

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONNY DARROW POWE ,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
Apr 21 2022 09:11 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-21-845477-W

Docket No: 84430

RECORD ON APPEAL

ATTORNEY FOR APPELLANT

RONNY POWE #1173457,
PROPER PERSON
P.O. BOX 7007
CARSON CITY, NV 89702

ATTORNEY FOR RESPONDENT

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

A-21-845477-W Ronny Powe, Plaintiff(s) vs. K. Olsen, Warden (W.S.C.C.),
Defendant(s)

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1 Ronny Powe, # 1173457
2 Warm Springs Correctional Center
3 P.O. Box 7007
4 Carson City, Nevada 89702

5 PETITIONER IN PROPER PERSON

FILED
DEC 15 2021

[Signature]
CLERK OF COURT

6 IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA IN AND FOR THE COUNTY OF Clark

8
9
10 Ronny Powe

11 Petitioner,

Case No.: **A-21-845477-W**

Dept. 12

12 V.

Dept. No.

13 K. Olsen, warden (W.S.C.C.),

14 Respondent

15
16
17 **PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)**

18 **INSTRUCTIONS:**

19 (1) This petition must be legibly handwritten or typewritten, signed by the
20 petitioner and verified.

21 (2) Additional pages are not permitted except where noted or with respect to the
22 facts which you rely upon to support your grounds for relief. No citation of
23 authorities need be furnished. If briefs or arguments are submitted, they should be
submitted in the form of a separate memorandum.

24 (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
25 prison complete the certificate as to the amount of money and securities on deposit to
your credit in any account in the institution.

26 (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.

CLERK OF THE COURT

DEC 06 2021

RECEIVED

(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: Warm Springs Correctional Center, Casan City NV
89702

2. Name and location of court which entered the judgment of conviction under attack:

Eighth Judicial District Court, Clark County NV

3. Date of judgment of conviction: Feb. 17th 2017

4. Case number: C-15-308371-1

5. (a) Length of sentence: life with the possibility of parole
after five (5) yrs and weapon enhancement of 60-150 months.

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

3
4 6. Are you presently serving a sentence for a conviction
5 other than the conviction under attack in this motion?

6 Yes _____ No X

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

9
10 7. Nature of offense involved in conviction being
11 challenged: kidnapping in the first degree with the use of a
12 weapon.

13
14 8. What was your plea? (check one)

15 (a) Not guilty _____

16 (b) Guilty X by way of negotiations

17 (c) Guilty but mentally ill _____

18 (d) Nolo contendere _____

19
20 9. If you entered a plea of guilty to one count of an
21 indictment or information, and a plea of not guilty to another
22 count of an indictment or information, or if a plea of guilty was
23 negotiated, give details: guilty plea by way of negotiations

24
25
26
27 10. If you were found guilty after a plea of not guilty, was
28 the finding made by: (check one) N/A.

1 (a) Jury _____

2 (b) Judge without a jury _____

3
4 11. Did you testify at the trial? Yes _____ No X

5
6 12. Did you appeal from the judgment of conviction?

7 Yes _____ No X

8
9 13. If you did appeal, answer the following:

10 (a) Name of court: N/A

11 (b) Case number or citation: _____

12 (c) Result: _____

13
14
15 (d) Date of result: _____

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

17
18 14. If you did not appeal, explain briefly why you did not:

19 Petitioner's attorney failed to conduct appeal; and explained I
20 was unable to appeal conviction as I waived my right to do
21 so upon plea deal entry.

22
23 15. Other than a direct appeal from the judgment of
24 conviction and sentence, have you previously filed any petitions,
25 applications or motions with respect to this judgment in any
26 court, state or federal? Yes X No _____

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

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

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

11 (1) First petition, application or motion?

12 Yes X No _____

13 Citation or date of decision: pending decision

14 (2) Second petition, application or motion?

15 Yes _____ No _____

16 Citation or date of decision: _____
17 _____

18 (3) Third or subsequent petitions, applications or motions?

19 Yes _____ No _____

20 Citation or date of decision: _____
21 _____

22 (e) If you did not appeal from the adverse action on any
23 petition, application or motion, explain briefly why you did not.

24 (You must relate specific facts in response to this question.

25 Your response may be included on paper which is 8 1/2 by 11
26 inches attached to the petition. Your response may not exceed
27 five handwritten or typewritten pages in length.)
28

1 17. Has any ground being raised in this petition been
2 previously presented to this or any other court by way of
3 petition for habeas corpus, motion, application or any other
4 post-conviction proceeding? If so, identify: *NO, newly discovered*
5 *evidence by the defendant.*

6 (a) Which of the grounds is the same: _____
7 _____
8 _____

9 (b) The proceedings in which these grounds were raised:
10 *N/A*
11 _____

12 (c) Briefly explain why you are again raising these grounds.

13 (You must relate specific facts in response to this
14 question. Your response may be included on paper which is 8 1/2
15 by 11 inches attached to the petition. Your response may not
16 exceed five handwritten or typewritten pages in length.)
17 *N/A*
18 _____
19 _____
20 _____

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

1 response may not exceed five handwritten or typewritten pages in
2 length.)

3 Answer given upon attached pages: 8-A
4
5

6
7 19. Are you filing this petition more than 1 year following
8 the filing of the judgment of conviction or the filing of a
9 decision on direct appeal? If so, state briefly the reasons for
10 the delay. (You must relate specific facts in response to this
11 question. Your response may be included on paper which is 8 1/2
12 by 11 inches attached to the petition. Your response may not
13 exceed five handwritten or typewritten pages in length.)

14 yes - answer attached upon pg 8-B
15
16

17 20. Do you have any petition or appeal now pending in any
18 court, either state or federal, as to the judgment under attack?
19 Yes x No _____ If yes, state what court and the case number:

20 Ninth Circuit Court of Appeals, Docket # 21-16534.
21

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

24 Mr. Craig Drummond.
25

26 22. Do you have any future sentences to serve after you
27 complete the sentence imposed by the judgment under attack?

28 Yes _____ No x

Petitioner Pave was represented by Craig Drummond. Mr. Drummond presented the evidence of the State as reliable and certain that the Petitioner's D.V.A. existed upon the samples taken by the forensics labs. As Mr. Drummond portrayed this as truth, though Pave maintained his innocence, this would help the State secure an guilty plea entry upon the charges of kidnapping with the use of a deadly weapon.

Pave's assistance at the W.S.C.C. institution revealed that Pave's D.V.A. was not on any weapon or sample taken by the forensics lab and Pave was excluded as a subject or source of the D.V.A. on the weapon tested, (the Hammer).

Pave's assistance at the W.S.C.C. institution revealed that no weapon was ever tested (firearm) for D.V.A. analysis, as no bullets were found; no firearm was discovered and Pave was not charged by way of the Amended Information of discharging or "using" a "firearm" as a deadly weapon, as the information gives the language "And/or".

Pave's attorney of record induced a guilty plea entry upon ill advice, by using evidence in a un-true manner, falsifying its contents.

Pave's attorney of record stated a direct appeal could not be done as a guilty plea was entered and appeal rights were waived, though misconduct was committed by Mr. Drummond. Pave did diligently sought the Courts protection to overturn the wrongs and allow the evidence speak for itself. This petition now tries to present those issues for the Courts review under the correct format.

Pave was denied an actual Direct Appeal due to Counsel and the process used by the Nev. Sup. Ct by identifying an appeal notice for the denial of Habeas Arrest as an Actual appeal on the criminal conviction. Though the Nev. Sup. Ct. treated an appeal for the denial of Habeas arrest as an appeal of the conviction, no Review for plain error was conducted as 1) The Notice of the Appeal was deemed untimely and therefore the Nev. Sup. Ct had no jurisdiction; and 2) Had the Court followed the M.R.A.²⁴ they would have discovered Reversible error in the record and vacated the conviction, yet Pave wasn't appealing the conviction so no review was warranted.

Pave received a double-edged standard that prejudiced the case at hand. Pave continued to seek review by 1) filing motions to correct the errors (which he now knows are the wrong legal vehicle to use); 2) filed and argued on Habeas Petition.

Through the process of post conviction appeal, Pave received assistance from inmate law clerks that explained documentation and exhibits that were used by Mr. Drummond and the State District Attorney to secure convictions. The documents were D.V.A reports. These Reports stated that Pave was excluded as a contributor. The Prosecution and Pave's Representation were aware of this yet moved forward to secure convictions based upon misleading statements that Pave's DNA was indeed located on the evidence obtained and that it will be used at trial. Once Pave understood he was deliberately deceived he sought judicial review.

1 If yes, specify where and when it is to be served, if you know:
2
3
4

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

9 (a) Ground one: Actual Innocence: DNA evidence
10 excludes Pave from contributor
11
12
13

14 (b) Ground two: Ineffective Assistance of Counsel.
15 Part A: Trial counsel ; Part B: Failure to file An
16 Appeal ; Part C: Misconduct
17
18

19 (c) Ground three: Prosecution Misconduct in violation
20 of Due Process, false presentation of DNA evidence.
21
22
23

24 (d) Ground four: Due Process: Appeal Process denied
25 to Pave by Nev. Sup. Ct, Judicial errors.
26
27
28

23. (a) GROUND ONE: Petitioner was denied the Right to Due Process and Effective Assistance of Counsel under the Sixth and Fourteenth Amendments

23. (a) SUPPORTING FACTS (tell your story briefly without citing cases or law): On June 15th 2015, an incident occurred against the person named Ranelle Martin in Las Vegas NV. Martin had several injuries and was transported to the hospital by the Petitioner Ronny Powe, (Here in after Powe). Powe was accompanied by his mother,

Martin gave officers her statement, which is what she had told Powe had occurred, that she was attacked and robbed, and as Powe had Martin receive medical treatment, he returned home. Powe was later arrested and charged on July 30th 2015 with the first of many Criminal informations.

Powe was charged with First degree Kidnapping w/ the use of a deadly weapon; Attempt murder with the use; Battery with the use; Battery with the use (constituting Domestic Violence, (all together Seven felony Counts).

Powe was charged due to Martins new statements provided to investigators, and Powe would begin to defend his innocence with the assistance of counsel Mr. Craig Drummond. Powe did explain the facts to Drummond as they occurred, and that an investigation would prove that Powe was being truthfull. Drummond questioned Powe about a "Gun" (as no weapon was used or discovered or confiscated by investigators), and about the use of a hammer that was allegedly used to injury Martin. Powe Denied any involvement in the

injuries that occurred upon Martin, that he had taken Martin to the hospital and that officers could testify evidence as he was not involved. Drummond stated that there was D.N.A. evidence being tested which would prove his statements "one way or the other". Pave welcomed the tests and wanted to proceed to trial as quickly as possible so he could move on with his life.

Pave waived his right to a preliminary hearing without negotiations so he could invoke his trial rights, on July 29th 2015, and Pave Elected for a Speedy Trial in 60 days on July 31st 2015.

Pave requested his Counsel to conduct an investigation into Martin as her testimony to the officers and then investigators was inconsistent and was inconsistent with what transpired. Drummond stated he would do so, and it was revealed Martin was Admitted for Emergency mental health concerns by an Robert Mull, M.D on May 6th 2015 (attached exhibit A, a part of court record). Drummond further revealed that Martin was cited for giving false statements to officers (attached exhibit B, officer report of April 4th 2014). Though this information exists Drummond Never informed Pave of its existence nor has it would assist him in his trial preparation. This betrayal was only made worse as Drummond conveyed the falsehood that Paves D.N.A. was located on a weapon used in this incident.

As the Criminal informations and Complaints allege, an hammer and /or a gun was used during the Commission of the injuries upon Martin. A Hammer was confiscated and tested by the Las Vegas Metropolitan Police Department Forensic Laboratory. The lab report was finished and signed by Brianne Huseby on December 3rd 2015. (see attached exhibit C DNA Report.).

Mr. Drummond was able to know that his clients D.V.A did not exist upon the alleged weapon used in this incident as early as December 3rd 2015, yet what transpired is the Prosecution moved forward presented an guilty plea deal negotiation to Mr. Drummond who conveyed the deal to Pave, that the State had D.V.A. evidence that belonged to Pave on the weapon and would place Pave in Prison for the rest of his life without parole unless he accepted the plea deal.

Paves counsel committed an act of fraud upon his client which induced an plea of guilty. Drummond explained that the D.V.A report showed Paves D.V.A was the source on the weapon, yet in fact Pave was Excluded as a source, in fact the D.V.A report excludes Pave from all tested samples provided to the forensic lab.

The Forensic lab had items #4-11 to test, item #7 was a sample of Ronny Paves D.V.A., the items No. 10; 10.1; and 10.2 are the samples taken from the alleged weapon used (the Hammer). These items demonstrate and exclude Ronny Pave as a contributor, though a mixture of Black/D.V.A. was found with at least one being male. Drummond did not convey this information to Pave But the complete opposite. This is the worse style of ineffective assistance of counsel, when your own attorney becomes the prosecution and uses lies and deception to secure a conviction of an innocent man.

Due to Mr. Drummonds presentation of the evidence and the potential terms of incarceration used as leverage and tactic, Pave entered pleas of guilt on Dec. 22nd 2016. This deal was presented under the condition that it would expire in Twenty-Four hours, and yet Drummond was out of state at the time Pave entered the plea. When a review of the Plea canvass is conducted it displays a defeated Pave agreeing to doing "what ever it says I did". (see Entry of Plea transcript of Dec 22nd 2016 pg 10..).

Upon the entry of a plea of guilt the Court conducted an canvass, the Court should have recognized that Powe was in distress when his answers were short and not specific to satisfy the requirements needed to allow the Court to accept the Plea as knowing, and intelligently.

The Court asks: "Can you tell me what you did in Clark County Nevada on or about the 16th day of June 2016 that makes you guilty of first degree kidnapping..

Powe states: Everything, Everything that's on page 2 on Exhibit 1. (see pg 10 Lns 2-7).

The Court went on to ask Powe if he did this with the use of a deadly weapon, a "fire arm". (pg 10 Ln 12). The Court Did not ask if he did such with a "Hammer".. which is the weapon that was charged and or located as the alleged weapon, as no firearm was located, and Martin revealed no evidence of a bullet or its residue.

With this one page, one line admittance of inconsistent facts based upon false evidence, Powe is and was denied a fair-Trial and Due Process with effective assistance of Counsel. The Court was hard to ask Powe exactly what he did, not allow a generalization of the contents of a guilty plea deal or Criminal Complaint which contents were ambiguous as to what Powe used as a weapon with the language "And/or".

To be clear Powe was / is innocent, Powe was allowed to plea guilty to these charges when the State Prosecution and Powes Counsel Mr Drummond Both knew Powe was innocent due to the D.V.A evidence, Powe was induced to Plea, his daughter and the length of incarceration he would receive and she would receive were used to help induce this plea, in combination of misleading and falsifying evidence contents.

Without key components or elements of the crime being held as true by material fact, and in this case D.N.A. evidence, the conviction can not be held reliable. Pave wished to proceed to trial, because Mr. Drummond acted in a way contrary to the desired end (to prove Paves innocence) Pave requested a new attorney.

Pave informed the court that Drummond had failed to provide discovery evidence to him, though the court made it clear that if Paves counsel had it, that was the same as Pave having it and had reviewed it, that is in error. When the court denied Paves request for new counsel, Pave was helpless. He knew that he had no choice but to save his life in the only way he could... enter a plea to charges he did not commit, especially as Pave believed evidence was now being doctored to make sure he was convicted.

To be clear Paves attorney informed him that his D.N.A. was located on the weapon that was used to harm another when in fact it was not and would not have been as Pave was not involved. And as the court turned its back upon Pave what else is Pave expected to do... except defeat which is reflected in the entry of plea transcript.

Pave is Actually innocent of this crime and D.N.A. exonerates him from this offense. Paves attorney induced a plea by lying to his client about evidence and the State Prosecution knew Pave was excluded as a suspect yet continued Prosecution, This is a fundamental Miscarriage of Justice, convicting an innocent man.

Pave was convicted of a crime he did not commit in violation of his 5th; 6th and 14th amendments to the United States Constitution.

23. (b) GROUND TWO: Petitioner received Ineffective Assistance of Counsel during the trial; plea entry; penalty phase and appeal phase in violation of Paves 5th 6th and 14th Constitutional Protections.

23. (b) SUPPORTING FACTS (tell your story briefly without citing cases or law): (Pave here in incorporates the facts set within Grand One as fully alleged Here within Ground Two).

Pave was represented by Craig Drummond. At the onset of Mr. Drummond's representation, the course of defense was to proceed to trial and show that Martin's statements were inconsistent; that she suffers from a mental illness and that no conduct by Pave had caused her injuries as Martin arrived at Pave's home beaten and Pave helped her and took her to the hospital. This was the statement that Martin gave to police at the hospital upon arrival.

Drummond stated an investigation would be needed, but we could get it done. Pave elected to proceed to trial immediately to get the charges removed quickly as he was innocent. Drummond stated Pave could go to trial in (60) Sixty days, and that's what Pave decided to do. On July 31st 2015 Pave invoked his Speedy trial right, though this would later be waived due to the State Prosecutors delay in supplying Brady material.

On October 13th 2015 the trial was vacated and Pave's case was "joined" to his co-defendants case, which was his daughter Tharonya B. Pave.

Once Paves case was joined to his Co-defendants case, counsel started acting contrary to the initial decision to gain evidence towards our defense at trial. Pave sent letters to his counsel for his discovery paperwork, any evidence the prosecution was using so Pave could help and assist in his defense. Drummond ignored these requests.

When Pave requested to know about the D.N.A sample he had given, Drummond explained that it was used to confirm that (Pave) my DNA was on the weapon and other items taken by police and the Prosecution was going to use that to put me (Pave) in Prison for the rest of my life. Pave was "Shocked", as there was no way his D.N.A could be upon the weapon.. how could that be Pave asked Drummond.. And Drummond stated that "You lied to me, you did this and we cant win now".

(As Grand one shows and exhibit E displays Pave was Excluded as an D.N.A source from this D.N.A Pool).

Pave still pushed Drummond to prove his innocence because some thing was wrong, to retest the D.N.A, to find the witness who helped Martin (as Martin stated). Drummond stopped acting as an advocate and relayed the State Prosecutions deal. The State would dismiss all charges except the kidnapping with the use of a weapon and Pave would be eligible for parole release instead of life without parole.. The State would also allow his daughter to receive a minimal sentence as Pave would maintain majority responsibility.

Based upon Drummonds representation of the D.N.A report, (which is false), Drummond presented to Pave that he should enter a plea of guilty, do a minimum term of about 10-15 yrs and go home on parole. That Pave would not only be saving his own life but his daughters as well as he- D.N.A was also on the weapon. (this too is false).

Pave was faced with presenting to a jury what he believed was his story against Martins, yet now his attorney was saying there was his own D.V.A on the weapon used to cause her injuries, how could he say he was innocent to a jury now? As such he decided to enter the plea of guilty and try to receive a sentence with parole eligibility.

Had Drummond not lied to his client, Pave would have proceeded to trial and the D.V.A report would have exonerated Pave from these charges. Pave received ineffective assistance when Drummond Blatly and deliberately lied to him about D.V.A evidence and by failing to provide this evidence for him to read, which lead to the conviction of an innocent man.

B: Once the conviction was obtained, Pave wished to challenge the conviction, because he knew he was innocent, he needed help to prove it. Drummond stated that Pave had waived all his rights to an appeal and post conviction matters. Yet Pave was allowed pursuant to WRC crp 34 to file an Post Conviction writ of Habeas Corpus with the district Court, (yet Pave did not learn of this until one month before the one year time limit was up). Pave was denied a Direct Appeal with the effective assistance of Counsel under "Evitts v. Lucy".

C: Paves attorney committed misconduct by allowing his client to plead guilty to charges his attorney knew his client could and was innocent of due to D.V.A evidence. Drummond was Bound to inform the Court that the prosecution was seeking charges that the prosecution could reasonably exclude due to D.V.A evidence, which in itself is prosecution misconduct. Drummond wasn't present for Paves plea entry, he allowed another attorney to stand in for him (an Scott Holper and Roy Nelson). This was Drummonds way of being able to deny "he knew" what Pave had agreed to, (denyability).

Overall Drummond allowed his client to be convicted because he lied and abandoned him. This is the worst form of a miscarriage of justice that a Court can come across. And this was done at the hands of the defendants own attorney the Person who is by law and Constitution to Protect him from such injustice.

An evidentiary hearing is needed to place Drummond on the stand, to place his testimony on the record so it can be established how his misconduct led to Paves wrongful conviction.

Drummond should explain why with DNA evidence excluding his client from the use of the weapon, this would remove Pave from the location of the incident, which is apart of the defense Drummond should have put forward. yet Drummond failed to do so and why he failed is a question of fact that goes towards Paves Due Process protections.

Pave was denied Effective Assistance of Counsel, Due Process under the 5th, 6th and 14th Amendments of the United States Constitution.

23. (c) GROUND THREE: The Prosecution Committed Misconduct
in violation of Paves Due Process Protections under the
5th and 14th Amendments to the United States Constitution.

23. (c) SUPPORTING FACTS (tell your story briefly without citing
cases or law): (Pave Herein incorporates the facts set within
Grounds one and two as fully alleged within Ground Three).

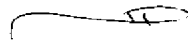
The Prosecution charged Pave with Several felony Counts
based upon the testimony of R. Martin, who was attacked
by her own admission by two individuals on her way home
and robbed. Several items were confiscated from Paves
Residence including a hammer - (the alleged weapon used
to attack Martin, as Martin changed her Statement).
D.V.A testing was performed and though Pave was told that
his D.V.A was found on the hammer, Paves D.V.A was
not on this weapon.

The prosecution received this information about Paves
D.V.A being excluded as a source, yet pressed forward
with charges and used Paves attorney to secure an con-
viction. But the Prosecution seemed to have doubts about
Martins statements and mental health as the Prosecution
Requested that "Martins" Competency evaluated on Decem-
ber 17th 2015, especially as doctors had requested she
be placed in a mental health facility (Exhibit A). with
this information the Prosecution still sought to charge
Pave, even though Pave took Martin to the hospital for
treatment.

with evidence that removed Pove as an individual of interest, the Prosecution still portrayed him as such and used his claughte and terms of incarceration (Life without parole) as a means to secure the conviction of an known innocent man. This is prosecutorial misconduct and this is a miscarriage of justice.

An evidentiary Hearing is needed to demonstrate the Prosecution knew Pove was innocent and should have withdrew the charges due to D.A. evidence and inconsistent statements. yet to hold to the better-safe than sorry, the Prosecution convicted Pove instead of being safe and removing the charges.

As such Pove has been denied his Due Process Rights to a fair and impartial trial process that used evidence of fact in the true light that it was delivered in to give Pove his innocence, in violation of the 5th and 14th Amendments to the United States Constitution.



23. (d) GROUND FOUR: Pawe was denied the Right and Protection to Due Process under the 5th and 14th Amendments By the Nev Sup Ct's errors on post conviction matters.

23. (d) SUPPORTING FACTS (tell your story briefly without citing cases or law): (Pawe here in incorporates the contents of Grounds One; Two and Three as fully alleged herein Ground Four).

Pawe's Appeal and Post conviction journey is filled with bizarre procedures and events, But one thing was clear that Pawe's Argmt reviewed of his Sentence and Convictions for the Crimes he did not commit, and in which he tried to convey this to the Nevada Court Systems.

On Feb 14th 2017 Pawe was convicted of 1st degree kidnapping with the use of a weapon, (an Category A felony). He was sentenced to Life with the possibility of parole after five years and an weapon enhancement of 60-150 months (The Judgement of Conviction was entered on Feb. 17th 2017.) what transpired next is the privat procedure that stopped all Judicial Review of Pawe's claims.

On April 13th 2017 Pawe filed an Appeal with the Nevada Supreme Court that Challenged the District Court's decision to Deny House Arrest. This was the Subject matter Pawe wished to appeal. (see exhibit D, "Notice of Appeal"). The Nevada Supreme Court did Two things which Barred Pawe from review, 1). The Court determined that this appeal Challenged the Conviction; and 2).

... That the appeal was time barred as it was filed after the 30 day time period and therefore the Nevada Supreme Court did not have Jurisdiction.

- This determination is a flaw and or in error. Had the Court made this a true appeal of the "Conviction", the appeal must of had the case appeal record made by trial counsel Mr. Drummond and allowed for cause to be shown for the delay in the filing of the Notice of Appeal. (Powe was represented by trial Counsel and is convicted by / Under a Category A felony, fast track Rules of N.R.A.P.s do not apply N.R.A.P 3C(3)(A).).

With criminal appeals any deficiencies of the Notice of Appeal under N.R.A.P 3(a)(3) are to be corrected by the defendant or given reason for by the defendant. That did not occur here, the Court took Powes appeal of a denial of House Arrest and treated it as a full criminal appeal.

When the Nev. Sup. Ct made that determination, Powes trial Counsel (attorney of record) should have been contacted, made aware of the appeal and allowed to brief the appeal, which could provide means for Tolling the appeal or excuse of the delay, (as Powe was in the N.D.G.C. Intake unit of High Desert State Prison and limited in any staff contact or means of Law Library contact, not knowing how to obtain the Services). This did not occur in violation of N.R.A.P procedures and Powes Due Process protections.

Next, review of the record as a whole is warranted in these circumstances, plain errors on the records face can be reviewed De Novo and were not. In essence the Court informed Powe that they recieved his "So-called Criminal appeal But he was to late, so they weren't going to look into it." So why did they not just say they didnt have jurisdiction to decide the Appeal about House Arrest to begin with?

By the Nevada Supreme Courts actions, procedural safety measures were to be applied and were not. Powe was denied the opportunity to explain why he was filing a late criminal appeal, especially as his own counsel (Mr Drummond) had told Powe he had waived his right to an appeal and Now the Nev. Sup. Ct. is stating he has a criminal appeal that is late. (Counsel ineffectiveness can overcome bars on procedural issues). As Powe was denied an appeal with the Nevada Sup. Ct. he sought help from the law clerks of H.B.S.P and learned he could file his motions to challenge the convictions under "Modification of Sentence and Correction of an Illegal Sentence," as these would be treated as a Habeas petition under the guidelines of "Harris v. State", 329 P.3d 619 (2014).

Powe filed to get his case records after he had received a letter and court minutes from Mr. Drummond, as he was withdrawn as counsel on January 2nd 2018; (Powe needed his documents to file claims that were supported by the record). Yet so as not to miss any more deadlines and as Powe had his pre-sentence investigation report he filed on February 8th 2018 a motion to modify his sentence, an motion to produce his documents on March 14th 2018 (which was granted on April 5th 2018).

Powe also filed a motion to correct an illegal sentence based upon the weapon on April 1st 2019. Subsequently all of these attempts by Powe to have his convictions reviewed were denied by the Courts. The courts either denied the motions as the grounds were presented on the wrong format or were reviewed under the incorrect legal "Scope". (Illegal sentences are those that are beyond the punishment clause of the conviction statute, yet for the lay person illegal means just that done without and outside the law, which the conviction for Powe was obtained under).

Paves post conviction review process was hampered from the beginning due to several factors, which started when Counsel informed Pave he was unable to appeal when he entered into a plea deal negotiation and waived his right to an appeal.

Next, the Nev. Sup. Ct. stated his Notice of Appeal for House Arrest was an Criminal Appeal. Paves Counsel did not inform him of a post conviction Habeas Petition until one month before the deadline, and Pave didn't have any documents to review to challenge the Conviction, those all hampered Paves quest for post conviction review.

A pleading filed by a defendant / Petitioner is to be liberally construed by the Court, so as to locate the actual challenge and or facts the defendant is putting forth. Pave stated that there were lots of errors in his P.S.I. and that there was no facts to support that Pave had used a weapon (firearm) as one was not produced, no ballistics were performed and now as Pave has read the D.V.A reports show Pave was exonerated from any use of a weapon, or being in possession of any weapon that was alleged to be used in the incident charged against Pave.

The Court ignored Paves claims and denied the motion because the Sentence structure wasn't illegal, yet what Pave was saying is, the "means and the way" the sentence was achieved as no evidence supported the conviction, the sentence was therefore illegal.. (the lay persons reasoning). If there are no facts and no evidence to support the charge, the charge is illegal and then the sentence is illegal, and that should be corrected at any time, as there can be no reliability in the conviction, yet here the motions contents were ignored and denied because they did not fit the narrow scope of that legal vehicles Review standard. The Court should have recognized the claim and reviewed it under the guidelines of *Harris v. State*.

Here an evidentiary hearing is required to show the flaws that barred Powes appeal process, and allow Powe to establish the facts of his claims. The record supports these assertions and evidence provides the basis for the challenge. Events outside Powes ability and understanding, caused this to occur. To correct these errors and appeal and Habeas petition should be granted to Powe to establish his innocence. As such Powe was denied Due Process Protections under the 5th and 6th Amendment to the United States Constitution.

~

Powe Prays this court grant this petition and allow the evidence to speak for itself, which exonerates Powe from this crime, as D.I.V.I.T shows the record demonstrates and testimony will confirm.

An evidentiary Hearing will benefit all parties here as an incomplete appeal record exists and Counsel's actions caused the procedural issues.

Index of Exhibits

- A: Request for Emergency Mental Health Admittance for R. Martin (dated May 6th 2015).
- B: Officers Report of Citation of false Statement of R. Martin (dated 4/4/2014).
- C: Las Vegas Metro Police Dept. Forensic Report of D.N.A. (dated Dec. 3rd. 2015).
- D: Notice of Appeal of Denial of House Arrest.

"Exhibit A"

- mental Health Admittance
Request for R. Martin
- 5/6/2015 -

Electronically Filed
05/06/2015 11:38:09 AM

PCOA
TIMOTHY J. BALDWIN
Deputy District Attorney
OFFICE OF THE DISTRICT ATTORNEY
Nevada Bar No. 11048
500 S. Grand Central Pkwy., Fifth Floor
Las Vegas, Nevada 89155-2215
702.455.4781
Attorneys for UNIVERSITY MEDICAL CENTER


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY NEVADA

IN THE MATTER OF THE HOSPITALIZATION OF
NAME: Renette Martin
DOB: 12/27/1980
ALLEGED TO BE A MENTALLY ILL PERSON

Case: M-12-139381

Dept. No.: A

Hearing Date: May 8, 2016

Hearing Time: 1:30 p.m.

PETITION FOR COURT-ORDERED ADMISSION FOLLOWING A PREVIOUS
EMERGENCY ADMISSION TO A HEALTH CARE FACILITY

State of Nevada

County of Clark

The undersigned Robert Mull, M.D. being first duly sworn, deposes and says:

1. That I am the Petitioner in the above-entitled action, and that I am a physician duly licensed to practice in the State of Nevada;

2. Renette Martin, the allegedly mentally ill person (hereinafter "the Patient"), being detained at University Medical Center of Southern Nevada. That I hereby certify that the attached Application, Certification and Medical Clearance for Emergency Admission of a Allegedly Mentally Ill Person to a Mental Health Facility is a true and correct copy of the


1 same on file in the medical records of the Patient maintained at University Medical Center of
2 Southern Nevada.

3 3. That the Patient has been examined by a physician and that said Patient is
4 mentally ill and as a result of that mental illness the Patient is likely to harm himself/herself
5 or others, as defined in N.R.S. § 432A.145.

6 WHEREFORE, Petitioner prays the Court to:

- 7 1. ORDER the Patient to be detained for a mental examination at University
8 Medical Center of Southern Nevada;
- 9 2. ORDER a mental examination of the Patient at the above-referenced health
10 care facility;
- 11 3. ORDER a hearing to be held on this Petition at 1:30 p.m. on the 6th day of
12 May, 2015 at Southern Nevada Adult Mental Health Services, 1850
13 Community College Drive, Las Vegas, Nevada, or such other place as the
14 Court deems appropriate; and
- 15 4. ORDER the Patient's involuntary admission to a Nevada Mental Health Facility
16 for the most appropriate course of treatment, upon the hearing and
17 consideration of all relevant evidence at the above-mentioned hearing and an
18 appropriate finding by the Court.

19 DATED this 6th day of May, 2015

20 
21 CERTIFYING PHYSICIAN,
22 Petitioner
23
24
25
26
27
28

MENTAL DISPOSITIONS

- ☐ - Involuntary (Statutory) Dismissal
☐ - Dismissed/Want of Prosecution
☐ - Settled/Withdrawn W/Judicial Conference/Hearing

District Court
CLARK COUNTY, NEVADA

-FILED IN OPEN COURT-

May 08, 2015

Steve Grierson, Clerk of Court

By: Kathleen Prock
Kathleen Prock, Deputy

MRAO

IN THE MATTER OF THE EXAMINATION OF

RANETTE MARTIN

ALLEGED TO BE A MENTALLY ILL PERSON

CASE NO.: M-12-139381-M

DEPARTMENT A

MASTER'S RECOMMENDATION AND ORDER

This matter having come before the above entitled Court before the undersigned Hearing Master for hearing on the Petition for the above named person's involuntary court ordered admission to a mental health facility, and the Court having heard and considered all relevant testimony, exhibits and the facts and documents herein, and good cause appearing therefore now recommends:

- ☐ **INVOLUNTARY ADMISSION:** It is hereby recommended that the patient named in the caption above be involuntarily admitted to a mental health facility for the most appropriate course of treatment as the patient is found to be "mentally ill" as defined in NRS 433A.115. The least restrictive environment in the patient's best interest is as follows:
- ☐ The Administrator Of The Division Of Mental Hygiene And Mental Retardation, Carson City, NV.
- or-
- ☐ Affirm Return From Conditional Release.
- ☐ **DISMISSAL:** It is hereby recommended that the proceedings herein be dismissed.
- ☐ Patient Found Not To Meet Commitment Criteria ☐ Patient Signed Voluntary Papers ☐ Patient Discharged
- ☐ In Lieu Of Voluntary Admission, Petitioner May Refile Should Patient Attempt Discharge Against Medical Advice
- ☐ Guardianship in Place ☐ Other:
- ☒ **CONTINUANCE:** It is hereby recommended that these proceedings be continued to the 5th day of June, 2015, at 1:30 PM.
- ☐ **CONDITIONS:** Patient shall be released to family when family is ready.

DATED this 8th day of May, 2015

JON NORHEIM HEARING MASTER

The undersigned hereby certifies that on the above date, a copy hereof was given to the Deputy District Attorney, the Patient's Attorney, and the Patient or the hospital staff.

Steve Grierson
STEVE GRIERSON, CEO/CLERK OF THE COURT

ORDER

Upon reviewing the above recommendation and good cause appearing therefore,

- ☒ **IT IS HEREBY ORDERED** the recommendations are approved and **ORDERED** as set forth above.
- ☒ **IT IS HEREBY ORDERED** that the Clerk of the Court shall seal the contents of Patient's file pursuant to NRS 433A.360.
- ☐ **IT IS HEREBY ORDERED**

DATED this 8th day of May, 2015.

Walt Okey
DISTRICT COURT JUDGE

STEVEN B WOLFSON, District Attorney
Nevada Bar No. 1565

Steven B Wolfson #0047

NOTICE: Pursuant to NRS 433A.310, the above order of the Court for involuntary admission is interlocutory and shall become final 30 days after the above date, unless the patient named in the caption above has been unconditionally released from the mental health facility pursuant to NRS 433A.390.

Calendar call

Court's Exhibit

Date Offered	Objection	Date Admitted
--------------	-----------	---------------

[illegible]

Exhibit B

- Officers Report of 4/4/14 -

ARREST REPORT/NOTES FOR TESTIFYING IN COURT

On all misdemeanor offenses, other than traffic and misdemeanor citations issued on citizens arrests, an arrest report must be hand printed in the spaces provided for below. This report must contain a sufficient amount of information to establish the corpus delicti, and physical evidence, witnesses, and any specific acts of defendant which increased the seriousness of the offense.

ON 4-4-14, AT APPROXIMATELY 0454 HOURS, I OFFICER
 C. JAMES P#12982 OPERATING AS MARKED PATROL UNIT
 1ST CAMP INTO GUNTER WITH A RAINDOG MARTIN
 (DOB 12-27-80) WHO WAS A PASSENGER OF A
 VEHICLE STOP AT SIRUS AND VALLEY VIEW LYN 4907.
 MARTIN INITIALLY IDENTIFIED HIMSELF AS RAINA
 THOMPSON WITH A DOB OF 2-20-86. OFFICER
 D. LEWIS P#11106 ARRIVED TO ASSIST ME ON MY
 STOP. LEWIS THEN INTERVIEWED MARTIN AND
 CONTINUED TO USE THE NAME OF THOMPSON.
 AFTER A BRIEF INTERVIEW BY OFFICER LEWIS AND
 WHEN ASKED, MARTIN FINALLY ADMITTED HER
 REAL NAME. MARTIN WAS THEN CITED FOR
 GIVING FALSE INFO.

EVIDENCE: ☐ Yes ☐ No LOCATION:
 WITNESSES: (include addresses and phone numbers)

JUVENILE'S
 PARENTS NOTIFIED

☐ Yes
☐ No

Parent/Guardian Name

Address

(REV. 12-11)

Exhibit C

- L.V. M. P.D. Forensic Report -
- 12/3/2015. -

Las Vegas Metropolitan Police Department Forensic Laboratory Report of Examination Biology/DNA Forensic Casework		Distribution Date: December 4, 2015 Agency: LVMPD Location: LVMPD - excluding Homicide & Sex Crimes Bureau Primary Case #: 150617-2303 Incident: Homicide-Attempt, Kidnapping, Domestic Violence Requester: Tyler Smith Lab Case #: 15-09577.3
Subject(s):	Ronny Powe (Suspect) Thaironya Powe (Suspect) Ranette Martin (Victim)	

The following evidence was examined and results are reported below.

Lab Item #	Impound Pkg #	Impound Item #	Description	Examination Summary
Item 4	005223 - 10	15	Swab from the west side of the refrigerator	• Positive presumptive blood test(s)
Item 5		16	Swab from the front of the refrigerator	• Positive presumptive blood test(s)
Item 6		17	Swab from the back of the bookcase	• Positive presumptive blood test(s)
Item 10	005223 - 7	12	Hammer/hatchet with rubber grips	• Negative presumptive blood test(s)
Item 10.1			- Swabbing from the hammer face and hatchet blade	
Item 10.2			- Swabbing from the grips	
Item 9	005223 - 3	4	Green bath towel	
Item 9.1			- Stain 1 from the front of the towel	• Positive presumptive blood test(s)
Item 9.2			- Stain 2 from the back of the towel	• Positive presumptive blood test(s)
Item 7	005223 - 9	14	Reference standard from Ronny Powe	
Item 8	005223 - 8	13	Reference standard from Ranette Martin	
Item 11	004216 - 1	1	Reference sample from Thaironya Powe	
A presumptive test is an indication, but not confirmation, of the identity of a body fluid.				

DNA Results and Conclusions:

Item 4, Item 5, Item 6, Item 10.1, Item 10.2, Item 9.1, Item 9.2, Item 7, Item 8, and Item 11 were subjected to PCR amplification at the following STR genetic loci: D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S539, D2S1338, D19S433, VWA, TPOX, D18S51, D5S818, and FGA. The sex-determining Amelogenin locus was also examined.

Lab Item 4

The full DNA profile obtained from the swab from the west side of the refrigerator (Item 4) is consistent with Ranette Martin (Item 8). The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the DNA profile obtained from the evidence sample is approximately 1 in 6.20 quintillion. Ronny Powe (Item 7) and Thaironya Powe (Item 11) are excluded as possible contributors to the DNA profile obtained.

Lab Item 5

The full DNA profile obtained from the swab from the front of the refrigerator (Item 5) is consistent with Ranette Martin (Item 8). The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the DNA profile obtained from the evidence sample is approximately 1 in 6.20 quintillion. Ronny Powe (Item 7) and Thaironya Powe (Item 11) are excluded as possible contributors to the DNA profile obtained.

Lab Item 6

The full DNA profile obtained from the swab from the back of the bookcase (Item 6) is consistent with Ranette Martin (Item 8). The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the DNA profile obtained from the evidence sample is approximately 1 in 6.20 quintillion. Ronny Powe (Item 7) and Thaironya Powe (Item 11) are excluded as possible contributors to the DNA profile obtained.

Lab Item 10.1

The partial DNA profile obtained from the swabbing from the hammer face and hatchet blade (Item 10.1) is consistent with an indistinguishable mixture of at least two individuals, with at least one being male. Due to the limited data available, no additional conclusions can be made regarding this DNA profile.

Lab Item 10.2

The partial DNA profile obtained from the swabbing from the grips (Item 10.2) is consistent with an indistinguishable mixture of at least two individuals, with at least one being male. Due to the limited data available, no additional conclusions can be made regarding this DNA profile.

Lab Item 9.1

The full DNA profile obtained from stain 1 from the front of the towel (Item 9.1) is consistent with Ranette Martin (Item 8). The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the DNA profile obtained from the evidence sample is approximately 1 in 6.20 quintillion. Ronny Powe (Item 7) and Thaironya Powe (Item 11) are excluded as possible contributors to the DNA profile obtained.

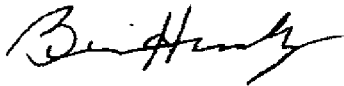
Lab Item 9.2

The full DNA profile obtained from stain 2 from the back of the towel (Item 9.2) is consistent with Ranette Martin (Item 8). The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the DNA profile obtained from the evidence sample is approximately 1 in 6.20 quintillion. Ronny Powe (Item 7) and Thaironya Powe (Item 11) are excluded as possible contributors to the DNA profile obtained.

Statistical probabilities were calculated using the recommendations of the National Research Council (NRC II) utilizing the FBI database (J Forensic Sci 44 (6) (1999): 1277-1286 and J Forensic Sci doi: 10.1111/1556-4029.12806; J Forensic Sci 46 (3) (2001) 453-489 and Forensic Science Communications 3 (3) (2001)). The probability that has been reported is the most conservative value obtained from the US Caucasian (CAU), African American (BLK), and Southwest Hispanic (SWH) population databases. These numbers are an estimation for which a deviation of approximately +/- 10-fold may exist. All random match probabilities, combined probability of inclusions/exclusions, and likelihood ratios calculated by the LVMPD are truncated to three significant figures.

The evidence is returned to secure storage.

—This report does not constitute the entire case file. The case file may be comprised of worksheets, images, analytical data and other documents.—



Brianne Huseby, #14783
Forensic Scientist II

12/03/2015

- END OF REPORT -

Exhibit D

Elizabeth A. Brown

CLERK OF THE COURT

1.

2.

3.

THE STATE OF NEVADA

CASE NO. C-15-308371-1

4.

PLAINTIFF

Electronically Filed
Apr 18 2017 11:57 a.m.

5.

-VS-

Elizabeth A. Brown
Clerk of Supreme Court

6.

Ronny D. Powe

7.

8.

NOTICE OF APPEAL

9.

COMES - NOW - DEFENDANT Ronny D. Powe, MOVES

10.

FOR ORDER APPEALING DISTRICT COURT ORDER,

11.

GRANTING OR DENYING MOTION FOR HOUSE

12.

ARREST, WHERE DEFENDANT Ronny D. Powe

13.

APPEALS IN DISTRICT COURT DEPT-NO. 12 ON

14.

6/30/15 DEFENDANT Ronny D. Powe CONTENDS

15.

HE NEVER RECEIVED NOTICE OF, IN WHICH

16.

DEFENDANT RONNY D. POWE SUBJECTS SUCH

17.

ORDER IS VOID FOR LACK OF JURISDICTION

18.

DUE TO THE EXPIRATION OF STATUTORY

19.

TIME LIMIT. DEFENDANT Ronny D. Powe

20.

SEEKS SUCH REVIEW FROM THE APPELATE

21.

COMPOTENT JURISDICTION

22.

23.

Ronny D. Powe

24.

SUBMITTED 4/9/17

25.

26.

RECEIVED

27.

APR 13 2017 #24

28.

CLERK OF THE COURT

29.

30.

1 WHEREFORE, petitioner prays that the court grant petitioner
2 relief to which he may be entitled in this proceeding.

3
4 EXECUTED at Warm Spring Correctional Center
5 on the 30 day of the month of Nov. of the
6 year 21

7
8 R. Power

9 Signature of petitioner

10 W S C C

11 Po Box 7007

12 Carson City, NV 89702

13 Address

14
15 Signature of attorney (if any)

16
17 Attorney for petitioner

18
19
20
21 Address

1
2
3 **VERIFICATION**

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

9 RPowe

10 Petitioner

11 _____
12 Attorney for petitioner

13
14 Affirmation
15

16
17 The attached pleading does not contain the Social
18 Security Number of any party or person
19

20 RPowe

21 - petitioner -
22
23
24
25
26
27
28

Certificate of Service

I, Renny Powe hereby certify pursuant to NRC P 5(b) that on this 30 day of Nov 2021 I mailed a true and correct copy of the attached Post conviction Habeas Corpus addressed to the following, postage pre paid, by using the U.S.C.C. mail system.

Eighth Judicial District Court
Attn: Court Clerk.
200 Lewis Ave
Las Vegas, NV
89155.

Attorney General
100 North Carson St
Carson City NV 89701

Dated this day Nov, 30 2021

RPowe
Renny Powe #1173457

40 MCMOL

1202 1 10 0000
1100 0000 0000

FCM

COMMERCIAL BASE PRICING

USPS FIRST-CLASS PKG SVC

MAIL ROOM
STATE OF NEVADA MAIL SERVICES
720 E FIFTH ST
CARSON CITY NV 89701

RECEIVED

DEC - 6 2021

SHIP EIGHTH JUDICIAL DISTRICT CLERK OF THE COURT
TO: 200 LEWIS AVE
LAS VEGAS NV 89101-6300

USPS TRACKING #



9300 1107 4040 0000 6607 26

ELECTRONIC RATE APPROVED #107404

BOX 1 OF 1
First-Class Mail is a registered trademark of the U.S. Postal Service

Heather L. Smith
CLERK OF THE COURT

PPOW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Ronny Powe,

Petitioner,

vs.

K. Olsen, Warden (W.S.C.C.),

Respondent,

Case No: A-21-845477-W
Department 12

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

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on December 15, 2021. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

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

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

Calendar on the 8th day of February, 2022, at the hour of

12:00 pm for further proceedings.

Dated this 27th day of December, 2021

Michelle Leavitt

District Court Judge
3DB E15 0EEC FC39
Michelle Leavitt
District Court Judge

1 **CSERV**

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

5
6 **Ronny Powe, Plaintiff(s)**

CASE NO: A-21-845477-W

7 **vs.**

DEPT. NO. Department 12

8 **K. Olsen, Warden (W.S.C.C.),**
9 **Defendant(s)**

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 Electronic service was attempted through the Eighth Judicial District Court's
13 electronic filing system, but there were no registered users on the case.

14 If indicated below, a copy of the above mentioned filings were also served by mail
15 via United States Postal Service, postage prepaid, to the parties listed below at their last
16 known addresses on 12/28/2021

17 **Ronny Powe**

#1173457

WSCC

P.O. Box 7007

Carson City, NV, 89702



1 **OPPS/RSPN**
STEVEN B. WOLFSON
2 Clark County District Attorney
Nevada Bar #001565
3 ALEXANDER CHEN
Chief Deputy District Attorney
4 Nevada Bar #10539
200 Lewis Avenue
5 Las Vegas, Nevada 89155-2212
(702) 671-2500
6 Attorney for Plaintiff

7
8 DISTRICT COURT
CLARK COUNTY, NEVADA

9 RONNY POWE

10 Petitioner,

11 -vs-

12 THE STATE OF NEVADA,

13 Respondent.
14

CASE NO: A-21-845477-W/
C-15-308371-1
DEPT NO: XII

15 STATE'S RETURN TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS
16 (POST-CONVICTION)

17 DATE OF HEARING: February 8, 2022
18 TIME OF HEARING: 12:00 PM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and hereby
21 submits the attached Points and Authorities in Opposition to Petitioner's Petition for Writ of
22 Habeas Corpus (Post-Conviction).

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

26 //

27 //

28 //

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 This Petition comes before this Court following a plea that Ronny Powe (hereinafter
4 “Petitioner”) entered on December 22, 2016. Pursuant to the Guilty Plea Agreement, Petitioner
5 agreed to plead guilty to one count of First Degree Kidnapping with Use of a Deadly Weapon.
6 The parties stipulated to a sentence of five (5) years to life in the Nevada Department of
7 Corrections with a consecutive five (5) years to twelve and a half (12.5) years for the Deadly
8 Weapon enhancement.

9 Petitioner was sentenced on February 14, 2017 consistent with the Guilty Plea
10 Agreement between the parties. He received an aggregate sentence of one hundred twenty
11 (120) months to a maximum of life imprisonment. A Judgment of Conviction was filed on
12 February 17, 2017.

13 Petitioner filed an untimely notice of appeal, and his appeal was dismissed by the
14 Nevada Supreme Court on May 19, 2017. Petitioner subsequently filed two separate Motions
15 for Modification of Sentence in 2018 and in 2019. Both motions were denied.

16 Petitioner filed the instant Petition for Writ of Habeas Corpus on December 15, 2021.
17 This Court filed an order to respond on December 27, 2021. The State now responds.

18 **ARGUMENT**

19 **I. PETITIONER’S PETITION IS PROCEDURALLY BARRED**

20 a. Petitioner’s Petition is time-barred

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

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

26 (emphasis added). “[T]he statutory rules regarding procedural default are mandatory and
27 cannot be ignored when properly raised by the State.” Riker, 121 Nev. at 233, 112 P.3d at
28 1075.

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

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

15 Here, the Judgment of Conviction was filed on January 30, 2018. Petitioner filed no
16 direct appeal from the guilty plea or the sentence. Petitioner did not file the instant petition
17 until June 10, 2021 which was over three years after the Judgment of Conviction was filed. As
18 a matter of law, Petitioner is untimely on the filing of his petition and it should be dismissed.

19 1. The procedural bars are mandatory

20 The Nevada Supreme Court has specifically found that the district court has a duty to
21 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily
22 disregard them. In Riker, the Court held that “[a]pplication of the statutory procedural default
23 rules to post-conviction habeas petitions is mandatory,” and “cannot be ignored when properly
24 raised by the State.” 121 Nev. at 231–33, 112 P.3d at 1074–75. There, the Court reversed the
25 district court’s decision not to bar the petitioner’s untimely and successive petition:

26
27 Given the untimely and successive nature of [petitioner’s] petition,
28 the district court had a duty imposed by law to consider whether
any or all of [petitioner’s] claims were barred under NRS 34.726,
NRS 34.810, NRS 34.800, or by the law of the case . . . [and] the

1 court's failure to make this determination here constituted an
2 arbitrary and unreasonable exercise of discretion.

3 Id. at 234, 112 P.3d at 1076. The Court justified this holding by noting that “[t]he necessity
4 for a workable system dictates that there must exist a time when a criminal conviction is final.”
5 Id. at 231, 112 P.3d 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180–
6 81, 69 P.3d 676, 681–82 (2003) (holding that parties cannot stipulate to waive, ignore or
7 disregard the mandatory procedural default rules nor can they empower a court to disregard
8 them).

9 In State v. Greene, the Nevada Supreme Court reaffirmed its prior holdings that the
10 procedural default rules are mandatory when it reversed the district court’s grant of a post-
11 conviction petition for writ of habeas corpus. See State v. Greene, 129 Nev. 559, 565–66, 307
12 P.3d 322, 326 (2013). There, the Court ruled that the petitioner’s petition was untimely and
13 successive, and that the petitioner failed to show good cause and actual prejudice. Id.
14 Accordingly, the Court reversed the district court and ordered the petitioner’s petition
15 dismissed pursuant to the procedural bars. Id. at 567, 307 P.3d at 327.

16 Petitioner does not set forth any good cause for his delayed filing in this matter. His
17 Judgment of Conviction was filed on February 17, 2017, thus he should have filed his petition
18 by February 17, 2018. While he was able to file two Motions for Modification of Sentence,
19 Petitioner never filed a timely petition. He has not set forth any good cause as to why his filing
20 was untimely. Without any good cause for the delay, his petition should be denied.

21 **II. PETITIONER CANNOT DEMONSTRATE THAT COUNSEL WAS** 22 **INEFFECTIVE**

23 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
24 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
25 defense.” The United States Supreme Court has long recognized that “the right to counsel is
26 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
27 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
28 (1993).

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

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

18 Based on the above law, the role of a court in considering allegations of ineffective
19 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
20 whether, under the particular facts and circumstances of the case, trial counsel failed to render
21 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
22 (1978). This analysis does not mean that the court should “second guess reasoned choices
23 between trial tactics nor does it mean that defense counsel, to protect himself against
24 allegations of inadequacy, must make every conceivable motion no matter how remote the
25 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
26 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
27 cannot create one and may disserve the interests of his client by attempting a useless charade.”
28 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

1 “There are countless ways to provide effective assistance in any given case. Even the
2 best criminal defense attorneys would not defend a particular client in the same way.”
3 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
4 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
5 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
6 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s
7 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
8 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

9 Even if a Petitioner can demonstrate that his counsel’s representation fell below an
10 objective standard of reasonableness, he must still demonstrate prejudice and show a
11 reasonable probability that, but for counsel’s errors, the result of the trial would have been
12 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
13 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
14 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
15 694, 104 S. Ct. at 2064-65, 2068). This portion of the test is slightly modified when the
16 convictions occurs due to a guilty plea. Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v.
17 State, 112 Nev. 980, 988 (1996). For a guilty plea, a Petitioner “must show that there is a
18 reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and
19 would have insisted on going to trial.” Kirksey, 112 Nev. at 998 (quoting Hill, 474 U.S. at 59).
20 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the disputed
21 factual allegations underlying his ineffective-assistance claim by a preponderance of the
22 evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims
23 of ineffective assistance of counsel asserted in a petition for post-conviction relief must be
24 supported with specific factual allegations, which if true, would entitle the petitioner to relief.
25 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”
26 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
27 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims
28

1 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
2 petition to be dismissed.” (emphasis added).

3 A. Grounds One– DNA evidence

4 Petitioner cannot show that but for a better investigation, he would not have accepted
5 the plea and would have insisted on going to trial. Petitioner sets forth no explanation of what
6 investigation should have been completed by his counsel. His first complaint is that the DNA
7 evidence exonerates him. However, this is not a case where DNA evidence was relevant to the
8 charges. The allegation was that the victim had been battered by her boyfriend, Petitioner.
9 Much of the evidence rested on her injuries and her statement to police.

10 Even assuming that counsel had not gone over the DNA evidence with petitioner, the
11 DNA itself would have done nothing to negate her statement that he was responsible, along
12 with his daughter, for causing her injuries. Thus, there is no prejudice to Petitioner and this
13 evidence would not have changed his desire to plea.

14 B. Ground Two – Desire for appeal and his attorney committing misconduct

15 Petitioner states that he wished to challenge his conviction, but this is belied by the
16 record and is a bare claim. The record does not indicate that he was dissatisfied with his plea
17 or with his sentence. Petitioner did not lodge an objection prior to or at his sentencing on
18 February 14, 2017. There is no evidence that he wanted counsel to appeal his sentence. Thus,
19 there is no grounds to grant him relief.

20 Petitioner also speculates about his attorney committing misconduct, but he presents no
21 coherent argument to this claim. He states that his attorney lied and abandoned him without
22 supporting it with any argument or evidence. This is a bare claim and does not entitle him to
23 relief.

24 C. Ground Three – Prosecutorial misconduct

25 Petitioner argues that the State should not have proceeded with the case because of
26 DNA results and mental health issues of the victim. Even from Petitioner’s pleadings, the DNA
27 results were provided to his counsel, thus the State cannot be held in violation of Brady.
28

1 As for proceeding with charges, the victim's testimony that the events happened, along
2 with her injuries and other evidence, were sufficient for the State to proceed. Petitioner cannot
3 show any misconduct by the prosecution.

4 Ground Four – Appeal and Post-conviction dismissals

5 Petitioner says that his rights were violated by the Nevada Courts because his appeals
6 were previously dismissed. In those cases, the appellate courts clearly stated why his appeal
7 was being dismissed. Moreover, he never filed a petition until now. Given that the record is
8 clear as to why his previous appeals were dismissed, this is not a basis to grant his petition.

9 **CONCLUSION**

10 Given the specific instructions, the State requests that this Court deny the current
11 Petition for Writ of Habeas Corpus.

12 DATED this 3rd day of February, 2022.

13 Respectfully submitted,

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

16
17 BY /s/ Alexander Chen
18 ALEXANDER CHEN
19 Chief Deputy District Attorney
20 Nevada Bar #10539
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1 CERTIFICATE OF ELECTRONIC FILING

2 I hereby certify that service of State's Return to Petitioner's Petition, was made this
3 3r day of February, 2022, by Electronic Filing to:

4 RONNY POWE #1173457
5 WARM SPRINGS CORRECTIONAL CENTER
6 P.O. BOX 7007
7 CARSON CITY, NV 89702

8 */s/ Kristian Falcon*

9 KRISTIAN FALCON

10 Secretary for the District Attorney's Office
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27 ac/kf/DVU
28

Heather S. Hume

CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #10539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

RONNY POWE

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-845477-W
DEPT NO: C-15-308371-1
XII

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

DATE OF HEARING: February 8, 2022
TIME OF HEARING: 12:00 PM

THIS CAUSE having come on for hearing before the Honorable Carolyn Ellsworth, District Judge, on the 8th day of February 2022, Petitioner not being present and Respondent being represented by STEVEN WOLFSON, Clark County District Attorney, by and through HAGAR TRIPPIEDI, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, the Court makes the following findings of fact and conclusions of law:

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

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

9 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme
10 Court affirmed the rejection of a habeas petition that was filed two days late, pursuant to the
11 “clear and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
12 importance of filing the petition with the district court within the one-year mandate, absent a
13 showing of “good cause” for the delay in filing. Gonzales, 118 Nev. at 593, 590 P.3d at 902.
14 The one-year time bar is therefore strictly construed. In contrast with the short amount of time
15 to file a notice of appeal, a prisoner has an ample full year to file a post-conviction habeas
16 petition, so there is no injustice in a strict application of NRS 34.726(1). Id. at 593, 53 P.3d at
17 903.

18 Here, the Judgment of Conviction was filed on February 17, 2017. Petitioner filed an
19 untimely notice of appeal and thus, the Nevada Supreme Court dismissed Petitioner’s appeal.
20 Petitioner then had one year from the Judgment of Conviction to file his petition. Petitioner’s
21 instant petition was filed on December 15, 2021, which was over three years after the Judgment
22 of Conviction was filed. As a matter of law, Petitioner is untimely on the filing of his petition.
23 Therefore, this petition is denied.

24 B. The procedural bars are mandatory

25 The Nevada Supreme Court has specifically found that the district court has a duty to
26 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily
27 disregard them. In Riker, the Court held that “[a]pplication of the statutory procedural default
28 rules to post-conviction habeas petitions is mandatory,” and “cannot be ignored when properly

1 raised by the State.” 121 Nev. at 231–33, 112 P.3d at 1074–75. There, the Court reversed the
2 district court’s decision not to bar the petitioner’s untimely and successive petition:

3
4 Given the untimely and successive nature of [petitioner’s] petition,
5 the district court had a duty imposed by law to consider whether
6 any or all of [petitioner’s] claims were barred under NRS 34.726,
7 NRS 34.810, NRS 34.800, or by the law of the case . . . [and] the
8 court’s failure to make this determination here constituted an
9 arbitrary and unreasonable exercise of discretion.

10 Id. at 234, 112 P.3d at 1076. The Court justified this holding by noting that “[t]he necessity
11 for a workable system dictates that there must exist a time when a criminal conviction is final.”
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13 81, 69 P.3d 676, 681–82 (2003) (holding that parties cannot stipulate to waive, ignore or
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18 conviction petition for writ of habeas corpus. See State v. Greene, 129 Nev. 559, 565–66, 307
19 P.3d 322, 326 (2013). There, the Court ruled that the petitioner’s petition was untimely and
20 successive, and that the petitioner failed to show good cause and actual prejudice. Id.
21 Accordingly, the Court reversed the district court and ordered the petitioner’s petition
22 dismissed pursuant to the procedural bars. Id. at 567, 307 P.3d at 327.

23 Petitioner does not set forth any good cause for his delayed filing in this matter. His
24 Judgment of Conviction was filed on February 17, 2017; thus, he should have filed his petition
25 by February 17, 2018. While he was able to file two Motions for Modification of Sentence,
26 Petitioner never filed a timely petition. He has not set forth any good cause as to why his filing
27 was untimely. Because the procedural bars are mandatory and Petitioner has failed to show
28 good cause to overcome the procedural defaults, this petition is denied.

II. PETITIONER CANNOT DEMONSTRATE THAT COUNSEL WAS INEFFECTIVE

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

To prevail on a claim of ineffective assistance of trial counsel, a Petitioner must prove he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of Strickland, 466 U.S. at 686–87, 104 S. Ct. at 2063–64. See also Love, 109 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a Petitioner must show first that his counsel’s representation fell below an objective standard of reasonableness, and second, that but for counsel’s errors, there is a reasonable probability that the result of the proceedings would have been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). “[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 Petitioner makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

The court begins with the presumption of effectiveness and then must determine whether the Petitioner 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 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is “not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711

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3 allegations of inadequacy, must make every conceivable motion no matter how remote the
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12 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
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24 State, 112 Nev. 980, 988 (1996). For a guilty plea, a Petitioner “must show that there is a
25 reasonable probability that, but for counsel's errors, he would not have pleaded guilty and
26 would have insisted on going to trial.” Kirksey, 112 Nev. at 998 (quoting Hill, 474 U.S. at 59).
27 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the disputed
28 factual allegations underlying his ineffective-assistance claim by a preponderance of the

evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, 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). “Bare” and “naked” allegations are not sufficient, nor are those belied and repelled by the record. Id. 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).

A. Ground One – DNA evidence

Petitioner cannot show that but for a better investigation, he would not have accepted the plea and would have insisted on going to trial. Petitioner sets forth no explanation of what investigation should have been completed by his counsel. His first complaint is that the DNA evidence exonerates him. However, this is not a case where DNA evidence was relevant to the charges. The allegation was that the victim had been battered by her boyfriend, Petitioner. Much of the evidence rested on her injuries and her statement to police.

Even assuming that counsel had not gone over the DNA evidence with petitioner, the DNA itself would have done nothing to negate her statement that he was responsible, along with his daughter, for causing her injuries. Thus, there is no prejudice to Petitioner and this evidence would not have changed his desire to plea.

B. Ground Two – Desire for appeal and his attorney committing misconduct

Petitioner states that he wished to challenge his conviction, but this is belied by the record and is a bare claim. The record does not indicate that he was dissatisfied with his plea or with his sentence. Petitioner did not lodge an objection prior to or at his sentencing on February 14, 2017. There is no evidence that he wanted counsel to appeal his sentence. Thus, there is no grounds to grant him relief.

Petitioner also speculates about his attorney committing misconduct, but he presents no coherent argument to this claim. He states that his attorney lied and abandoned him without

1 supporting it with any argument or evidence. This is a bare claim and does not entitle him to
2 relief.

3 C. Ground Three – Prosecutorial misconduct

4 Petitioner argues that the State should not have proceeded with the case because of
5 DNA results and mental health issues of the victim. Even from Petitioner’s pleadings, the DNA
6 results were provided to his counsel, thus the State cannot be held in violation of Brady.

7 As for proceeding with charges, the victim’s testimony that the events happened, along
8 with her injuries and other evidence, were sufficient for the State to proceed. Petitioner cannot
9 show any misconduct by the prosecution.

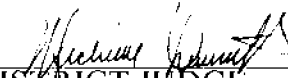
10 D. Ground Four – Appeal and Post-conviction dismissals

11 Petitioner says that his rights were violated by the Nevada Courts because his appeals
12 were previously dismissed. In those cases, the appellate courts clearly stated why his appeal
13 was being dismissed. Moreover, he never filed a petition until now. Given that the record is
14 clear as to why his previous appeals were dismissed, this is not a basis to grant his petition.

15 **ORDER**

16 THEREFORE, IT IS HEREBY ORDERED that Petitioner’s Petition for Writ of
17 Habeas Corpus is DENIED.

18 Dated this 6th day of March, 2022

19 
20 _____
DISTRICT JUDGE

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

04B 9F5 E957 99D7
Michelle Leavitt
District Court Judge

23 BY /s/ Alexander Chen
24 ALEXANDER CHEN
25 Chief Deputy District Attorney
Nevada Bar #010539
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1 CERTIFICATE OF SERVICE

2 I hereby certify that service of Findings of Fact and Conclusions of Law and Order, was
3 made this 28th day of February, 2022, by Mail via United States Postal Service to:

4
5 RONNY POWE #1173457
6 WARM SPRINGS CORRECTIONAL CENTER
7 P.O. BOX 7007
8 CARSON CITY, NV 89702

9 /s/ Kristian Falcon

10 Secretary for the District Attorney's Office
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Ronny Powe, Plaintiff(s)

CASE NO: A-21-845477-W

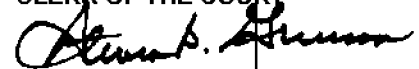
7 vs.

DEPT. NO. Department 12

8 K. Olsen, Warden (W.S.C.C.),
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 Electronic service was attempted through the Eighth Judicial District Court's
13 electronic filing system, but there were no registered users on the case. The filer has been
14 notified to serve all parties by traditional means.
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1 NEFF

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

4
5 RONNY POWE,

6 Petitioner,

Case No: A-21-845477-W

Dept No: XII

7 vs.

8 K. OLSEN, WARDEN (W.S.C.C.),

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on March 6, 2022, the court entered a decision or order in this matter, a
12 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 mailed
to you. This notice was mailed on March 7, 2022.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

17 Amanda Hampton, Deputy Clerk

18
19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 7 day of March 2022, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

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

24 ☒ The United States mail addressed as follows:

25 Ronny Powe # 1173457
26 P.O. Box 7007
27 Carson City, NV 89702

28 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #10539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

RONNY POWE

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-845477-W
DEPT NO: C-15-308371-1
XII

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

DATE OF HEARING: February 8, 2022
TIME OF HEARING: 12:00 PM

THIS CAUSE having come on for hearing before the Honorable Carolyn Ellsworth, District Judge, on the 8th day of February 2022, Petitioner not being present and Respondent being represented by STEVEN WOLFSON, Clark County District Attorney, by and through HAGAR TRIPPIEDI, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, the Court makes the following findings of fact and conclusions of law:

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

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

9 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme
10 Court affirmed the rejection of a habeas petition that was filed two days late, pursuant to the
11 “clear and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
12 importance of filing the petition with the district court within the one-year mandate, absent a
13 showing of “good cause” for the delay in filing. Gonzales, 118 Nev. at 593, 590 P.3d at 902.
14 The one-year time bar is therefore strictly construed. In contrast with the short amount of time
15 to file a notice of appeal, a prisoner has an ample full year to file a post-conviction habeas
16 petition, so there is no injustice in a strict application of NRS 34.726(1). Id. at 593, 53 P.3d at
17 903.

18 Here, the Judgment of Conviction was filed on February 17, 2017. Petitioner filed an
19 untimely notice of appeal and thus, the Nevada Supreme Court dismissed Petitioner’s appeal.
20 Petitioner then had one year from the Judgment of Conviction to file his petition. Petitioner’s
21 instant petition was filed on December 15, 2021, which was over three years after the Judgment
22 of Conviction was filed. As a matter of law, Petitioner is untimely on the filing of his petition.
23 Therefore, this petition is denied.

24 B. The procedural bars are mandatory

25 The Nevada Supreme Court has specifically found that the district court has a duty to
26 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily
27 disregard them. In Riker, the Court held that “[a]pplication of the statutory procedural default
28 rules to post-conviction habeas petitions is mandatory,” and “cannot be ignored when properly

1 raised by the State.” 121 Nev. at 231–33, 112 P.3d at 1074–75. There, the Court reversed the
2 district court’s decision not to bar the petitioner’s untimely and successive petition:

3
4 Given the untimely and successive nature of [petitioner’s] petition,
5 the district court had a duty imposed by law to consider whether
6 any or all of [petitioner’s] claims were barred under NRS 34.726,
7 NRS 34.810, NRS 34.800, or by the law of the case . . . [and] the
8 court’s failure to make this determination here constituted an
9 arbitrary and unreasonable exercise of discretion.

10 Id. at 234, 112 P.3d at 1076. The Court justified this holding by noting that “[t]he necessity
11 for a workable system dictates that there must exist a time when a criminal conviction is final.”
12 Id. at 231, 112 P.3d 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180–
13 81, 69 P.3d 676, 681–82 (2003) (holding that parties cannot stipulate to waive, ignore or
14 disregard the mandatory procedural default rules nor can they empower a court to disregard
15 them).

16 In State v. Greene, the Nevada Supreme Court reaffirmed its prior holdings that the
17 procedural default rules are mandatory when it reversed the district court’s grant of a post-
18 conviction petition for writ of habeas corpus. See State v. Greene, 129 Nev. 559, 565–66, 307
19 P.3d 322, 326 (2013). There, the Court ruled that the petitioner’s petition was untimely and
20 successive, and that the petitioner failed to show good cause and actual prejudice. Id.
21 Accordingly, the Court reversed the district court and ordered the petitioner’s petition
22 dismissed pursuant to the procedural bars. Id. at 567, 307 P.3d at 327.

23 Petitioner does not set forth any good cause for his delayed filing in this matter. His
24 Judgment of Conviction was filed on February 17, 2017; thus, he should have filed his petition
25 by February 17, 2018. While he was able to file two Motions for Modification of Sentence,
26 Petitioner never filed a timely petition. He has not set forth any good cause as to why his filing
27 was untimely. Because the procedural bars are mandatory and Petitioner has failed to show
28 good cause to overcome the procedural defaults, this petition is denied.

II. PETITIONER CANNOT DEMONSTRATE THAT COUNSEL WAS INEFFECTIVE

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

To prevail on a claim of ineffective assistance of trial counsel, a Petitioner must prove he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of Strickland, 466 U.S. at 686–87, 104 S. Ct. at 2063–64. See also Love, 109 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a Petitioner must show first that his counsel’s representation fell below an objective standard of reasonableness, and second, that but for counsel’s errors, there is a reasonable probability that the result of the proceedings would have been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). “[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 Petitioner makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

The court begins with the presumption of effectiveness and then must determine whether the Petitioner 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 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is “not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711

1 (1978). This analysis does not mean that the court should “second guess reasoned choices
2 between trial tactics nor does it mean that defense counsel, to protect himself against
3 allegations of inadequacy, must make every conceivable motion no matter how remote the
4 possibilities are of success.” Id. To be effective, the Constitution “does not require that counsel
5 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
6 cannot create one and may disserve the interests of his client by attempting a useless charade.”
7 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

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

16 Even if a Petitioner can demonstrate that his counsel's representation fell below an
17 objective standard of reasonableness, he must still demonstrate prejudice and show a
18 reasonable probability that, but for counsel's errors, the result of the trial would have been
19 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
20 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
21 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
22 694, 104 S. Ct. at 2064-65, 2068). This portion of the test is slightly modified when the
23 convictions occurs due to a guilty plea. Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v.
24 State, 112 Nev. 980, 988 (1996). For a guilty plea, a Petitioner “must show that there is a
25 reasonable probability that, but for counsel's errors, he would not have pleaded guilty and
26 would have insisted on going to trial.” Kirksey, 112 Nev. at 998 (quoting Hill, 474 U.S. at 59).
27 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the disputed
28 factual allegations underlying his ineffective-assistance claim by a preponderance of the

evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, 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). “Bare” and “naked” allegations are not sufficient, nor are those belied and repelled by the record. Id. 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).

A. Ground One – DNA evidence

Petitioner cannot show that but for a better investigation, he would not have accepted the plea and would have insisted on going to trial. Petitioner sets forth no explanation of what investigation should have been completed by his counsel. His first complaint is that the DNA evidence exonerates him. However, this is not a case where DNA evidence was relevant to the charges. The allegation was that the victim had been battered by her boyfriend, Petitioner. Much of the evidence rested on her injuries and her statement to police.

Even assuming that counsel had not gone over the DNA evidence with petitioner, the DNA itself would have done nothing to negate her statement that he was responsible, along with his daughter, for causing her injuries. Thus, there is no prejudice to Petitioner and this evidence would not have changed his desire to plea.

B. Ground Two – Desire for appeal and his attorney committing misconduct

Petitioner states that he wished to challenge his conviction, but this is belied by the record and is a bare claim. The record does not indicate that he was dissatisfied with his plea or with his sentence. Petitioner did not lodge an objection prior to or at his sentencing on February 14, 2017. There is no evidence that he wanted counsel to appeal his sentence. Thus, there is no grounds to grant him relief.

Petitioner also speculates about his attorney committing misconduct, but he presents no coherent argument to this claim. He states that his attorney lied and abandoned him without

1 supporting it with any argument or evidence. This is a bare claim and does not entitle him to
2 relief.

3 C. Ground Three – Prosecutorial misconduct

4 Petitioner argues that the State should not have proceeded with the case because of
5 DNA results and mental health issues of the victim. Even from Petitioner’s pleadings, the DNA
6 results were provided to his counsel, thus the State cannot be held in violation of Brady.

7 As for proceeding with charges, the victim’s testimony that the events happened, along
8 with her injuries and other evidence, were sufficient for the State to proceed. Petitioner cannot
9 show any misconduct by the prosecution.

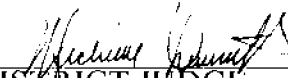
10 D. Ground Four – Appeal and Post-conviction dismissals

11 Petitioner says that his rights were violated by the Nevada Courts because his appeals
12 were previously dismissed. In those cases, the appellate courts clearly stated why his appeal
13 was being dismissed. Moreover, he never filed a petition until now. Given that the record is
14 clear as to why his previous appeals were dismissed, this is not a basis to grant his petition.

15 **ORDER**

16 THEREFORE, IT IS HEREBY ORDERED that Petitioner’s Petition for Writ of
17 Habeas Corpus is DENIED.

18 Dated this 6th day of March, 2022

19 
20 _____
DISTRICT JUDGE

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

04B 9F5 E957 99D7
Michelle Leavitt
District Court Judge

23 BY /s/ Alexander Chen
24 ALEXANDER CHEN
25 Chief Deputy District Attorney
Nevada Bar #010539

1 CERTIFICATE OF SERVICE

2 I hereby certify that service of Findings of Fact and Conclusions of Law and Order, was
3 made this 28th day of February, 2022, by Mail via United States Postal Service to:

4
5 RONNY POWE #1173457
6 WARM SPRINGS CORRECTIONAL CENTER
P.O. BOX 7007
CARSON CITY, NV 89702

7
8 /s/ Kristian Falcon

9 Secretary for the District Attorney's Office
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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Ronny Powe, Plaintiff(s)

CASE NO: A-21-845477-W

7 vs.

DEPT. NO. Department 12

8 K. Olsen, Warden (W.S.C.C.),
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 Electronic service was attempted through the Eighth Judicial District Court's
13 electronic filing system, but there were no registered users on the case. The filer has been
14 notified to serve all parties by traditional means.
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Heather A. Hume

CLERK OF THE COURT

OSCC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

RONNY POWE, PLAINTIFF(S)
VS.
K. OLSEN, WARDEN (W.S.C.C.),
DEFENDANT(S)

CASE NO.: A-21-845477-W

DEPARTMENT 12

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 18th day of March, 2022

Michelle Leavitt

**5AA BC4 6CD7 EFE2
Michelle Leavitt
District Court Judge**

1 **CSERV**

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

5
6 **Ronny Powe, Plaintiff(s)**

CASE NO: A-21-845477-W

7 **vs.**

DEPT. NO. Department 12

8 **K. Olsen, Warden (W.S.C.C.),**
9 **Defendant(s)**

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 Electronic service was attempted through the Eighth Judicial District Court's
13 electronic filing system, but there were no registered users on the case.

14 If indicated below, a copy of the above mentioned filings were also served by mail
15 via United States Postal Service, postage prepaid, to the parties listed below at their last
16 known addresses on 3/21/2022

17 **Ronny Powe**

#1173457

WSCC

P.O. Box 7007

Carson City, NV, 89702

Ronny Pave#1173457
WSCC PO Box 7007
Carson City, NV 89702
(Petitioner-Propor Person)

Electronically Filed
03/18/2022

Heather L. Lumin
CLERK OF THE COURT

District Court
Clark County Nevada

Ronny Pave,
Petitioner,

vs~

The State of Nevada,
Respondents.

Case No: A-21-845477-W/
C-15-308371-1

Dept No: 12 (XII).

"Petitioner's Answer to States"
Return for writ of Habeas Corpus

Comes now Ronny Pave, in Proper Person with the assistance of an inmate law clerk, in the above entitled pleading "Petitioner's Answer to States Return for writ of Habeas Corpus", filed on February 3rd 2022. This Answer is given to contest and oppose the claims made by the State against the grounds raised in the Petition for writ of Habeas Corpus and the relief sought by the Petitioner. This Answer is based upon the following.

RECEIVED

FEB 28 2022

CLERK OF THE COURT

Facts in Support

The Respondents have given an return and or Opposition to the Petition for writ of Habeas Corpus filed by Powe on December 15th 2021, in which claims including actual innocence were raised as grounds for relief. The State's main contention has been that Powe has raised his claims untimely and is therefore barred from review, and or Powe has not given reason for Powe to overcome these bars for the Court to review the claims.

As Powe will address, the claims are such that raise to a level that cause doubt to the entry of plea and place the conviction itself in peril of not being dependable, and or reliable. At the forefront is the grand where Counsel has lied to Powe which created a domino effect that secured the conviction of an innocent person.

As we look at the evidence an Structural error has occurred against Powes liberty Interests as the ability to make an informed decision was hampered by Counsels failure to supply truthful and accurate representation of the States evidence that suggested Powes alleged guilt.

As Powe contends, his Counsel informed him that his D.V.A was upon the weapon used to assault the alleged victim (who the State has represented as Powes girlfriend and that Powe submits was never acquainted with the victim). As the record and States exhibits of the D.V. A reports discovered, Powes D.V.A and or finger prints were not upon the alleged weapon that was used against the victim. This supports Powes legal theory and defense that he was never involved in the any alleged battery. The victim stated she was attacked with a hammer as what caused the injuries, Powe can not be attributed to this crime as no source of evidence supports the claim made.

Had Paves counsel provided accurate information about the D.V.A evidence, Pave would elected to proceed to trial, even as the record indicates Pave requested new counsel to assist him and to go over the case documents with him, (yet that request was denied without review by the Court, an issue of structural error and abuse of discretion under "U.S. v. Moore, 159 F.3d 1154 (9th 1998)"; "... Standard of review for Motions for New Counsel." But here Paves Counsel deliberately lied to help secure a conviction and or to avoid a trial as Counsels conduct would be viewed and found to be in violation of the Nevada Rules of Professional Conduct.

Pave draws the Courts attention to the very simple facts in the States return which are in Paves Favor. . The State alleges That this is not a case for D.V.A evidence (pg 7 Lns 6-8).. Pave believes it is as the victim states that she was assaulted with the use of a hammer (which Pave was subsequently charged of using). If a hammer was used in this assault then evidence would support the victims claim, especially as the States Sole collaborating evidence was the witness and the forensic evidence secured by officers, without one (the D.V.A evidence) the State must rely upon the witness, here the alleged victim who has mental health issues and provided inconsistent statements. So this is an D.V.A case especially as said evidence Exonerates Pave as the alleged attacker.

Appointed Counsel has an duty to disclose to the defendant the States evidence truthfully allowing for the Defendant to make informed decisions about the best course to protect his liberty. (see McCoy v. Louisiana, 138 S.Ct 1500 (2018)), that process was subverted by Paves Counsel providing inaccurate information concerning the D.V.A evidence.

Powe was deliberately misled by counsel... D.V.A. evidence demonstrates he (Powe) was not associated with the offense, so the question is raised why counsel would not advise his client to proceed to trial and not file a motion to dismiss the charges as evidence did not substantiate the charge? These are questions the Courts must have counsel answer.

Powe argued as a Proper Person litigant the only way he could, he can not be held to the same standards as a lawyer so as he files his timely motions that raised grounds contesting the evidence and the plea, the Courts did not entertain the grounds because they were filed under the incorrect judicial review vehicle. Yet again Powe was not represented by counsel and relied upon law clerks to tell him what to do.

The State can not believe for one second that a defendant would still enter pleas of guilt after hearing his attorney tell the client, "hey guess what your D.V.A. is not on the weapon". This evidence is fifty (50) percent of the States case against the Defendant. D.V.A. is the equivalent to seeing a video of the accused doing the alleged act.

What Powe is arguing is not a Strickland review standard But Structural errors even though counsel was ineffective. Prejudice doesn't need to be proven as Structural errors don't protect against a wrongful conviction but how the defendant elects to protect his liberty.

Powe protected his liberty by giving notice to the Courts that his sentence was wrong and illegal as the elements to use of a weapon were not proven (His D.V.A. was not upon the weapon, which follows into Powe electing to proceed to trial); and that he had issues with the plea entry.

As the record shows Paves arguments within the Motion to correct an illegal sentence, (that was taken out of context) and his motion concerning habeas arrest (which was considered as an direct Appeal, that Requires per N.R.A.P.s a Complete Review of the Record; it would of been found that no D.V.A evidence existed to hold Pave accountable), all Raised objections and Constitutional claims that were ignored by the court because Pave (an untrained Proper Person litigant) filed his challenges on the incorrect format.

A proper persons litigants filings are to be liberally construed and plainly given the benefit of doubt. Pave complained of his sentences for the deadly weapon enhancement and counsels errors. Pave challenged such in the State and federal courts and discovered when given the case records the D.V.A reports by the state. Now that Pave has spoken with law clerks of the issues and gained assistance the current Habeas Corpus petition has been filed which does overcome procedural Bars due to the claims presented which are all supported by the record.

All the claims are asserted and are supported by the record and proof given. Had Pave known at the time he was in court that Counsel had lied and misrepresented the facts of the evidence Pave would of spoke of such immediately. Pave did not discover this falsehood untill later in the appeal process. Pave is not at Fault here, Paves Counsel committed fraud and deception that the conviction was attained upon .. that is who is at fault, Paves attorney who portrayed evidence in an false light.

The Courts can not deny relief to Pave now once he has established an Miscarriage of justice.

Pave has demonstrated Good Cause for any delay in presenting the ground of Actual innocence for the purpose of 12S 34.726(1) the discovery of the lie was not obtained until Pave filed his federal 28 USC 2254 petition. If the facts of evidence are deliberately misconstrued by Counsel for the defendant and the defendant doesn't discover the falsehood till years later than the evidence must be used in the light that it displays the proof of a fact, which here is the exoneration of Pave.

To bar the claims, when Actual Innocence overcomes the default if any, would only continue the unjust result of an innocent person. Pave was not aware of Habeas Petitions until he filed a federal petition with the district Court of Nevada.

Counsel as shown is ineffective and an agent of the State, as falsehoods gain an conviction upon false evidence, which amounts to a structural error in the proceedings. The Respondents wish the Court to find that Counsel's actions were reasonable trial tactics and strategy. What Counsel did here was Unethical and Unconstitutional and it is still costing the life of an innocent individual.

"Bare and bald" allegations are those that have no basis in fact. What Pave has asserted is Fact Supported by the Record that the events occurred, evidence from the State Prosecution show the Pave is correct and this would lead to Prosecutorial misconduct. (See Bennett v. State, 901 P2d 676 (1995))"

In Rogers v. State, 267 P3d 802 (2011), Pave asserts that the legal basis for these claims now raised were not available at the time of the appeal and Habeas review period, and would allow this petition to proceed under Rogers supra.


In Roy v. Lampert, 465 F.3d 964 (2006 9th cir), the Courts should be primarily concerned with whether a claimant was Diligent in his efforts to pursue his appeal at the time his efforts were thwarted, As Powe has shown he was and is Diligent in his efforts to have the evidence reviewed by the Courts.

In Padilla v. Kentucky, 130 Sct 1473 (2010), Counsel's lack of advice on guilty pleas is an structural error that is not harmless, and for the Prosecution to knowingly use evidence that demonstrating the lack of Powe's involvement is misconduct (see. Darden v. Wainwright, 106 Sct. 2464 (1986)).

Each Claim/grand allows the review of the other and the Court must review the Claim before attaching any bars to them as they support actual innocence.

Powe requests this Court allow review of his claims, and deny the Respondents Requests.

Respectfully submitted this 22 day of Feb. 2022.



Ronny Powe #1173457
WSEC PO Box 7007
Carson City NV 89702
(Petitioner Proper Person)

Affirmation
(NRS239B.030).

The undersigned does hereby affirm that the preceding Petitioners Answer to States Return for writ of Habeas Corpus filed in District Court Case no. A-21-845477-W Does Not contain the Social Security numbers of any party.

x 2/22/22
Date

x RPowe
Ronny Powe

Certificate of Service

I Ronny Powe hereby Certify Pursuant to NRCP 5(b) that on this x day February 2022, I mailed a true and correct copy of the attached pleading Petitioners Answer to the States Response/Return.. " to the following parties postage prepaid.

Eighth Jud. Dist. Ct.
200 Lewis Ave
Las Vegas, NV
89155.

Clark County District Attorney
200 Lewis Ave
Las Vegas, NV
89155.

executed this 22 day of February 2022.

RPowe
Ronny Powe # 1173457

To: Eighth Ind. Dist. Ct. Attn: Court Clerk.

Fr: Ronny Rowe # 1173457

Sub: Filing of Petitioners Answer.

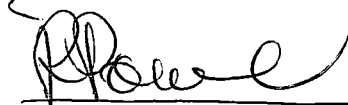
Date: x 2/22/22

Dear Court clerk ~

Please find enclosed two (2) copies of the pleading titled "Petitioners Answer to States Return for writ of Habeas Corpus." Please file with the Court .. and as confirmation of receipt and filing return the offered copy with a filed stamped date affixed please.

Thank you for your time.

Sincerely



Ronny Rowe # 1173457

WSEC PO Box 7007

Carson City, NV 89702

Ronny Pave #1173457
WSEC PO Box 7007
Carson City, NV 89702
(Petitioner Proper Person)

District Court
Clark County Nevada

Ronny Pave,
Petitioner,

vs-

The State of Nevada,
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Case No: A-21-845477-W/
C-15-308371-1

Dept No. 12 (XII).

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Facts in Support

The Respondents have given an return and or Opposition to the Petition for writ of Habeas Corpus filed by Powe on December 15th 2021, in which claims including actual innocence were raised as grounds for relief. The State's main contention has been that Powe has raised his claims untimely and is therefore barred from review, and or Powe has not given reason for Powe to overcome these bars for the Court to review the claims.

As Powe will address, the claims are such that raise to a level that cause doubt to the entry of plea and place the conviction itself in peril of not being dependable, and or reliable. At the forefront is the grand where Counsel has lied to Powe which created a domino effect that secured the conviction of an innocent person.

As we look at the evidence an structural error has occurred against Powes liberty Interests as the ability to make an informed decision was hampered by Counsels failure to supply truthfull and accurate representation of the States evidence that suggested Powes alleged guilt.

As Powe contends, his Counsel informed him that his D.N.A was upon the weapon used to assault the alleged victim (who the State has represented as Powes girlfriend and that Powe submits was never acquainted with the victim). As the record and States exhibits of the D.N.A reports discovered, Powes D.N.A and or finger prints were not upon the alleged weapon that was used against the victim. This supports Powes legal theory and defense that he was never involved in the any alleged battery. The victim stated she was attacked with a hammer as what caused the injuries, Powe can not be attributed to this crime as no piece of evidence supports the claim made.

Had Paves counsel provided accurate information about the D.V.A evidence, Pave would elected to proceed to trial, even as the record indicates Pave requested new counsel to assist him and to go over the case documents with him, (yet that request was denied without review by the Court, an issue of structural error and abuse of discretion under "U.S. v. Moore, 159 F.3d 1154 (9th 1998)"; "... Standard of review for Motions for New Counsel." But here Paves Counsel deliberately lied to help secure a conviction and or to avoid a trial as Counsels conduct would be viewed and found to be in violation of the Nevada Rules of Professional Conduct.

Pave draws the Courts attention to the very simple facts in the States return which are in Paves Favor... The State alleges That this is not a case for D.V.A evidence (pg 7 Lns 6-8).. Pave believes it is as the victim states that she was assaulted with the use of a hammer (which Pave was subsequently charged of using). If a hammer was used in this assault then evidence would support the victims claim, especially as the States Sole collaborating evidence was the witness and the forensic evidence secured by officers, without one (the D.V.A evidence) the State must rely upon the witness, here the alleged victim who has mental health issues and provided inconsistent statements. So this is an D.V.A case especially as said evidence Exonerates Pave as the alleged attacker.

Appointed Counsel has an duty to disclose to the defendant the States evidence truthfully allowing for the Defendant to make informed decisions about the best course to protect his liberty. (see McCoy v. Louisiana, 138 S.Ct 1500 (2018)), that process was subverted by Paves Counsel providing inaccurate information concerning the D.V.A evidence.

Pawe was deliberately misled by counsel... D.V.A. evidence demonstrates he (Pawe) was not associated with the offense, so the question is raised why counsel would not advise his client to proceed to trial and not file a motion to dismiss the charges as evidence did not substantiate the charge? These are questions the Courts must have counsel answer.

Pawe argued as a Proper Person litigant the only way he could, he can not be held to the same standards as a lawyer so as he files his timely motions that raised grounds contesting the evidence and the plea, the Courts did not entertain the grounds because they were filed under the incorrect judicial review vehicle. Yet again Pawe was not represented by counsel and relied upon law clerks to tell him what to do.

The State can not believe for one second that a defendant would still enter pleas of guilt after hearing his attorney tell the client, "hey guess what your D.V.A. is not on the weapon". This evidence is fifty (50) percent of the States case against the Defendant. D.V.A. is the equivalent to seeing a video of the accused doing the alleged act.

What Pawe is arguing is Not a Strickland review standard But Structural errors even though counsel was ineffective. Prejudice doesnt need to be proven as Structural errors dont protect against a wrongful conviction but how the defendant elects to protect his liberty.

Pawe protected his liberty by giving notice to the Courts that his sentence was wrong and illegal as the elements to use of a weapon were not proven (His D.V.A. was not upon the weapon, which follows into Pawe electing to proceed to trial); and that he had issues with the plea entry.

As the record shows Powes arguments within the Motion to correct an illegal sentence, (that was taken out of context) and his motion concerning habeas arrest (which was considered as an direct Appeal, that Requires per WZAPS a Complete Review of the Record; it would of been found that no D.V.A evidence existed to hold Powe accountable), all Raised objections and Constitutional Claims that were ignored by the court because Powe (an untrained Proper Person litigant) filed his challenges on the incorrect format.

A proper persons litigants filings are to be liberally construed and plainly given the benefit of doubt. Powe complained of his sentences for the deadly weapon enhancement and counsels errors. Powe challenged such in the State and federal courts and discovered when given the case records the D.V.A reports by the state. Now that Powe has spoken with law clerks of the issues and gained assistance the current Habeas Corpus petition has been filed which does overcome procedural Bars due to the claims presented which are all supported by the record.

All the claims are asserted and are supported by the record and proof given. Had Powe known at the time he was in court that Counsel had lied and misrepresented the facts of the evidence Powe would of spoke of such immediately. Powe did not discover this falsehood untill later in the appeal process. Powe is not at Fault here, Powes Counsel committed fraud and deception that the conviction was attained upon .. that is who is at fault, Powes attorney who portrayed evidence in an false light.

The Courts can not deny relief to Powe now once he has established an Miscarriage of justice.

Pave has demonstrated Good Cause for any delay in presenting the ground of Actual innocence for the purpose of VRS 34.726(1) the discovery of the lie was not obtained until Pave filed his federal 28 USC 2254 petition. If the facts of evidence are deliberately misconstrued by counsel for the defendant and the defendant doesn't discover the falsehood till years later than the evidence must be used in the light that it displays the proof of a fact, which here is the exoneration of Pave.

To bar the claims, when Actual Innocence overcomes the default if any, would only continue the unjust result of an innocent person. Pave was not aware of Habeas Petitions until he filed a federal petition with the district Court of Nevada.

Counsel as shown is ineffective and an agent of the State, as falsehoods gain an conviction upon false evidence, which amounts to a Structural error in the proceedings. The Respondents with the Court to find that Counsel's actions were reasonable trial tactics and strategy. What counsel did here was Unethical and Unconstitutional and it is still costing the life of an innocent individual.

"Bare and naked" allegations are those that have no basis in fact. What Pave has asserted is Fact Supported by the Record that the events occurred, evidence from the State Prosecution show the Pave is correct and this would lead to Prosecutorial misconduct. (See Bennett v. State, 901 P2d 676 (1995))"

In Rogers v. State, 267 P3d 802 (2011), Pave asserts that the Legal Basis for these claims now raised were not available at the time of the appeal and Habeas review period, and would allow this petition to proceed under Rogers supra.

In Roy v. Lampert, 465 F.3d 964 (2006 9th cir), the Courts should be primarily concerned with whether a claimant was Diligent in his efforts to pursue his appeal at the time his efforts were thwarted, As Pave has shown he was and is Diligent in his efforts to have the evidence reviewed by the Courts.

In Padilla v. Kentucky, 130 S Ct 1473 (2010), Counsel's bad advice on guilty pleas is an structural error that is not harmless, and for the Prosecution to knowingly use evidence that demonstrating the lack of Paves involvement is misconduct (see. Darden v. Wainwright, 106 S Ct. 2464 (1986)).

Each Claim/grand allows the review of the other and the Court must review the Claim before attaching any bars to them as they support actual innocence.

Pave requests this Court allow review of his claims, and deny the Respondents Requests.

Respectfully submitted this 22 day of Feb. 2022.

R Pave

Ronny Pave #1173457
WSCC PO Box 7007
Carson City NV 89702
(Petitioner Proper Person)

Affirmation
(NRS 239B.030).

The undersigned does hereby affirm that the preceding Petitioners Answer to States Return for writ of Habeas Corpus filed in District Court Case no. A-21-845477-W Does not contain the Social Security numbers of any party.

x 2/22/22
Date

x RPowe 1173457
Ronny Powe

Certificate of Service

I Ronny Powe hereby Certify Pursuant to NRCR 5(b) that on this x day February 2022, I mailed a true and correct copy of the attached pleading Petitioners Answer to the States Response/Return.. " to the following parties postage prepaid.

Eighth Jud. Dist. Ct.
200 Lewis Ave
Las Vegas, NV
89155.

Clark County District Attorney
200 Lewis Ave
Las Vegas, NV
89155.

executed this 22 day of February 2022.

RPowe
Ronny Powe # 1173457

Ronny Powe 1173457
WSSC PO Box 7067
Carson City, NV 89702

Eighth Jud. District Court,
200 Lewis Ave
Las Vegas, NV 89155

3716
C. D. Anthony
Las Vegas, NV

00000176

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011502850788

*Confidential
Legal Office*

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FEB 23 2022
NEVADA DEPARTMENT OF CORRECTIONS
WARM SPRINGS CORRECTIONAL CENTER

Ronny Pave #1173457
WSCC PO Box 7007
Carson City, NV 89702.
(Petitioner Proper Person).

FILED

MAR 21 2022

Thomas A. Johnson
CLERK OF COURT

District Court
Clark County Nevada

Ronny Pave
Petitioner,

Case No: A-21-845477-W
C-15-308371-1

vs-
The State of Nevada.
Respondents.

Dept No: X II (12).

"
Notice of Appeal
"

Comes now Ronny Pave the Petitioner in proper-person in the above pleading "Notice of Appeal", as the Petitioner wishes to appeal the decision rendered by the Clark County District Court on February 8th 2022 in which the Petitioners writ for Habeas Corpus was denied. This decision is an abuse of discretion and in violation of the protections of the Constitution, as such this Notice of Appeal is now given. This appeal is timely as the decision was not rendered until February 28th 2022.

Respectfully submitted this ~~16~~th day of March 2022.

RECEIVED

MAR 21 2022

CLERK OF THE COURT

R Pave

Ronny Pave #1173457
WSCC PO Box 7007
Carson City, NV 89702

Renny Powe 1173457
Wscd PO Box 7007
Carson City, NV 89702

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200 Lewis Ave
Las Vegas, NV 89155

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Certificate of Service

I Renny Powe hereby certify under the penalty of perjury that on this ~~16~~¹⁷ day of March, 2022, I mailed a true and correct copy of the attached pleading Notice of Appeal, to the following parties postage prepaid by United States postal service.

Eighth Judicial Dist. Ct.

Attn: Court Clerk

200 Lewis Ave.

Las Vegas, NV 89155

Clark County District

Attorney

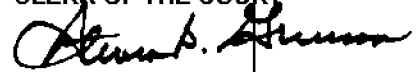
200 Lewis Ave

Las Vegas NV

89155.

Executed on this ~~16~~¹⁷ day of March 2022.

x R Powe
Renny Powe



ASTA

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

RONNY POWE,

Plaintiff(s),

vs.

K. OLSEN, WARDEN (W.S.C.C.),

Defendant(s),

Case No: A-21-845477-W

Dept No: XII

CASE APPEAL STATEMENT

1. Appellant(s): Ronny Powe

2. Judge: Michelle Leavitt

3. Appellant(s): Ronny Powe

Counsel:

Ronny Powe #1173457
P.O. Box 7007
Carson City, NV 89702

4. Respondent (s): K. Olsen, Warden (W.S.C.C.)

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: No
Date Application(s) filed: N/A

9. Date Commenced in District Court: December 15, 2021

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 23 day of March 2022.

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: Ronny Powe

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

February 08, 2022

A-21-845477-W Ronny Powe, Plaintiff(s)
vs.
K. Olsen, Warden (W.S.C.C.), Defendant(s)

**February 08, 2022 12:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo
Pharan Burchfield

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT: Trippiedi, Hagar L Attorney

JOURNAL ENTRIES

- COURT FINDS Petition for Writ of Habeas Corpus is time-barred; Petitioner failed to file within one year of remittitur, that was filed on 04/10/2020 and the said Petition was filed on 12/15/21. COURT ORDERED, State to prepare Findings of Facts and Conclusion of Law and Order.

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated April 4, 2022, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 104.

RONNY POWE,

Plaintiff(s),

vs.

K. OLSEN, WARDEN (W.S.C.C.),

Defendant(s),

Case No: A-21-845477-W

Dept. No: XII

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 21 day of April 2022.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk