arguing the State did not meet its burden, and represented Petitioner on appeal. Petitioner's claim is conclusory and is lacking factual support, and is therefore denied. 4. Valencia alleges his counsel was ineffective for not conducting his own DNA testing and DNA expert. Not calling an expert witness or having independent testing performed is not per se deficient performance. State presenting a DNA expert does not necessarily require an expert to rebut. Defense counsel argued at closing that these results exculpated Petitioner. It is not likely that further testing/testimony would have benefited Petitioner, as DNA was not the basis for conviction. Valencia has failed to meet both prongs of Strickland on this issue. 5. Valencia re-raises his contention that he was denied the right of self-representation. This claim is belied by the record, and is barred as it was already addressed by the Supreme Court in Valencia's direct appeal. On direct appeal, the Supreme Court affirmed the lower court's decision regarding self-representation. Valencia has presented no additional information on this claim in his writ; this issue is hereby denied. 6. Valencia alleges counsel was ineffective for failing to remind the Court his waiver of self-representation was conditional. However, there is nothing*

**CASE SUMMARY****CASE NO. A-20-815616-W**

*in the record that shows the waiver of self-representation was actually conditional; Valencia was always free to raise a request to represent himself at any point in the proceedings, so there was nothing special about the "conditional" nature of his waiver that needed to be brought to the judge's attention. He also fails to make a showing of how the trial outcome would be different if this record was made, and therefore fails the Strickland test. 7. Valencia alleges his counsel failed to provide him with legal materials. Petitioner did not identify what specific materials he believed should have been provided and how they would have rendered a different result. Therefore, he did not make an adequate showing under Strickland and this allegation is denied. 8. Valencia alleges his attorney didn't object to a certified judgment of conviction, and the habitual criminal enhancement was imposed. This is an issue that should have been raised on direct appeal and was not. It is therefore considered waived in all subsequent proceedings, including this one, under the Nevada Supreme Court's ruling in Franklin v. State, 110 Nev. 750, 752, 29 P.3d 498, 523 (2001). 9. Valencia alleges trial counsel was ineffective for failing to request a change of venue. This allegation has no substance or support that would justify a change in venue. A motion to change venue would have been futile. The venire was asked about pre-trial publicity by the judge in voir dire and no one mentioned having heard anything about the case, belying Valencia's contention that pre-trial publicity surrounding his case prevented him from having a fair trial. Further, counsel's "failure" to object to the admittance of the gun was raised and denied on direct appeal to Nevada Supreme Court. Additionally, Petitioner's allegation regarding counsel's "failure" to object to perjured testimony is not supported by any evidence beyond a bare allegation. Valencia's allegation here is insufficient to show ineffective assistance of counsel. Finally, Valencia's contention that his attorney failed to object to "perjured testimony" is not supported by facts to show that the testimony was actually perjured; it is simply another bare and naked allegation. The Court notes that Counsel's decision to object or not object is a strategic decision, and under these facts, cannot be shown to have been objectively unreasonable. 10. Valencia claims his attorney was ineffective for not presenting a defense, subpoenaing witnesses, or requesting video footage. Petitioner's assertion that his attorney presented no defense is belied by the record. Coyer vigorously cross-examined witnesses and argued that the police were mistaken in their identification of the perpetrator. While this may not have been Valencia's preferred defense, this was clearly a tactical decision and not objectively unreasonable. Valencia's contention that Eric Gilbert should have been subpoenaed does not allege specific facts to show exactly what Gilbert's testimony might have been, or how that testimony would have entitled Valencia to relief. Additionally, the Court notes that the decision to call witnesses is solely up to Counsel's discretion. Regarding counsel's alleged failure to subpoena dashcam footage, Valencia neither establishes that this footage actually existed, nor elaborates on how it would have changed the outcome of the trial. Nothing Valencia raises in this section rises to the level necessary to make a showing of ineffective assistance of counsel. 11. Valencia claims his counsel was ineffective for failing to investigate and prepare for trial. This is a broad claim, devoid of any specificity or facts to support it, and is denied for this reason. 12. Valencia states his counsel was ineffective for suggestive identification; ineffectiveness of appellate counsel; errors in jury selection, jury instruction, and sentencing. All of Petitioner's claims under this ground are bare and naked allegations that are plead in a conclusory manner, with no accompanying argument or factual explanation. Accordingly, all of these claims are summarily denied pursuant to Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Here, Petitioner's claims do not require an evidentiary hearing as Petitioner failed to assert any meritorious claims in the Writ. There is nothing that requires an expansion of the record for this Court to make its decision, so this request is also DENIED. State to prepare the Order. CLERK'S NOTE: The above minute order has been electronically distributed.;*

## DISTRICT COURT CIVIL COVER SHEET

A-20-815616-W  
Dept. 29

County, Nevada

Case No.

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): Ceasar Valencia	Defendant(s) (name/address/phone): State of Nevada
Attorney (name/address/phone):	Attorney (name/address/phone):

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

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

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

May 28, 2020

PREPARED BY CLERK

Date

Signature of initiating party or representative

See other side for family-related case filings.

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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
Plaintiff,

-vs-

CEASAR SANCHAZ VALENCIA,  
#1588390  
Defendant.

CASE NO: A-20-815616-W

DEPT NO: II

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

DATE OF HEARING: AUGUST 19, 2021  
TIME OF HEARING: 12:30 PM

THIS CAUSE having come on for hearing before the Honorable CARLI KIERNY, District Judge, on the 19th day of August, 2021, the Petitioner not being present, proceeding in proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through BERNARD ZADROWSKI, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT, CONCLUSIONS OF LAW**

**PROCEDURAL HISTORY**

On June 9, 2016, the State filed an Information charging Petitioner Ceasar Sanchaz Valencia (hereinafter "Petitioner") with one count of Assault on a Protected Person With Use

1 of a Deadly Weapon, one count of Ownership or Possession of Firearm by Prohibited Person,  
2 one count of Trafficking in Controlled Substance, and two counts of Possession of Controlled  
3 Substance. On June 10, 2016, Petitioner was arraigned on the Information, at which time he  
4 entered a plea of not guilty and invoked his right to a speedy trial.

5 On November 27, 2017, the matter proceeded to trial. On December 1, 2017, the jury  
6 rendered its verdict of guilty as to all counts. On January 25, 2018, Petitioner was sentenced  
7 to the Nevada Department of Corrections, pursuant to the small habitual criminal statute, as  
8 follows: Count 1 – a minimum of 84 months and a maximum of 240 months; Count 2 – a  
9 minimum of 24 months and a maximum of 72 months, concurrent to Count 1; Count 3 – a  
10 minimum of 12 months and a maximum of 48 months, concurrent with Count 2; Count 4 – a  
11 minimum of 12 months and a maximum of 48 months, concurrent with Count 3; Count 5 – a  
12 minimum of 24 months and a maximum of 72 months, concurrent to Count 4. Petitioner's total  
13 aggregate sentence was a minimum of 108 months and a maximum of 312 months. Petitioner  
14 received 615 days credit for time served. The Judgment of Conviction was filed on February  
15 6, 2018.

16 On March 1, 2018, Petitioner filed a Notice of Appeal. The Nevada Supreme Court  
17 affirmed Petitioner's Judgment of Conviction, and remittitur issued on May 7, 2019.

18 On May 28, 2020,<sup>1</sup> Petitioner filed the instant Petition for Writ of Habeas Corpus (Post-  
19 Conviction) (hereinafter "Petition"). On July 28, 2020, the Court denied the Petition. The  
20 Findings of Fact, Conclusions of Law were filed on August 7, 2020. On appeal, the Nevada  
21 Supreme Court reversed the denial of the Petition, finding that the Petition was timely filed.  
22 The Nevada Supreme Court remanded the matter back to this Court, with instructions to  
23 consider the Petition's claims on their merits. On August 19, 2021, this Court held a hearing  
24 on the merits of the Petition, and on September 9, 2021, this Court issued a minute order  
25 denying the Petition. Specifically, the Court finds as follows:

26 ///

27 ///

---

28 <sup>1</sup>The Petition reflects that though it was filed on May 28, 2020, it was received by the clerk of the court on May 4, 2020.

## **FACTUAL SUMMARY**

On May 19, 2016, Las Vegas Metropolitan Police (“LVMPD”) Officers Houston and Jacobitz attempted to conduct a traffic stop on Petitioner after they observed him operating a moped at a high rate of speed and failing to stop at a stop sign. Officer Jacobitz activated the patrol car’s lights and sirens, and followed Petitioner until he appeared to stop and got off the moped. The officers exited their patrol car and were approximately five to eight feet away from Petitioner. Petitioner turned to face the officers, but then dropped the moped and ran away from the officers.

The officers pursued Petitioner on foot. Officer Jacobitz observed a firearm in Petitioner’s right hand, and yelled “gun” to alert Officer Houston of the presence of a firearm. Petitioner raised the firearm and pointed it at Officer Jacobitz, however, Petitioner’s elbow hit a pole which caused the gun to fall to the ground.

Officer Jacobitz remained with the firearm while Officer Houston continued chasing Petitioner. While waiting with the firearm, Officer Jacobitz saw two men (unrelated to this case) attempt to steal the moped that Petitioner had abandoned. Having to react quickly to this attempt theft, Officer Jacobitz retrieved the firearm without gloves so that the firearm would not be left unattended while he addressed the moped theft. Officer Jacobitz observed that the firearm was loaded and contained six rounds. Although Officer Houston continued the foot chase, ultimately Petitioner was able to flee the scene.

On May 21, 2016, officers arrested Petitioner during a felony vehicle stop after conducting surveillance on Petitioner. During a search of his person incident to arrest, officers located 11.60 grams of heroin, 3.1 grams of methamphetamine, 2.400 grams of cocaine, 2.67 grams of methamphetamine, and \$946 in US Currency.

## **ANALYSIS**

### **I. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

All of the claims Petitioner raises are contradicted by the record, not cognizable on habeas review, barred from further consideration, or are bare and naked allegations. The majority of Petitioner’s claims are ineffective-assistance-of-counsel claims. To demonstrate

1 ineffective assistance of trial counsel, a petitioner must show counsel's performance was  
2 deficient in that it fell below an objective standard of reasonableness, and prejudice resulted  
3 in that there was a reasonable probability of a different outcome in the absence of counsel's  
4 deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 2063  
5 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the  
6 Strickland test). Both components – deficient performance and prejudice – must be shown.  
7 Strickland, 466 U.S. at 687, 104 S.Ct. at 2065. “[T]here is no reason for a court deciding an  
8 ineffective assistance claim to approach the inquiry in the same order or even to address both  
9 components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697,  
10 104 S. Ct. at 2069.

11 Importantly, claims of ineffective assistance of counsel asserted in a petition for post-  
12 conviction relief must be supported with specific factual allegations, which if true, would  
13 entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225  
14 (1984). NRS 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts  
15 supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just  
16 conclusions may cause your petition to be dismissed.” (emphasis added). “Bare” and “naked”  
17 allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled  
18 by the record. Id. “A claim is ‘belied’ when it is contradicted or proven to be false by the record  
19 as it existed at the time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228,  
20 1230 (2002).

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

27 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
28 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the



1 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
2 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
3 (2002).

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

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

23 **a. Ground One: Ineffective Assistance of Trial Counsel During the**  
24 **Preliminary Process**

25 Petitioner alleges that his initial counsel, Deputy Public Defender Steven Lisk, provided  
26 ineffective assistance during the “preliminary process and pretrial.” Petition at 6. Specifically,  
27 Petitioner alleges that Mr. Lisk did not visit him in jail, wanted him to accept a plea negotiation,  
28 and did not provide him with discovery. Id. at 6-10.

1        These allegations regarding Mr. Lisk, even if accepted as true, are insufficient to meet  
2 the Strickland standard because Petitioner cannot demonstrate that he was prejudiced as a  
3 result of Mr. Lisk's conduct. Mr. Lisk did not represent Petitioner at trial. He withdrew as  
4 counsel and Gregory E. Coyer was appointed to represent Petitioner. Thus, Petitioner cannot  
5 demonstrate a reasonable probability that the outcome of the trial would have been different  
6 in the absence of these alleged errors. Petitioner does not even allege this is the case, as he  
7 maintains he was prejudiced, not at trial, but at the preliminary hearing and calendar call.  
8 Accordingly, Petitioner is not entitled to relief on this claim.

9                    **b. Ground Two: Ineffective Assistance of Trial Counsel**

10  
11        Petitioner alleges his trial counsel was ineffective for failing to assist him with a civil  
12 forfeiture case. Petitioner has failed to state a claim for which he is entitled to relief. Based on  
13 Petitioner's own account of counsel's conduct, this does not amount to ineffective assistance.  
14 Counsel's statement to Petitioner that he was not appointed to represent him in a civil matter  
15 was correct; counsel was appointed to represent Petitioner only in the criminal case. Further,  
16 Petitioner does not explain how counsel's supposed failure to assist him in this forfeiture case  
17 prejudiced him in the criminal trial. Accordingly, this claim must be summarily denied.

18        Petitioner also alleges there was body camera footage in this case that counsel failed to  
19 provide to him. This allegation is contradicted by the record, and therefore must be dismissed.  
20 See Mann, 118 Nev. at 354, 46 P.3d at 1230; Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.  
21 At trial, Officer Houston testified that neither he nor Officer Jacobitz was wearing body-worn  
22 camera on the date of the incident, and that at the time body-worn camera was not standardly  
23 issued for department personnel. Trial Transcript, C315580, Day 2, pp. 133, 146-47.  
24 Furthermore, trial counsel obtained the radio traffic from the incident and admitted it at trial.  
25 Id. at 138. Counsel also repeatedly used the radio traffic during cross-examination of Officer  
26 Houston. Id. at 138-46. Thus, trial counsel did in fact ensure he obtained discovery from the  
27 State, and at trial presented the best documentation of the incident that was available to him.

28        ///

1           Petitioner also complains about counsel advising him as to the elements of Trafficking  
2 in Controlled Substance, and states that by doing so counsel was an “advocate for the state,  
3 not for the defense.” Petition at 12-13. Based on Petitioner’s own pleading, it appears counsel  
4 correctly informed Petitioner that the key element of the offense was the amount of the  
5 controlled substance, and that it did not require separate proof of intent to sell. See NRS  
6 453.3385. Providing Petitioner with accurate information as to the charges he was facing was  
7 clearly not deficient performance; in fact it was counsel’s duty to do so. Accordingly,  
8 Petitioner is not entitled to relief on this claim.

9                           **c. Ground Three Ineffective Assistance of Trial Counsel for Inadequate Pre-**  
10                           **Trial Contact**

11           Petitioner alleges his trial counsel was ineffective for failing to meet and communicate  
12 with him. Petition at 15. Petitioner fails to provide any specificity as to how this alleged lack  
13 of communication amounted to deficient performance or prejudiced him at trial. See  
14 Strickland, 466 U.S. at 697, 104 S.Ct. at 2069. See also NRS 34.735 (stating that failure to  
15 raise specific facts rather than conclusions may cause a petition to be dismissed); Hargrove,  
16 100 Nev. at 502-03, 686 P.2d at 225.

17           Here, rather than plead any specific facts relating to this alleged lack of communication,  
18 Petitioner simply asserts that he “was extremely prejudiced by the abandonment of counsel.”  
19 Petition at 15. He fails to state what additional communication was needed or demonstrate that  
20 additional communication with counsel would have changed the outcome of his trial. Nor does  
21 he explain how he was “abandoned” by counsel. The record reveals Petitioner’s counsel  
22 extensively cross-examined witnesses at trial, presented a strong closing argument alleging  
23 that the State had not met its burden, and represented Petitioner on appeal. Trial Transcript,  
24 C315580, Day 2, pp. 125-46, 149-52; Day 3, pp. 114-45, 149-50; Day 4, pp. 34-36, 53-59,  
25 115-25; Day 5, pp. 3-22, 32-34, 79-90. This is hardly evidence of abandonment. This  
26 conclusory claim is completely lacking in factual support. Accordingly, Petitioner is not  
27 entitled to relief on this claim.

28       ///

1                   **d. Ground 4: Ineffective Assistance of Trial Counsel for Failure to Conduct**  
2                   **DNA Testing and Present Expert Witnesses**

3                   Petitioner alleges that counsel was ineffective for failing to conduct independent DNA  
4 testing of the evidence and for failing to present expert witnesses. Petition at 16-18. Not calling  
5 an expert witness or having independent testing performed is not *per se* deficient performance.  
6 If counsel and the client understand the evidence to be presented by the State and the possible  
7 outcomes of that evidence, “counsel is not required to unnecessarily exhaust all available  
8 public or private resources.” Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).  
9 Further, “strategic choices”—such as choice of witnesses—“made after thorough investigation  
10 of law and facts relevant to plausible options are virtually unchallengeable.” Strickland, 466  
11 U.S. at 691, 104 S. Ct. at 2064; Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). And  
12 simply because the State presented a DNA expert does not mean a defense expert was also  
13 required. See Harrington v. Richter, 562 U.S. 111, 131 S. Ct. 770, 791, 578 F.3d 944 (2011).  
14 (“Strickland does not enact Newton’s third law for the presentation of evidence, requiring for  
15 every prosecution expert an equal and opposite expert for the defense.”).

16                   Further, Petitioner fails to specify precisely how independent DNA testing or hiring an  
17 expert DNA witness would have rendered a different trial outcome probable. The DNA expert  
18 testimony presented by the State at trial did not inculcate Petitioner. In fact, Petitioner was  
19 excluded as a contributor to the major DNA profile on the firearm recovered from the scene.  
20 Trial Transcript, C315580, Day 4, pp. 29, 35. In closing, defense counsel argued to the jury  
21 that these results exculpated Petitioner. Trial Transcript, C315580, Day 5, pp. 80, 86. It is  
22 highly improbable that further DNA testing or testimony would have benefited Petitioner,  
23 when clearly DNA evidence was not the basis for his conviction. Accordingly, Petitioner is  
24 not entitled to relief on this claim.

25                   ///

26                   ///

27                   ///

28                   ///

1                   **e. Ground Five: Ineffective Assistance of Trial Counsel Regarding the Denial**  
2                   **of Petitioner’s Request for Self-Representation**

3                   Petitioner alleges trial counsel was ineffective for “failure to correct the record and to  
4                   preserve the denial of the conditional waiver of self representation...” Petition at 19. Petitioner  
5                   also cited a statement made by the district court at a hearing on November 1, 2016, in which  
6                   the court indicated Petitioner could request to have counsel removed if he felt he and counsel  
7                   had become “incompatible.” Id. Petitioner’s claim is facially unclear because he is claiming  
8                   that counsel failed to correct the record while simultaneously citing a statement directly from  
9                   the record in an attempt to support this claim. He appears to believe that counsel failed to  
10                  present this statement by the district court to the Nevada Supreme Court on direct appeal.

11                 This claim is both contradicted by the record and barred under the law of the case  
12                 doctrine. See Mann, 118 Nev. at 354, 46 P.3d at 1230; Hargrove, 100 Nev. at 502, 686 P.2d at  
13                 225; Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975). Trial counsel also represented  
14                 Petitioner on direct appeal, wherein he argued that the district court erred by denying  
15                 Petitioner’s request to represent himself. Valencia v. State, Docket No. 75282 (Order of  
16                 Affirmance, Apr. 12, 2019). The Nevada Supreme Court concluded that this claim was  
17                 meritless, noting “the record as a whole demonstrates Petitioner did not make an unequivocal  
18                 request to represent himself.” Valencia v. State, Docket No. 75282 (Order of Affirmance, Apr.  
19                 12, 2019), at 3. Accordingly, this claim is also barred by the law of the case doctrine.

20                 “The law of a first appeal is law of the case on all subsequent appeals in which the facts  
21                 are substantially the same.” Hall, 91 Nev. At 315, 535 P.2d at 798 (quoting Walker v. State,  
22                 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the law of the case cannot be  
23                 avoided by a more detailed and precisely focused argument subsequently made after reflection  
24                 upon the previous proceedings.” Id. at 316, 535 P.2d at 799. Under the law of the case doctrine,  
25                 issues previously decided on direct appeal may not be reargued in a habeas petition. Pellegrini  
26                 v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelson v. State, 115 Nev. 396,  
27                 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, the district court cannot overrule the  
28

1 Nevada Supreme Court. NEV. CONST. Art. VI § 6. Therefore, the district court is barred from  
2 granting Petitioner any relief on this claim.

3 **f. Ground Six: Ineffective Assistance of Trial Counsel for Failure to Remind**  
4 **the Court that His Waiver of Self-Representation Was Conditional**

5 This claim is substantially similar to Ground Five. Petitioner appears to believe trial  
6 counsel was under a duty to “remind the Court that the waiver to self representation was  
7 conditional.” Petition at 20. It is unclear why Petitioner interpreted what occurred at the  
8 November 1, 2016 hearing in the district court as amounting to a conditional waiver of his  
9 right to self-representation, or why he believes it was trial counsel’s duty to bring this to the  
10 court’s attention, particularly considering that trial counsel was not present at the November  
11 1, 2016 hearing. The court was merely informing Petitioner that should he wish in the future  
12 to move for the removal of trial counsel, he could do so. Petitioner was certainly aware that he  
13 had the right to do so, as he had moved for the dismissal of previous counsel and filed  
14 numerous pro per motions. Regardless, for the reasons stated above, any claim regarding the  
15 district court’s denial of Petitioner’s request for self-representation is barred under the law of  
16 the case doctrine. Accordingly, the district court was barred from granting Petitioner any relief  
17 on this claim.

18 **g. Ground Seven: Ineffective Assistance of Trial Counsel for Failure to**  
19 **Provide Legal Materials**

20 Petitioner alleges trial counsel failed to provide him with legal materials. Petition at 21.  
21 This is a bare and naked claim suitable only for summary denial. See Hargrove, 100 Nev. at  
22 502, 686 P.2d at 225. Petitioner fails to identify what specific materials he believes should  
23 have been provided to him, or how provision of these materials would have rendered a different  
24 result probable at trial. Accordingly, Petitioner is not entitled to relief on this claim.

25 ///

26 ///

27 ///

28 ///

1                   **h. Ground Eight: Ineffective Assistance of Trial Counsel for Failure to Object**  
2                   **to Certified Judgment of Conviction; Imposition of Habitual Sentence**

3                   As a preliminary matter, to the extent Petitioner appears to contend that the district court  
4                   erred by sentencing him pursuant to the habitual criminal statute, this is a substantive claim  
5                   that has been waived for habeas review. NRS 34.810(1) reads:

6                   The court shall dismiss a petition if the court determines that:

7                   (a) The petitioner's conviction was upon a plea of guilty or guilty  
8                   but mentally ill and the petition is not based upon an allegation  
9                   that the plea was involuntarily or unknowingly or that the plea was  
10                  entered without effective assistance of counsel.

11                  (b) *The petitioner's conviction was the result of a trial and the*  
12                  *grounds for the petition could have been:*

13                  (2) *Raised in a direct appeal or a prior petition for a writ of habeas*  
14                  *corpus or postconviction relief.*

15                  The Nevada Supreme Court has held that while claims of ineffective assistance of trial  
16                  and appellate counsel are appropriately raised for the first time in post-conviction proceedings,  
17                  “all other claims that are appropriate for a direct appeal must be pursued on direct appeal, or  
18                  they will be *considered waived in subsequent proceedings.*” Franklin v. State, 110 Nev. 750,  
19                  752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other grounds by Thomas  
20                  v. State, 115 Nev. 148, 979 P.2d 222 (1999)). See also NRS 34.724(2)(a) (stating that a post-  
21                  conviction petition is not a substitute for a direct appeal); Evans v. State, 117 Nev. 609, 646–  
22                  47, 29 P.3d 498, 523 (2001). Accordingly, Petitioner is not entitled to relief on his claim that  
23                  the sentencing court erred by imposing a habitual criminal sentence.

24                  As to Petitioner's claim that counsel should have objected to the admission of one of  
25                  the certified judgments of conviction that the State admitted at sentencing, the only argument  
26                  Petitioner offers in support of this claim is his bare assertion that “Case No. C224558 is an  
27                  illegal sentence.” Petition at 22. For Count 1, Petitioner was sentenced pursuant to the small  
28                  habitual criminal statute, and a prison sentence of 84 to 240 months was imposed. At the time  
29                  of Petitioner's sentencing, a defendant was eligible for small habitual criminal treatment upon  
30                  the proof of two prior felony convictions. NRS 207.010(1)(a). At sentencing, the State  
31                  admitted four certified judgments of conviction. Certified judgments of conviction are prima

1 facie evidence of a defendant's previous convictions. NRS 207.016(5). Thus, counsel could  
2 not have raised a valid legal objection to the certified judgments of conviction. To do so would  
3 have been futile, and counsel cannot be found ineffective for failure to raise futile objections  
4 or motions. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Furthermore,  
5 Petitioner only claims one of his admitted convictions was invalid. Even if that conviction had  
6 not been presented, the State still presented three other certified judgments of conviction. This  
7 was more than enough to adjudicate Petitioner as a habitual criminal. Thus, Petitioner cannot  
8 demonstrate he was prejudiced. Accordingly, Petitioner is not entitled to relief on this claim.

9  
10 **i. Ground Nine: Ineffective Assistance of Trial Counsel for Failure to Request  
a Change of Venue**

11 Petitioner claims that counsel "failed to request change of venue for a jury who  
12 explained to the court that Ms. Plunkett had brought cell phones into the jail on that all that he  
13 seen on the news..." Petition at 23. To the best the State can ascertain, Petitioner appears to  
14 claim that trial counsel Gregory Coyer should have requested a change of venue due to there  
15 having been local media coverage regarding an incident involving Mr. Coyer's co-counsel Ms.  
16 Plunkett bringing a cell phone into the Clark County Detention Center. This claim is nearly  
17 incomprehensible, and is entirely lacking in support or explanation as to why Petitioner  
18 believes a change in venue was warranted, or how he was prejudiced. This is a bare and naked  
19 allegation suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

20 Further, a motion to change venue would have been futile, and counsel cannot be held  
21 ineffective for failing to file a futile motion. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. A  
22 request for a change in venue must comply with the requirements of NRS 174.455(1), which  
23 states that "[a] criminal action prosecuted by indictment, information or complaint may be  
24 removed from the court in which it is pending, on application of the defendant or state, *on the*  
25 *ground that a fair and impartial trial cannot be had* in the county where the indictment,  
26 information or complaint is pending." (emphasis added). Additionally, a motion to change  
27 venue cannot be granted by the district court until after voir dire examination of the  
28 jury. NRS 174.455(2). Such a motion requires a demonstration that members of the jury were



1 biased against the defendant, not defendant's counsel. See Rhyne, 118 Nev. at 11, 38 P.3d at  
2 169. There is nothing in the record of voir dire in this case indicating that any members of the  
3 jury were prejudiced against Petitioner. Thus, any request for a change in venue would have  
4 been futile. Accordingly, Petitioner is not entitled to relief on this claim.

5 To the extent Petitioner appears to claim that counsel failed to object to the "admittance  
6 of the bag with the gun", this claim was raised on direct appeal and rejected by the Nevada  
7 Supreme Court. See Valencia v. State, Docket No. 75282 (Order of Affirmance, Apr. 12,  
8 2019), at 03-05. The Nevada Supreme Court stated as follows:

9 Petitioner was not denied a fair trial as the evidence bag that the officer read  
10 from had already been admitted without objection from Petitioner and neither  
11 the State nor Petitioner realized it contained the ex-felon language...the district  
12 court properly found that the prejudicial effect was minimal as the ex-felon  
13 testimony was a passing comment that the district court did not permit to be  
14 expounded on.

15 Id. at 04-05.

16 This holding is the law of the case and this issue cannot be revisited in a habeas petition. See  
17 Pellegrini, 117 Nev. at 879, 34 P.3d at 532. Petitioner also ignores the fact that trial counsel  
18 requested a mistrial based on the witness inadvertently reading this information from the bag  
19 containing the firearm. Trial Transcript, C315580, Day 4, p. 86-93.

20 To the extent Petitioner claims trial counsel should have objected to "perjured  
21 testimony", Petitioner fails to support his claim that this testimony was perjured, beyond  
22 simply making this bare allegation. Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. It is highly  
23 improbable that counsel objecting to a witness's testimony and asserting the witness was  
24 committing perjury would have benefited Petitioner in any way, as such an objection would  
25 be at best improper, and at worst outright misconduct, as counsel is not permitted to testify,  
26 nor is counsel permitted to express a personal opinion as to whether or not a witness is being  
27 truthful. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990) ("It is improper  
28 argument for counsel to characterize a witness as a liar."). Further, whether or not to object is

1 a strategic decision, which is virtually unchallengeable. Dawson v. State, 108 Nev. 112, 117,  
2 825 P.2d 593, 596 (1992). Accordingly, Petitioner is not entitled to relief on this claim.

3  
4 **j. Ground Ten: Ineffective Assistance of Trial Counsel for Not Presenting a**  
5 **Defense, Subpoenaing Witnesses or Requesting Video Footage**

6 Petitioner alleged that trial counsel deprived him of a defense. Petition at 24. Petitioner  
7 appears to believe that trial counsel should have presented a defense that the police fabricated  
8 the incident and maintains that this fabrication can be shown by DNA, fingerprints, and  
9 witness Eric Gilbert. Id. To the extent Petitioner maintains his counsel did not present a  
10 defense, this claim is contradicted by the record and thus does not entitle Petitioner to relief.  
11 See, e.g., Mann, 118 Nev. at 354, 46 P.3d at 1230. As to his complaint that counsel did not  
12 present a defense of “police fabrication”, the decision not to raise such a defense was a strategic  
13 choice within the sole discretion of counsel. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
14 (2002) (stating that trial counsel has the “immediate and ultimate responsibility of deciding if  
15 and when to object, which witnesses, if any, to call, and what defenses to develop.”).

16 The record reveals that DNA and fingerprint analyses were performed on the recovered  
17 firearm, and those results were presented at trial. Trial Transcript, C315580, Day 4, pp. 19-30,  
18 42-59. Neither Petitioner’s DNA nor his fingerprints were found on the firearm, but despite  
19 Petitioner’s claims, this did not establish that the police “fabricated” this incident.  
20 Furthermore, trial counsel argued in closing that these results exonerated Petitioner. Trial  
21 Transcript, C315580, Day 5, pp. 80, 86. Contrary to Petitioner’s assertion, trial counsel did in  
22 fact present a defense. Though trial counsel did not allege that the testifying police officers  
23 had fabricated the entire incident, counsel presented the far more reasonable argument that the  
24 police were mistaken as to the identity of the perpetrator and had rushed to judgment in  
25 identifying Petitioner. Id. at 79-90. The decision to present this particular defense was within  
26 the discretion of trial counsel. Rhyne, 118 Nev. at 8, 38 P.3d at 167 (2002).

27 As to Petitioner’s contention that police fabrication could have been proven through the  
28 witness Eric Gilbert, Petitioner fails to provide a cogent explanation as to how this individual

1 would have done so. The record reveals that Eric Gilbert attempted to steal the moped that  
2 Petitioner was riding on the date of the initial police incident. Trial Transcript, C315580 Day  
3 3, pp. 57, 62. Petitioner refers to a voluntary statement presumably made by Eric Gilbert, but  
4 none of the purported statements point to police fabrication or another individual as the  
5 perpetrator. Thus, this is a bare allegation that must be summarily denied. Hargrove, 100 Nev.  
6 at 502-03, 686 P.2d at 225.

7 Petitioner is also not entitled to relief on his claims that trial counsel failed to subpoena  
8 witnesses. The decision not to call witnesses is within the discretion of trial counsel and will  
9 not be questioned unless it was a plainly unreasonable decision. See Rhyne, 118 Nev. at 8, 38  
10 P.3d at 168 (2002); Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992). “[T]he  
11 trial lawyer alone is entrusted with decisions regarding legal tactics such as deciding what  
12 witnesses to call.” Rhyne, 118 Nev. at 8, 38 P.3d at 167. When defense counsel does not have  
13 a solid case, the best strategy can be to say that there is too much doubt about the State’s theory  
14 for a jury to convict. See Harrington, 562 U.S. at 111, 131 S. Ct. at 791. Further, Petitioner  
15 fails to identify the supposed alibi witness he believes counsel should have called, or any  
16 helpful information that could have been presented through Eric Gilbert’s testimony. To satisfy  
17 the Strickland standard and establish ineffectiveness for failure to interview or obtain  
18 witnesses, a petitioner must allege *in the pleadings* the substance of the missing witness’  
19 testimony, and demonstrate how such testimony would have resulted in a more favorable  
20 outcome. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004); State v. Haberstroh,  
21 119 Nev. 173, 185, 69 P.3d 676, 684 (2003). Petitioner has clearly not met this burden.

22 As to Petitioner’s claim that counsel failed to subpoena “dashcam footage”, nothing in  
23 the record indicates that there was such footage in this case. Further, Petitioner fails to  
24 adequately explain how such footage, even if it existed, would have altered the outcome of his  
25 trial. The testimony at trial was that Petitioner pointed a firearm at Officer Jacobitz during a  
26 foot pursuit in an alleyway, and thus any sort of “dashcam” would not have captured the  
27 incident. Trial Transcript, C315580, Day 3, pp. 37-40. Thus, Petitioner’s allegation that  
28

counsel did not obtain dashcam footage, even if true, would not entitle him to relief. See Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Accordingly, this claim is summarily denied.

As to Petitioner's claim that counsel failed to request the photograph used for identification, Petitioner fails to specify how this alleged failure amounted to deficient performance or how it prejudiced him at trial. Accordingly, this claim is summarily denied.

As to his claims that counsel failed to correct misinformation from the prosecutor and failed to object to inconsistencies, these bare allegations are entirely vague with no citation to the record. Petitioner also fails to specify the misinformation and the inconsistencies to which he refers. Petitioner has not met his burden to present specific factual allegations. See Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Accordingly, these claims are summarily denied.

**k. Ground Eleven: Ineffective Assistance of Trial Counsel for Failure to Investigate and Prepare for Trial**

Petitioner raises several broad allegations that must be summarily denied pursuant to Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. He alleges that counsel failed to investigate, but fails to specify what matters should have been investigated, or to show how a better investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at 192, 87 P.3d at 538. He repeats his allegation that counsel failed to call witnesses, but does not specify what witnesses should have been called or the expected substance of such testimony. He complains that counsel did not make an opening statement, but fails to explain how this amounted to deficient performance or how it prejudiced him. He also raises a nearly incomprehensible allegation that counsel failed to raise a legally cognizable defense that could render a sentence of life in prison unreliable. It is entirely unclear what Petitioner even means by a life sentence being "unreliable" or what defense he believes counsel should have raised. This claim is so devoid of specificity that it must be summarily denied.

As to Petitioner's claim that counsel failed to instruct the jury as to the exculpatory value of the DNA evidence, this claim is belied by the record. Mann, 118 Nev. at 354, 46 P.3d at 1230. During closing argument, trial counsel explicitly stated to the jury that the DNA and

1 fingerprint results exonerated Petitioner. Trial Transcript, C315580 Day 5, p. 80. Accordingly,  
2 this claim must be denied.

3 To the extent that Petitioner appears to maintain counsel was ineffective on appeal,  
4 Petitioner has not met his burden of pleading specific facts to demonstrate ineffectiveness of  
5 appellate counsel. See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).  
6 Petitioner merely makes a conclusory assertion that counsel failed to prepare for appeal.  
7 Accordingly, this claim must be denied.

8 To the extent Petitioner appears to claim that counsel had a conflict of interest, he also  
9 fails to present specific factual allegations. A conflict of interest arises when counsel's loyalty  
10 to a client is threatened by his responsibilities to another client or person, or by his own  
11 interests. Jefferson v. State, 133 Nev. 874, 876, 410 P.3d 1000, 1002 (Nev. App. 2017).  
12 Petitioner fails to identify the alleged conflict; he merely presents a conclusory assertion that  
13 there was an irreconcilable conflict. Accordingly, he is not entitled to relief on this claim.

14  
15 **I. Ground Twelve: Ineffective Assistance of Trial Counsel for Suggestive**  
16 **Identification; Ineffectiveness of Appellate Counsel; Errors by District**  
17 **Court in Jury Selection, Jury Instruction, and Sentencing**

18 All of Petitioner's claims under this ground are bare and naked allegations that are plead  
19 in a conclusory manner, with no accompanying argument or factual explanation. Accordingly,  
20 all of these claims must be summarily denied pursuant to Hargrove, 100 Nev. at 502-03, 686  
21 P.2d at 225.

22 Further, as to Petitioner's allegations that the district court erred during jury selection  
23 and the setting of jury instructions, as well as by sentencing Petitioner pursuant to the habitual  
24 criminal statute, these are all claims that could have been raised on direct appeal. Accordingly,  
25 they cannot be considered on habeas review. See NRS 34.724(2)(a); Evans, 117 Nev. at 646–  
26 47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059.

27 ///

28 ///

///

## II. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING

NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent *unless an evidentiary hearing is held*.
2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, he shall dismiss the petition without a hearing.
3. If the judge or justice determines that an evidentiary hearing is required, he shall grant the writ and shall set a date for the hearing.

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann, 118 Nev. at 356, 46 P.3d at 1231. A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. at 503, 686 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to hold an evidentiary hearing simply to make a complete record. See State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

Further, the United States Supreme Court has held that an evidentiary hearing is not required simply because counsel’s actions are challenged as being unreasonable strategic decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge post hoc rationalization for counsel’s decision making that contradicts the available evidence of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis

1 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain  
2 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (citing  
3 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the  
4 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466  
5 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

6 Petitioner’s claims do not require an evidentiary hearing. An expansion of the record is  
7 unnecessary because Petitioner has failed to assert any meritorious claims and the Petition can  
8 be disposed of with the existing record, as discussed *supra*. Marshall, 110 Nev. at 1331, 885  
9 P.2d at 605; Mann, 118 Nev. at 356, 46 P.3d at 1231. Therefore, Petitioner’s request for an  
10 evidentiary hearing is denied.

11 **ORDER**

12 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief  
13 shall be, and it is, hereby denied.

14 DATED this \_\_\_\_ day of November, 2021.

Dated this 3rd day of November, 2021

15 

16 DISTRICT JUDGE

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

FE9 C94 108F 979C  
Carli Kierny  
District Court Judge

19 BY  For

20 KAREN MISHLER  
21 Chief Deputy District Attorney  
Nevada Bar #013730

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Ceasar Valencia, Plaintiff(s)

CASE NO: A-20-815616-W

7 vs.

DEPT. NO. Department 2

8 State of Nevada, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

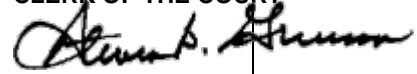
11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the  
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
case as listed below:

14 Service Date: 11/3/2021

15 NOREEN DEMONTE

nykosn@co.clark.nv.us





NEFF

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CEASAR VALENCIA,

Petitioner,

vs.

STATE OF NEVADA,

Respondent,

Case No: A-20-815616-W

Dept No: II

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

**PLEASE TAKE NOTICE** that on November 3, 2021, 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 November 8, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Ingrid Ramos

Ingrid Ramos, Deputy Clerk

**CERTIFICATE OF E-SERVICE / MAILING**

I hereby certify that on this 8 day of November 2021, 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:

Cesar Valencia # 94307  
P.O. BOX 650  
Indian Springs, NV 89070

/s/ Ingrid Ramos

Ingrid Ramos, Deputy Clerk

Statistically closed: USJR - Other Manner of Disposition (USJROT)

1 of a Deadly Weapon, one count of Ownership or Possession of Firearm by Prohibited Person,  
2 one count of Trafficking in Controlled Substance, and two counts of Possession of Controlled  
3 Substance. On June 10, 2016, Petitioner was arraigned on the Information, at which time he  
4 entered a plea of not guilty and invoked his right to a speedy trial.

5 On November 27, 2017, the matter proceeded to trial. On December 1, 2017, the jury  
6 rendered its verdict of guilty as to all counts. On January 25, 2018, Petitioner was sentenced  
7 to the Nevada Department of Corrections, pursuant to the small habitual criminal statute, as  
8 follows: Count 1 – a minimum of 84 months and a maximum of 240 months; Count 2 – a  
9 minimum of 24 months and a maximum of 72 months, concurrent to Count 1; Count 3 – a  
10 minimum of 12 months and a maximum of 48 months, concurrent with Count 2; Count 4 – a  
11 minimum of 12 months and a maximum of 48 months, concurrent with Count 3; Count 5 – a  
12 minimum of 24 months and a maximum of 72 months, concurrent to Count 4. Petitioner's total  
13 aggregate sentence was a minimum of 108 months and a maximum of 312 months. Petitioner  
14 received 615 days credit for time served. The Judgment of Conviction was filed on February  
15 6, 2018.

16 On March 1, 2018, Petitioner filed a Notice of Appeal. The Nevada Supreme Court  
17 affirmed Petitioner's Judgment of Conviction, and remittitur issued on May 7, 2019.

18 On May 28, 2020,<sup>1</sup> Petitioner filed the instant Petition for Writ of Habeas Corpus (Post-  
19 Conviction) (hereinafter "Petition"). On July 28, 2020, the Court denied the Petition. The  
20 Findings of Fact, Conclusions of Law were filed on August 7, 2020. On appeal, the Nevada  
21 Supreme Court reversed the denial of the Petition, finding that the Petition was timely filed.  
22 The Nevada Supreme Court remanded the matter back to this Court, with instructions to  
23 consider the Petition's claims on their merits. On August 19, 2021, this Court held a hearing  
24 on the merits of the Petition, and on September 9, 2021, this Court issued a minute order  
25 denying the Petition. Specifically, the Court finds as follows:

26 ///

27 ///

---

28 <sup>1</sup>The Petition reflects that though it was filed on May 28, 2020, it was received by the clerk of the court on May 4, 2020.

## **FACTUAL SUMMARY**

On May 19, 2016, Las Vegas Metropolitan Police (“LVMPD”) Officers Houston and Jacobitz attempted to conduct a traffic stop on Petitioner after they observed him operating a moped at a high rate of speed and failing to stop at a stop sign. Officer Jacobitz activated the patrol car’s lights and sirens, and followed Petitioner until he appeared to stop and got off the moped. The officers exited their patrol car and were approximately five to eight feet away from Petitioner. Petitioner turned to face the officers, but then dropped the moped and ran away from the officers.

The officers pursued Petitioner on foot. Officer Jacobitz observed a firearm in Petitioner’s right hand, and yelled “gun” to alert Officer Houston of the presence of a firearm. Petitioner raised the firearm and pointed it at Officer Jacobitz, however, Petitioner’s elbow hit a pole which caused the gun to fall to the ground.

Officer Jacobitz remained with the firearm while Officer Houston continued chasing Petitioner. While waiting with the firearm, Officer Jacobitz saw two men (unrelated to this case) attempt to steal the moped that Petitioner had abandoned. Having to react quickly to this attempt theft, Officer Jacobitz retrieved the firearm without gloves so that the firearm would not be left unattended while he addressed the moped theft. Officer Jacobitz observed that the firearm was loaded and contained six rounds. Although Officer Houston continued the foot chase, ultimately Petitioner was able to flee the scene.

On May 21, 2016, officers arrested Petitioner during a felony vehicle stop after conducting surveillance on Petitioner. During a search of his person incident to arrest, officers located 11.60 grams of heroin, 3.1 grams of methamphetamine, 2.400 grams of cocaine, 2.67 grams of methamphetamine, and \$946 in US Currency.

## **ANALYSIS**

### **I. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

All of the claims Petitioner raises are contradicted by the record, not cognizable on habeas review, barred from further consideration, or are bare and naked allegations. The majority of Petitioner’s claims are ineffective-assistance-of-counsel claims. To demonstrate

1 ineffective assistance of trial counsel, a petitioner must show counsel's performance was  
2 deficient in that it fell below an objective standard of reasonableness, and prejudice resulted  
3 in that there was a reasonable probability of a different outcome in the absence of counsel's  
4 deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 2063  
5 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the  
6 Strickland test). Both components – deficient performance and prejudice – must be shown.  
7 Strickland, 466 U.S. at 687, 104 S.Ct. at 2065. “[T]here is no reason for a court deciding an  
8 ineffective assistance claim to approach the inquiry in the same order or even to address both  
9 components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697,  
10 104 S. Ct. at 2069.

11 Importantly, claims of ineffective assistance of counsel asserted in a petition for post-  
12 conviction relief must be supported with specific factual allegations, which if true, would  
13 entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225  
14 (1984). NRS 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts  
15 supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just  
16 conclusions may cause your petition to be dismissed.” (emphasis added). “Bare” and “naked”  
17 allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled  
18 by the record. Id. “A claim is ‘belied’ when it is contradicted or proven to be false by the record  
19 as it existed at the time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228,  
20 1230 (2002).

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

27 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
28 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the

1 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
2 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
3 (2002).

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

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

23 **a. Ground One: Ineffective Assistance of Trial Counsel During the**  
24 **Preliminary Process**

25 Petitioner alleges that his initial counsel, Deputy Public Defender Steven Lisk, provided  
26 ineffective assistance during the “preliminary process and pretrial.” Petition at 6. Specifically,  
27 Petitioner alleges that Mr. Lisk did not visit him in jail, wanted him to accept a plea negotiation,  
28 and did not provide him with discovery. Id. at 6-10.

1        These allegations regarding Mr. Lisk, even if accepted as true, are insufficient to meet  
2 the Strickland standard because Petitioner cannot demonstrate that he was prejudiced as a  
3 result of Mr. Lisk's conduct. Mr. Lisk did not represent Petitioner at trial. He withdrew as  
4 counsel and Gregory E. Coyer was appointed to represent Petitioner. Thus, Petitioner cannot  
5 demonstrate a reasonable probability that the outcome of the trial would have been different  
6 in the absence of these alleged errors. Petitioner does not even allege this is the case, as he  
7 maintains he was prejudiced, not at trial, but at the preliminary hearing and calendar call.  
8 Accordingly, Petitioner is not entitled to relief on this claim.

9                    **b. Ground Two: Ineffective Assistance of Trial Counsel**

10  
11        Petitioner alleges his trial counsel was ineffective for failing to assist him with a civil  
12 forfeiture case. Petitioner has failed to state a claim for which he is entitled to relief. Based on  
13 Petitioner's own account of counsel's conduct, this does not amount to ineffective assistance.  
14 Counsel's statement to Petitioner that he was not appointed to represent him in a civil matter  
15 was correct; counsel was appointed to represent Petitioner only in the criminal case. Further,  
16 Petitioner does not explain how counsel's supposed failure to assist him in this forfeiture case  
17 prejudiced him in the criminal trial. Accordingly, this claim must be summarily denied.

18        Petitioner also alleges there was body camera footage in this case that counsel failed to  
19 provide to him. This allegation is contradicted by the record, and therefore must be dismissed.  
20 See Mann, 118 Nev. at 354, 46 P.3d at 1230; Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.  
21 At trial, Officer Houston testified that neither he nor Officer Jacobitz was wearing body-worn  
22 camera on the date of the incident, and that at the time body-worn camera was not standardly  
23 issued for department personnel. Trial Transcript, C315580, Day 2, pp. 133, 146-47.  
24 Furthermore, trial counsel obtained the radio traffic from the incident and admitted it at trial.  
25 Id. at 138. Counsel also repeatedly used the radio traffic during cross-examination of Officer  
26 Houston. Id. at 138-46. Thus, trial counsel did in fact ensure he obtained discovery from the  
27 State, and at trial presented the best documentation of the incident that was available to him.

28        ///

1           Petitioner also complains about counsel advising him as to the elements of Trafficking  
2 in Controlled Substance, and states that by doing so counsel was an “advocate for the state,  
3 not for the defense.” Petition at 12-13. Based on Petitioner’s own pleading, it appears counsel  
4 correctly informed Petitioner that the key element of the offense was the amount of the  
5 controlled substance, and that it did not require separate proof of intent to sell. See NRS  
6 453.3385. Providing Petitioner with accurate information as to the charges he was facing was  
7 clearly not deficient performance; in fact it was counsel’s duty to do so. Accordingly,  
8 Petitioner is not entitled to relief on this claim.

9                           **c. Ground Three Ineffective Assistance of Trial Counsel for Inadequate Pre-**  
10                           **Trial Contact**

11           Petitioner alleges his trial counsel was ineffective for failing to meet and communicate  
12 with him. Petition at 15. Petitioner fails to provide any specificity as to how this alleged lack  
13 of communication amounted to deficient performance or prejudiced him at trial. See  
14 Strickland, 466 U.S. at 697, 104 S.Ct. at 2069. See also NRS 34.735 (stating that failure to  
15 raise specific facts rather than conclusions may cause a petition to be dismissed); Hargrove,  
16 100 Nev. at 502-03, 686 P.2d at 225.

17           Here, rather than plead any specific facts relating to this alleged lack of communication,  
18 Petitioner simply asserts that he “was extremely prejudiced by the abandonment of counsel.”  
19 Petition at 15. He fails to state what additional communication was needed or demonstrate that  
20 additional communication with counsel would have changed the outcome of his trial. Nor does  
21 he explain how he was “abandoned” by counsel. The record reveals Petitioner’s counsel  
22 extensively cross-examined witnesses at trial, presented a strong closing argument alleging  
23 that the State had not met its burden, and represented Petitioner on appeal. Trial Transcript,  
24 C315580, Day 2, pp. 125-46, 149-52; Day 3, pp. 114-45, 149-50; Day 4, pp. 34-36, 53-59,  
25 115-25; Day 5, pp. 3-22, 32-34, 79-90. This is hardly evidence of abandonment. This  
26 conclusory claim is completely lacking in factual support. Accordingly, Petitioner is not  
27 entitled to relief on this claim.

28       ///



1                   **d. Ground 4: Ineffective Assistance of Trial Counsel for Failure to Conduct**  
2                   **DNA Testing and Present Expert Witnesses**

3                   Petitioner alleges that counsel was ineffective for failing to conduct independent DNA  
4 testing of the evidence and for failing to present expert witnesses. Petition at 16-18. Not calling  
5 an expert witness or having independent testing performed is not *per se* deficient performance.  
6 If counsel and the client understand the evidence to be presented by the State and the possible  
7 outcomes of that evidence, “counsel is not required to unnecessarily exhaust all available  
8 public or private resources.” Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).  
9 Further, “strategic choices”—such as choice of witnesses—“made after thorough investigation  
10 of law and facts relevant to plausible options are virtually unchallengeable.” Strickland, 466  
11 U.S. at 691, 104 S. Ct. at 2064; Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). And  
12 simply because the State presented a DNA expert does not mean a defense expert was also  
13 required. See Harrington v. Richter, 562 U.S. 111, 131 S. Ct. 770, 791, 578 F.3d 944 (2011).  
14 (“Strickland does not enact Newton’s third law for the presentation of evidence, requiring for  
15 every prosecution expert an equal and opposite expert for the defense.”).

16                   Further, Petitioner fails to specify precisely how independent DNA testing or hiring an  
17 expert DNA witness would have rendered a different trial outcome probable. The DNA expert  
18 testimony presented by the State at trial did not inculcate Petitioner. In fact, Petitioner was  
19 excluded as a contributor to the major DNA profile on the firearm recovered from the scene.  
20 Trial Transcript, C315580, Day 4, pp. 29, 35. In closing, defense counsel argued to the jury  
21 that these results exculpated Petitioner. Trial Transcript, C315580, Day 5, pp. 80, 86. It is  
22 highly improbable that further DNA testing or testimony would have benefited Petitioner,  
23 when clearly DNA evidence was not the basis for his conviction. Accordingly, Petitioner is  
24 not entitled to relief on this claim.

25                   ///

26                   ///

27                   ///

28                   ///

1                   **e. Ground Five: Ineffective Assistance of Trial Counsel Regarding the Denial**  
2                   **of Petitioner’s Request for Self-Representation**

3                   Petitioner alleges trial counsel was ineffective for “failure to correct the record and to  
4 preserve the denial of the conditional waiver of self representation...” Petition at 19. Petitioner  
5 also cited a statement made by the district court at a hearing on November 1, 2016, in which  
6 the court indicated Petitioner could request to have counsel removed if he felt he and counsel  
7 had become “incompatible.” Id. Petitioner’s claim is facially unclear because he is claiming  
8 that counsel failed to correct the record while simultaneously citing a statement directly from  
9 the record in an attempt to support this claim. He appears to believe that counsel failed to  
10 present this statement by the district court to the Nevada Supreme Court on direct appeal.

11                  This claim is both contradicted by the record and barred under the law of the case  
12 doctrine. See Mann, 118 Nev. at 354, 46 P.3d at 1230; Hargrove, 100 Nev. at 502, 686 P.2d at  
13 225; Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975). Trial counsel also represented  
14 Petitioner on direct appeal, wherein he argued that the district court erred by denying  
15 Petitioner’s request to represent himself. Valencia v. State, Docket No. 75282 (Order of  
16 Affirmance, Apr. 12, 2019). The Nevada Supreme Court concluded that this claim was  
17 meritless, noting “the record as a whole demonstrates Petitioner did not make an unequivocal  
18 request to represent himself.” Valencia v. State, Docket No. 75282 (Order of Affirmance, Apr.  
19 12, 2019), at 3. Accordingly, this claim is also barred by the law of the case doctrine.

20                  “The law of a first appeal is law of the case on all subsequent appeals in which the facts  
21 are substantially the same.” Hall, 91 Nev. At 315, 535 P.2d at 798 (quoting Walker v. State,  
22 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the law of the case cannot be  
23 avoided by a more detailed and precisely focused argument subsequently made after reflection  
24 upon the previous proceedings.” Id. at 316, 535 P.2d at 799. Under the law of the case doctrine,  
25 issues previously decided on direct appeal may not be reargued in a habeas petition. Pellegrini  
26 v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelson v. State, 115 Nev. 396,  
27 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, the district court cannot overrule the  
28

1 Nevada Supreme Court. NEV. CONST. Art. VI § 6. Therefore, the district court is barred from  
2 granting Petitioner any relief on this claim.

3 **f. Ground Six: Ineffective Assistance of Trial Counsel for Failure to Remind**  
4 **the Court that His Waiver of Self-Representation Was Conditional**

5 This claim is substantially similar to Ground Five. Petitioner appears to believe trial  
6 counsel was under a duty to “remind the Court that the waiver to self representation was  
7 conditional.” Petition at 20. It is unclear why Petitioner interpreted what occurred at the  
8 November 1, 2016 hearing in the district court as amounting to a conditional waiver of his  
9 right to self-representation, or why he believes it was trial counsel’s duty to bring this to the  
10 court’s attention, particularly considering that trial counsel was not present at the November  
11 1, 2016 hearing. The court was merely informing Petitioner that should he wish in the future  
12 to move for the removal of trial counsel, he could do so. Petitioner was certainly aware that he  
13 had the right to do so, as he had moved for the dismissal of previous counsel and filed  
14 numerous pro per motions. Regardless, for the reasons stated above, any claim regarding the  
15 district court’s denial of Petitioner’s request for self-representation is barred under the law of  
16 the case doctrine. Accordingly, the district court was barred from granting Petitioner any relief  
17 on this claim.

18 **g. Ground Seven: Ineffective Assistance of Trial Counsel for Failure to**  
19 **Provide Legal Materials**

20 Petitioner alleges trial counsel failed to provide him with legal materials. Petition at 21.  
21 This is a bare and naked claim suitable only for summary denial. See Hargrove, 100 Nev. at  
22 502, 686 P.2d at 225. Petitioner fails to identify what specific materials he believes should  
23 have been provided to him, or how provision of these materials would have rendered a different  
24 result probable at trial. Accordingly, Petitioner is not entitled to relief on this claim.

25 ///

26 ///

27 ///

28 ///

1                   **h. Ground Eight: Ineffective Assistance of Trial Counsel for Failure to Object**  
2                   **to Certified Judgment of Conviction; Imposition of Habitual Sentence**

3                   As a preliminary matter, to the extent Petitioner appears to contend that the district court  
4                   erred by sentencing him pursuant to the habitual criminal statute, this is a substantive claim  
5                   that has been waived for habeas review. NRS 34.810(1) reads:

6                   The court shall dismiss a petition if the court determines that:

7                   (a) The petitioner's conviction was upon a plea of guilty or guilty  
8                   but mentally ill and the petition is not based upon an allegation  
9                   that the plea was involuntarily or unknowingly or that the plea was  
10                  entered without effective assistance of counsel.

11                  (b) *The petitioner's conviction was the result of a trial and the*  
12                  *grounds for the petition could have been:*

13                  *(2) Raised in a direct appeal or a prior petition for a writ of habeas*  
14                  *corpus or postconviction relief.*

15                  The Nevada Supreme Court has held that while claims of ineffective assistance of trial  
16                  and appellate counsel are appropriately raised for the first time in post-conviction proceedings,  
17                  “all other claims that are appropriate for a direct appeal must be pursued on direct appeal, or  
18                  they will be *considered waived in subsequent proceedings.*” Franklin v. State, 110 Nev. 750,  
19                  752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other grounds by Thomas  
20                  v. State, 115 Nev. 148, 979 P.2d 222 (1999)). See also NRS 34.724(2)(a) (stating that a post-  
21                  conviction petition is not a substitute for a direct appeal); Evans v. State, 117 Nev. 609, 646–  
22                  47, 29 P.3d 498, 523 (2001). Accordingly, Petitioner is not entitled to relief on his claim that  
23                  the sentencing court erred by imposing a habitual criminal sentence.

24                  As to Petitioner's claim that counsel should have objected to the admission of one of  
25                  the certified judgments of conviction that the State admitted at sentencing, the only argument  
26                  Petitioner offers in support of this claim is his bare assertion that “Case No. C224558 is an  
27                  illegal sentence.” Petition at 22. For Count 1, Petitioner was sentenced pursuant to the small  
28                  habitual criminal statute, and a prison sentence of 84 to 240 months was imposed. At the time  
29                  of Petitioner's sentencing, a defendant was eligible for small habitual criminal treatment upon  
30                  the proof of two prior felony convictions. NRS 207.010(1)(a). At sentencing, the State  
31                  admitted four certified judgments of conviction. Certified judgments of conviction are prima

1 facie evidence of a defendant's previous convictions. NRS 207.016(5). Thus, counsel could  
2 not have raised a valid legal objection to the certified judgments of conviction. To do so would  
3 have been futile, and counsel cannot be found ineffective for failure to raise futile objections  
4 or motions. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Furthermore,  
5 Petitioner only claims one of his admitted convictions was invalid. Even if that conviction had  
6 not been presented, the State still presented three other certified judgments of conviction. This  
7 was more than enough to adjudicate Petitioner as a habitual criminal. Thus, Petitioner cannot  
8 demonstrate he was prejudiced. Accordingly, Petitioner is not entitled to relief on this claim.

9  
10 **i. Ground Nine: Ineffective Assistance of Trial Counsel for Failure to Request  
a Change of Venue**

11 Petitioner claims that counsel "failed to request change of venue for a jury who  
12 explained to the court that Ms. Plunkett had brought cell phones into the jail on that all that he  
13 seen on the news..." Petition at 23. To the best the State can ascertain, Petitioner appears to  
14 claim that trial counsel Gregory Coyer should have requested a change of venue due to there  
15 having been local media coverage regarding an incident involving Mr. Coyer's co-counsel Ms.  
16 Plunkett bringing a cell phone into the Clark County Detention Center. This claim is nearly  
17 incomprehensible, and is entirely lacking in support or explanation as to why Petitioner  
18 believes a change in venue was warranted, or how he was prejudiced. This is a bare and naked  
19 allegation suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

20 Further, a motion to change venue would have been futile, and counsel cannot be held  
21 ineffective for failing to file a futile motion. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. A  
22 request for a change in venue must comply with the requirements of NRS 174.455(1), which  
23 states that "[a] criminal action prosecuted by indictment, information or complaint may be  
24 removed from the court in which it is pending, on application of the defendant or state, *on the*  
25 *ground that a fair and impartial trial cannot be had* in the county where the indictment,  
26 information or complaint is pending." (emphasis added). Additionally, a motion to change  
27 venue cannot be granted by the district court until after voir dire examination of the  
28 jury. NRS 174.455(2). Such a motion requires a demonstration that members of the jury were

1 biased against the defendant, not defendant's counsel. See Rhyne, 118 Nev. at 11, 38 P.3d at  
2 169. There is nothing in the record of voir dire in this case indicating that any members of the  
3 jury were prejudiced against Petitioner. Thus, any request for a change in venue would have  
4 been futile. Accordingly, Petitioner is not entitled to relief on this claim.

5 To the extent Petitioner appears to claim that counsel failed to object to the "admittance  
6 of the bag with the gun", this claim was raised on direct appeal and rejected by the Nevada  
7 Supreme Court. See Valencia v. State, Docket No. 75282 (Order of Affirmance, Apr. 12,  
8 2019), at 03-05. The Nevada Supreme Court stated as follows:

9       Petitioner was not denied a fair trial as the evidence bag that the officer read  
10       from had already been admitted without objection from Petitioner and neither  
11       the State nor Petitioner realized it contained the ex-felon language...the district  
12       court properly found that the prejudicial effect was minimal as the ex-felon  
13       testimony was a passing comment that the district court did not permit to be  
14       expounded on.

15 Id. at 04-05.

16 This holding is the law of the case and this issue cannot be revisited in a habeas petition. See  
17 Pellegrini, 117 Nev. at 879, 34 P.3d at 532. Petitioner also ignores the fact that trial counsel  
18 requested a mistrial based on the witness inadvertently reading this information from the bag  
19 containing the firearm. Trial Transcript, C315580, Day 4, p. 86-93.

20 To the extent Petitioner claims trial counsel should have objected to "perjured  
21 testimony", Petitioner fails to support his claim that this testimony was perjured, beyond  
22 simply making this bare allegation. Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. It is highly  
23 improbable that counsel objecting to a witness's testimony and asserting the witness was  
24 committing perjury would have benefited Petitioner in any way, as such an objection would  
25 be at best improper, and at worst outright misconduct, as counsel is not permitted to testify,  
26 nor is counsel permitted to express a personal opinion as to whether or not a witness is being  
27 truthful. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990) ("It is improper  
28 argument for counsel to characterize a witness as a liar."). Further, whether or not to object is

1 a strategic decision, which is virtually unchallengeable. Dawson v. State, 108 Nev. 112, 117,  
2 825 P.2d 593, 596 (1992). Accordingly, Petitioner is not entitled to relief on this claim.

3  
4 **j. Ground Ten: Ineffective Assistance of Trial Counsel for Not Presenting a**  
5 **Defense, Subpoenaing Witnesses or Requesting Video Footage**

6 Petitioner alleged that trial counsel deprived him of a defense. Petition at 24. Petitioner  
7 appears to believe that trial counsel should have presented a defense that the police fabricated  
8 the incident and maintains that this fabrication can be shown by DNA, fingerprints, and  
9 witness Eric Gilbert. Id. To the extent Petitioner maintains his counsel did not present a  
10 defense, this claim is contradicted by the record and thus does not entitle Petitioner to relief.  
11 See, e.g., Mann, 118 Nev. at 354, 46 P.3d at 1230. As to his complaint that counsel did not  
12 present a defense of “police fabrication”, the decision not to raise such a defense was a strategic  
13 choice within the sole discretion of counsel. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
14 (2002) (stating that trial counsel has the “immediate and ultimate responsibility of deciding if  
15 and when to object, which witnesses, if any, to call, and what defenses to develop.”).

16 The record reveals that DNA and fingerprint analyses were performed on the recovered  
17 firearm, and those results were presented at trial. Trial Transcript, C315580, Day 4, pp. 19-30,  
18 42-59. Neither Petitioner’s DNA nor his fingerprints were found on the firearm, but despite  
19 Petitioner’s claims, this did not establish that the police “fabricated” this incident.  
20 Furthermore, trial counsel argued in closing that these results exonerated Petitioner. Trial  
21 Transcript, C315580, Day 5, pp. 80, 86. Contrary to Petitioner’s assertion, trial counsel did in  
22 fact present a defense. Though trial counsel did not allege that the testifying police officers  
23 had fabricated the entire incident, counsel presented the far more reasonable argument that the  
24 police were mistaken as to the identity of the perpetrator and had rushed to judgment in  
25 identifying Petitioner. Id. at 79-90. The decision to present this particular defense was within  
26 the discretion of trial counsel. Rhyne, 118 Nev. at 8, 38 P.3d at 167 (2002).

27 As to Petitioner’s contention that police fabrication could have been proven through the  
28 witness Eric Gilbert, Petitioner fails to provide a cogent explanation as to how this individual

1 would have done so. The record reveals that Eric Gilbert attempted to steal the moped that  
2 Petitioner was riding on the date of the initial police incident. Trial Transcript, C315580 Day  
3 3, pp. 57, 62. Petitioner refers to a voluntary statement presumably made by Eric Gilbert, but  
4 none of the purported statements point to police fabrication or another individual as the  
5 perpetrator. Thus, this is a bare allegation that must be summarily denied. Hargrove, 100 Nev.  
6 at 502-03, 686 P.2d at 225.

7 Petitioner is also not entitled to relief on his claims that trial counsel failed to subpoena  
8 witnesses. The decision not to call witnesses is within the discretion of trial counsel and will  
9 not be questioned unless it was a plainly unreasonable decision. See Rhyne, 118 Nev. at 8, 38  
10 P.3d at 168 (2002); Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992). “[T]he  
11 trial lawyer alone is entrusted with decisions regarding legal tactics such as deciding what  
12 witnesses to call.” Rhyne, 118 Nev. at 8, 38 P.3d at 167. When defense counsel does not have  
13 a solid case, the best strategy can be to say that there is too much doubt about the State’s theory  
14 for a jury to convict. See Harrington, 562 U.S. at 111, 131 S. Ct. at 791. Further, Petitioner  
15 fails to identify the supposed alibi witness he believes counsel should have called, or any  
16 helpful information that could have been presented through Eric Gilbert’s testimony. To satisfy  
17 the Strickland standard and establish ineffectiveness for failure to interview or obtain  
18 witnesses, a petitioner must allege *in the pleadings* the substance of the missing witness’  
19 testimony, and demonstrate how such testimony would have resulted in a more favorable  
20 outcome. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004); State v. Haberstroh,  
21 119 Nev. 173, 185, 69 P.3d 676, 684 (2003). Petitioner has clearly not met this burden.

22 As to Petitioner’s claim that counsel failed to subpoena “dashcam footage”, nothing in  
23 the record indicates that there was such footage in this case. Further, Petitioner fails to  
24 adequately explain how such footage, even if it existed, would have altered the outcome of his  
25 trial. The testimony at trial was that Petitioner pointed a firearm at Officer Jacobitz during a  
26 foot pursuit in an alleyway, and thus any sort of “dashcam” would not have captured the  
27 incident. Trial Transcript, C315580, Day 3, pp. 37-40. Thus, Petitioner’s allegation that  
28



counsel did not obtain dashcam footage, even if true, would not entitle him to relief. See Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Accordingly, this claim is summarily denied.

As to Petitioner's claim that counsel failed to request the photograph used for identification, Petitioner fails to specify how this alleged failure amounted to deficient performance or how it prejudiced him at trial. Accordingly, this claim is summarily denied.

As to his claims that counsel failed to correct misinformation from the prosecutor and failed to object to inconsistencies, these bare allegations are entirely vague with no citation to the record. Petitioner also fails to specify the misinformation and the inconsistencies to which he refers. Petitioner has not met his burden to present specific factual allegations. See Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Accordingly, these claims are summarily denied.

**k. Ground Eleven: Ineffective Assistance of Trial Counsel for Failure to Investigate and Prepare for Trial**

Petitioner raises several broad allegations that must be summarily denied pursuant to Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. He alleges that counsel failed to investigate, but fails to specify what matters should have been investigated, or to show how a better investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at 192, 87 P.3d at 538. He repeats his allegation that counsel failed to call witnesses, but does not specify what witnesses should have been called or the expected substance of such testimony. He complains that counsel did not make an opening statement, but fails to explain how this amounted to deficient performance or how it prejudiced him. He also raises a nearly incomprehensible allegation that counsel failed to raise a legally cognizable defense that could render a sentence of life in prison unreliable. It is entirely unclear what Petitioner even means by a life sentence being "unreliable" or what defense he believes counsel should have raised. This claim is so devoid of specificity that it must be summarily denied.

As to Petitioner's claim that counsel failed to instruct the jury as to the exculpatory value of the DNA evidence, this claim is belied by the record. Mann, 118 Nev. at 354, 46 P.3d at 1230. During closing argument, trial counsel explicitly stated to the jury that the DNA and

1 fingerprint results exonerated Petitioner. Trial Transcript, C315580 Day 5, p. 80. Accordingly,  
2 this claim must be denied.

3 To the extent that Petitioner appears to maintain counsel was ineffective on appeal,  
4 Petitioner has not met his burden of pleading specific facts to demonstrate ineffectiveness of  
5 appellate counsel. See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).  
6 Petitioner merely makes a conclusory assertion that counsel failed to prepare for appeal.  
7 Accordingly, this claim must be denied.

8 To the extent Petitioner appears to claim that counsel had a conflict of interest, he also  
9 fails to present specific factual allegations. A conflict of interest arises when counsel's loyalty  
10 to a client is threatened by his responsibilities to another client or person, or by his own  
11 interests. Jefferson v. State, 133 Nev. 874, 876, 410 P.3d 1000, 1002 (Nev. App. 2017).  
12 Petitioner fails to identify the alleged conflict; he merely presents a conclusory assertion that  
13 there was an irreconcilable conflict. Accordingly, he is not entitled to relief on this claim.

14  
15 **I. Ground Twelve: Ineffective Assistance of Trial Counsel for Suggestive**  
16 **Identification; Ineffectiveness of Appellate Counsel; Errors by District**  
17 **Court in Jury Selection, Jury Instruction, and Sentencing**

18 All of Petitioner's claims under this ground are bare and naked allegations that are plead  
19 in a conclusory manner, with no accompanying argument or factual explanation. Accordingly,  
20 all of these claims must be summarily denied pursuant to Hargrove, 100 Nev. at 502-03, 686  
21 P.2d at 225.

22 Further, as to Petitioner's allegations that the district court erred during jury selection  
23 and the setting of jury instructions, as well as by sentencing Petitioner pursuant to the habitual  
24 criminal statute, these are all claims that could have been raised on direct appeal. Accordingly,  
25 they cannot be considered on habeas review. See NRS 34.724(2)(a); Evans, 117 Nev. at 646–  
26 47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059.

27 ///

28 ///

///

## II. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING

NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent *unless an evidentiary hearing is held*.
2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, he shall dismiss the petition without a hearing.
3. If the judge or justice determines that an evidentiary hearing is required, he shall grant the writ and shall set a date for the hearing.

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann, 118 Nev. at 356, 46 P.3d at 1231. A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. at 503, 686 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to hold an evidentiary hearing simply to make a complete record. See State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

Further, the United States Supreme Court has held that an evidentiary hearing is not required simply because counsel’s actions are challenged as being unreasonable strategic decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge post hoc rationalization for counsel’s decision making that contradicts the available evidence of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis

1 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain  
2 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (citing  
3 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the  
4 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466  
5 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

6 Petitioner’s claims do not require an evidentiary hearing. An expansion of the record is  
7 unnecessary because Petitioner has failed to assert any meritorious claims and the Petition can  
8 be disposed of with the existing record, as discussed *supra*. Marshall, 110 Nev. at 1331, 885  
9 P.2d at 605; Mann, 118 Nev. at 356, 46 P.3d at 1231. Therefore, Petitioner’s request for an  
10 evidentiary hearing is denied.

11 **ORDER**

12 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief  
13 shall be, and it is, hereby denied.

14 DATED this \_\_\_\_ day of November, 2021.

Dated this 3rd day of November, 2021



DISTRICT JUDGE

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

FE9 C94 108F 979C  
Carli Kierny  
District Court Judge

19 BY



For

20 KAREN MISHLER  
21 Chief Deputy District Attorney  
Nevada Bar #013730

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Ceasar Valencia, Plaintiff(s)

CASE NO: A-20-815616-W

7 vs.

DEPT. NO. Department 2

8 State of Nevada, 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: 11/3/2021

15 NOREEN DEMONTE

nykosn@co.clark.nv.us

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**July 28, 2020**

---

A-20-815616-W      Ceasar Valencia, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

---

**July 28, 2020      10:15 AM      Petition for Writ of Habeas  
Corpus**

**HEARD BY:** Jones, David M

**COURTROOM:** RJC Courtroom 15A

**COURT CLERK:** Michaela Tapia

**RECORDER:** De'Awna Takas

**REPORTER:**

**PARTIES**

**PRESENT:**      Demonte, Noreen C.      Attorney  
State of Nevada      Defendant

**JOURNAL ENTRIES**

- Deft. not present.

The petition being improper as the aggregate total Sentence is correct, COURT ORDERED, petition DENIED. State to prepare the order.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**June 09, 2021**

---

A-20-815616-W      Ceasar Valencia, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

---

**June 09, 2021      9:30 AM      Status Check**

**HEARD BY:** Kierny, Carli      **COURTROOM:** RJC Courtroom 16B

**COURT CLERK:** Alan Castle

**RECORDER:** Jessica Kirkpatrick

**REPORTER:**

**PARTIES**

**PRESENT:**      Mishler, Karen      Attorney  
State of Nevada      Defendant

**JOURNAL ENTRIES**

- Colloquy regarding the Nevada Supreme Court Reversal & Remand from Judge Jones' decision. Court directed State to respond and ORDERED, Briefing Schedule set as follows: State's Response/Opposition DUE - 7/15/21; Petitioner's Reply DUE - 8/12/21 and matter set for decision.

8/19/21 12:30 p.m. Decision - Petition for Writ of Habeas Corpus

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**August 19, 2021**

---

A-20-815616-W      Ceasar Valencia, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

---

**August 19, 2021      12:30 AM      Decision**

**HEARD BY:** Craig, Christy      **COURTROOM:** RJC Courtroom 16D

**COURT CLERK:** Andrea Natali

**RECORDER:** Kaihla Berndt

**REPORTER:**

**PARTIES**

**PRESENT:**      Zadrowski, Bernard B.      Attorney

**JOURNAL ENTRIES**

- Petitioner not present. COURT ORDERED, matter CONTINUED for Judge Kierny to issue her ruling.

CONTINUED TO: 9/9/21 - 12:30 PM



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Writ of Habeas Corpus

# COURT MINUTES

September 09, 2021

A-20-815616-W      Ceasar Valencia, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

**September 09, 2021      8:00 AM      Decision**

**HEARD BY:** Kierny, Carli

**COURTROOM:** RJC Courtroom 16B

**COURT CLERK:** Alan Castle

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

## JOURNAL ENTRIES

- This matter is before the Court on Defendant's Petition for Writ of Habeas Corpus (Post-Conviction). The matter was previously denied by Judge David Jones as untimely; however, the Supreme Court remanded the matter back to this Court with instructions to consider the Petitioner's writ on its merits. The Court finds as follows: The Petition for Writ of Habeas Corpus is DENIED. Valencia's sole contention is that he received ineffective assistance of counsel; he gives twelve different grounds under this assertion. To demonstrate ineffective assistance of trial counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice resulted in that there was a reasonable probability of a different outcome in the absence of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 2063 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the *Strickland* test). Both components—deficient performance and prejudice—must be shown. *Strickland*, 466 U.S. at 687, 104 S.Ct. at 2065. Importantly, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). NRS 34.735(6) states in relevant part, "[Petitioner] must allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed." (emphasis added). "Bare" and "naked" allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled by the record. *Id.* "A

claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002). The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). Taking each allegation in turn, the Court finds as follows:

1. Valencia alleges that his Public Defender, Steven Lisk, was ineffective for not visiting him in jail, wanting him to take a plea, and not providing discovery to Valencia. Lisk was not Valencia's attorney at trial; that attorney was Gregory Coyer. Petitioner does not show how Lisk's performance in these preliminary matters affected Coyer's trial performance, or that the outcome of the trial would have been different but for Lisk's performance. Valencia has not satisfied the second prong of Strickland on this claim.

2. Valencia alleges Coyer failed to assist him with his civil forfeiture case, did not provide body camera footage to him, and acting as an "advocate for the State, not the defense." The civil forfeiture portion of the case is entirely separate from Valencia's criminal case and is irrelevant to this writ. Regarding the body cam allegation, Valencia fails to make any showing that not providing Valencia himself with body camera footage fell below an objective standard of reasonableness; it is unclear to the Court what Valencia would have done with this footage, or even how he would have viewed it on his own at the detention center. Valencia also fails to show how him having body cam footage could have resulted in a different trial outcome. Therefore, Valencia fails to meet both prongs of Strickland as to this allegation. Finally, Valencia's allegation regarding Coyer acting as an advocate for the State and not the defense is a conclusory statement with no specific facts supporting it; it is the exact type of "bare and naked allegation" that is insufficient to warrant post-conviction relief as explained in Hargrove.

3. Valencia alleges his counsel did not maintain adequate pretrial contact. Petitioner failed to provide any specificity as to how this alleged lack of communication amounted to deficient performance or prejudiced him at trial. Petitioner simply states he was "extremely prejudiced by the abandonment of counsel." No specific facts were presented. At trial, the record reveals Petitioner's counsel extensively cross-examined witnesses, presented a strong closing arguing the State did not meet its burden, and represented Petitioner on appeal. Petitioner's claim is conclusory and is lacking factual support, and is therefore denied.

4. Valencia alleges his counsel was ineffective for not conducting his own DNA testing and DNA expert. Not calling an expert witness or having independent testing performed is not per se deficient performance. State presenting a DNA expert does not necessarily require an expert to rebut. Defense counsel argued at closing that these results exculpated Petitioner. It is not likely that further testing/testimony would have benefited Petitioner, as DNA was not the basis for conviction. Valencia has failed to meet both prongs of Strickland on this issue.

5. Valencia re-raises his contention that he was denied the right of self-representation. This claim is belied by the record, and is barred as it was already addressed by the Supreme Court in Valencia's direct appeal. On direct appeal, the Supreme Court affirmed the lower court's decision regarding self-representation. Valencia has presented no additional information on this claim in his writ; this issue is hereby denied.

6. Valencia alleges counsel was ineffective for failing to remind the Court his waiver of self-representation was conditional. However, there is nothing in the record that shows the waiver of self-

representation was actually conditional; Valencia was always free to raise a request to represent himself at any point in the proceedings, so there was nothing special about the "conditional" nature of his waiver that needed to be brought to the judge's attention. He also fails to make a showing of how the trial outcome would be different if this record was made, and therefore fails the Strickland test.

7. Valencia alleges his counsel failed to provide him with legal materials. Petitioner did not identify what specific materials he believed should have been provided and how they would have rendered a different result. Therefore, he did not make an adequate showing under Strickland and this allegation is denied.

8. Valencia alleges his attorney didn't object to a certified judgment of conviction, and the habitual criminal enhancement was imposed. This is an issue that should have been raised on direct appeal and was not. It is therefore considered waived in all subsequent proceedings, including this one, under the Nevada Supreme Court's ruling in *Franklin v. State*, 110 Nev. 750, 752, 29 P.3d 498, 523 (2001).

9. Valencia alleges trial counsel was ineffective for failing to request a change of venue. This allegation has no substance or support that would justify a change in venue. A motion to change venue would have been futile. The venire was asked about pre-trial publicity by the judge in voir dire and no one mentioned having heard anything about the case, belying Valencia's contention that pre-trial publicity surrounding his case prevented him from having a fair trial. Further, counsel's "failure" to object to the admittance of the gun was raised and denied on direct appeal to Nevada Supreme Court. Additionally, Petitioner's allegation regarding counsel's "failure" to object to perjured testimony is not supported by any evidence beyond a bare allegation. Valencia's allegation here is insufficient to show ineffective assistance of counsel. Finally, Valencia's contention that his attorney failed to object to "perjured testimony" is not supported by facts to show that the testimony was actually perjured; it is simply another bare and naked allegation. The Court notes that Counsel's decision to object or not object is a strategic decision, and under these facts, cannot be shown to have been objectively unreasonable.

10. Valencia claims his attorney was ineffective for not presenting a defense, subpoenaing witnesses, or requesting video footage. Petitioner's assertion that his attorney presented no defense is belied by the record. Coyer vigorously cross-examined witnesses and argued that the police were mistaken in their identification of the perpetrator. While this may not have been Valencia's preferred defense, this was clearly a tactical decision and not objectively unreasonable. Valencia's contention that Eric Gilbert should have been subpoenaed does not allege specific facts to show exactly what Gilbert's testimony might have been, or how that testimony would have entitled Valencia to relief. Additionally, the Court notes that the decision to call witnesses is solely up to Counsel's discretion. Regarding counsel's alleged failure to subpoena dashcam footage, Valencia neither establishes that this footage actually existed, nor elaborates on how it would have changed the outcome of the trial. Nothing Valencia raises in this section rises to the level necessary to make a showing of ineffective assistance of counsel.

11. Valencia claims his counsel was ineffective for failing to investigate and prepare for trial. This is a broad claim, devoid of any specificity or facts to support it, and is denied for this reason.

12. Valencia states his counsel was ineffective for suggestive identification; ineffectiveness of appellate counsel; errors in jury selection, jury instruction, and sentencing. All of Petitioner's claims under this ground are bare and naked allegations that are plead in a conclusory manner, with no

accompanying argument or factual explanation. Accordingly, all of these claims are summarily denied pursuant to Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.

Here, Petitioner's claims do not require an evidentiary hearing as Petitioner failed to assert any meritorious claims in the Writ. There is nothing that requires an expansion of the record for this Court to make its decision, so this request is also DENIED.

State to prepare the Order.

CLERK'S NOTE: The above minute order has been electronically distributed.

# Certification of Copy

State of Nevada }  
County of Clark } SS:

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

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

CEASAR SANCHEZ VALENCIA,

Plaintiff(s),

vs.

JOHNSON WARDEN HIGH DESERT STATE PRISON; STATE OF NEVADA,

Defendant(s),

Case No: A-20-815616-W

Dept No: II

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 10 day of November 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

