

IN THE SUPREME COURT OF THE STATE OF NEVADA

CEASAR SANCHAZ VALENCIA,
A/K/A/CEASAR SANCHEZ VALENCIA,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-20-815616-W

Docket No: 83778

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
CEASAR VALENCIA #94307,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
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Case No. C-16-315580-1
Dept. No. 29

FILED

MAY 28 2020

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

John H. Blum
CLERK OF COURT

Cesar Sanchez Valencia
Petitioner, H94307

Johnson warden High Desert State Prison
The State of Nevada

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

A-20-815616-W
Dept. 29

Respondent.

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert STATE Prison Clark County
2. Name and location of court which entered the judgment of conviction under attack: EIGHTH Judicial District Court Clark County Las Vegas NV
3. Date of judgment of conviction: 2-6-18
4. Case number: C-315580-1
5. Length of sentence: Aggregate Total 108 to 312 months

RECEIVED

MAY - 4 2020

CLERK OF THE COURT

1 (b) If sentence is death, state any date upon which execution is scheduled:....
2 6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

3 Yes No ☒

4 If "yes," list crime, case number and sentence being served at this time:
5
6

7 7. Nature of offense involved in conviction being challenged: *Count 1 Assault w/Weapon on protected person*
8 *Count 2 Possession of Fire Arm by prohibited person Count 3 trafficking*
9 *Count 3 & 4 Possession of controlled substance*

8 8. What was your plea? (check one)

10 (a) Not guilty ☒

11 (b) Guilty

12 (c) Guilty but mentally ill

13 (d) Nolo contendere

14 9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a
15 plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was
16 negotiated, give details:
17

18 10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

19 (a) Jury ☒

20 (b) Judge without a jury

21 11. Did you testify at the trial? Yes No ☒

22 12. Did you appeal from the judgment of conviction? Yes ☒ No

23 13. If you did appeal, answer the following:

24 (a) Name of court: *Nevada Supreme Court*

25 (b) Case number or citation: *No 75282*

26 (c) Result: *Order of Affirmance*

27 (d) Date of result: *April 12 2019 Reorder May 7 2019*

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

1 14. If you did not appeal, explain briefly why you did not: N/A

2

3

4 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any
5 petitions, applications or motions with respect to this judgment in any court, state or federal? Yes No X

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

7 (a) (1) Name of court:

8 (2) Nature of proceeding: N/A

9

10 (3) Grounds raised: N/A

11

12

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

14 (5) Result: N/A

15 (6) Date of result: N/A

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

17

18

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

20 (1) Name of court:

21 (2) Nature of proceeding: N/A

22 (3) Grounds raised: N/A

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

24 (5) Result: N/A

25 (6) Date of result: N/A

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

27

28

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

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

3 (1) First petition, application or motion? Yes No
4 Citation or date of decision:

5 (2) Second petition, application or motion? Yes No
6 Citation or date of decision:

7 (3) Third or subsequent petitions, applications or motions? Yes No
8 Citation or date of decision:

9 (e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you
10 did not. (You must relate specific facts in response to this question. Your response may be included on paper which
11 is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in
12 length.).....

13
14 17. Has any ground being raised in this petition been previously presented to this or any other court by way of
15 petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

16 (a) Which of the grounds is the same:
17

18 (b) The proceedings in which these grounds were raised:
19

20 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this
21 question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your
22 response may not exceed five handwritten or typewritten pages in length.)

23

24 18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached,
25 were not previously presented in any other court, state or federal, list briefly what grounds were not so presented,
26 and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your
27 response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not
28 exceed five handwritten or typewritten pages in length.)

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

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

If yes, state what court and the case number:

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Steven W. H. Public Defenders Office and Gregory E. Coyne ESQ

Alexis Plunnett

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

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

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

1 (a) Ground One: Conviction And/or Sentence are
2 Unconstitutional IN Violation of Sixth and ~~Fourth~~
3 Amendments As Guaranteed By The Nevada and
4 United States Constitutions.

5
6 Supporting Facts: Ineffective Assistance of Counsel
7 through the entire initial Preliminary Process
8 and PRE Trial

9 Public Defender Mr Steven WSK was Appointed
10 During Justice Court Arraignment and preliminary
11 hearing handed over to District Court when he first
12 talk to me I him to come see me at the CDC before
13 the preliminary hearing which he failed to do so
14 I was requesting additional discovery of victim
15 Statements I also explained to him that I was being
16 charged for something I didn't do, that the police
17 fabricated this charge of Assault with a deadly weapon
18 and that the day of my arrest I was threatened by police
19 officer that I did not recognize but he was yelling
20 at me that he should of shot me yesterday he also
21 was trying to get at me but detective Bryant pushed
22 him off told him to stop ahead of but prior to that
23 the same officer could not identify me because I heard
24 Detective Bryant say you sure that's not him do you recognize
25 Valencia vs the passenger take a good look at him then
26 at that point he said ya that's him I still didn't understand
27 why he was threaten me until I was booked into CDC
28 that I was being charged with Assault on an officer

1 That's why I was requesting that Mr Lisk to come visit me
2 in person at CCDC which he failed and on the day of the prelim
3 ary. I asked why did you not visit me his response was
4 that he was busy with a trial. I also asked him why you
5 never responded to my voice mails I left for him,
6 so he responded with the same thing that he was done with
7 trial so I explained that I don't want a preliminary hearing
8 I'm going to waste it and he got real upset with me I asked
9 him if I have this hearing are you going to file a writ
10 when we get to District Court his response was no so
11 I waived my preliminary hearing and asked him
12 to be ready for trial that I was going to invoke my
13 speedy trial because I would like to have my trial
14 because I'm innocent of this Assault with the gun then
15 he Mr Lisk threaten me that I was going to be found guilty
16 and that they the State will habeatualize me I explained
17 that I will never accept a deal to something I did not
18 do I can't accept that I will take a Deal for the drugs
19 but not for the gun or Assault this was at my preliminary
20 hearing. On June 10 2016 was the next time I spoke or seen
21 him Mr Lisk I explained to Mr Lisk to be ready for trial
22 because I wasn't taking a Deal for the gun only two felonies
23 for the possession of Drugs Mr Lisk was giving me a look
24 like Anger the look that he really wanted to yell at me
25 I felt like Mr Lisk was Addebaating for the state because
26 he would negotiate a deal want to go talk to the DA and ask
27 if they would offer a deal for the drugs this was on Jun 10 2016
28 I ask him to request additional Discovery like my DNA and all
Video to file some suppressing motions Mr Lisk responded

1. explained that he will not file any motions for me because
2. I waived my preliminary hearing that there was nothing he could
3. do for me now alright then come see me at CCDC in person
4. before my calendar call so that we can be ready for trial
5. Mr Lisk said I will. Mr Lisk never showed up to visit me I called
6. the Public Defender the receptionist always transferred my calls
7. to Mr Lisk voicemail I left numerous messages after
8. what seemed like a hundred attempts spoke to Mr Lisk
9. a few days before calendar call that's when he informed
10. me that he had file a discovery motion and that he would
11. be requesting a continuance. I explained to Mr Lisk that would
12. be filing a complaint with the State bar for ineffective
13. because no I would have to waive my speedy trial
14. Mr Lisk had failed to prepare for trial and you never
15. come to visit at CCDC before the calendar call. On July
16. 19 2016 Mr Lisk was ineffective for filing the Discovery
17. Motion on same day for calendar call so because of
18. his ineffectiveness I had to waive my speedy trial
19. and request Alternate Counsel the hearing continued
20. for July 26 2016 to request Mr Lisk to be dismissed
21. I explained to the court that Mr Lisk was ineffective
22. he wants me to plead guilty to something I'm innocent
23. why is he forcing me to plead guilty he explained
24. the elements of the trafficking and possession
25. all contributing with with the possession being a lesser
26. included offense in trafficking Mr Lisk stated to
27. the court that regards with MS Holleran they
28. were in the process of working that they were

1 always in communication with regards to the discovery
2 issues and everything. So with regard to that he didn't feel
3 that Ms O'Halloran Mr Lisk withheld any information
4 about this to me again counsel was an advocate to the state
5 instead of the defense Ms O'Halloran insisted that there
6 was no video footage but there was body cam
7 footage of K9 unit that was processed by Ms O'Halloran.
8 On Mr Lisk Discovery there was request for video footage
9 I was asking for that video because the of the way one
10 of the officers was threaten that he should or shot killed
11 me. All of this information Mr Lisk knew but he failed
12 to investigate or inform me that he had communication
13 with Ms O'Halloran so the K9 video that was released
14 Nov 12 2016 in it there was PDF files which are logged
15 or recorded that there was video footage deleted this
16 information was deleted by Ms O'Halloran all by District Attorney
17 So Mr Lisk knew about this video and Mr Lisk should of
18 had notes turned over in the case file for Mr Coyer
19 unless he kept them on what did he do to them. By Mr Lisk
20 failing to investigate all the aspects of the case had
21 irreparable injurious effect on the preliminary hearing
22 and calendar call which are critical stages of the criminal
23 process because it is at this juncture counsel learns of charges
24 the evidence realized upon for said charges and there
25 sufficiency. The Court has held "Sixth Amendment guaranty
26 to Accused is guaranteed that he not stand alone against
27 state at any stage of prosecution formal or informal in court
28 or out where counsel's absence might derogate Accuseds

①

1 right to fair. States V Wade 388 US 218, 87 Sct 1926 (1967)
2 And actual or constructive denial of the assistance of
3 Counsel Altogether is legally presumed to result in prejudice
4 So are various kinds of state interference with counsel
5 assistance. See United States V Cronk ante at 659 "
6 concluding that prejudice in these circumstances is
7 so likely that case by case - inquiry into prejudice
8 is not worth the cost Ante at 658 Thus here it lies
9 sufficient cause and prejudice Therefore this case must
10 be reversed and remanded for evidentiary hearing
11 to prevent manifest injustice

12
13 The actions of Counsel violates the
14 Sixth and Fourteenth Amendments to the
15 US and Nevada constitutions

16
17 Relief is Warranted

18 // //

19 // //

20 // //

1 (b) Grand Two: Conviction And/or Sentence are unconstitutional
2 In Violation of Fifth, Sixth and Fourteenth Amendments
3 Right to effective Assistance of pre-trial, trial
4 and Appellate Counsel As Guaranteed By Nevada and
5 United States Constitutions;

6
7 Supporting facts: On August 9 2016 Mr Coyer
8 was confirmed a counsel on that hearing a trial date
9 was requested it was set for status check negotiations
10 / trial setting on August 23 2016 I requested
11 to discharge Mr Coyer I informed the court
12 that I have filed a complaint to State Bar. Mr Coyer
13 who declined to file motions and conduct investigation
14 or provide discovery. The court did advise me to inform
15 Mr Coyer about my day of arrest and I spoke to Mr
16 Coyer on CCDC visit between the dates of August 9th
17 2016 and before August 23rd 2016 During this visit
18 I explained to Mr Coyer that there was some money
19 that was forfeiture case he responded with what do
20 you want me to do with that? so I said you would
21 explain it to me I know that I must respond to
22 the court in Dept 23 with a verified answer or I will
23 not be able to claim my money my property if a default
24 Judgment goes through his response was you are on your
25 own on that case because I don't practice civil and the
26 court doesn't pay me for me to represent you on that
27 case so I asked so there is nothing you could help me
28 with? he responded with no I ask again if you advice

(11)

1 me to accept a plea deal I will have to forfeit my money
2 he responded with yes. I ask him that I ask if he could
3 get a deal for drugs because I was innocent of assault with
4 gun. I ask to request additional discovery he explained to me
5 that he don't request nothing until 30 days before trial
6 I told him the trial date was set for 7-25-16 I then explain
7 that my constitutional rights were violated because police
8 were making this charge up of assault with the weapon
9 police say there was a chase I would like to request
10 dash cam footage and body cam footages he told me
11 that didn't exist. I asked him could you at least investigate
12 & what video footage ~~available~~ then response was that
13 it was my word against the officers word and Mr. Coyer
14 responded with me personally I'm going with the officers
15 word OK I say are you going to be ready for trial coming
16 up he told me he would have to get familiar with the
17 case I explained that I was asking for discovery to
18 be ready for trial so your not going to request nothing on ~~my~~ my
19 case, They claim my money is proceeds from drugs but my
20 charges as you can see very clear are possession not for
21 purpose of sale Mr. Coyer gave me his personal opinion he
22 explained that I shouldn't get my money back because of the
23 simple fact that I was in possession of drugs and I ask if
24 at trial what are the elements of trafficking this type of charge
25 he explained to me that just the amount of the substance
26 that's enough to convict on trial I ask ~~what~~ about the intent
27 for sell or delivery or the other elements responded with
28 no just possession at this point I could not trust him

(12)

1 because he is an advocate for the state not for the defense.
2 I try again to talk with Mr Coyer about the brady motion
3 the one Mr Lusk filed that was in the process of additional discovery
4 but he knew that there was an opposition from the state all these motions
5 were placed off calendar the court explained that since I had alternate
6 Counsel that you will ^{rep} file my discovery motion you know Lusk
7 requesting all evidence in the case all I was getting that he was
8 less than truthful like he was creating a road block
9 to getting anything I also remember that he explained that
10 my case was going to have to be put on the back burner
11 that my file was just going to be put on a shelf on the DAs
12 office collecting dust the one his comments No I said I disa
13 gree I will want to have my trial soon I need discovery he
14 explained to me I don't file nothing with the courts Mr Coyer
15 explained to me his practice in requesting evidence or discovery
16 materials which was by him sending a note or letter to the prosecu
17 tor and then they will give him some type of response and he leaves a
18 paper trail I later found out that in my case file Mr Coyer had
19 in his possession that opposition motion from the state he never respon
20 ed to me that he was in possession of it and also the discovery
21 motion that Mr Lusk had filed. again he hasn't inform me of those
22 motions I later found out he was withholding from me these documents
23 but he wants to lie to me about his discovery practice but he already
24 had a response in the file his loyalty was with the state not the
25 defense Mr Coyer was ineffective for failure to provide me
26 with ^{vide} copy's or even inform me on them so on the visit at CCDC
27 I asked him to request video of the police chase to file
28 a suppression motion because if they claim that there
was a traffic violation his response was you need a civil rights

⑬

1 lawyer for that claim like I told you I don't do civil
2 I cannot help you there I do not practice civil I only do
3 criminal so you wouldn't be able to represent me on
4 a 4th violation ~~amendment~~ to suppress or could I
5 not even get advice or help me at all with my for future
6 or criminal they took my money and you can't even give me
7 some advice or nothing to help me how could I put my trust
8 in you at all I know you could ask the courts or something
9 for some kind of ass. stance how can you say you are an advocate
10 for me and my rights when all you're doing is being an obstacle
11 obstructing me from getting my money back if you can't be
12 ready for trial I don't want you on my case his response
13 was that you can't can't get rid of me the court appointed
14 me to the case ok well we'll see about that on August 23 2016
15 I told the court and I told Mr. Coyer I don't want you on my
16 case because your loyalty is with the prosecutor not with me.
17 his response was again I already told you you can't
18 get rid of me ok then I will continue prose I tried to
19 be good with Mr. Coyer but he has conflicting interest
20 because Mr. Lisk and Mr. Coyer both work with the public
21 defenders office Mr. Coyer for several years then he
22 went on to open his private practice but for sure they use
23 to be co-workers, now Mr. Coyer has a heavy caseload
24 and don't even have a supervisor gets paid by the court and
25 saves money on defending indigent defendants he's been ineffective
26 before and on August 25 2016 oral motion to dismiss counsel
27 Granted

28 Relieff is Warranted



1 (c) Ground Three: IN Violation of the Sixth and Fourteenth
2 Amendments US Const and Nevada Const Art 1 Sect 3, 5.

3
4 Trial Counsel was ineffective ~~in~~ failing to meet or
5 confer and or have any pre-trial contact whatsoever
6 with Petitioner

7
8 I seen Mr Cover on the February 28 2017 court hearing
9 and next time I seen him was Nov 14 2017 never
10 explained to me nothing about the trial and the only
11 thing that was mentioned was who was going to be
12 doing the trial with him and he asked who I wanted
13 I said to get that lawyer on the news who
14 got charged dismissed that was all he never
15 mentioned who he was going to call for witness
16 or any trial preparation nothing never review
17 any evidence. Petitioner has the constitutional right to be represented
18 by competent counsel and in this case the lack of the most basic
19 right to effectiveness was lost to Petitioner by and through the total
20 abandonment by counsel during critical stages of the criminal process
21 to such extent as to render Petitioner's pretrial investigation and
22 conviction and sentence fundamentally unfair and unconstitutional
23 and although the courts have Petitioner had no constitutional right
24 to "meeting all" relationship with appointed counsel so long as
25 lawyer acted as clients advocate Plumlee v. State 512 F3d 1204
26 (2008) CA9 Nev. cert den (2008) 553 US 1085 128 Sct 2885, 171
27 L Ed 822 with the exception that this case is significantly different
28 Petitioner was extremely prejudiced by the abandonment of counsel
Relief is warranted

(15)

1. (d) Ground Four: IN Violation of the The Sixth and
2 Fourteenth Amendment US Const. And ~~the~~ constitution
3 New const. Art 1 sect 3, 8.

4
5 Trial Counsel was ineffective In failing to conduct
6 an independant DNA testing of the evidence and for
7 failing to present expert witnesses, in violation
8 of the Sixth and Fourteenth Amendment US Const
9 in this case officer Jacobitz discovered a firearm
10 body cam footage shows that officer Jacobitz is
11 claiming that Cesar was holding the firearm like this
12 with two hands and elbows up in front of the
13 chest and that his partner saw everything
14 at trial he change his story by saying that
15 Cesar had the gun in the waist and with one
16 hand turned with his torso and officer Houston
17 testified that he never saw the suspect point the
18 gun Mr Coyer During a visit when he produce me this
19 DNA Report told me he was going to have it explained
20 how the DNA and finger prints would of have been
21 on the gun from some who was hold it running from police
22 he failed to hire any Defense experts and
23 During trial I asked him when are you going to present
24 the DNA evidence he replied he he was not I told him
25 that I was going to tell the court and Alexis Plunkett
26 Mr Coyer told me not to because I was going to get the judge
27 mad so he after a while told me that there are state witnesses
28 they don't have to bring them so and on why he suppress
them prejudice is shown that Mr Coyer was ineffective

⑥

Deficient Performance

MRS 50.275 provides for expert witnesses testimony or opinion if such expert testimony or specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue. See *Pineda v State* 88 P3d 827, 833 (Nev 2004)

here counsel was ^{well} aware that of the intentions not to present expert witness on DNA and fingerprints tested because they matched the officers Jacobitz but counsel failed to do independent because he already mentioned in the record that he was not going to spend any ~~resources~~ on the case the DNA results were of four individuals at least one being a female but Cesar Valenzuela is excluded as a possible contributor to patrol or major DNA if counsel would of had defense expert why there were no DNA left behind with some one who was holding the gun with ~~two~~ ^{three} hands and the DNA was incomplete there were the bullets with which were never tested leave the results inconclusive also the State expert testified that she did not get a buccal swab from anyone to eliminate any potential contributors to the DNA profiles concluding trial counsel was ineffective in failing to offer expert testimony finally had counsel conducted an independent DNA testing on the gun and bullets counsel would have been able to run a DNA comparison on the mixture of DNA profiles with identified at least ~~four~~ ^{four} different individuals the ~~the~~ four other individuals were potential witnesses ~~to the~~ ^{to the} suspects to the assault with a deadly weapon and who was actually was in possession of the River ~~over~~ ^{over} not the Prisoner

⑦

Prejudicial Effect

The prejudicial effect of counsel's over all deficient performance is obvious and irreparable to the highest magnitude as petitioner Cesar Valenzuela was ultimately denied his right to present an adequate theory to his defense and put the state DNA evidence through a proper adversarial testing especially as it could not be disputed that Petitioner Cesar Valenzuela could not be found on the gun or the product of transfer evidence. Furthermore as to the state witnessess crystal may did not attempt to run the mixture of profiles through a state and nationwide data base to determine who the other contributors of DNA could have belong too, counsel's failure to conduct this independent procedure prejudice Petitioner Cesar Valenzuela to the highest degree because counsel's actions or lack thereof, eliminated the opportunity at discovery potential witnesses and subjects when considering the prejudicial effect of counsel's actions or lack thereof there is absolute no tactical justification for the course of action tried counsel chose finding ineffectiveness for failure to call witnesses whose testimony could have bolstered defense theory. Under the Sixth Amendment and the dictates of Strickland counsel's actions or lack thereof demonstrates deficient performance that caused prejudice and a reasonable probability that for counsel's errors the results of the trial would have been different Wiggins v Smith 538 US 123 Oct 25 2003 (2003). The actions of counsel violates the Sixth and Fourteenth Amendment to the US Constitution and Nevada Constitution; Nev. Const Art 1, Sect 3, 8.

Relief is Warranted
7/1/11

1 (a) Grand Five: Petitioners Conviction AND/or Sentence are
2 unconstitutional IN Violation OF Sixth AND Fourteenth
3 Amendment Right to effective ASSISTANCE OF Pre trial
4 trial AND APPELLATE COUNSEL AS Guaranteed By The
5 NEVADA Constitution USCA VI, XIV; Nev Const
6 Art I Sect 3, 8

7
8 Trial Counsel was ineffective for failure to
9 correct the record and to preserve the denial
10 of the conditional waiver of Self Representation
11 on hearing Date NOV 1 2016 upon request for co-counsel
12 to obtain legal materials before waiving this right to
13 self representation the court state: AND YOU WOULD
14 have another opportunity if you felt that you become
15 incompetent to ask that Mr Coyer be removed
16 as long as it's not a tactic designed to delay the trial
17 That was the condition with the court that I would be
18 able or if the court would honor this condition
19 for the opportunity that was the understanding. NOV 1
20 2018. Mr Coyer has failed to present this facted
21 to the Supreme Court and During the court hearing of
22 January 19 I explained and ask Mr Coyer I don't want you
23 on the case he failed to provide any legal materials and all
24 Mr Coyer would say for sure it's your constitutional right
25 but I told him to object and preserve the record for
26 Appeal cause all he would say don't worry about
27 we will bring it back on Appeal
28 Reiter is warranted

1 (b) Ground Six: Petitioner's Conviction And/or Sentence are
2 UNCONSTITUTIONAL IN VIOLATION OF SIXTH AND FOURTEENTH
3 AMENDMENTS AS GUARANTEED BY THE NEVADA CONSTITUTION
4 USCA VI, XIV; NEV CONST ART 1 SECT 3, 8

5
6
7 Trial Court on August 25 2016 defendant's oral motion
8 to dismiss counsel Granted. Court stated it will consider
9 a motion to Appoint counsel if Defendant changes his mind
10 on Nov 1 2016 on a hearing for Access to the Courts motion
11 Defendant made oral request to proceed with co-counsel
12 Judge Scotti explained to either represent yourself or Appoint
13 Mr Coyer Argued to the Appeal that Petitioner reluctantly
14 agreed to have prior counsel re-appointed. But the agree-
15 ment with the Court was that Judge Scotti report
16 AND YOU WOULD HAVE ANOTHER OPPORTUNITY
17 IF YOU FELT THAT YOU BECAME INCOMPAT-
18 TIBLE TO ASK THAT HE BE REMOVED
19 AS LONG AS THAT WASN'T A TACTIC DES-
20IGNED TO DELAY THE TRIAL. On February 28 2017
21 Mr Coyer Failed to remind the Court that the waiver
22 to Self Representation was Conditional I kept telling
23 Mr Coyer Judge Scotti told me that I would have the
24 opportunity to withdraw Mr Coyer but on Nov 8 2016
25 I ACCEPTED Mr Coyer but the Court made an Order
26 to Mr Coyer would Provide me with legal materials
27 that's why I ACCEPTED ON Nov 8 2016 that was the order
28 of the court for Mr Coyer was to provide legal materials.
Relief vs were denied Page 20

1 c) Ground seven: Conviction And/or Sentence are
2 UnConstitutional IN Violation OF Sixth AND Fourteenth
3 AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE
4 OF PRE TRIAL, TRIAL AND APPELLATE COUNSEL
5 AS GUARANTEED BY THE NEVADA AND
6 UNITED Constitution,

7
8 Mr Coyer failed to provide legal materials
9 ON NOV 8 2016 Judge Scotti made an order
10 for those materials and for the order giving approval
11 requeste funding so mr coyer could provide effective defense.
12 Petitioner requested that the court make that order before
13 accepting mr coyer and on Feb 28 2017 Mr coyer denied
14 that he got back on to help provide those material by
15 stating that: I think I got back on for whatever
16 reason I don't recall if it was his request or
17 not and also told the court to reconsider because
18 the way the record was made by the previous judge
19 so even after I told Mr coyer he went on a Adl
20 told the judge that I stand ready to represent
21 him if you let me stay on the case. Petitioner
22 explained to the court that mr coyer has denying me research
23 if I wanted anything to request from commission he could even
24 provide a legal ~~for~~ the order from the court was to provide
25 he was depriving everything that he agreed to do so it
26 shows that mr coyer was Fraud Disonesty and perjury
27 of the law denying my constitutional rights
28 Relief is warranted

Page 21

1 (d) Ground EIGHT: Petitioners Sentence are unconstitutional
2 IN Violation of EIGHTH AND fourteenth Amendments
3 AS Guaranteed by The Nevada Constitutions AND US
4 CONSTITUTIONS

5
6 A Court has the discretion to make the decision
7 to dismiss the Court did not weigh or was
8 presented with the facts or those prior convictions
9 Case No C224558 is an illegal Sentence and Mr Coyer
10 Failed to object to that JDC it was Amended
11 2 times on March 9 2007 the Defendant was
12 not present in court and was not represented by counsel
13 Although Nev Stat 207.010 renders a Defendant with three
14 qualifying convictions a habitual criminal the statute gives
15 a Sentencing court only discretion not to adjudge
16 the defendant the decision to adjudge an individual as
17 is not an absolute one Sentencing court has broad
18 discretion to dismiss the Court Failed to exercise
19 its discretion and was Failed to be provided with
20 relevant facts by Counsel, also invoke and reserve to
21 later time Amend with the provisions of ASSEMBLY
22 BILL 236 Section 86 Amend on NRS 207.10
23 Defendant also request that this Court Allow him to develop
24 the necessary facts and documents and other evidence
25 he will need to prove his claims

26
27 Evidence/ hearing is Requested

1 (a) Grandine Petitioners Conviction And/or Sentence
2 are UNCONSTITUTIONAL IN Violation of Sixth AND
3 Fourteenth Amendments Right to EFFECTIVE ASSISTANCE
4 OF TRIAL COUNSEL AS GUARANTEED BY
5 THE NEVADA AND UNITED STATES CONSTITUTIONS

6
7 INEFFECTIVE ASSISTANCE OF COUNSEL

8 BOTH COUNSEL MS PLUNKETT MR COYER

9 Failed to Request change of Venue for a Jury

10 Who explained to the Court that MS Plunkett

11 had Brought cell phones into the Jail on that

12 all that he seen on the news the bad publicity

13 Failed to object and Preserve for Appeal

14 Failed to object to the admission of the bag with

15 the gun that the officers made to the Jury

16 That was ex Felon possession of the Fire Arm

17 so when the officer testified and failed to

18 object so they failed to initially object to

19 the testimony so failure to do so cause prejudice

20 so failure to object to this issue was practically

21 precluded for review and counsel also failed

22 to object to perjured testimony from the officers Jacobitz

23 when he 9 body cam footage he is say that the

24 suspect is hold the Gun with two hands

25 and Mr Coyer and ms Plunkett failed to object

26 and correct that and along with DNA experts

27 for the defense would of had a different result at trial

28 Relies on Warrandel Nevada follows the rule of Exclusion concerning
Page 23 evidence of other offense

1 (b) Grand Ten: Petitioner Conviction And/or Sentence are
2 Unconstitutional IN Violation OF Sixth AND Fourteenth
3 Amendment Right TO Effective ASSISTANCE OF
4 Trial, Trial AND Appellate Counsel AS Guaranteed
5 By THE NEVADA AND UNITED STATES CONSTITUTIONS.
6

7
8 Counsel failed to and deprived Criminal Defendant
9 of his only viable defense which certainly renders
10 the resultant trial fundamentally unfair and unreliable.
11 Mr. Coyer failed to present and preventing Petitioner his
12 defense a defense the police fabrication will be supported
13 by DNA fingerprints and by a witness who said or gave a voluntary
14 statement ERIC Gilbert was at the crime scene and
15 Page 9 claiming that he said I don't know who so after the the
16 fact who ya'll chasing at first and the officers asked
17 him how do you know after the fact? what was the situation
18 with that you knew who we were chasing that he got put in handcuffs
19 got put in car and on page 15 of voluntary statement he ERIC
20 Gilbert Answered that's what I said I came I did not know
21 who ya'll chasing or nothing I did not recognize the people you
22 you know what I'm saying I did not know that was his.
23 Mr. Coyer failed to subpoena or to interview a witness ERIC Gilbert
24 or a viable witness. Mr. Coyer failed to subpoena Metro Records for
25 dashcam footage. failed to correct the irreparable misvoluntary
26 cause from the prosecutor failed to object to inconsistencies
27 with the reported crime and request which picture was used for ID
28 Detective warranted

Page 24

1 (c) Ground Eleven: Petitioner's Conviction AND/or Sentence
2 are unconstitutional for Violation of his Fifth, Sixth AND
3 Fourteenth AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE
4 OF Trial and Appellate Counsel AS guaranteed by
5 The NEVADA AND UNITED STATES CONSTITUTIONS.

6
7 Mr Cozer failed to prepare for trial and Counsel's
8 failure to investigate the facts failure to call witnesses
9 failure to make an opening statement failure to consider
10 the legal cognizable Defense that could render a
11 sentence of life in prison is unreliable. Mr Cozer has
12 a duty to instruct the jury on exculpatory evidence
13 which the state's lawyer effected. He failed to instruct
14 on DNA Exculpatory he failed to prepare for Appeal
15 the day I finally spoke with him he told me it was too late
16 that my Appeal was already in the courts. The deprivation
17 of the right to counsel is so inconsistent with the right to
18 fair trial. Although a criminal defendant enjoys the right to
19 conflict free representation in order to demonstrate an actual
20 conflict of interest the defendant must show that his Attorney
21 was actively representing conflicting interest and that the conflict
22 adversely affected the Attorney's performance. However forcing
23 a defendant to go to trial with an attorney with whom he
24 has an irreconcilable conflict amounts to constructive
25 denial of the Sixth Amendment right to counsel. Mr Cozer
26 was aware that we had an irreconcilable conflict and refused
27 to withdraw from the case failed to advise regarding the new counsel
28 or Requesting Appointment of new counsel

(d) Ground Twelve: Petitioner's Conviction AND/OR Sentence ARE UNCONSTITUTIONAL IN VIOLATION OF HIS FIFTH SIXTH AND FOURTEENTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL AS GUARANTEED BY THE NEVADA AND UNITED STATES CONSTITUTIONS

COUNSEL FAILURE TO assess whether the IDENTIFICATION procedures were "so unnecessary suggestive and conducive to invariable mistaken identifications" that Petitioner was denied due process of law OR APPELLATE COUNSEL failed to raise all issues due to the lock-to-order issue whether the District Court erred during jury selection and whether the District Court erred when setting jury, regarding the Healy trial treatment and whether cumulative error warrants reversal, and that the state withheld or concealed video footage and Mr. Cooper refused to provide copies of all Records and requested Korol Menus Kent Attorney never responded to the request

CONCLUSION

That the Cumulative Effect of the ERRORS of Trial Counsel DENIED Defendant due process and a fair trial under the Fifth Sixth And Fourteenth Amendments to the NEVADA AND UNITED STATES CONSTITUTIONS

1 Petitioner incorporates the facts evidence and argument
2 from Ground 1 thru 12 as though fully set forth herein
3 Petitioner contends that EACH of these claims⁸ instances
4 of ineffective assistance of his trial and/or Appellate
5 counsel entitle him to relief, and collectively the cumulative
6 effect denied him due process and a fair trial under
7 the 5th, 6th and 14th Amendments to United STATES Const
8 AND Nevada Constitution Nev Const Art 1, Sect 3, 8.
9 Petitioner also request that this Court allow him to
10 develop the necessary facts, witnesses, testimony
11 documents and other evidence he will need to prove
12 his claims of ineffectiveness of his trial and/or Appellate
13 counsel, in form of interrogatories, Request for admissions
14 Request for production of documents, Subpoenas for depositions
15 This will allow for a productive evidentiary hearing that
16 can be heard on the merits. To Prevail on his claim of
17 ineffective assistance of counsel petitioner must show that his
18 Counsel's conduct fell below an objective standard of reasonableness
19 and outside the wide range of professionally competent assistance.
20 Strickland v Washington 4166 US 668, 690, 104 Sct 2052,
21 80 L. Ed 2d 674. To Succeed on a petition petitioners counsel
22 errors must be so serious "as to deprive the petitioner of the value
23 of a fair trial, a trial whose result is reliable." Lockhart v Fretwell
24 506 US 364, 369-70, 113 Sct 838, 122 L Ed 2d 180 (1993)
25 (quoting Strickland 4166 US at 687) In other words, petitioner
26 must show that there is a reasonable probability that
27 but for Counsel's unprofessional errors the result of the

proceeding would have been different, "Benefiel v Davis,
357 F.2d 655 662 (7th Cir. 2004) (quoting Stichman 466 US
at 694) the Defendant in this case believes that if he were
allowed to proceed he could prove beyond a reasonable
doubt that the allegations herein are true and the outcome
of the proceedings would have been different,

The Court has held in Haines v Kerner 404 US 519
520-21, 92 Sct. 594 (1972) that: "1. The United States
Supreme Court holds allegations of pro se complaint to less
stringent standards than formal pleadings drafted by lawyers
and" 2. A complaint should not be dismissed for failure
to state a claim unless it appears beyond doubt that the
plaintiff can prove no set of facts in support of his
claims which would entitle him to relief"

Therefore this case must be reversed remanded for evidentiary
hearing to prevent manifest injustice.

And Notwithstanding the preliminary issues identified herein
Petitioner ~~severely~~ reserves the right to Alter or Amend this
Petition to add or remove issues should petitioner
deem it appropriate.

Relief is warranted

llh

llh

llh

IN THE SUPREME COURT OF THE STATE OF NEVADA

CEASAR SANCHAZ VALENCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75282

FILED

APR 12 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of assault on a protected person with use of a deadly weapon, trafficking in a controlled substance, ownership or possession of a firearm by a prohibited person, and two counts of possession of a controlled substance. Eighth Judicial District Court, Clark County; Mark B. Bailus, Judge. Valencia raises two contentions on appeal.¹

Valencia first argues that the district court erred by denying his request to represent himself. Although the Sixth Amendment of the United States Constitution guarantees a defendant the right to self-representation, *Faretta v. California*, 422 U.S. 806, 819-20 (1975), a district court may deny a self-representation request that is “untimely, equivocal, or made for the purpose of delay.” *Watson v. State*, 130 Nev. 764, 782, 335 P.3d 157, 170 (2014). A district court’s decision to deny a motion for self-representation is reviewed for an abuse of discretion. See *Vanisi v. State*, 117 Nev. 330, 340-41, 22 P.3d 1164, 1171 (2001).

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

29

19-16057

Valencia argues that he "clearly and unequivocally requested to exercise his constitutional right to represent himself," yet the record shows his requests, for the most part, were for a different attorney, not self-representation. After granting Valencia's first request for alternate counsel, the district court brought up self-representation during a subsequent hearing, where Valencia was, again, requesting alternate counsel. At that hearing, the district court advised Valencia that his right to counsel did not include counsel of his choice and thus told Valencia that he could represent himself if he was unhappy with his options. There were occasions where Valencia expressed a desire to represent himself, but they were sandwiched between shifting requests for alternate counsel, "co-counsel," and an investigator.

Even at the hearing when Valencia was *Faretta*-canvassed, he vacillated between telling the court that he wished to represent himself, requesting a new attorney, and asking if there was any "going back" once he made his decision on self-representation. *See Stenson v. Lambert*, 504 F.3d 873, 883 (9th Cir. 2007) (analyzing whether a self-representation request was equivocal by reviewing "the record as whole"). The record here supports that Valencia's requests mainly consisted of his frustration with his lack of resources to prepare his defense, unhappiness with his counsel, and his belief that the State was withholding discovery, as opposed to a clear request to represent himself. *See Gallego v. State*, 117 Nev. 348, 360, 23 P.3d 227, 235-36 (2001) (reiterating that an unequivocal request for self-representation can be conditional but still "must speak to self-representation and not simply to a dissatisfaction with current counsel"), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 263 P.3d 235 (2011); *see also Brewer v. Williams*, 430 U.S. 387, 404 (1977) (concluding

that because a defendant's self-representation motion involves the mutually exclusive constitutional rights to either be represented by counsel or not, a court must "indulge in every reasonable presumption against [a defendant's] waiver" of his right to counsel); *Adams v. Carroll*, 875 F.2d 1441, 1444 (9th Cir. 1989) ("Because a defendant normally gives up more than he gains when he elects self-representation, we must be reasonably certain that he in fact wishes to represent himself.").

The district court could have better articulated the basis for denying Valencia's final request to discharge counsel, beyond stating that he "waived" the right to represent himself. Indeed Valencia's actions subsequent to the *Faretta* canvass included seeking to have co-counsel appointed, accepting the reappointment of counsel, and waiving the previously granted right to self-representation. Nonetheless, we conclude that it was not an abuse of discretion to deny Valencia's self-representation request since the record as a whole demonstrates Valencia did not make an unequivocal request to represent himself. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (recognizing that a correct result will not be reversed simply because it is based on the wrong reasoning).

Second, Valencia argues that the district court abused its discretion by denying his motion for a mistrial after the State elicited previously excluded prejudicial evidence. The evidence at issue was an officer's testimony that Valencia was an ex-felon. Before the officer's testimony, the parties and district court took several measures to redact any reference to Valencia's felon status on the exhibits and pleadings, including bifurcating the charge of possession of a firearm by a prohibited person. Nonetheless, the officer testified that one of Valencia's charges was "ex-felon in possession of firearm," in response to the State asking him to

read from the front of the evidence bag containing the firearm for chain of custody purposes. When Valencia failed to object, the district court intervened and took a recess to discuss the situation with the parties outside of the jury's presence. Valencia moved for a mistrial, which the district court denied noting that Valencia failed to initially object to the testimony, the bag had already been admitted without objection, and it was a passing comment that would not be permitted to be expanded on or argued in closing. In an effort to not draw further attention to the testimony, Valencia refused the district court's offer to give a curative instruction, but did ask the court to not send the bag back with the jury to review as an exhibit, which was granted.

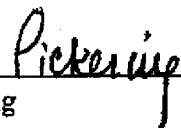
A defendant's motion for mistrial may be granted where prejudice has denied the defendant a fair trial. *Rudin v. State*, 120 Nev. 121, 144, 86 P.3d 572, 587 (2004). However, "[t]he trial court has discretion to determine whether a mistrial is warranted, and its judgment will not be overturned absent an abuse of discretion." *Id.* at 142, 86 P.3d at 586. Where the district court denies a defendant's motion for a mistrial based upon prejudicial testimony solicited by the prosecutor, this court reviews for harmless error, *Parker v. State*, 109 Nev. 383, 389, 849 P.2d 1062, 1066 (1993), which will be found "where the prejudicial effect of the statement is not strong and where there is otherwise strong evidence of defendant's guilt." *Id.*


Here, the record supports that Valencia was not denied a fair trial as the evidence bag that the officer read from had already been admitted without objection from Valencia and neither the State nor Valencia realized it contained the ex-felon language. Further, the district court offered to issue a contemporaneous curative instruction, which,

Valencia declined. Accordingly, the district court properly found that the prejudicial effect was minimal as the ex-felon testimony was a passing comment that the district court did not permit to be expounded on. Additionally, strong evidence supported Valencia's convictions, including multiple eyewitnesses and evidence found on his person. Therefore, we conclude that the district court did not abuse its discretion in denying Valencia's motion for a mistrial and that, nevertheless, any error would be deemed harmless. *See Rice v. State*, 108 Nev. 43, 44, 824 P.2d 281, 282 (1992) (concluding that an error was harmless beyond a reasonable doubt where the defendant refused a curative instruction after jury heard inadvertent and unsolicited trial references that indicated he had engaged in prior criminal activity). We therefore

ORDER the judgment of the district court AFFIRMED.

 C.J.
Gibbons

 J.
Pickering

 J.
Cadish

cc: Hon. Mark B. Bailus, District Judge
Coyer Law Office
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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exhibit
A

34



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

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Brandi J. Wendel
Court Division Administrator

January 26, 2017

Attorney: Gregory E. Coyer
Coyer Law Office
Attn Gregory E Coyer
600 S Tonopah Drive - Suite 220
Las Vegas NV 89106

Case Number: C-16-315580-1
Department: Department 2

Defendant: Ceasar Sanchaz Valencia

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70. Also included are the Case Summary and Minutes for A-16-738293-C.

**Pleadings: Subpoena For Production Of Documentary Evidence And Of Objects, Notice
Of Motion & Certificate Of Mailing**

Rule 3.70. Papers which May Not be Filed

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,

DC Criminal Desk # 18

CS

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exhibit
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36

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 01, 2016

C-16-315580-1 State of Nevada
 vs
 Ceasar Valencia

November 01, 2016 9:00 AM Motion

HEARD BY: Scotti, Richard F.

COURTROOM: RJC Courtroom 11D

COURT CLERK: Kory Schlitz

RECORDER: Dalayne Easley

REPORTER:

PARTIES

PRESENT:	Demonte, Noreen C.	Attorney
	State of Nevada	Plaintiff
	Valencia, Ceasar Sanchaz	Defendant

JOURNAL ENTRIES

- Upon Court's inquiry, Ms. Demonte indicated she did not respond to Defendant's Motion due to Defendant serving the wrong party, the State does not represent Clark County Detention Center (CCDC); Defendant needed to serve Las Vegas Metropolitan Police Department (LVMPD). Colloquy between Court and State regarding counsel for LVMPD. Upon Court's inquiry, Ms. Demonte suggested LVMPD has in house counsel that would appear. COURT directed Defendant to serve his Motion on CCDC and LVMPD. Defendant made an oral request to proceed with co-counsel to help obtain the materials requested. Court reviewed the history of Defendant's requesting to represent himself, and noted the Court would be inclined to reappoint Mr. Coyer as counsel of record, not as co-counsel. Court advised Defendant can re-file his Motion to withdraw Mr. Coyer if parties are incompatible as long as the removal is not a tactic to delay trial. Colloquy between the Court and Defendant regarding legal materials requested. Upon Court's inquiry, Defendant requested Mr. Coyer be confirmed as counsel of record. COURT ORDERED, Defendant's Oral Motion for Re-appointment of Counsel, GRANTED. Court directed Defendant to provide a copy of his brief to Mr. Coyer. COURT FURTHER ORDERED, status check SET and matter CONTINUED.

PRINT DATE: 10/17/2019

Page 4 of 7

Minutes Date: August 25, 2016

(37)

C-16-315580-1

CUSTODY(COC)

11/8/16 9:00 A.M. STATUS CHECK: CONFIRMATION OF COUNSEL (GREGORY COYER)...
DEFENDANT'S PRO PER MOTION TO RIGHT OF ACCESS TO THE COURTS

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder at the Regional
Justice Center of: Gregory Coyer Esq.

PRINT DATE: 10/17/2019

Page 5 of 7

Minutes Date: August 25, 2016

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 08, 2016

C-16-315580-1 State of Nevada
 vs
 Ceasar Valencia

November 08, 2016 9:00 AM All Pending Motions

HEARD BY: Scotti, Richard F.

COURTROOM: RJC Courtroom 11D

COURT CLERK: Shelly Landwehr

RECORDER: Dalayne Easley

REPORTER:

PARTIES

PRESENT:	Coyer, Gregory E.	Attorney
	Demonte, Noreen C.	Attorney
	State of Nevada	Plaintiff
	Valencia, Ceasar Sanchaz	Defendant

JOURNAL ENTRIES

- Court stated there was a Feratta canvas after which defendant elected to represent himself and has now changed his mind. Court inquired if Mr. Coyer was available.

Mr. Coyer stated he was not sure that is what defendant is requesting. Mr. Coyer informed the Court regarding the jail's highly restrictive access to the library highly restrictive in which defendant has to ask for a specific case or statute and then it is copied for defendant. Further, defendant is still being charged for materials to represent himself. Mr. Coyer stated those are some of the reasons defendant is rethinking his choice to represent himself.

Ms. DeMonte stated defendant had previously requested co-counsel and wanted defendant to be clear he is either representing himself or he is not. Court stated it made that clear last date.

Mr. Coyer stated it is the Court's task to ensure the defendant receives due process and if the defendant's library access fails to meet the due process threshold, Mr. Coyer believes the Court can

PRINT DATE: 10/17/2019

Page 1 of 7

Minutes Date: November 08, 2016

39

and should intervene.

Court stated it believes that would be a separate civil rights action as the underlying court would not have jurisdiction.

Mr. Coyer further advised there is a corresponding forfeiture case pending and defendant wants assistance in that matter and Mr. Coyer informed defendant this Court does not appoint counsel in civil matters. Further Mr. Coyer's contract with Clark County requires that he not solicit business from Court appointed clients.

Statement by defendant regarding the civil matter. Defendant stated he cannot rely on Mr. Coyer's advice on the same conduct that arises from the civil action. Court stated Mr. Coyer can provide names of resources with respect to pro bono for the civil action.

Court inquired whether defendant wanted Mr. Coyer to represent him in the criminal matter. Colloquy regarding what Mr. Coyer could provide with respects to materials, resources and copies, within the jail's guidelines. Defendant declined the services of Mr. Coyer and stated he intends to continue in pro se and requested an investigator to help with his defense.

Court stated he believes it is a bad decision. Defendant inquired if Mr. Coyer would be able to provide a book on the Hollis case. Mr. Coyer stated if it is something he can get into the jail, he will do so. Upon Court's inquiry, defendant stated he would accept Mr. Coyer's representation.

COURT ORDERED, defendant's motion DENIED as moot and ORDERED, Greg Coyer, Esq., APPOINTED to represent defendant in this matter.

Colloquy regarding the charges for research. Court stated it is willing to sign an order approving requisite funding. Defendant stated he has previously been charged and requested the order to be retroactive to include those costs. Colloquy. Court DIRECTED Mr. Coyer to file a separate motion with the total amount and it will determine whether it is an appropriate expenditure.

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Cliff B. Smith
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C224558

-vs-

DEPT. NO. XIV

CESAR VALENCIA
aka Cesar Sanchaz Valencia
#1588390

Defendant.

AMENDED JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of POSSESSION OF STOLEN VEHICLE (Category C Felony) in violation of NRS 205.273; thereafter, on the 13th day of November, 2006, the Defendant was present in court for sentencing with his counsel, MARISA BORDER, Deputy Public Defender, and good cause appearing,

THE DEFENDANT WAS THEREBY ADJUDGED guilty of said offense and, in addition to the \$25.00 Administrative Fee, the Defendant was sentenced as follows: TO A MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS, in the Nevada Department of Corrections (NDC), to run

APR 13 2007


CLERK OF THE COURT

1 CONSECUTIVE to C223991; with ONE HUNDRED EIGHTY-FOUR (184) days credit
2 for time served.

3 THEREAFTER, on the 29th day of March, 2007, the Defendant was not present
4 in court and was not represented by counsel, and good cause appearing to amend the
5 Judgment of Conviction; now therefore,
6

7 IT IS HEREBY ORDERED the Defendant's sentence to be amended to delete
8 CONSECUTIVE to C223991 time.
9

10 DATED this 11th day of April, 2007
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13 DONALD M. MOSLEY
14 DISTRICT JUDGE
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BEFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 24th day of the month of April, 2020.

CM
* Cesar Valenzuela #44307

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

VERIFICATION

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

CM
* Cesar Valenzuela Sanchez #44307

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

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number C-16-51880-1 Does not contain the social security number of any person.

CM
* Cesar Valenzuela Sanchez #44307

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

CERTIFICATE OF SERVICE BY MAIL

I, Cesar Valenzuela Sanchez, hereby certify pursuant to N.R.C.P. 5(b), that on this 24th day of the month of April, 2020, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

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

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

clerk of the court
200 Lewis Ave
Las Vegas NV 89155

CM
* Cesar Valenzuela Sanchez #44307

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

* Print your name and NDOC back number and sign

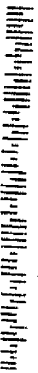
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Caesar Valencia #94307
High Desert State Prison
PO Box 1550
Indian Springs NV 89070
Please Return File Stamp copy

~~POST~~
~~MAIL~~
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Clerk of the Court
200 Lewis Ave 3rd Fl
Las Vegas NV 89155

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US POSTAGE \$003.20
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Case No. C-16-315580-1

Dept. No. 29

FILED

MAY 28 2020

John T. Johnson
CLERK OF COURT

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

A-20-815616-W
Dept. 29

Cesar Valencia Sanchez
Petitioner, #94307

**MOTION FOR THE APPOINTMENT
OF COUNSEL**

Johnson Warden High Desert State Prison
THE STATE OF NEVADA
Respondents.

REQUEST FOR EVIDENTIARY HEARING

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

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

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

II. STATEMENT OF THE FACTS

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

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

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

II. ARGUMENT

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

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

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

III. CONCLUSION

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

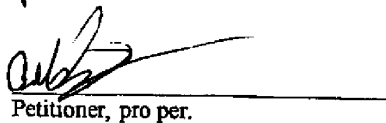
Dated this 24th day of April, 2020.


Counsel

VERIFICATION

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

Dated this 24th day of April, 2020.


Petitioner, pro per.

CERTIFICATE OF SERVICE BY MAIL

I, Cesar Sanchez Valencia, hereby certify pursuant to N.R.C.P.
5(b), that on this 24th day of April, of the year 2020, I mailed a true and
correct copy of the foregoing Motion for Leave to Proceed in Forma Pauperis; Affidavit in Support of
Motion for Leave to Proceed in Forma Pauperis; Motion for the Appointment of Counsel; and Request for
Evidentiary Hearing, addressed to:

Clerk of the Court
Name

Clark County District Attorney Nevada
Name

Attorney General
Name

200 Lewis Av 3rd Fl
Las Vegas NV 89155-1160
Address

200 Lewis Av
Post Office Box 55212
Las Vegas NV 89155
Address

100 North Carson St
Carson NV 89701
Address

Cesar Valencia Sanchez #94307
Petitioner

THIS SEALED
DOCUMENT,
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50 - 66
WILL FOLLOW VIA
U.S. MAIL

Case No. C-16-315580-1

Dept. No. 29

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

Caesar Valencia Sanchez
Petitioner, #94307

Johnson Warder ^{vs-} High Deser State
Prison
The STATE OF NEVADA
Respondents.

A-20-815616-W
Dept. 29

ORDER APPOINTING COUNSEL

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

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

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

Dated this ____ day of _____, 20 ____.

Submitted by:

DISTRICT COURT JUDGE

Caesar Valencia Sanchez #94307
Petitioner, In Proper Person

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding MOOTION FOR

THE APPOINTMENT OF COUNSEL
(Title of Document)

filed in District Court Case No. C-16-315580-1

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

-OR-

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

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

(State specific law)

-OR-

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



(Signature)

4-24-20

(Date)

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

6 Ceasar Valencia,

7 Petitioner,

8 vs.

9 State of Nevada; Johnson, Warden of HDSP,

10 Respondent,

Case No: A-20-815616-W
Department 29

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

11 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on
12 May 28, 2020. The Court has reviewed the Petition and has determined that a response would assist the
13 Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good
14 cause appearing therefore,

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

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

19 Calendar on the 28th day of July, 2020, at the hour of

20
21 8:30 am
22 _____ o'clock for further proceedings.

23
24 
25 _____
26 District Court Judge
27
28



1 NOCH

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

5 *****

6 Ceasar Valencia, Plaintiff(s)

Case No.: A-20-815616-W

7 vs.

Department 29

8 State of Nevada, Defendant(s)

9
10 **NOTICE OF CHANGE OF HEARING**

11 The hearing on the Petition for Writ of Habeas Corpus, presently set for 7-28-20 @ 8:30am,
12 has been moved to the 28th day of July, 2020, at 10:15 AM and will be heard by Judge
13 David M Jones.
14

15 STEVEN D. GRIERSON, CEO/Clerk of the Court

16 By: /s/ Allison Behrhorst

17 Allison Behrhorst

18 Deputy Clerk of the Court
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CERTIFICATE OF SERVICE

I hereby certify that this 2nd day of June, 2020

☒ The foregoing Notice of Change of Hearing was electronically served to all registered parties for case number A-20-815616-W.

/s/ Allison Behrhorst

Allison Behrhorst

Deputy Clerk of the Court



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: XXIX

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

DATE OF HEARING: July 28, 2020
TIME OF HEARING: 10:15 AM

THIS CAUSE having come on for hearing before the Honorable DAVID JONES, District Judge, on the 28th day of July, 2020, the Petitioner not being present, proceeding in proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through NOREEN DEMONTE, 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

STATEMENT OF THE CASE

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, Petitioner filed the instant Petition for Writ of Habeas Corpus (Post-
19 Conviction) (hereinafter "the Petition"). This Court denies the Petition, for the reasons stated
20 below.

21 ANALYSIS

22 **THE PETITION IS UNTIMELY, WITH NO GOOD CAUSE PRESENTED TO** 23 **OVERCOME THE PROCEDURAL BAR**

24 The Petition is time-barred with no good cause shown for delay. Pursuant to NRS
25 34.726(1):

26 Unless there is good cause shown for delay, a petition that challenges the validity
27 of a judgment or sentence must be filed within 1 year of the entry of the judgment
28 of conviction or, if an appeal has been taken from the judgment, within 1 year
after the Supreme Court issues its remittitur. For the purposes of this subsection,

1 good cause for delay exists if the petitioner demonstrates to the satisfaction of
2 the court:

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

4 (b) That dismissal of the petition as untimely will unduly prejudice the
5 petitioner.

6 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its
7 plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per
8 the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
9 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
10 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

11 The one-year time limit for preparing petitions for post-conviction relief under NRS
12 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
13 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
14 evidence presented by the defendant that he purchased postage through the prison and mailed
15 the Notice within the one-year time limit. Furthermore, the Nevada Supreme Court has held
16 that the district court has a duty to consider whether a defendant's post-conviction petition
17 claims are procedurally barred. State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225,
18 231, 112 P.3d 1070, 1074 (2005).

19 Here, Petitioner's Judgment of Conviction was filed on May 7, 2019. Petitioner filed
20 the Petition on May 28, 2020, several weeks after the one-year time bar had passed.

21 Therefore, this Petition is untimely and must be dismissed absent a showing of good cause.

22 Pursuant to NRS 34.726, a showing of good cause may overcome procedural bars.
23 Good cause sufficient to overcome the time bar exists when 1) the delay is not the fault of the
24 petitioner and 2) dismissal of the petition as untimely will unduly prejudice the petitioner. NRS
25 34.726(1). "To establish good cause, appellants *must* show that an impediment external to the
26 defense prevented their compliance with the applicable procedural rule. A qualifying
27 impediment might be shown where the factual or legal basis for a claim was not reasonably
28 available at the time of default." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003)
(emphasis added). "[A]ppellants cannot attempt to manufacture good cause[.]" Id., 81 P.3d at

1 526. To find good cause there must be a "substantial reason; one that affords a legal excuse."
2 Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003) (quoting Colley v. State, 105 Nev. 235,
3 236, 773 P.2d 1229, 1230 (1989)). Clearly, any delay in filing of the petition must not be the
4 fault of the petitioner. NRS 34.726(1)(a). Claims of ineffective assistance of counsel do not
5 constitute good cause if those claims themselves are procedurally defaulted. Stewart v.
6 LaGrand, 526 U.S. 115, 120, 119 S.Ct. 1018, 1021 (1999).

7 Petitioner has failed to demonstrate good cause for filing a time-barred Petition. He has
8 failed entirely to even address the issue of good cause. Accordingly, this Court cannot address
9 the time-barred claims contained in the Petition.

10 **ORDER**

11 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus
12 (Post-Conviction) shall be, and it is, hereby denied.

13 DATED this 7th day of August, 2020.

14 
15 DISTRICT JUDGE

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

18 BY  for
19 KAREN MISHLER
20 Chief Deputy District Attorney
Nevada Bar #013730

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CERTIFICATE OF SERVICE

I certify that on the 10th day of August, 2020, I mailed a copy of the foregoing Findings of Fact, Conclusions of Law, and Order to:

CEASAR VALENCIA, BAC #94307
H.D.S.P.
P.O. BOX 650
INDIAN SPRINGS, NV 89070

BY


Secretary for the District Attorney's Office



1 NEFF

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 CEASAR VALENCIA,

5
6 Petitioner,

Case No: A-20-815616-W

Dept No: XXIX

7 vs.

8 STATE OF NEVADA; ET.AL.,

9 Respondent,

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

10
11 PLEASE TAKE NOTICE that on August 7, 2020, the court entered a decision or order in this matter, a
true and correct copy of which is attached to this notice.

12 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
13 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
14 mailed to you. This notice was mailed on August 11, 2020.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

17
18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 11 day of August 2020, I served a copy of this Notice of Entry on the
following:

21 ☒ By e-mail:


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

23
24 ☒ The United States mail addressed as follows:

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

26
27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk



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: XXIX

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

DATE OF HEARING: July 28, 2020
TIME OF HEARING: 10:15 AM

THIS CAUSE having come on for hearing before the Honorable DAVID JONES, District Judge, on the 28th day of July, 2020, the Petitioner not being present, proceeding in proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through NOREEN DEMONTE, 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

STATEMENT OF THE CASE

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, Petitioner filed the instant Petition for Writ of Habeas Corpus (Post-
19 Conviction) (hereinafter "the Petition"). This Court denies the Petition, for the reasons stated
20 below.

21 ANALYSIS

22 **THE PETITION IS UNTIMELY, WITH NO GOOD CAUSE PRESENTED TO** 23 **OVERCOME THE PROCEDURAL BAR**

24 The Petition is time-barred with no good cause shown for delay. Pursuant to NRS
25 34.726(1):

26 Unless there is good cause shown for delay, a petition that challenges the validity
27 of a judgment or sentence must be filed within 1 year of the entry of the judgment
28 of conviction or, if an appeal has been taken from the judgment, within 1 year
after the Supreme Court issues its remittitur. For the purposes of this subsection,

1 good cause for delay exists if the petitioner demonstrates to the satisfaction of
2 the court:

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

4 (b) That dismissal of the petition as untimely will unduly prejudice the
5 petitioner.

6 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its
7 plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per
8 the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
9 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
10 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

11 The one-year time limit for preparing petitions for post-conviction relief under NRS
12 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
13 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
14 evidence presented by the defendant that he purchased postage through the prison and mailed
15 the Notice within the one-year time limit. Furthermore, the Nevada Supreme Court has held
16 that the district court has a duty to consider whether a defendant's post-conviction petition
17 claims are procedurally barred. State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225,
18 231, 112 P.3d 1070, 1074 (2005).

19 Here, Petitioner's Judgment of Conviction was filed on May 7, 2019. Petitioner filed
20 the Petition on May 28, 2020, several weeks after the one-year time bar had passed.

21 Therefore, this Petition is untimely and must be dismissed absent a showing of good cause.

22 Pursuant to NRS 34.726, a showing of good cause may overcome procedural bars.
23 Good cause sufficient to overcome the time bar exists when 1) the delay is not the fault of the
24 petitioner and 2) dismissal of the petition as untimely will unduly prejudice the petitioner. NRS
25 34.726(1). "To establish good cause, appellants *must* show that an impediment external to the
26 defense prevented their compliance with the applicable procedural rule. A qualifying
27 impediment might be shown where the factual or legal basis for a claim was not reasonably
28 available at the time of default." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003)
(emphasis added). "[A]ppellants cannot attempt to manufacture good cause[.]" Id., 81 P.3d at

1 526. To find good cause there must be a "substantial reason; one that affords a legal excuse."
2 Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003) (quoting Colley v. State, 105 Nev. 235,
3 236, 773 P.2d 1229, 1230 (1989)). Clearly, any delay in filing of the petition must not be the
4 fault of the petitioner. NRS 34.726(1)(a). Claims of ineffective assistance of counsel do not
5 constitute good cause if those claims themselves are procedurally defaulted. Stewart v.
6 LaGrand, 526 U.S. 115, 120, 119 S.Ct. 1018, 1021 (1999).

7 Petitioner has failed to demonstrate good cause for filing a time-barred Petition. He has
8 failed entirely to even address the issue of good cause. Accordingly, this Court cannot address
9 the time-barred claims contained in the Petition.

10 **ORDER**

11 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus
12 (Post-Conviction) shall be, and it is, hereby denied.

13 DATED this 7th day of August, 2020.

14 
15 DISTRICT JUDGE

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

18 BY  for
19 KAREN MISHLER
20 Chief Deputy District Attorney
Nevada Bar #013730

21 ///

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CERTIFICATE OF SERVICE

I certify that on the 10th day of August, 2020, I mailed a copy of the foregoing Findings of Fact, Conclusions of Law, and Order to:

CEASAR VALENCIA, BAC #94307
H.D.S.P.
P.O. BOX 650
INDIAN SPRINGS, NV 89070

BY


Secretary for the District Attorney's Office

Steven D. Grierson

OSCC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CEASAR VALENCIA, PLAINTIFF(S) | CASE NO.: A-20-815616-W
VS. |
STATE OF NEVADA, DEFENDANT(S) | DEPARTMENT 29

CIVIL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Default Judgment
- ☐ Judgment on Arbitration
- ☐ Stipulated Judgment
- ☐ Summary Judgment
- ☐ Involuntary Dismissal
- ☐ Motion to Dismiss by Defendant(s)
- ☐ Stipulated Dismissal
- ☐ Voluntary Dismissal
- ☐ Transferred (before trial)
- ☐ Non-Jury – Disposed After Trial Starts
- ☐ Non-Jury – Judgment Reached
- ☐ Jury – Disposed After Trial Starts
- ☐ Jury – Verdict Reached
- ☒ Other Manner of Disposition

DATED this 13th day of August, 2020.



DAVID M JONES
DISTRICT COURT JUDGE

27

FILED

SEP 02 2020

Cesar Sanchez Valencia #94307
PO BOX 650
INDIAN SPRINGS Nevada 89707
Petitioner / Pro Se

Clerk of Court

DISTRICT COURT

CLARK COUNTY NEVADA

Cesar Sanchez Valencia
Petitioner

Case No A-20-815016-W
Dept No 29

WARDEN Johnson High Desert State
Prison THE STATE OF NEVADA

NOTICE OF Appeal

Respondents

NOTICE OF APPEAL

TO: THE STATE OF NEVADA STEVEN B WOLFSON, DISTRICT ATTORNEY
CLARK COUNTY NEVADA AND DEPT 29 OF THE EIGHTH
JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR
THE CLARK COUNTY

NOTICE is hereby given that Petitioner CEASAR SANCHEZ

VALENCIA #94307 presently incarcerated in the High
Desert STATE PRISON appeals to the Supreme Court of
the STATE OF NEVADA from the EIGHTH Judicial District
Court Judgment of Conviction and Sentence and Denial
of Petition For Writ of Habeas Corpus Post Conviction
and Request to Proceed in form Pauper is also Request
For the Appointment of Counsel Request for Emergency
Hearing entered against Petitioner on or about July 28th
2020

Dated this 17th of August 2020

by Cesar Sanchez Valencia
#94307
PO BOX 650
Indian Springs NV
89707

CLERK OF THE COURT
RECEIVED
AUG 24 2020

FILED

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CERTIFICATE OF MAILING

THE undersigned does hereby certify that on the
12th day of August 2020 I did deposit in the
United States Post Office at High Desert STATE
Prison legal library, First class Postage fully
Paid - a true copy of the above and foregoing
Notice of Appeal; Petition For writ Habeas Corpus
(Post Conviction) addressed to the following

① Steven B Wolfson
Clark County District Attorney
Criminal Appeals
200 Lewis Av
Las Vegas NV 89155

② ADAM PAUL LAXALT
Nevada Attorney General
100 North Carson Street
Carson City NV 89701

③ Clerk of the Court Dept 29
200 Lewis Av 7nd floor
Las Vegas NV 89155

by Cesar Sandoval
Valencia #94307
P.O. Box 650
Indian Springs NV 89120

To clerk of the Court Dept 29

I would like to request court minutes case
Summary Dates of September 3rd 2019 and
Feb 4th 2020 also March 3rd 2020 and
For August 4th 2020 I need to know
the status for my motion in contempt Gregory
Coyer for failing to forward entire case
file I know that if my motion is denied
in August 4 2020 I would ask to please
re file and calendar I would highly appreciate
I will later submit a motion for contempt
because Gregory Coyer has failed or
has refused to forward case file with
three or more DISC body cam video of
CAD and other PDF files I need to get
those records please let me know how
I could get these records Mr Coyer
is refusing my mail and phone calls
can you please remind him the court has
already made an order to send me my
entire case file Thank you

case # C-16-35580-1

respectfully

Cesar Valencia
#94305

refiling motion for contempt

Gregory Coyer ruled July 13 2020

please re calendar

Robert 650

Indiana Springs
~ NV 8000?

RECEIVED

AUG 24 2020

CLERK OF THE COURT

Caesar Valverde #94357

P.O. Box 650
Indian Springs NV 89707

Please return file stamped copy

Legal
Mail

3762

0000039-10168

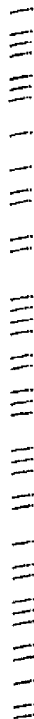
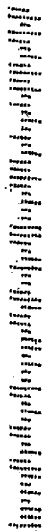
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NV 890
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US POSTAGE \$000.50



ZIP 89101
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clerk of the Court
Dept 29
200 Lewis Av 3rd Floor
Las Vegas NV 89155



HIGH DESERT STATE PRISON
AUG 17 2020
UNIT 8 C/D



1 ASTA

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

9 CEASAR SANCHEZ VALENCIA,

10 Plaintiff(s),

11 vs.

12
13 JOHNSON WARDEN, HIGH DESERT STATE
14 PRISON; THE STATE OF NEVADA,

15 Defendant(s),

Case No: A-20-815616-W

Dept No: XXIX

16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Ceasar Sanchez Valencia

19 2. Judge: David M. Jones

20 3. Appellant(s): Ceasar Sanchez Valencia

21 Counsel:

22
23 Ceasar Sanchez Valencia #94307
24 P.O. Box 650
Indian Springs, NV 89070

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

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 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: May 28, 2020

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: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 3 day of September 2020.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton

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

cc: Ceasar Sanchez Valencia

FILED

SEP 23 2020

CLERK OF COURT

1 Cesar Sanchez Valencia #94307
PO Box 650

2 INDIAN SPRINGS NV
89707

3 Petitioner Pro per DISTRICT COURT

4 CLARK COUNTY NEVADA

5
6 Cesar Valencia #94307

7 Petitioner

case No: A-20-815616-W

Dept No: XXIX

8
9 STATE OF NEVADA ET AL.

10 Respondent

REQUEST FOR EVIDENTIARY
HEARING

11
12 MOTION FOR THE COURT TO RECONSIDER
13 PETITION THERE IS GOOD CAUSE AND
14 UNDOE PREJUDICE TO EXCUSE PROCEDURAL
15 TIME BAR

16
17 COMES NOW, Petitioner Cesar Sanchez Valencia pro per
18 and respectfully moves this Honorable Court for Reconsideration
19 for Writ of Habeas Corpus (Post conviction).

20
21 This motion is based on all papers and pleadings on file
22 with the clerk of the court which are hereby incorporated by
23 this Reference the Points and Authorities herein and att-
24 ached at the end of Petitioner and based upon pursuant
25 to Nevada Revised statutes chapter 34 NRS
26 34.726 and Nevada constitution.

POINTS AND AUTHORITIES

IT is Respectfully requested of the Honorable DAVID JONES District Judge to reconsider Petition Writ Habeas Corpus Post Conviction. Petitioner can establish good cause to overcome procedural bars pursuant to NRS 34.226. Good cause sufficient to overcome the time bar exists when (1) the delay is not the fault of the Petitioner and (2) dismissal of Petition as untimely will unduly prejudice the Petitioner. NRS 34.226 (1) To establish good cause appellants must show that an impediment external to the defense prevented their compliance with the applicable procedural rule. Petitioner prepared the Petition 24th of April 2020 mailed it to clerk of the Court by 5th of April 2020 and it was Received on 4th of May 2020. The 1 year deadline was 7th of May 2020 due to the clerk of the Court not filing the petition May 4th when Received. The Delay of filing was interference by officials made compliance impracticable. The grounds raised in petition are of ineffective of counsel at Trial and Appeal counsel was so ineffective as to violate the Sixth Amendment so that dismissal of the Petition as untimely will unduly prejudice the Petitioner.

The one year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In *Gonzalez v State*, 118 Nev 590 596 S3 P3d 901 904 (2002) the Nevada Supreme Court rejected a habeas petition that was filed two days late despite evidence presented by the defendant that he purchased postage through the prison and mailed the notice within one year limit clearly this is NOT what Petitioner is faced with. Petitioner never intended for Petition to be filed after the 1 year limit Petitioner mailed and it was received by court clerk 3 day before the deadline the delay of filing was the fault of petitioner. This is all due to Global Pandemic. The COVID 19 restrictions and the court is well aware of the flooding of the 15th Floor at the regional Justice Center the courts being backed up for damage of the flooding and that was where the Dept 29 was located and the Dept 29 banking from floor to floor moving the court specifically Dept 29 moving around practically out of a box. That's why Petitioner Requesting Honorable David Jones District Judge knows that because of this is not the fault of Petitioner. The Petition is stamped Received.

③

1 May 4 2020 clerk of the court 'the Delay
2 of 24 days I'm requesting this for the
3 Court's Reconsideration I have requested
4 Several times for status of the petition
5 to clerk of the Court never was given
6 any notice The order states Petitioner
7 Failed to demonstrate good cause. I hope
8 Court to find Good cause there must be
9 a substantial reason one that affords
10 a legal excuse again this VS what
11 We are faced here. SEE Harris v Warden
12 114 Nev 107 959 § 960 n 4, 964 P2d 785, 787
13 § n 4, (1998) explaining that good cause "must
14 be some impediment external to the defense"
15 and noting such an impediment could include
16 "some interference by officials that made
17 compliance impracticable" (quoting Murray
18 v Carberry, 477 US 488 488 91 L. Ed 2d 397
19 106 Sct 2639 (1986) (quoting Brown v Allen 344
20 US 443 486 97 L Ed 489 73 Sct 397 (1953))
21 the untimely filing of Cesser Velasco's
22 petition in the district court was the result
23 of official interference. Furthermore the
24 Nevada Supreme Court has held that the
25 District Court has a duty to consider whether
26 a Defendant's post-conviction petition claims
27 are procedurally barred. STATE v Eighth Judicial Dist
28 Court Riches 121 Nev 225 231, 112 P3d 1070 (2005)

④

1 WHEREFORE the undersigned prays
2 that the Honorable David Jones Rept 29
3 District Judge Grants this Motion for
4 Reconsider Petition Habeas Corpus Post-conviction
5 and Appointer to Proceed Informa Poppers
6 Motion for Request Appointment of Counsel
7 Generally good cause under Nev Stat 34726(1)
8 for not filing a post-conviction habeas means a
9 substantial Reason one the affords a legal error
10 Petitioner has good cause and dismissel
11 of Petition as untimely is established that
12 Petitioner-proved undue prejudice grounds
13 of counsel at trial and appeal was so ineffective
14 and also other claims of both amendments
15 that are not considered Harmless error, clearly
16 any delay after clerk received Petition for
17 Ruling after May 4th is not the fault of
18 the Petitioner

19 conclusion.

20 Based upon the facts and law presented herein
21 Petitioner would respectfully request this Court
22 to weigh the factors involved within this case
23 and Reconsider Petition and Appoint Counsel
24 for Petitioner to assist this Court in the
25 just determination of this action

26 Dated this 22 of August 2020

27
28

Cesar Talera #9429
Petitioner

⑤

Verification

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

Dated 22nd of August 2020

Respectfully Submitted
Cesar Valencia #94327
PO Box 650
Indian Springs NV
89502

Petitioner proper

CERTIFICATE OF SERVICE BY MAILING

I, Cesar Valenzuela #94307 hereby certify, pursuant to NRCP 5(b), that on this 22
day of August, 2020, I mailed a true and correct copy of the foregoing, "Motion
for Court to Reconsider Retention Habeas Corpus"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

clerk of the court Dept 29
200 Lewis Ave
Las Vegas NV 89155

Nevada Attorney General
100 North Carson St
Las Vegas NV 89101

Clark County District Attorney
200 Lewis Ave
Postbox 33210
Las Vegas NV 89155

CC: FILE

DATED: this 22 day of August, 2020.

Cesar Valenzuela #94307
Perforar /In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding

Motion for
Court to Reconsider Petition to Holders Corpus
(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

August 22 2020
Date

Caesar Valencetti #94302
Print Name

Petitioner
Title



Caesar Valencia #341307
Pobox 650
Indian Springs NV 89107
Please Return File Stamp Copy

Hasler
FIRST-CLASS MAIL
09/14/2020
US POSTAGE \$000.65
ZIP 89101
011E12650516

1005211
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Clerk of The Court
Dept 29
200 Vegas NV 3rd Fl
Las Vegas NV 89155

1 Cesar Valencia #94307
2 Petitioner In Propria Personam
3 Post Office Box 650 [HDSP]
4 Indian Springs, Nevada 89018

FILED
SEP 23 2020
CLERK OF COURT

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 Cesar Sanchez Valencia #94307
8 Petitioner
9
10 vs.
11 THE STATE OF NEVADA
12 Respondent
13

Case No. A20-81866-W
Dept No. 29
Docket _____

14 NOTICE OF MOTION

15 YOU WILL PLEASE TAKE NOTICE, that Petitioner Cesar Valencia
16 MOTION FOR COURT TO RECONSIDER Petition Habeas Corpus
17 will come on for hearing before the above-entitled Court on the _____ day of _____, 20____
18 at the hour of _____ o'clock _____ M. In Department _____ of said Court.

19
20 CC:FILE

21
22 DATED: this 22 day of August, 2020.

23
24 BY: Cesar Sanchez Valencia
25 [Signature] # 94307
26 /In Propria Personam

27
28 RECEIVED
SEP 17 2020
CLERK OF THE COURT

FILED

OCT - 7 2020

CLERK OF COURT

Cesar Sanchez Valencia #94307
Petitioner / In proper person
P.O. Box 650
INDIAN SPRINGS NV 89707

DISTRICT COURT
CLARK COUNTY NEVADA

Cesar Sanchez Valencia #94307

Petitioner,

V THE STATE OF NEVADA

Calvin Johnson Wendler HOSP

Respondent.

Case No A-20-815616-W

Dept No 29

MOTION AND ORDER COURT APPEARANCE
IN THE ALTERNATIVE. FOR APPEARANCE
BY TELEPHONE OR VIDEO CONFERENCE

Petitioner Cesar Sanchez Valencia #94307, proceeding pro se, Requests that this Honorable Court order appearance, in the alternative, that he be made available to appear by telephone or by Video conference at the hearing in the instant case that is scheduled for _____ at Regional Justice Center Court Dept 29 Las Vegas Clark County Nevada.

RECEIVED

OCT 06 2020

CLERK OF THE COURT

1 IN support of this Motion, I allege the following:

2 (1) I am an inmate incarcerated at High Desert State
3 Prison "MDC". My mandatory release date is
4 Jan 26 2030.

5 (2) The Department of Corrections is required to
6 transport offenders to and from court if an
7 inmate is required or request to appear
8 before a court in this state.

9
10 NRS 209.274 Transportation of Offender to Appear
11 Before Court states: "(1) Except as otherwise
12 provided in this section, when an offender is
13 required or requested to appear before a Court
14 in this state, the Department shall transport the
15 offender to and from Court on the day
16 scheduled for his appearance.

17 (2) If notice is not provided within the time set
18 forth in NRS 50.215, the Department shall
19 transport the offender to Court on the date
20 scheduled for his appearance if it is possible to
21 transport the offender in the usual manner for
22 the transportation of offenders by the Department.
23 If it is not possible for Department to transport
24 the offender in the usual manner,

25 (a) The Department shall make the offender available
26 on the date scheduled for his appearance to provide
27 testimony by telephone or video conference,
28 if so requested by the Court.

Page 2

1 (b) The Department shall provide for special
2 Transportation of the offender to and from the
3 Court, if the Court so orders. If the Court
4 orders special transportation, it shall order
5 the County in which the Court is located to
6 reimburse the Department for any cost incurred for
7 the special transportation.

8 (c) The Court may order the county Sheriff to
9 transport the offender to and from the court
10 at the Expense of the County."

11 (3) My presence is required at the hearing because
12 THE HEARING WILL BE EVIDENTIARY
13 HEARING

14 My petition raises material issues of fact that
15 can be determined only in my presence.
16 See Walker v Johnston, 312 U.S. 255 (1941) (government's
17 contention that allegations are improbable and unbelievable
18 cannot serve to deny the petitioner an opportunity to
19 support them by evidence). The Nevada Supreme
20 Court has held that the presence of petitioner
21 for habeas corpus relief is required at any evidentiary
22 hearing conducted on the merits of the claim
23 asserted in petition. See Gebers v Nevada, 118 Nev.
24 500 (2002).

25 (4) The prohibition against ex parte communication
26 requires that I be present at any hearing at which
27 the State is present and at which issues

1 Concerning the claims raised in my petition
2 are addressed, U.S. Const, amends. V, VI.

3 (5). If a person incarcerated in a state prison is
4 required or is requested to appear as a witness
5 in any action, the Department of Corrections
6 must be notified in writing not less than 7 business
7 days before the date scheduled for his appearance
8 in court if the inmate is incarcerated in a prison
9 located more than 40 miles from Las Vegas.
10 NRS 209.215, (4). If a person is incarcerated in prison
11 located 41 miles or more from Las Vegas, The Department
12 of Corrections must be notified in writing not
13 less than 14 business days before the date scheduled
14 for the person's appearance in court.

15 (6) Indian Springs Nevada is located approximately
16 36 miles from Las Vegas, Nevada.

17 (7). If there is insufficient time to provide the required
18 notice to the Department of Corrections for me to
19 be transported to hearing, I respectfully request
20 that this Honorable Court order the WARDEN
21 to make me available on the date of the
22 scheduled appearance by telephone, or video
23 conference, pursuant to NRS 209.274(2)(A),
24 so that I may provide relevant testimony and
25 or be present for the evidentiary hearing.

1 (8) The rules of the institution prohibit me from
2 placing telephone calls from the institution, except
3 for collect calls, unless special arrangements
4 are made with prison staff. Nev. Admin. Code
5 DOC 718.01. However, arrangements for my
6 Telephone appearance can be made by contacting
7 the following staff member at my institution
8 Calvin Johnson Warden at High Desert State
9 Prison whose Telephone number is 702-879-
10 6789

11
12 Dated this 28th day of September 2020

13
14
15 Caesar Valencia #1437
16 P.O. Box 650
17 Indian Springs NV
18 89707

AFFIDAVIT OF MOTION ORDER THE WARDEN
TO MAKE ME AVAILABLE APPEARANCE
BY TELEPHONE/OR VIDEO CONFERENCE
PURSUANT TO NRS 209.274.

STATE OF NEVADA)

vs

COUNTY OF CLARK)

I, Petitioner Cesar Sanchez Valencia #94307, do hereby
affirm under penalty of perjury that the assertions
of this Affidavit are true.

(1) That I am the Petitioner in the above-captioned action
and that I make this Affidavit in support of Motion
AND ORDER Court Appearance IN THE ALTERNATE Appearance
by Telephone OR/VIDEO Conference. Attached hereto.

(2) That I am over eighteen (18) years of age; of sound mind
and have a personal knowledge of and am capable to testify
to the matter as stated herein.

(3) That on _____ day of _____ 2020, I have
hearing scheduled at _____ am in Dept #29 and request
the Court to ORDER the DOC to transport me for Settlement
REQUEST THIS Honorable Court ORDER WARDEN TO MAKE
ME AVAILABLE APPEARANCE BY TELEPHONE/OR VIDEO
CONFERENCE PURSUANT TO NRS 209.274.

Dated this 28th day of September, 2020

By Cesar Sanchez Valenc
PO Box 650
Indian Springs NV 89307

CERTIFICATE OF SERVICE BY MAILING

I, Cesar Valencia, hereby certify, pursuant to NRCP 5(b), that on this 28
day of September, 2020, I mailed a true and correct copy of the foregoing, "MOTION
AND ORDER COURT APPEARANCE IN THE TRIAL by
Telephone for VIDEO CONFERENCE"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Clerk of the Court
200 Lewis Ave 3rd Fl
Las Vegas NV 89155

District Attorney
200 Lewis Ave
P.O. Box 5522
Las Vegas NV 89155-2212

Calvin Johnson Warden
High Desert State Prison
P.O. Box 1650
Indian Springs NV 89007

Attorney General of Nevada
100 NORTH CARSON AVE
CARSON CITY NV 89101

CC: FILE

DATED: this 28 day of Sept, 2020

Cesar Valencia
mn

#94307

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

(5)

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion

AND ORDER Court Appearance by Telephone or VIDEO
(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

Sept 28th 2020
Date

Cesar Valenzuela
Print Name

Petitioner
Title

[Signature]

Cesar Valencuela #94307
PO BOX 6050
Indian Springs WV 89307

Please Return File Stamp copy

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Legal
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clerk of the court
200 Lewis Ave 3rd Fl
Las Vegas NV 89105

22

Case No. A-20-815616-W

Dept. No. 29

FILED

OCT - 7 2020

Ch. J. Blum
CLERK OF COURT

IN THE ~~ELIABH~~ JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

Cesar Sanchez Valencia #14307

Petitioner

vs.
Calvin Johnson, Warden, IDSP
The STATE OF NEVADA
Respondents

Case No. A-20-815616-W

Dept No. 29

Docket _____

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that Cesar Valencia #14307

MOTION FOR Court Appearance by Telephone for VIDEO Conference

will come on for hearing before the above-entitled Court on the _____ day of _____, 20__

at the hour of _____ o'clock _____ M. In Department _____ of said Court.

CC: FILE

DATED: this 28th day of September, 2020

BY Cesar Valencia # 14307
/In Propria Personam

RECEIVED

OCT 10 6 30 AM '20

CLERK OF THE COURT

Heather S. Hume
CLERK OF THE COURT

1 NOH

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 Ceasar Valencia,

CASE NO.: A-20-815616-W

6 Petitioner,

DEPT. NO.: II

7 vs.

8
9 State of Nevada; Johnson, Warden of
10 HDSP,

11 Respondent.

12 NOTICE OF HEARING

13 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

14
15 PLEASE TAKE NOTICE that the undersigned will bring a Status Check regarding the
16 Post-Conviction Petition for a Writ of Habeas Corpus and Court of Appeals Order of Reversal
17 and Remand filed in this case on for hearing on **June 9, 2021 at the hour of 9:30 a.m.**, or as
18 soon thereafter as counsel can be heard.

19 The Blue Jeans meeting ID is 589556619; <https://bluejeans.com/589556619>. To
20 call into the meeting please dial 1-408-419-1715 or 1-408-915-6290.
21

22 Dated this 11th day of May, 2021

23 *Carli Kierny*

24
25 408 9CD 2958 4306
26 Carli Kierny
27 District Court Judge
28

Carli Kierny
District Court Judge

Department II
Las Vegas, NV 89155

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
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 Notice of Hearing was served via the court's electronic eFile system to
13 all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 5/11/2021

15 NOREEN DEMONTE

nykosn@co.clark.nv.us

16 If indicated below, a copy of the above mentioned filings were also served by mail
17 via United States Postal Service, postage prepaid, to the parties listed below at their last
18 known addresses on 5/12/2021

19 Ceasar Valencia

HDSP
P.O. Box 650
Indian Springs, NV, 89070

IN THE SUPREME COURT OF THE STATE OF NEVADA

CEASAR SANCHAZ VALENCIA, A/K/A
CEASAR SANCHEZ VALENCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 81745
District Court Case No. A815616; ~~6245582~~

FILED

JUN - 3 2021

CLERK'S CERTIFICATE

Elizabeth A. Brown
CLERK OF COURT

STATE OF NEVADA, ss.

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

JUDGMENT

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

"ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order."

Judgment, as quoted above, entered this 07 day of May, 2021.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
June 02, 2021.

Elizabeth A. Brown, Supreme Court Clerk

By: Kaitlin Meetze
Administrative Assistant

A-20-815616-W
CCJR
NV Supreme Court Clerks Certificate/Judgm
4956355



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CEASAR SANCHAZ VALENCIA, A/K/A
CEASAR SANCHEZ VALENCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81745-COA

FILED

MAY 07 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK 0

ORDER OF REVERSAL AND REMAND

Ceasar Sanchaz Valencia appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on May 28, 2020. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

We previously ordered the State to show cause why the district court's order denying the petition as untimely should not be reversed. *See Valencia v. State*, Docket No. 81745-COA (Order to Show Cause, April 9, 2021). Although Valencia's petition was filed outside the one-year time limit, *see* NRS 34.726(1), it was received by the clerk of the district court within the one-year time limit. And it is the clerk's duty, not the parties', to file submitted documents. *See Sullivan v. Eighth Judicial Dist. Court*, 111 Nev. 1367, 1372, 904 P.2d 1039, 1042 (1995).


In its response, the State concedes the clerk received the petition within the one-year time limit. Because the record demonstrates the district court clerk received the petition within the one-year time limit

for filing the petition, we conclude the district court erred by denying the petition as untimely.¹ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



Gibbons C.J.



Tao J.



Bulla J.

cc: Hon. David M. Jones, District Judge
Ceasar Sanchez Valencia
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹The State opposes remand, arguing this court should affirm the denial of Valencia's petition based on the merits of his claims. A disposition on the merits will require factual findings, which is the province of the district court. *Cf. Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005) (noting an appellate court will defer to the district court's factual findings). We therefore decline to consider the merits of Valencia's claims on appeal in the first instance.

IN THE SUPREME COURT OF THE STATE OF NEVADA

CEASAR SANCHAZ VALENCIA, A/K/A
CEASAR SANCHEZ VALENCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 81745
District Court Case No. A815816; ~~G345588~~

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: June 02, 2021

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze
Administrative Assistant

cc (without enclosures):

Hon. David M. Jones, District Judge
Ceasar Sanchaz Valencia
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUN - 3 2021

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS

JUN - 3 2021

CLERK OF THE COURT



1 **RSPN**
2 **STEVEN B. WOLFSON**
3 Clark County District Attorney
4 Nevada Bar #001565
5 **KAREN MISHLER**
6 Chief Deputy District Attorney
7 Nevada Bar #013730
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10
11 Plaintiff,

11 -vs-

12 CEASAR SANCHAZ VALENCIA,
13 #1588390

14 Defendant.

CASE NO: A-20-815616-W
DEPT NO: II

15 **STATE'S RESPONSE TO DEFENDANT'S PETITION**
16 **FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

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

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through KAREN MISHLER, Chief Deputy District Attorney, and moves
20 this Honorable Court for an order denying the Defendant's Petition for Post-Conviction Relief
21 heretofore filed in the above entitled matter.

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

25 **POINTS AND AUTHORITIES**

26 **STATEMENT OF THE CASE**

27 On June 9, 2016, the State filed an Information charging Petitioner Ceasar Sanchaz
28 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, 2020,¹ 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. The State responds to the arguments raised in
24 the Petition as follows.

25 ///

26 ///

27 ///

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

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1 **ARGUMENT**

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

3
4 All of the claims Petitioner raises are contradicted by the record, not cognizable on
5 habeas review, barred from further consideration, or are bare and naked allegations. The
6 majority of Petitioner's claims are ineffective-assistance-of-counsel claims. To demonstrate
7 ineffective assistance of trial counsel, a petitioner must show counsel's performance was
8 deficient in that it fell below an objective standard of reasonableness, and prejudice resulted
9 in that there was a reasonable probability of a different outcome in the absence of counsel's
10 deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 2063
11 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the
12 Strickland test). Both components – deficient performance and prejudice – must be shown.
13 Strickland, 466 U.S. at 687, 104 S.Ct. at 2065. “[T]here is no reason for a court deciding an
14 ineffective assistance claim to approach the inquiry in the same order or even to address both
15 components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697,
16 104 S. Ct. at 2069.

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

27 The court begins with the presumption of effectiveness and then must determine
28 whether the defendant has demonstrated by a preponderance of the evidence that counsel was

1 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
2 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
3 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
4 537 P.2d 473, 474 (1975).

5 Counsel cannot be ineffective for failing to make futile objections or arguments. See
6 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
7 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
8 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
9 (2002).

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

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

1
2 **a. Ground One: Ineffective Assistance of Trial Counsel During the**
3 **Preliminary Process**

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

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

16 **b. Ground Two: Ineffective Assistance of Trial Counsel**
17

18 Petitioner alleges his trial counsel was ineffective for failing to assist him with a civil
19 forfeiture case. Petitioner has failed to state a claim for which he is entitled to relief. Based on
20 Petitioner’s own account of counsel’s conduct, this does not amount to ineffective assistance.
21 Counsel’s statement to Petitioner that he was not appointed to represent him in a civil matter
22 was correct; counsel was appointed to represent Petitioner only in the criminal case. Further,
23 Petitioner does not explain how counsel’s supposed failure to assist him in this forfeiture case
24 prejudiced him in the criminal trial. Accordingly, this claim must be summarily denied.

25 Petitioner also alleges there was body camera footage in this case that counsel failed to
26 provide to him. This allegation is contradicted by the record, and therefore must be dismissed.
27 See Mann, 118 Nev. at 354, 46 P.3d at 1230; Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.
28 At trial, Officer Houston testified that neither he nor Officer Jacobitz was wearing body-worn

1 camera on the date of the incident, and that at the time body-worn camera was not standardly
2 issued for department personnel. Trial Transcript, C315580, Day 2, pp. 133, 146-47.
3 Furthermore, trial counsel obtained the radio traffic from the incident and admitted it at trial.
4 Id. at 138. Counsel also repeatedly used the radio traffic during cross-examination of Officer
5 Houston. Id. at 138-46. Thus, trial counsel did in fact ensure he obtained discovery from the
6 State, and at trial presented the best documentation of the incident that was available to him.

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

15 **c. Ground Three Ineffective Assistance of Trial Counsel for Inadequate Pre-**
16 **Trial Contact**

17 Petitioner alleges his trial counsel was ineffective for failing to meet and communicate
18 with him. Petition at 15. Petitioner fails to provide any specificity as to how this alleged lack
19 of communication amounted to deficient performance or prejudiced him at trial. See
20 Strickland, 466 U.S. at 697, 104 S.Ct. at 2069. See also NRS 34.735 (stating that failure to
21 raise specific facts rather than conclusions may cause a petition to be dismissed); Hargrove,
22 100 Nev. at 502-03, 686 P.2d at 225.

23 Here, rather than plead any specific facts relating to this alleged lack of communication,
24 Petitioner simply asserts that he “was extremely prejudiced by the abandonment of counsel.”
25 Petition at 15. He fails to state what additional communication was needed or demonstrate that
26 additional communication with counsel would have changed the outcome of his trial. Nor does
27 he explain how he was “abandoned” by counsel. The record reveals Petitioner’s counsel
28 extensively cross-examined witnesses at trial, presented a strong closing argument alleging

1 that the State had not met its burden, and represented Petitioner on appeal. Trial Transcript,
2 C315580, Day 2, pp. 125-46, 149-52; Day 3, pp. 114-45, 149-50; Day 4, pp. 34-36, 53-59,
3 115-25; Day 5, pp. 3-22, 32-34, 79-90. This is hardly evidence of abandonment. This
4 conclusory claim is completely lacking in factual support. Accordingly, Petitioner is not
5 entitled to relief on this claim.

6
7 **d. Ground 4: Ineffective Assistance of Trial Counsel for Failure to Conduct
DNA Testing and Present Expert Witnesses**

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

21 Further, Petitioner fails to specify precisely how independent DNA testing or hiring an
22 expert DNA witness would have rendered a different trial outcome probable. The DNA expert
23 testimony presented by the State at trial did not inculcate Petitioner. In fact, Petitioner was
24 excluded as a contributor to the major DNA profile on the firearm recovered from the scene.
25 Trial Transcript, C315580, Day 4, pp. 29, 35. In closing, defense counsel argued to the jury
26 that these results exculpated Petitioner. Trial Transcript, C315580, Day 5, pp. 80, 86. It is
27 highly improbable that further DNA testing or testimony would have benefited Petitioner,
28

1 when clearly DNA evidence was not the basis for his conviction. Accordingly, Petitioner is
2 not entitled to relief on this claim.

3 **e. Ground Five: Ineffective Assistance of Trial Counsel Regarding the Denial**
4 **of Petitioner's Request for Self-Representation**

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

13 This claim is both contradicted by the record and barred under the law of the case
14 doctrine. *See Mann*, 118 Nev. at 354, 46 P.3d at 1230; *Hargrove*, 100 Nev. at 502, 686 P.2d
15 at 225; *Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975). Trial counsel also
16 represented Petitioner on direct appeal, wherein he argued that the district court erred by
17 denying Petitioner's request to represent himself. *Valencia v. State*, Docket No. 75282 (Order
18 of Affirmance, Apr. 12, 2019). The Nevada Supreme Court concluded that this claim was
19 meritless, noting "the record as a whole demonstrates Petitioner did not make an unequivocal
20 request to represent himself." *Valencia v. State*, Docket No. 75282 (Order of Affirmance, Apr.
21 12, 2019), at 3. Accordingly, this claim is also barred by the law of the case doctrine.

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

1 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, the district court cannot overrule the
2 Nevada Supreme Court. NEV. CONST. Art. VI § 6. Therefore, the district court is barred from
3 granting Petitioner any relief on this claim.

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

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

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

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

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
4 court erred by sentencing him pursuant to the habitual criminal statute, this is a substantive
5 claim 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 1. . .]

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

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

25 As to Petitioner's claim that counsel should have objected to the admission of one of
26 the certified judgments of conviction that the State admitted at sentencing, the only argument
27 Petitioner offers in support of this claim is his bare assertion that "Case No. C224558 is an
28 illegal sentence." Petition at 22. For Count 1, Petitioner was sentenced pursuant to the small
habitual criminal statute, and a prison sentence of 84 to 240 months was imposed. At the time
of Petitioner's sentencing, a defendant was eligible for small habitual criminal treatment upon
the proof of two prior felony convictions. NRS 207.010(1)(a). At sentencing, the State
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
13 strategic choice within the sole discretion of counsel. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d
14 163, 167 (2002) (stating that trial counsel has the “immediate and ultimate responsibility of
15 deciding if and when to object, which witnesses, if any, to call, and what defenses to
16 develop.”).

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

28 ///

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

9 Petitioner is also not entitled to relief on his claims that trial counsel failed to subpoena
10 witnesses. The decision not to call witnesses is within the discretion of trial counsel and will
11 not be questioned unless it was a plainly unreasonable decision. See Rhyne, 118 Nev. at 8, 38
12 P.3d at 168 (2002); Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992). "[T]he
13 trial lawyer alone is entrusted with decisions regarding legal tactics such as deciding what
14 witnesses to call." Rhyne, 118 Nev. at 8, 38 P.3d at 167. When defense counsel does not have
15 a solid case, the best strategy can be to say that there is too much doubt about the State's theory
16 for a jury to convict. See Harrington, 562 U.S. at 111, 131 S. Ct. at 791. Further, Petitioner
17 fails to identify the supposed alibi witness he believes counsel should have called, or any
18 helpful information that could have been presented through Eric Gilbert's testimony. To
19 satisfy the Strickland standard and establish ineffectiveness for failure to interview or obtain
20 witnesses, a petitioner must allege *in the pleadings* the substance of the missing witness'
21 testimony, and demonstrate how such testimony would have resulted in a more favorable
22 outcome. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004); State v. Haberstroh,
23 119 Nev. 173, 185, 69 P.3d 676, 684 (2003). Petitioner has clearly not met this burden.

24 As to Petitioner's claim that counsel failed to subpoena "dashcam footage", nothing in
25 the record indicates that there was such footage in this case. Further, Petitioner fails to
26 adequately explain how such footage, even if it existed, would have altered the outcome of his
27 trial. The testimony at trial was that Petitioner pointed a firearm at Officer Jacobitz during a
28 foot pursuit in an alleyway, and thus any sort of "dashcam" would not have captured the

1 incident. Trial Transcript, C315580, Day 3, pp. 37-40. Thus, Petitioner's allegation that
2 counsel did not obtain dashcam footage, even if true, would not entitle him to relief. See
3 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Accordingly, this claim must be summarily
4 denied.

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

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

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

17 Petitioner raises several broad allegations that must be summarily denied pursuant to
18 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. He alleges that counsel failed to investigate,
19 but fails to specify what matters should have been investigated, or to show how a better
20 investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at
21 192, 87 P.3d at 538. He repeats his allegation that counsel failed to call witnesses, but does
22 not specify what witnesses should have been called or the expected substance of such
23 testimony. He complains that counsel did not make an opening statement, but fails to explain
24 how this amounted to deficient performance or how it prejudiced him. He also raises a nearly
25 incomprehensible allegation that counsel failed to raise a legally cognizable defense that could
26 render a sentence of life in prison unreliable. It is entirely unclear what Petitioner even means
27 by a life sentence being "unreliable" or what defense he believes counsel should have raised.
28 This claim is so devoid of specificity that it must be summarily denied.

1 As to Petitioner's claim that counsel failed to instruct the jury as to the exculpatory
2 value of the DNA evidence, this claim is belied by the record. Mann, 118 Nev. at 354, 46 P.3d
3 at 1230. During closing argument, trial counsel explicitly stated to the jury that the DNA and
4 fingerprint results exonerated Petitioner. Trial Transcript, C315580 Day 5, p. 80. Accordingly,
5 this claim must be denied.

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

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

17
18 **1. Ground Twelve: Ineffective Assistance of Trial Counsel for Suggestive**
19 **Identification; Ineffectiveness of Appellate Counsel; Errors by District**
20 **Court in Jury Selection, Jury Instruction, and Sentencing**

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

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

1 **II. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

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

3 1. The judge or justice, upon review of the return, answer and all supporting
4 documents which are filed, shall determine whether an evidentiary hearing is
5 required. A petitioner must not be discharged or committed to the custody of a
6 person other than the respondent *unless an evidentiary hearing is held*.

7 2. If the judge or justice determines that the petitioner is not entitled to relief
8 and an evidentiary hearing is not required, he shall dismiss the petition without
9 a hearing.

10 3. If the judge or justice determines that an evidentiary hearing is required, he
11 shall grant the writ and shall set a date for the hearing.

12 The Nevada Supreme Court has held that if a petition can be resolved without
13 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
14 1328, 885 P.2d 603 (1994); Mann, 118 Nev. at 356, 46 P.3d at 1231. A defendant is entitled
15 to an evidentiary hearing if his petition is supported by specific factual allegations, which, if
16 true, would entitle him to relief unless the factual allegations are repelled by the record.
17 Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. at 503, 686
18 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not entitled to an
19 evidentiary hearing on factual allegations belied or repelled by the record”). “A claim is
20 ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the
21 claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to hold an
22 evidentiary hearing simply to make a complete record. See State v. Eighth Judicial Dist. Court,
23 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered itself the
24 ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a record as
25 possible.’ This is an incorrect basis for an evidentiary hearing.”).

26 Further, the United States Supreme Court has held that an evidentiary hearing is not
27 required simply because counsel’s actions are challenged as being unreasonable strategic
28 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge
29 post hoc rationalization for counsel’s decision making that contradicts the available evidence
30 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 should be denied.

11 **CONCLUSION**

12 For the foregoing reasons, the State respectfully requests that the Petition for Writ of
13 Habeas Corpus (Post-conviction) be denied.

14 DATED this 15th day of June, 2021.

15 Respectfully submitted,

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

18
19 BY /s/ KAREN MISHLER
KAREN MISHLER
20 Chief Deputy District Attorney
Nevada Bar #013730

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CERTIFICATE OF SERVICE

I certify that on the 15th day of June, 2021, I mailed a copy of the foregoing State's
Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) to:

CEASAR VALENCIA, BAC #94307
H.D.S.P.
P.O. BOX 650
INDIAN SPRINGS, NV 89070

BY  Secretary for the District Attorney's Office



1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 KAREN MISHLER
6 Chief Deputy District Attorney
7 Nevada Bar #013730
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10
11 Plaintiff,

11 -vs-

12 CEASAR SANCHAZ VALENCIA,
13 #1588390

14 Defendant.

CASE NO: A-20-815616-W
DEPT NO: II

15 **STATE'S RESPONSE TO DEFENDANT'S PETITION**
16 **FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

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

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through KAREN MISHLER, Chief Deputy District Attorney, and moves
20 this Honorable Court for an order denying the Defendant's Petition for Post-Conviction Relief
21 heretofore filed in the above entitled matter.

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

25 **POINTS AND AUTHORITIES**

26 **STATEMENT OF THE CASE**

27 On June 9, 2016, the State filed an Information charging Petitioner Ceasar Sanchaz
28 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, 2020,¹ 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. The State responds to the arguments raised in
24 the Petition as follows.

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

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ARGUMENT

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 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. “[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697, 104 S. Ct. at 2069.

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). “Effective counsel

1 does not mean errorless counsel, but rather counsel whose assistance is “[w]ithin the range of
2 competence demanded of attorneys in criminal cases.” Jackson v. Warden, 91 Nev. 430, 432,
3 537 P.2d 473, 474 (1975).

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

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

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

28 //

1 **a. Ground One: Ineffective Assistance of Trial Counsel During the**
2 **Preliminary Process**

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

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

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

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

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

6 Petitioner also complains about counsel advising him as to the elements of Trafficking
7 in Controlled Substance, and states that by doing so counsel was an “advocate for the state,
8 not for the defense.” Petition at 12-13. Based on Petitioner’s own pleading, it appears counsel
9 correctly informed Petitioner that the key element of the offense was the amount of the
10 controlled substance, and that it did not require separate proof of intent to sell. See NRS
11 453.3385. Providing Petitioner with accurate information as to the charges he was facing was
12 clearly not deficient performance; in fact, it was counsel’s duty to do so. Accordingly,
13 Petitioner is not entitled to relief on this claim.

14 **c. Ground Three Ineffective Assistance of Trial Counsel for Inadequate Pre-**
15 **Trial Contact**

16 Petitioner alleges his trial counsel was ineffective for failing to meet and communicate
17 with him. Petition at 15. Petitioner fails to provide any specificity as to how this alleged lack
18 of communication amounted to deficient performance or prejudiced him at trial. See
19 Strickland, 466 U.S. at 697, 104 S.Ct. at 2069. See also NRS 34.735 (stating that failure to
20 raise specific facts rather than conclusions may cause a petition to be dismissed); Hargrove,
21 100 Nev. at 502-03, 686 P.2d at 225.

22 Here, rather than plead any specific facts relating to this alleged lack of communication,
23 Petitioner simply asserts that he “was extremely prejudiced by the abandonment of counsel.”
24 Petition at 15. He fails to state what additional communication was needed or demonstrate that
25 additional communication with counsel would have changed the outcome of his trial. Nor does
26 he explain how he was “abandoned” by counsel. The record reveals Petitioner’s counsel
27 extensively cross-examined witnesses at trial, presented a strong closing argument alleging
28

1 that the State had not met its burden, and represented Petitioner on appeal. Trial Transcript,
2 C315580, Day 2, pp. 125-46, 149-52; Day 3, pp. 114-45, 149-50; Day 4, pp. 34-36, 53-59,
3 115-25; Day 5, pp. 3-22, 32-34, 79-90. This is hardly evidence of abandonment. This
4 conclusory claim is completely lacking in factual support. Accordingly, Petitioner is not
5 entitled to relief on this claim.

6
7 **d. Ground 4: Ineffective Assistance of Trial Counsel for Failure to Conduct
DNA Testing and Present Expert Witnesses**

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

22 Further, Petitioner fails to specify precisely how independent DNA testing or hiring an
23 expert DNA witness would have rendered a different trial outcome probable. The DNA expert
24 testimony presented by the State at trial did not inculcate Petitioner. In fact, Petitioner was
25 excluded as a contributor to the major DNA profile on the firearm recovered from the scene.
26 Trial Transcript, C315580, Day 4, pp. 29, 35. In closing, defense counsel argued to the jury
27 that these results exculpated Petitioner. Trial Transcript, C315580, Day 5, pp. 80, 86. It is
28 highly improbable that further DNA testing or testimony would have benefited Petitioner,

1 when clearly DNA evidence was not the basis for his conviction. Accordingly, Petitioner is
2 not entitled to relief on this claim.

3 **e. Ground Five: Ineffective Assistance of Trial Counsel Regarding the Denial**
4 **of Petitioner's Request for Self-Representation**

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

13 This claim is both contradicted by the record and barred under the law of the case
14 doctrine. See Mann, 118 Nev. at 354, 46 P.3d at 1230; Hargrove, 100 Nev. at 502, 686 P.2d
15 at 225; Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975). Trial counsel also
16 represented Petitioner on direct appeal, wherein he argued that the district court erred by
17 denying Petitioner's request to represent himself. Valencia v. State, Docket No. 75282 (Order
18 of Affirmance, Apr. 12, 2019). The Nevada Supreme Court concluded that this claim was
19 meritless, noting "the record as a whole demonstrates Petitioner did not make an unequivocal
20 request to represent himself." Valencia v. State, Docket No. 75282 (Order of Affirmance, Apr.
21 12, 2019), at 3. Accordingly, this claim is also barred by the law of the case doctrine.

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

1 v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelson v. State, 115 Nev. 396,
2 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, the district court cannot overrule the
3 Nevada Supreme Court. NEV. CONST. Art. VI § 6. Therefore, the district court is barred from
4 granting Petitioner any relief on this claim.

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

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

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

23 Petitioner alleges trial counsel failed to provide him with legal materials. Petition at 21.
24 This is a bare and naked claim suitable only for summary denial. See Hargrove, 100 Nev. at
25 502, 686 P.2d at 225. Petitioner fails to identify what specific materials he believes should
26 have been provided to him, or how provision of these materials would have rendered a
27 different result probable at trial. Accordingly, Petitioner is not entitled to relief on this claim.
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
4 court erred by sentencing him pursuant to the habitual criminal statute, this is a substantive
5 claim 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 1. . .]

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

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

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

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

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

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

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

1 venue cannot be granted by the district court until after voir dire examination of the
2 jury. NRS 174.455(2). Such a motion requires a demonstration that members of the jury were
3 biased against the defendant, not defendant's counsel. See Rhyne, 118 Nev. at 11, 38 P.3d at
4 169. There is nothing in the record of voir dire in this case indicating that any members of the
5 jury were prejudiced against Petitioner. Thus, any request for a change in venue would have
6 been futile. Accordingly, Petitioner is not entitled to relief on this claim.

7 To the extent Petitioner appears to claim that counsel failed to object to the "admittance
8 of the bag with the gun", this claim was raised on direct appeal and rejected by the Nevada
9 Supreme Court. See Valencia v. State, Docket No. 75282 (Order of Affirmance, Apr. 12,
10 2019), at 03-05. The Nevada Supreme Court stated as follows:

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

16 Id. at 04-05.

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

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

1 argument for counsel to characterize a witness as a liar.”). Further, whether or not to object is
2 a strategic decision, which is virtually unchallengeable. Dawson v. State, 108 Nev. 112, 117,
3 825 P.2d 593, 596 (1992). Accordingly, Petitioner is not entitled to relief on this claim.

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

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

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

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

9 Petitioner is also not entitled to relief on his claims that trial counsel failed to subpoena
10 witnesses. The decision not to call witnesses is within the discretion of trial counsel and will
11 not be questioned unless it was a plainly unreasonable decision. See Rhyne, 118 Nev. at 8, 38
12 P.3d at 168 (2002); Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992). "[T]he
13 trial lawyer alone is entrusted with decisions regarding legal tactics such as deciding what
14 witnesses to call." Rhyne, 118 Nev. at 8, 38 P.3d at 167. When defense counsel does not have
15 a solid case, the best strategy can be to say that there is too much doubt about the State's theory
16 for a jury to convict. See Harrington, 562 U.S. at 111, 131 S. Ct. at 791. Further, Petitioner
17 fails to identify the supposed alibi witness he believes counsel should have called, or any
18 helpful information that could have been presented through Eric Gilbert's testimony. To
19 satisfy the Strickland standard and establish ineffectiveness for failure to interview or obtain
20 witnesses, a petitioner must allege *in the pleadings* the substance of the missing witness'
21 testimony and demonstrate how such testimony would have resulted in a more favorable
22 outcome. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004); State v. Haberstroh,
23 119 Nev. 173, 185, 69 P.3d 676, 684 (2003). Petitioner has clearly not met this burden.

24 As to Petitioner's claim that counsel failed to subpoena "dashcam footage", nothing in
25 the record indicates that there was such footage in this case. Further, Petitioner fails to
26 adequately explain how such footage, even if it existed, would have altered the outcome of his
27 trial. The testimony at trial was that Petitioner pointed a firearm at Officer Jacobitz during a
28 foot pursuit in an alleyway, and thus any sort of "dashcam" would not have captured the

1 incident. Trial Transcript, C315580, Day 3, pp. 37-40. Thus, Petitioner's allegation that
2 counsel did not obtain dashcam footage, even if true, would not entitle him to relief. See
3 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Accordingly, this claim must be summarily
4 denied.

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

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

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

17 Petitioner raises several broad allegations that must be summarily denied pursuant to
18 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. He alleges that counsel failed to investigate
19 but fails to specify what matters should have been investigated, or to show how a better
20 investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at
21 192, 87 P.3d at 538. He repeats his allegation that counsel failed to call witnesses but does not
22 specify what witnesses should have been called or the expected substance of such testimony.
23 He complains that counsel did not make an opening statement but fails to explain how this
24 amounted to deficient performance or how it prejudiced him. He also raises a nearly
25 incomprehensible allegation that counsel failed to raise a legally cognizable defense that could
26 render a sentence of life in prison unreliable. It is entirely unclear what Petitioner even means
27
28

1 by a life sentence being “unreliable” or what defense he believes counsel should have raised.
2 This claim is so devoid of specificity that it must be summarily denied.

3 As to Petitioner’s claim that counsel failed to instruct the jury as to the exculpatory
4 value of the DNA evidence, this claim is belied by the record. Mann, 118 Nev. at 354, 46 P.3d
5 at 1230. During closing argument, trial counsel explicitly stated to the jury that the DNA and
6 fingerprint results exonerated Petitioner. Trial Transcript, C315580 Day 5, p. 80. Accordingly,
7 this claim must be denied.

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

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

19
20 **1. Ground Twelve: Ineffective Assistance of Trial Counsel for Suggestive**
21 **Identification; Ineffectiveness of Appellate Counsel; Errors by District**
22 **Court in Jury Selection, Jury Instruction, and Sentencing**

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

27 Further, as to Petitioner’s allegations that the district court erred during jury selection
28 and the setting of jury instructions, as well as by sentencing Petitioner pursuant to the habitual

1 criminal statute, these are all claims that could have been raised on direct appeal. Accordingly,
2 they cannot be considered on habeas review. See NRS 34.724(2)(a); Evans, 117 Nev. at 646–
3 47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059.

5 II. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING

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

7 1. The judge or justice, upon review of the return, answer and all supporting
8 documents which are filed, shall determine whether an evidentiary hearing is
9 required. A petitioner must not be discharged or committed to the custody of a
10 person other than the respondent *unless an evidentiary hearing is held*.

11 2. If the judge or justice determines that the petitioner is not entitled to relief
12 and an evidentiary hearing is not required, he shall dismiss the petition without
13 a hearing.

14 3. If the judge or justice determines that an evidentiary hearing is required, he
15 shall grant the writ and shall set a date for the hearing.

16 The Nevada Supreme Court has held that if a petition can be resolved without
17 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
18 1328, 885 P.2d 603 (1994); Mann, 118 Nev. at 356, 46 P.3d at 1231. A defendant is entitled
19 to an evidentiary hearing if his petition is supported by specific factual allegations, which, if
20 true, would entitle him to relief unless the factual allegations are repelled by the record.
21 Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. at 503, 686
22 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not entitled to an
23 evidentiary hearing on factual allegations belied or repelled by the record”). “A claim is
24 ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the
25 claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to hold an
26 evidentiary hearing simply to make a complete record. See State v. Eighth Judicial Dist. Court,
27 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered itself the
28 ‘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.”).

1 Further, the United States Supreme Court has held that an evidentiary hearing is not
2 required simply because counsel's actions are challenged as being unreasonable strategic
3 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge
4 post hoc rationalization for counsel's decision making that contradicts the available evidence
5 of counsel's actions, neither may they insist counsel confirm every aspect of the strategic basis
6 for his or her actions. Id. There is a "strong presumption" that counsel's attention to certain
7 issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Id. (citing
8 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the
9 *objective* reasonableness of counsel's performance, not counsel's *subjective* state of mind. 466
10 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

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

16 CONCLUSION

17 For the foregoing reasons, the State respectfully requests that the Petition for Writ of
18 Habeas Corpus (Post-conviction) be denied.

19
20 DATED this 15th day of June, 2021.

21 Respectfully submitted,

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

25 BY /s/ Karen Mishler
26 KAREN MISHLER
27 Chief Deputy District Attorney
28 Nevada Bar #013730

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CERTIFICATE OF SERVICE

I hereby certify that service of Document Name, was made this 15th day of June, 2021,
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/s/ Kristian Falcon
Secretary for the District Attorney's Office

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Dept. No. II

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

Cesar Sanchez Valencia
Petitioner, #94307

**MOTION FOR THE APPOINTMENT
OF COUNSEL**

-VS-

THE STATE OF NEVADA
Respondents.

REQUEST FOR EVIDENTIARY HEARING

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

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

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

II. STATEMENT OF THE FACTS

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

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

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CLERK OF THE COURT

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

II. ARGUMENT

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

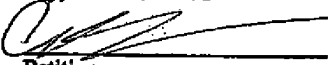
such person unable to employ counsel. On a Motion for Appointment of Counsel pursuant to N.R.S.

34.750, the District Court should consider whether appointment of counsel would be of service to the indigent petitioner, the Court, and respondents as well, by sharpening the issues in the case, shaping examination of witnesses, and ultimately shortening trial and assisting in the just determination.

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

III CONCLUSION


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

Dated this 22 day of JUNE, 2021 HDSP
PO BOX 650
Ely State Prison Indian Springs
P.O. Box 1989 NV89020
Ely, Nevada 89301

Petitioner.

VERIFICATION

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

Dated this 22 day of JUNE, 2021.


Petitioner, pro per.

CERTIFICATE OF SERVICE BY MAIL

I Cesar Valenzuela #94307, hereby certify pursuant to N.R.C.P.
5(b), that on this 22 day of June, of the year 2021, I mailed a true and
correct copy of the foregoing, MOTION FOR THE APPOINTMENT OF COUNSEL; REQUEST
FOR EVIDENTIARY HEARING, to the following:

<u>clerk of the court</u> Name	<u>District Attorney Nevada Attorney</u> Name	<u>General</u> Name
<u>200 1st St</u> <u>Las Vegas NV 89101</u> Address	<u>200 1st St</u> <u>Las Vegas NV 89101</u> Address	<u>100 Carson St</u> <u>Carson City NV 89701</u> Address

[Signature]
Petitioner

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, 2020,¹ 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:

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

1 **FACTUAL SUMMARY**

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

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

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

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

24 **ANALYSIS**

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

26 All of the claims Petitioner raises are contradicted by the record, not cognizable on
27 habeas review, barred from further consideration, or are bare and naked allegations. The
28 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. Cronie, 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.

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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.

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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.

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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.

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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 [...]

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

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

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

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

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

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

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

14 Petitioner raises several broad allegations that must be summarily denied pursuant to
15 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. He alleges that counsel failed to investigate,
16 but fails to specify what matters should have been investigated, or to show how a better
17 investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at
18 192, 87 P.3d at 538. He repeats his allegation that counsel failed to call witnesses, but does not
19 specify what witnesses should have been called or the expected substance of such testimony.
20 He complains that counsel did not make an opening statement, but fails to explain how this
21 amounted to deficient performance or how it prejudiced him. He also raises a nearly
22 incomprehensible allegation that counsel failed to raise a legally cognizable defense that could
23 render a sentence of life in prison unreliable. It is entirely unclear what Petitioner even means
24 by a life sentence being "unreliable" or what defense he believes counsel should have raised.
25 This claim is so devoid of specificity that it must be summarily denied.

26 As to Petitioner's claim that counsel failed to instruct the jury as to the exculpatory
27 value of the DNA evidence, this claim is belied by the record. Mann, 118 Nev. at 354, 46 P.3d
28 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 **1. 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 ///

///

1 **II. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

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

3 1. The judge or justice, upon review of the return, answer and all supporting
4 documents which are filed, shall determine whether an evidentiary hearing is
5 required. A petitioner must not be discharged or committed to the custody of a
6 person other than the respondent *unless an evidentiary hearing is held*.

7 2. If the judge or justice determines that the petitioner is not entitled to relief
8 and an evidentiary hearing is not required, he shall dismiss the petition without
9 a hearing.

10 3. If the judge or justice determines that an evidentiary hearing is required, he
11 shall grant the writ and shall set a date for the hearing.

12 The Nevada Supreme Court has held that if a petition can be resolved without
13 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
14 1328, 885 P.2d 603 (1994); Mann, 118 Nev. at 356, 46 P.3d at 1231. A defendant is entitled
15 to an evidentiary hearing if his petition is supported by specific factual allegations, which, if
16 true, would entitle him to relief unless the factual allegations are repelled by the record.
17 Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. at 503, 686
18 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not entitled to an
19 evidentiary hearing on factual allegations belied or repelled by the record”). “A claim is
20 ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the
21 claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to hold an
22 evidentiary hearing simply to make a complete record. See State v. Eighth Judicial Dist. Court,
23 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered itself the
24 ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a record as
25 possible.’ This is an incorrect basis for an evidentiary hearing.”).

26 Further, the United States Supreme Court has held that an evidentiary hearing is not
27 required simply because counsel’s actions are challenged as being unreasonable strategic
28 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).

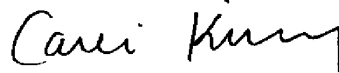
6 Petitioner’s claims do not require an evidentiary hearing. An expansion of the record is
7 unnecessary because Petitioner has failed to assert any meritorious claims and the Petition can
8 be disposed of with the existing record, as discussed *supra*. Marshall, 110 Nev. at 1331, 885
9 P.2d at 605;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



1 NEFF

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 CEASAR VALENCIA,

6 Petitioner,

Case No: A-20-815616-W

Dept No: II

7 vs.

8 STATE OF NEVADA,

9 Respondent,

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

10
11 PLEASE TAKE NOTICE that on November 3, 2021, the court entered a decision or order in this
12 matter, a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on November 8, 2021.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Ingrid Ramos

Ingrid Ramos, Deputy Clerk

18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 8 day of November 2021, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:
23 Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

24 ☒ The United States mail addressed as follows:
25 Ceasar Valencia # 94307
26 P.O. BOX 650
Indian Springs, NV 89070

27 /s/ Ingrid Ramos

28 Ingrid Ramos, Deputy Clerk

DISTRICT COURT
CLARK COUNTY, NEVADA

Defendant.

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

1 **FACTUAL SUMMARY**

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

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

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

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

24 **ANALYSIS**

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

26 All of the claims Petitioner raises are contradicted by the record, not cognizable on
27 habeas review, barred from further consideration, or are bare and naked allegations. The
28 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.

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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.

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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.

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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 [...]

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

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

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

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

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

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

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

14 Petitioner raises several broad allegations that must be summarily denied pursuant to
15 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. He alleges that counsel failed to investigate,
16 but fails to specify what matters should have been investigated, or to show how a better
17 investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at
18 192, 87 P.3d at 538. He repeats his allegation that counsel failed to call witnesses, but does not
19 specify what witnesses should have been called or the expected substance of such testimony.
20 He complains that counsel did not make an opening statement, but fails to explain how this
21 amounted to deficient performance or how it prejudiced him. He also raises a nearly
22 incomprehensible allegation that counsel failed to raise a legally cognizable defense that could
23 render a sentence of life in prison unreliable. It is entirely unclear what Petitioner even means
24 by a life sentence being "unreliable" or what defense he believes counsel should have raised.
25 This claim is so devoid of specificity that it must be summarily denied.

26 As to Petitioner's claim that counsel failed to instruct the jury as to the exculpatory
27 value of the DNA evidence, this claim is belied by the record. Mann, 118 Nev. at 354, 46 P.3d
28 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 **1. 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.

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1 **II. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

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

3 1. The judge or justice, upon review of the return, answer and all supporting
4 documents which are filed, shall determine whether an evidentiary hearing is
5 required. A petitioner must not be discharged or committed to the custody of a
6 person other than the respondent *unless an evidentiary hearing is held*.

7 2. If the judge or justice determines that the petitioner is not entitled to relief
8 and an evidentiary hearing is not required, he shall dismiss the petition without
9 a hearing.

10 3. If the judge or justice determines that an evidentiary hearing is required, he
11 shall grant the writ and shall set a date for the hearing.

12 The Nevada Supreme Court has held that if a petition can be resolved without
13 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
14 1328, 885 P.2d 603 (1994); Mann, 118 Nev. at 356, 46 P.3d at 1231. A defendant is entitled
15 to an evidentiary hearing if his petition is supported by specific factual allegations, which, if
16 true, would entitle him to relief unless the factual allegations are repelled by the record.
17 Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. at 503, 686
18 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not entitled to an
19 evidentiary hearing on factual allegations belied or repelled by the record”). “A claim is
20 ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the
21 claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to hold an
22 evidentiary hearing simply to make a complete record. See State v. Eighth Judicial Dist. Court,
23 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered itself the
24 ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a record as
25 possible.’ This is an incorrect basis for an evidentiary hearing.”).

26 Further, the United States Supreme Court has held that an evidentiary hearing is not
27 required simply because counsel’s actions are challenged as being unreasonable strategic
28 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).

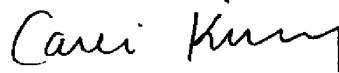
6 Petitioner’s claims do not require an evidentiary hearing. An expansion of the record is
7 unnecessary because Petitioner has failed to assert any meritorious claims and the Petition can
8 be disposed of with the existing record, as discussed *supra*. Marshall, 110 Nev. at 1331, 885
9 P.2d at 605; 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
CLARK COUNTY, NEVADA

4
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

Electronically Filed
11/09/2021

Heather Shuman
CLERK OF THE COURT

Cesar Sanchez Valenzuela #94507

In Proper Person

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

Edith Clark DISTRICT COURT
CLARK COUNTY NEVADA

Cesar Sanchez Valenzuela
#94507

Case No. *A 20-815616-4*
Dept. No. _____
Docket _____

-v-
THE STATE OF NEVADA

NOTICE OF APPEAL

Notice is hereby given that the *Edith Clark* *Cesar Sanchez*
Valenzuela #94507, 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, *Oct 26 2021*.

Respectfully Submitted,

Cesar Valenzuela
In Proper Person
Cesar Valenzuela #94507

RECEIVED

NOV - 8 2021

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

I, Cesar Valdez #94307, 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 Valadez #94307
Oct /In Propria Persona
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding notice

of Appeal
(Title of Document)

filed in District Court Case number A-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

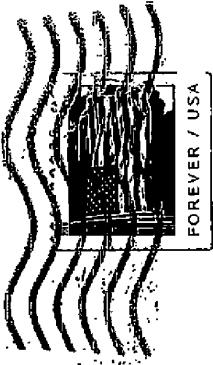
Bessor Sanchez Valende
Print Name

[Signature]
Title

Cesar Sanchez Valenzuela #41367
PO BOX 650
Indian Springs NV 89090

LAS VEGAS NV 890

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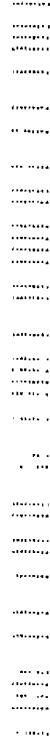


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HIGH DESERT STATE PRISON

OCT 9 1 2021

UNIT 5 A/B



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

10 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
18 **CASE APPEAL STATEMENT**
19

20 1. Appellant(s): Ceasar Valencia

21 2. Judge: Carli Kierny

22 3. Appellant(s): Ceasar Valencia

23 Counsel:

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

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

28 Counsel:

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

**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

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Minutes Date: July 28, 2020

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

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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 and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated November 23, 2021, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 235.

CEASAR SANCHEZ VALENCIA,

Plaintiff(s),

vs.

JOHNSON WARDEN, HIGH DESERT STATE
PRISON; THE STATE OF NEVADA,

Defendant(s),

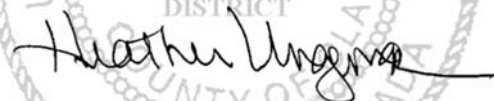
Case No: A-20-815616-W

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 2 day of December 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk