

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMEL JACQKEY GIBBS,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
Apr 29 2022 02:11 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-21-844881-W

Docket No: 84569

RECORD ON APPEAL

ATTORNEY FOR APPELLANT

JAMEL GIBBS #1056675,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT

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

A-21-844881-W Jamel Gibbs, Plaintiff(s) vs. State of Nevada, Defendant(s)

I N D E X

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Case No.: **A-21-844881-W**
Dept. No.: **Dept. 10**

FILED
DEC 02 2021

Shirley L. Johnson
CLERK OF COURT

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

Jamel Gibbs

Petitioner,

v.

State of Nevada

Respondent.

PETITION FOR WRIT OF
HABEAS CORPUS

(Post-conviction)

(NRS 34.720 et seq.)

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty:

High Desert State Prison, Indian Springs NV, 89070, P.O. Box 650

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

Regional Justice Center, 200 Lewis Ave, 8th Judicial District Court, Dep 10, LV, NV 89155

3. Date of judgment of conviction: 10/12/2021

4. Case number: 19BGJ287X

5. (a) Length of sentence:

120 months to life w/ consecutive up to 120 months

b) If sentence is death, state any date upon which execution is scheduled:

N/A

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No ☒

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

N/A

7. Nature of offense involved in conviction being challenged:

2nd deg Murder w/ deadly weapon

8. What was your plea? (check one)

- (a) Not guilty ☒
(b) Guilty _____
(c) Guilty but mentally ill _____
(d) Nolo contendere _____

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

_____ N/A _____

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

- (a) Jury ☒
(b) Judge without a jury _____

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

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

13. If you did appeal, answer the following:

- (a) Name of court: The Supreme Court State of Nevada
(b) Case number or citation: 83072
(c) Result: Still Pending

(d) Date of result: N/A
(Attach copy of order or decision, if available.)

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

_____ N/A _____

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

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

(a) (1) Name of court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____

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

(5) Result: _____

(6) Date of result: _____

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

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

(1) Name of court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes _____ No _____

(5) Result: _____

(6) Date of result: _____

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

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

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

(1) First petition, application or motion? Yes _____ No _____

Citation or date of decision: _____

(2) Second petition, application or motion? Yes _____ No _____

Citation or date of decision: _____

(3) Third or subsequent petitions, applications or motions? Yes _____ No _____

Citation or date of decision: _____

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

N/A

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

(a) Which of the grounds is the same:

N/A

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

N/A

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

N/A

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

N/A

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

NO.

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

If yes, state what court and the case number:

Nevada, Case # 83072

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

Craig A. Mueller

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

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

Re: *State of Nevada v. Jamel Gibbs*

Case No. ~~1002~~ *ABGT287X*

Dear Mr./Ms. *Craig Mueller*:

Nev. Rev. Stat. 7.055, provides that:

An attorney who has been discharged by his client shall, upon demand...Immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client.

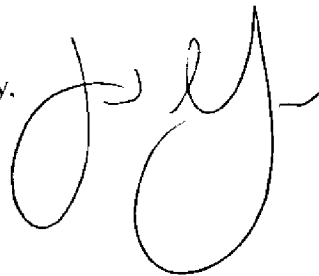
See also Nev. Sup. Ct. Rule 166(4):

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as ... surrendering papers and property to which the client is entitled..."

I hereby formally make demand that you provide my entire file, including, but not limited to all papers, documents, pleading and items of tangible personal property which belong to or were prepared on my behalf to me at the address set forth on this letter.

As you know pursuit of post-conviction claims are governed by strict deadlines. Therefore, I cannot stress enough the importance of your providing of your providing my file to me as soon as possible. Your prompt attention to this very important matter is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to be 'JD' or similar, written in a cursive style.

CERTIFICATE OF SERVICE BY MAIL

I, Jamel Gibbs hereby certify, pursuant to N.R.C.P. 5(b), that on this 29 day of the month of 11 of the year 2021, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Warden C. Johnson

Respondent prison or jail official

High Desert State Prison, PO Box 650, Indian Springs NV, 89070

Address

Aaron Ford

Attorney General

100 N. Carson St, Carson City, NV 89701

Address

Steven D. Guerson

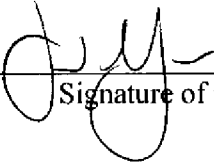
District Attorney of County of Conviction

200 Lewis Ave, 3rd floor, LV, NV 89155

Address

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

EXECUTED at 2:30^{pm} on the 29 day of the month of 11 of the year 2021



Signature of petitioner

HOSP, PO Box 650 Indian Spring, NV 89070

Address

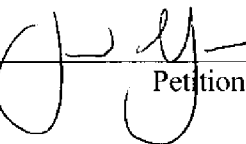
Signature of attorney (if any)

Attorney for petitioner

Address

VERIFICATION

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



Petitioner

Attorney for petitioner

JAMEL J. GIBBS
HOSP P.O. Box 650
Indian Springs, NV 89070

#1050070

Las Vegas P&DC 89199
MON 29 NOV 2021 PM



200 Lewis Ave, 3rd floor
Department 10, 8th Judicial District
Court.
Las Vegas, Nevada
89155

Case No: A-21-844881-W
Dept: 10 Dept. 10

FILED
DEC 02 2021
Am. Hill
CLERK OF COURT

Jamel Gibbs
V.
State of Nevada

Separate Memorandum
Supporting the fact of the
Ineffective assistance of
counsel claim.

Grand ONE

Respectfully Submitted,
Jamel Gibbs,
x *J. Gibbs*
Petitioner

I. Introduction

(A) Ground One: Petitioners Sixth Amendment (Right to effective assistance of counsel) has been violated pursuant to: Scarbom V. State, 107 Nev. Nev. 399, 812 P.2d 1279 (Nev. 1991), Strickland V. Washington, 466 U.S. 668, 104 S. Ct 2052 (1982) and Lynns V. Warden 100 Nev. 430, 1983 P.2d 504 (1984).

II. Statement of facts / Statement of the Case

1) On March 3rd, 2021 at approximately 1846 hours officers responded to 3940 Scott Robinson Blvd, in reference to a person reporting who stated a male was just shot. The subject was later identified as Jaylon Tiffith and he was laying in the driveway of the Hidden Canyon Village Condos.

2) On March 5th, 2021 an arrest Warrant was signed and issued from North Las Vegas Judge, Judge Hoo.

3) On March 24th, 2021 Petitioner was located and picked up by the F.B.I. criminal Apprehension Team, taken into custody and booked on 1 Count of open murder.

(Case number. 21CR000371) Dept 1.

4) On April 13th, 2021 Petitioner appeared in Justice Court Dept 1 for the first Scheduled Preliminary hearing.

Petitioners Lawyer, Craig Mueller, ESA asked for a continuance due to the state giving him the discovery on that same very court date. Preliminary was reset to May 12th, 2021.

5) On May 5th, 2021 at approximately 1:36^{pm} a Grand Jury hearing was held that Petitioner had no knowledge of.

(GJ case no. 19BGJT287X)

1 b.) On May 10th, 2021 Petitioner was arraigned on the new
2 indictment Count One: Open Murder d/w, Count two: Possession
3 of firearm by Prohibited person. Pled Not Guilty and Invoked
4 the 60 day rule.

5 III Law and Argument

6 In support of Ground one Petitioner incorporates the Statement
7 of facts / Statement of the case section (Number 5) will demonstrate
8 a fundamental denial of Effective Assistance of counsel, and
9 prove how Craig Mueller (defence counsel) abandoned his
10 required duty of loyalty and acted with disregard to Gibbs'
11 interest.

12 (A) Ineffective Assistance of Counsel: The Sixth Amendment
13 of the United States Constitution Provides that "[I]n all Criminal
14 Prosecutions, the accused shall enjoy the right.... to have the
15 assistance of counsel for his defence". The United States Supreme
16 Court has long recognized "The right to counsel is the right to effective
17 assistance of Counsel". Strickland V. Washington, 476 U.S. 683, 686, 104
18 S.Ct. 2052, 2063 (1984) see also State V. Gore, 109 Nev. 1130, 1138, 865 P.2d
19 322, 323 (1993). In Strickland the Supreme Court of the United States
20 held that to warrant reversal, a lawyer's conduct must have fell below
21 an objective standard of reasonableness and that counsel's deficiencies
22 were so severe that they rendered the jury's verdict unreliable.

23 In Sanborn, the defendant's conviction was reversed.
24 Evidence considered on appeal was that Sanborn's counsel did
25 not adequately perform pre-trial investigation, failed to ~~conduct~~
26 Pursue evidence supportive of a claim of Self defence
27 and failed to explore allegations of the victims profenshy

1 towards violence. The Supreme Court of Nevada held that
2 Sanborn's lawyer was not functioning as the counsel guaranteed to
3 the defendant by the "Sixth Amendment". The test discussed
4 in Sanborn was "had Counsel been effective, the outcome may
5 very well have been different." In the Present Case Craig
6 Mueller was definitely ineffective because he did not give Petitioner
7 notice that he was being indicted by a grand jury. By Craig
8 not giving Petitioner notice is not just a violation of his
9 constitutional right but PROOF of him being ineffective. If Craig
10 Mueller would have giving Petitioner proper notice he would have
11 wanted to testify at the grand jury hearing which he has
12 that right, see, Sheriff, Humbolt County V. Marcum, 105 Nev. 824, 783 p.2d
13 1389, 1989 Nev. Lexis 311 (Nev. 1989) amended, 70 p.2d 497 (Nev. 1996) superseded
14 by statute as stated in McKinnon V. State, 377 p.3d 106, 132 Nev. Adv. Rep.
15 600 2010 Nev. Lexis 1654 (Nev. 2016) NRS 172.045(1)(d) The state of Nevada
16 did their part in giving Craig a proper notice but he failed to give
17 Petitioner "any" type of notice, and if he would have, Petitioner
18 would have testified vital information at the grand jury hearing
19 that would have persuaded the grand jurors from charging him.
20 Sheriff, Humbolt County V. Marcum Clearly states "By a defendant
21 having notice that he is a target of a grand jury investigation, is
22 consistent with the policy of ~~avoiding~~ avoiding unnecessary trials
23 since a defendant who has notice that he is the subject of a
24 possible indictment may present the grand jury with evidence
25 which exonerates him. Hence, in some instances, notice to the target
26 defendant will eliminate the need for a trial." The matter of the fact
27 is if Craig would have giving Petitioner notice, it would NOT have

1 been a trial due to what evidence he would have provided at the 2
2 grand jury hearing if he had that opportunity to. On May 10th 2021
3 Petitioner was arraigned on the new indictment Count 1: Open
4 Murder d/w Count 2: Possession of firearm by Prohibited Person. At
5 that same court date, Craig Mueller was not present but had one
6 of his attorneys from his law office come in and represent
7 Petitioner. The fill in attorney advised Petitioner that he had been
8 indicted and that a hearing had been held on May 5th 2021,
9 Wednesday, 1:36^{pm}. On the same day after Petitioner was
10 arraigned, Petitioner made contact with Mr. Mueller to question him
11 about the arraignment that just happened. Mr. Mueller told Petitioner
12 that he was unaware of him being indicted and he never received
13 the Marcum notice from the state of Nevada. Later on in the
14 month Petitioner contacted his Private Investigator Patrick
15 M. Hardy (Licence #1814) to find out if the State of Nevada
16 sent Craig Mueller the Marcum notice. Mr. Hardy advised
17 Petitioner that the notice was indeed sent in mid April.
18 Nevada Rules Of Professional Conduct (N.R.P.C) Rule 1.1
19 Competence: A LAWYER SHALL PROVIDE COMPETENT REPRESENTATION
20 TO A CLIENT. COMPETENT REPRESENTATION REQUIRES THE LEGAL
21 KNOWLEDGE, SKILL, THOROUGHNESS, AND PREPARATION ~~AND PREPARATION~~
22 REASONABLE FOR NECESSARY REPRESENTATION. (N.R.P.C) Rule 1.4
23 Communication (4)(b) A LAWYER SHALL EXPLAIN A MATTER TO THE EXTENT
24 REASONABLY NECESSARY TO PREPARE THE CLIENT TO MAKE INFORMED
25 DECISIONS REGARDING THE REPRESENTATION. Petitioner's lawyer
26 Mr. Mueller clearly violated the (N.R.P.C) Rule 1.1 and rule 1.4
27 by #1, failing to communicate with Mr. Gibbs in letting him

1 Know that he was a target in a grand jury investigation #2
2 failing to have enough Legal Knowledge to not want Mr Gibbs
3 to have his constitutional Right violated by not giving him
4 notice of indictment. There is a strong Presumption
5 that counsel has fully discharged his duties Warden V. Lishro,
6 90 Nev. 221, 223, 523 p.2d 6, 7 (1974). Considering the history
7 of this case, it is pretty safe to assume that had Gibbs been
8 afforded his constitutional Rights this indictment would have been
9 thrown out at the end of the grand jury hearing due to what
10 he would have testified to. Craig Mueller abandoned his role
11 as advocate the very moment he received the Marcum notice and
12 not advising Petitioner that he has been a target in a
13 grand jury investigation and by Mueller doing that is Clear
14 Cut Proof of him being "INEFFECTIVE". The burden has to
15 fall somewhere, and in this case it has to be on Mr. Mueller.
16 This can also be argued through Cronic "Prejudice is presumed
17 when an attorney fails to engage in adversarial activity." The
18 Supreme Court Of Nevada held that counsel's failure to
19 pursue his Client's interest zealously, in Rekamer, 61 Nev. 174, 22
20 p.2d 862 (1942) and counsel's failure to pursue and investigate
21 his Client's Case Carefully, Jackson V. Warden, 91 Nev. 430,
22 537 p.2d 473 (1975) results in the deprivation of an accused's
23 "Sixth Amendment" right to effective assistance of counsel.
24 The true fact is if Craig Mueller would have gave Petitioner
25 Proper notice the Petitioner would have testified at the Grand
26 Jury Hearing, and what he would have testified is to the fact
27 that; ~~Branta~~ Branta Terrell never seen him exit a Car

1 because she was already in a all out brawl. He also would
2 have testified that he never had a firearm and she
3 ~~could not~~ could not of have seen one due to her rolling
4 around on the ground fighting and people surrounding
5 her trying to break them up. Petitioner would have
6 testified that there were ~~multiple~~ multiple people outside
7 (specifically trying to break them up) and also he would have
8 testified that when the shots rang out, people dispersed
9 and people drove off including him. This information that
10 Petitioner wanted the Grand Jury to hear was vital to
11 this case, but by Craig not giving him the opportunity to,
12 by not giving him notice, which he is promised by
13 Sheriff Humboldt County V. Marcum, is not just a violation
14 of his constitutional right, but also a violation of his "Sixth
15 Amendment". Right to effective assistance of counsel.

16 The record ~~can~~ herein indicates that Gibbs' attorney demonstrated
17 marked indifference to his Client's interest. there is no way to guess
18 that Mueller failed to provide effective assistance of counsel as
19 guaranteed through the Sixth Amendment. These proceedings would
20 of been very different had Gibbs been provided effective assistance
21 of counsel. In fact it is unlikely that these charges would of made
22 it pass the Grand Jury Hearing. Therefore Petitioner respectfully
23 request Her Honor to dismiss this indictment or remand this case
24 back down to Justice Court for another Grand Jury Hearing.

25 **IV Conclusion** For the reason stated herein it is respectfully requested that this
26 Honorable Court dismiss this indictment with Prejudice against Petitioner Gibbs or
27 recognize his rights that was stolen from him and force the state to another Grand Jury Hearing.

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
18 - 19
WILL FOLLOW VIA
U.S. MAIL**

1056675
Inmate No. _____

FILED
DEC 02 2021

Shirley L. Johnson
CLERK OF COURT

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

Jamel Gibbs
Petitioner,

v.

STATE OF NEVADA,

Respondent.

Case No. **A-21-844881-W**
Dept. 10

EX PARTE MOTION FOR
APPOINTMENT OF COUNSEL
AND REQUEST FOR
EVIDENTIARY HEARING

COMES NOW Petitioner Jamel Gibbs, in Proper Person, and moves this Court for its order allowing the appointment of counsel for Petitioner and for evidentiary hearing. This motion is made based in the interest of justice.

Pursuant to NRS 34.750(1).

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

- (a) The issues presented are difficult;
- (b) The petitioner is unable to comprehend the proceedings; or

(c) Counsel is necessary to proceed with discovery.


Petitioner is presently incarcerated at HDSP, Indian Springs, Nevada, where he is unemployed, indigent, and unable to retain private counsel to represent him.

Petitioner is unlearned and unfamiliar with the complexities of Nevada state law, particularly state post-conviction proceedings. Furthermore, Petitioner alleges that the issues in this case are complex and require an evidentiary hearing. Petitioner is unable to factually develop and adequately present the claims without an evidentiary hearing.

Petitioner hereby respectfully requests that the Court appoint counsel and set a date for evidentiary hearing for the reasons stated above.

DATED this 29 day of November, 2021.

Respectfully submitted,



Petitioner

Feb 30

JAMEL GIBBS ID NO. 1056075

HIGH DESERT STATE PRISON
22010 COLD CREEK ROAD
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89018

FILED

DEC 02 2021

CLERK OF COURT

8th Judicial District Court
Clark County, Nevada

JAMEL GIBBS

Petitioner

v.

State of Nevada

Respondent

CASE NO.: A-21-844881-W

DEPT. NO.: Dept. 10

DOCKET:

Notice Of Motion

COMES NOW, Jamel Gibbs, Jamel Gibbs, herein above respectfully
moves this Honorable Court for an petition for writ of Habeas Corpus
(Ineffective Assistance of Counsel)

This Motion is made and based upon the accompanying Memorandum of Points and
Authorities.

DATED: this 29 day of November, 2021

BY: JAMEL GIBBS 1056075

[Signature] #1056075
Defendant/In Proper Personam

CLERK OF THE COURT

DEC 02 2021

RECEIVED

CERTIFICATE OF SERVICE BY MAILING

I, Jamel Gibbs, hereby certify, pursuant to NRCP 5(b), that on this 29
day of November 2021, I mailed a true and correct copy of the foregoing, "Notice of Motion, Petition for Writ of Habeas Corpus"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Steven D. Gerson
700 Lewis Ave, 3rd floor, LV, NV
89155

Warden C. Johnson
High Desert State Prison, P.O. Box
650, Indian Springs, 89070

Aaron Ford
100 W. Carson St., Carson City, NV
89701

CC:FILE

DATED: this 29 day of November, 2021.

Jamel Gibbs #1056075

[Signature] #1056075 #
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS

Heather L. Smith
CLERK OF THE COURT

1 PPOW
2

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

5 Jamel Gibbs,

6 Petitioner,

7 vs.

8 State of Nevada,

9 Respondent,
10

Case No: A-21-844881-W
Department 10

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

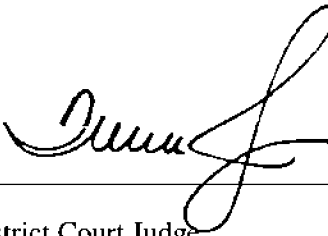
11 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on
12 December 02, 2021. The Court has reviewed the Petition and has determined that a response would assist
13 the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and
14 good cause appearing therefore,

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

18 **IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this Court's
19 Calendar on the 9th day of February, 2021, at the hour of
20

21 8:30 a.m.
22 o clock for further proceedings.

Dated this 7th day of December, 2021

23 
24

25 District Court Judge

26 **779 3F7 FAC0 654A**
27 **Tierra Jones**
28 **District Court Judge**

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Jamel Gibbs, Plaintiff(s)

CASE NO: A-21-844881-W

7 vs.

DEPT. NO. Department 10

8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

13
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
known addresses on 12/8/2021

16 Jamel Gibbs

#1056675

HDSP

P.O. Box 650

Indian Springs, NV, 89070

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
12/9/2021 2:35 PM
Steven D. Grierson
CLERK OF THE COURT



Jamel Gibbs, Plaintiff(s)

Case No.: A-21-844881-W

vs.

State of Nevada, Defendant(s)

Department 10

NOTICE OF HEARING

Please be advised that the Plaintiff's Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing in the above-entitled matter is set for hearing as follows:

Date: February 09, 2022

Time: 8:30 AM

Location: RJC Courtroom 14B
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

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


STEVEN D. GRIERSON, CEO/Clerk of the Court

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

CERTIFICATE OF SERVICE

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

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



RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #005734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMAL GIBBS, aka Jamel Jacqkey,
#2662590

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-844881-W

C-21-355769-1

DEPT NO: X

**STATE'S RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION), MOTION FOR APPOINTMENT OF COUNSEL,
AND REQUEST FOR EVIDENTIARY HEARING**

DATE OF HEARING: FEBRUARY 9, 2022
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction), Motion for Appointment of Counsel, and Request for Evidentiary Hearing.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 An Indictment was filed on May 6, 2021, charging Jamel Gibbs (hereinafter
4 “Petitioner”) with one count of Murder with Use of a Deadly Weapon and one count of
5 Ownership or Possession of Firearm by Prohibited Person. Trial proceeded on July 20, 2021.
6 On July 23, 2021, the jury returned a verdict of guilty of Second-Degree Murder with Use of
7 a Deadly Weapon. The State subsequently dismissed the Ownership or Possession of Firearm
8 by Prohibited Person charge.

9 On July 28, 2021, Petitioner filed a Motion for New Trial. The State’s Opposition was
10 filed on July 29, 2021. On August 30, 2021, the Court denied Petitioner’s Motion for New
11 Trial.

12 On October 8, 2021, Petitioner was sentenced to Life with the Possibility of Parole after
13 ten (10) years in the Nevada Department of Corrections (hereinafter “NDOC”), plus a
14 consecutive minimum of forty-eight (48) months and a maximum of one hundred twenty (120)
15 months in the NDOC for use of a deadly weapon, with one hundred ninety-nine (199) days
16 credit for time served.

17 The Judgment of Conviction was filed on October 12, 2021.

18 On October 16, 2021, Petitioner filed a Notice of Appeal.

19 On November 1, 2021, Petitioner’s Motion to Withdraw Attorney of Record and
20 Request for Appointment of Appellate Counsel was granted. On November 29, 2021, Jeannie
21 Hua, Esq. was appointed as appellate counsel. Petitioner’s appeal is currently still pending
22 under Nevada Supreme Court Case No. 83672.

23 On December 2, 2021, Petitioner filed the instant Petition for Writ of Habeas Corpus
24 (Post-Conviction) (hereinafter “Petition”), Motion for Appointment of Counsel and Request
25 for Evidentiary Hearing. The State’s Response now follows.

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1 repeatedly held that the timely filing of a notice of appeal ‘divests the district court of
2 jurisdiction to act and vests jurisdiction in [the appellate] court.’” Foster v. Dingwall, 126 Nev.
3 49, 52, 228 P.3d 453, 454-55 (2010) (quoting Mack–Manley v. Manley, 122 Nev. 849, 855,
4 138 P.3d 525, 529 (2006)). Pursuant to NRS 177.155, the supreme court retains control and
5 supervision of a case “from the filing of the notice of appeal until the issuance of the certificate
6 of judgment.” Buffington, 110 Nev. at 126, 868 P.2d at 644.

7 Only a remittitur will return jurisdiction from an appellate court of competent
8 jurisdiction to the district court. See NRS 177.305 (“After the certificate of judgment has been
9 remitted, the appellate court...shall have no further jurisdiction of the appeal or of the
10 proceedings thereon, and all order which may be necessary to carry the judgment into effect
11 shall be made by the court to which the certificate is remitted.”). Until such remittitur is
12 received, a district court lacks jurisdiction over a particular case. Buffington, 110 Nev. at 126,
13 868 P.2d at 644.

14 However, the Nevada Supreme Court has recognized concurrent jurisdiction when a
15 defendant files a Petition for Writ of Habeas Corpus (Post Conviction). See, Varwig v. State,
16 104 Nev. 40, 42, 752 P.2d 760, 761 (1988); see also, Daniels v. State, 100 Nev. 579, 580, 688
17 P.2d 315, 316 (1984).

18 Here, Petitioner timely filed a Notice of Appeal on October 16, 2021. The trial
19 transcripts have still not been filed. The State respectfully submits that this Court should
20 decline to address this Petition on the merits until a decision has been issued by the Nevada
21 Supreme Court. Petitioner’s Case Appeal Statement was filed on October 18, 2021. No
22 Opinion, Order or Certificate of Judgment has been entered by the Nevada Supreme Court as
23 of the time of filing the instant response. Therefore, this Petition should be denied.

24 **II. PETITIONER DID NOT RECEIVE INEFFECTIVE ASSISTANCE OF** 25 **COUNSEL**

26 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
27 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
28 defense.” The United States Supreme Court has long recognized that “the right to counsel is

1 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
2 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
3 (1993).

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

15 The court begins with the presumption of effectiveness and then must determine
16 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
17 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
18 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
19 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
20 537 P.2d 473, 474 (1975).

21 Counsel cannot be ineffective for failing to make futile objections or arguments. See
22 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
23 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
24 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
25 (2002).

26 Based on the above law, the role of a court in considering allegations of ineffective
27 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
28 whether, under the particular facts and circumstances of the case, trial counsel failed to render

1 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
2 (1978). This analysis does not mean that the court should “second guess reasoned choices
3 between trial tactics nor does it mean that defense counsel, to protect himself against
4 allegations of inadequacy, must make every conceivable motion no matter how remote the
5 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
6 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
7 cannot create one and may disserve the interests of his client by attempting a useless charade.”
8 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

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

17 The decision not to call witnesses is within the discretion of trial counsel, and will not
18 be questioned unless it was a plainly unreasonable decision. See Rhyne v. State, 118 Nev. 1,
19 38 P.3d 163 (2002); see also Dawson v. State, 108 Nev. 112, 825 P.2d 593 (1992). Strickland
20 does not enact Newton's third law for the presentation of evidence, requiring for every
21 prosecution expert an equal and opposite expert from the defense. In many instances cross-
22 examination will be sufficient to expose defects in an expert's presentation. When defense
23 counsel does not have a solid case, the best strategy can be to say that there is too much doubt
24 about the State's theory for a jury to convict. Harrington v. Richter, 131 S.Ct. 770, 791, 578
25 F.3d. 944 (2011). “Strategic choices made by counsel after thoroughly investigating the
26 plausible options are almost unchallengeable.” Dawson v. State, 108 Nev. 112, 117, 825 P.2d
27 593, 596 (1992).

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1 Even if a defendant can demonstrate that his counsel's representation fell below an
2 objective standard of reasonableness, he must still demonstrate prejudice and show a
3 reasonable probability that, but for counsel's errors, the result of the trial would have been
4 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
5 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability
6 sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89,
7 694, 104 S. Ct. at 2064-65, 2068).

8 The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the
9 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
10 the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
11 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
12 be supported with specific factual allegations, which if true, would entitle the petitioner to
13 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked"
14 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
15 34.735(6) states in relevant part, "[Petitioner] must allege specific facts supporting the claims
16 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
17 petition to be dismissed." (emphasis added).

18 In this case, Petitioner argues that trial counsel was ineffective because he failed to
19 notify him of the Marcum notice. Petition, at 3. The magistrate may order an accused to answer
20 the charges filed against him or her upon a finding that a public offense has been committed,
21 and slight or marginal evidence that the Appellant committed the crime. See, Sheriff v. Hodes,
22 96 Nev. 184, 186, 606 P.2d 178, 180 (1980); Beasley v. Lamb, 79 Nev. 78, 80, 378 P.2d 524,
23 525 (1963); State v. Fuchs, 78 Nev. 63, 65, 368 P.2d 869, 869 (1962). The State only must
24 present enough evidence to support a reasonable inference that the accused committed the
25 crime and does not need to negate all possible inferences as to doubt. See, Lamb v. Holsten,
26 85 Nev. 566, 568, 459 P.2d 771, 772 (1969); Johnson v. State, 82 Nev. 338, 341, 418 P.2d
27 495, 496 (1966). Further, the State may present a case based solely on circumstantial evidence.
28 See, Howard v. Sheriff, 93 Nev. 30, 31, 559 P.2d 827, 827 (1977). Finally, the Nevada

1 Supreme Court has explicitly held that a probable cause hearing is “not a substitute for trial,”
2 and that the “full and complete exploration of all facets of the case” should be reserved for
3 trial. Marcum v. Sheriff, 85 Nev. 175, 178, 451 P.2d 845, 847 (1969); see also, Robertson v.
4 Sheriff, 85 Nev. 681, 683, 462 P.2d 528, 529 (1969).

5 In a grand jury proceeding, neither a criminal defendant nor his or her counsel have a
6 right to be present. NRS 172.145; NRS 172.235; Maiden v. State, 84 Nev. 443, 445, 442 P.2d
7 902, 904 (1968). However, a defendant has a right to testify before a grand jury considering
8 an indictment against him or her. NRS 172.241(1); Sheriff v. Bright, 108 Nev. 498, 501, 835
9 P.2d 782, 784-85 (1992). NRS 172.241 governs the right of certain persons to appear before
10 the Grand Jury and it provides that the district attorney’s notice upon a person whose
11 indictment is being considered by a grand jury is adequate if it is given to the person, or the
12 person’s attorney of record, and gives the person not less than 5 days judicial days to submit a
13 request to testify to the district attorney. NRS 172.241(2)(a).

14 The Nevada Supreme Court has held that a defendant must be given reasonable notice
15 that a grand jury will meet and consider returning an indictment against him. Sheriff v.
16 Marcum, 105 Nev. 824, 783 P.2d 1389 (1989). In order for a defendant to exercise his
17 statutory right to testify before the grand jury, he must be given reasonable notice that he is
18 the target of a grand jury investigation. Id. at 826, 783 P.2d at 1390.

19 In Solis-Ramirez, the Nevada Supreme Court held that “reasonable” notice under NRS
20 172.241 required the State to inform the target of the investigation of the actual time, date and
21 place of the grand jury hearing otherwise the statutory right to testify would be meaningless.
22 Solis-Ramirez v. District Court, 112 Nev. 344, 913 P.2d 1293 (1996). In Solis-Ramirez, the
23 defendant received a Marcum notice indicating that the State intended to obtain a Grand Jury
24 indictment against him but failed to include the date, time, or location. Solis-Ramirez, 112
25 Nev. at 346, 913 P.2d at 1294. The Nevada Supreme Court held that the notice to the defendant
26 placed the ultimate “burden on him to call the district attorney’s office from jail and located
27 the information regarding the date, time, and location of the hearing” and ordered the district
28 court to dismiss the indictment. Solis-Ramirez, 112 Nev. at 347, 913 P.2d at 1295. However,

1 it was not the legislature's intent that the right to testify be interpreted so expansively.
2 Therefore, in 1998, the legislature amended NRS 172.241 to clarify that notice is adequate if
3 it simply "advises the person that he may testify before the grand jury only if he submits a
4 written request to the district attorney and includes an address where the district attorney may
5 send a notice of the date, time and place of the scheduled proceeding of the grand jury." NRS
6 172.241(2)(b). This legislative change places the burden on the person receiving notice of a
7 grand jury investigation to respond with written notice of their intent to testify before they are
8 entitled to details of the date, time, and place where they may appear to testify.

9 On April 15, 2021, the State provided Petitioner with Marcum notice. Exhibit 1.
10 Petitioner does not deny that the State properly notified counsel:

11 The State of Nevada did their part in giving Craig a proper notice
12 but he failed to give Petitioner "any" type of notice . . ."

13 Petition, at 3. Petitioner's only contention is that trial counsel should have told him about the
14 notice. This is insufficient to establish prejudice. Only if the defendant demonstrates actual
15 prejudice based on lack of notice must the district court dismiss an Indictment. Hill v. State,
16 124 Nev. 546, 188 P.3d 51; Lisle v. State, 114 Nev. 221, 224, 954 P.2d 744, 746 (1998).
17 Implicit in the decisions of most district courts addressing claims of basic unfairness, which
18 violates due process within grand jury proceedings, "is the concept that substantial prejudice
19 to the defendant must be demonstrated before the province of the independent grand jury is
20 invaded." Sheriff v. Keeney, 106 Nev. 213, 216, 791 P.2d 55, 57 (1990).

21 Therefore, even if Petitioner did not receive adequate notice from his attorney, any error
22 in the Grand Jury proceedings connected with the charging decision is harmless beyond a
23 reasonable doubt where a defendant was convicted after trial beyond a reasonable doubt,
24 because the conviction establishes that probable cause undoubtedly existed to bind the
25 defendant over for trial. In United States v. Mechanik, the United States Supreme Court held
26 that the jury's guilty verdict in prosecution for drug-related offenses and conspiracy established
27 probable cause to charge the defendants with those offenses and thus rendered harmless any
28 error in the grand jury's charging decision. United States v. Mechanik, 475 U.S. 66, 106 S. Ct.

1 938 (1986) (cited approvingly by and applied in the Marcum context in Lisle v. State, 114
2 Nev. 221, 224-225, 954 P.2d 744, 746-747 (1998)). The United States Supreme Court
3 concluded that the jury's subsequent guilty verdict means not only that there was probable
4 cause to believe that the defendants were guilty as charged, but also that they are in fact guilty
5 as charged beyond a reasonable doubt. Measured by the jury's verdict, then, any error in
6 the grand jury proceeding connected with the charging decision was harmless beyond a
7 reasonable doubt. Mechanik, 475 U.S. at 70, 106 S. Ct. at 941-42.

8 The Nevada Supreme Court has also suggested that a jury verdict of guilt may render
9 harmless an error in the grand jury proceedings. Dettloff v. State, 120 Nev. 588, 596, 97 P.3d
10 586, 591 (2004). The Nevada Supreme Court found that the jury convicting Dettloff under a
11 higher burden of proof cured any irregularities that may have occurred during the grand jury
12 proceedings. Dettloff, 120 Nev. at 596, 97 P.3d at 591.

13 The State presented substantial evidence of Petitioner's guilt during the Grand Jury
14 proceeding. Brionta testified that Petitioner and Mimi started a fight with her and Jaylon. Prior
15 to and during this fight, she saw Petitioner with a gun. She heard a gunshot and saw Petitioner
16 waving the gun around. Petitioner was the only person in the area that she saw with a gun. Her
17 testimony established probable cause that Petitioner murdered Jaylon with a deadly weapon.
18 As such, there was substantial evidence for the Grand Jury to indict Petitioner. Additionally,
19 there is nothing in the transcripts that the Grand Jury held his absence against him.

20 Furthermore, Petitioner cannot face prejudice as a jury found him guilty beyond a
21 reasonable doubt. Any error associated with his lack of notice is harmless beyond a reasonable
22 doubt due to his conviction. Thus, Petitioner's claim of ineffective assistance of trial counsel
23 for allegedly failing to present Petitioner's testimony and exculpatory evidence to the Grand
24 Jury is moot because a jury has already found Petitioner guilty of the charged offense beyond
25 a reasonable doubt. Weber v. State, 121 Nev. 554, 585, 119 P.3d 107, 128 (2005). There is no
26 evidence whatsoever to suggest that Petitioner's testimony or any exculpatory evidence
27 Petitioner may have presented would have negated the probable cause evidence offered by the
28 State. As such, this Court should deny Petitioner's claim.

III. PETITIONER IS NOT ENTITLED TO COUNSEL

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

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

A petition may allege that the Defendant is unable to pay the costs of the proceedings or employ counsel. If the court is satisfied that the allegation of indigency is true and the petition *is not dismissed summarily*, the court may appoint counsel at the time the court orders the filing of an answer and a return. In making its determination, the court may consider whether:

- (a) The issues are difficult;
- (b) The Defendant is unable to comprehend the proceedings; or
- (c) Counsel is necessary to proceed with discovery.

(emphasis added). Accordingly, under NRS 34.750, it is clear that the Court has discretion in determining whether to appoint counsel.

More recently, the Nevada Supreme Court examined whether a district court appropriately denied a defendant’s request for appointment of counsel based upon the factors listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75,

1 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the defendant
2 filed a pro se postconviction petition for writ of habeas corpus and requested counsel be
3 appointed. Id. The district court ultimately denied the petitioner's petition and his appointment
4 of counsel request. Id. In reviewing the district court's decision, the Nevada Supreme Court
5 examined the statutory factors listed under NRS 34.750 and concluded that the district court's
6 decision should be reversed and remanded. Id. The Court explained that the petitioner was
7 indigent, his petition could not be summarily dismissed, and he had in fact satisfied the
8 statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor, the Court concluded that
9 because petitioner had represented he had issues with understanding the English language
10 which was corroborated by his use of an interpreter at his trial, that was enough to indicate that
11 the petitioner could not comprehend the proceedings. Id. Moreover, the petitioner had
12 demonstrated that the consequences he faced—a minimum eighty-five (85) year sentence—
13 were severe and his petition may have been the only vehicle for which he could raise his
14 claims. Id. at 76-77, 391 P.3d at 761-62. Finally, his ineffective assistance of counsel claims
15 may have required additional discovery and investigation beyond the record. Id.

16 Pursuant to NRS 34.750, Petitioner has not demonstrated that counsel should be
17 appointed. As a preliminary matter, Petitioner's request is suitable only for summary denial as
18 he has failed to provide any specific facts to support his bare and naked request. Hargrove v.
19 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

20 Notwithstanding summary denial, Petitioner's request should still be denied as he has
21 failed to meet any of the additional statutory factors under NRS 34.750. The issues Petitioner
22 raises are not difficult. Petitioner raises a meritless claim since there was substantial evidence
23 to support probable cause at the grand jury hearing. Additionally, Petitioner cannot establish
24 prejudice because he was convicted by a jury. As such, counsel is not necessary as the issue is
25 not difficult.

26 Additionally, there has been no indication that Petitioner is unable to comprehend the
27 proceedings. Unlike the petitioner in Renteria-Novoa who faced difficulties understanding the
28 English language, here Petitioner has failed to demonstrate any inability to understand these

1 proceedings. By filing the instant petition, Petitioner demonstrates he understands that a
2 Petition for Writ of Habeas Corpus is how you bring a claim of ineffective assistance of
3 counsel. Additionally, he is able to research and apply case law. As such, he can comprehend
4 the proceedings.

5 Finally, counsel is not necessary to proceed with further discovery in this case. Given
6 that Petitioner's claim is meritless, no additional discovery is necessary. Due to habeas relief
7 not being warranted, there is no need for additional discovery, let alone counsel's assistance
8 to conduct such investigation. Therefore, Petitioner's request should be denied.

9 **IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

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

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

19 The Nevada Supreme Court has held that if a petition can be resolved without
20 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
21 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
22 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
23 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
24 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
25 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that "[a] defendant seeking post-conviction
26 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the
27 record"). "A claim is 'belied' when it is contradicted or proven to be false by the record as it
28 existed at the time the claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

1 It is improper to hold an evidentiary hearing simply to make a complete record. *See*
2 State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The
3 district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted
4 ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary
5 hearing.”). Further, the United States Supreme Court has held that an evidentiary hearing is
6 not required simply because counsel’s actions are challenged as being unreasonable strategic
7 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge
8 post hoc rationalization for counsel’s decision making that contradicts the available evidence
9 of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis
10 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain
11 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (*citing*
12 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the
13 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466
14 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

15 Here, Petitioner requests an evidentiary hearing for his claim. There is no need for an
16 evidentiary hearing because Petitioner is not entitled to any relief. Petitioner’s claim fails as
17 he is unable to establish prejudice. As such, Petitioner would not be entitled to relief even if
18 counsel were deficient. No need exists to expand the record, as all claims can be disposed of
19 based on the existing record. Thus, Petitioner’s request for an evidentiary hearing should be
20 denied.

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1 CONCLUSION

2 Based on the foregoing, the State requests that this Court deny the Petition for Writ of
3 Habeas Corpus (Post-Conviction), Motion for Appointment of Counsel, and Request for
4 Evidentiary Hearing.

5 DATED this 21st day of January, 2022.

6 Respectfully submitted,

7 STEVEN WOLFSON
8 Clark County District Attorney
9 Nevada Bar #001565

10 BY /s/ TALEEN PANDUKHT
11 TALEEN PANDUKHT
12 Chief Deputy District Attorney
13 Nevada Bar #005734

14 CERTIFICATE OF MAILING

15 I hereby certify that service of the above and foregoing was made this 21st day of
16 January, 2022, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

17 JAMEL GIBBS, BAC#1056675
18 HIGH DESERT STATE PRISON
19 22010 COLD CREEK ROAD
20 P.O. BOX 650
21 INDIAN SPRINGS, NEVADA 89070

22 BY /s/ L.M.
23 Secretary for the District Attorney's Office
24
25
26
27

28 21CRN000371/TRP/ee/lm/GU



RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #005734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMAL GIBBS, aka Jamel Jacqkey,
#2662590

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-844881-W

C-21-355769-1

DEPT NO: X

**STATE'S SUPPLEMENTAL RESPONSE TO PETITIONER'S PETITION FOR
WRIT OF HABEAS CORPUS (POST-CONVICTION), MOTION FOR
APPOINTMENT OF COUNSEL, AND REQUEST FOR EVIDENTIARY HEARING**

DATE OF HEARING: MARCH 9, 2022
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and hereby submits the attached Supplemental Points and Authorities in Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction), Motion for Appointment of Counsel, and Request for Evidentiary Hearing.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 An Indictment was filed on May 6, 2021, charging Jamel Gibbs (hereinafter
4 “Petitioner”) with one count of Murder with Use of a Deadly Weapon and one count of
5 Ownership or Possession of Firearm by Prohibited Person. Trial proceeded on July 20, 2021.
6 On July 23, 2021, the jury returned a verdict of guilty of Second-Degree Murder with Use of
7 a Deadly Weapon. The State subsequently dismissed the Ownership or Possession of Firearm
8 by Prohibited Person charge.

9 On July 28, 2021, Petitioner filed a Motion for New Trial. The State’s Opposition was
10 filed on July 29, 2021. On August 30, 2021, the Court denied Petitioner’s Motion for New
11 Trial.

12 On October 8, 2021, Petitioner was sentenced to Life with the Possibility of Parole after
13 ten (10) years in the Nevada Department of Corrections (hereinafter “NDOC”), plus a
14 consecutive minimum of forty-eight (48) months and a maximum of one hundred twenty (120)
15 months in the NDOC for use of a deadly weapon, with one hundred ninety-nine (199) days
16 credit for time served.

17 The Judgment of Conviction was filed on October 12, 2021.

18 On October 16, 2021, Petitioner filed a Notice of Appeal.

19 On November 1, 2021, Petitioner’s Motion to Withdraw Attorney of Record and
20 Request for Appointment of Appellate Counsel was granted. On November 29, 2021, Jeannie
21 Hua, Esq. was appointed as appellate counsel. Petitioner’s appeal is currently still pending
22 under Nevada Supreme Court Case No. 83672.

23 On December 2, 2021, Petitioner filed the instant Petition for Writ of Habeas Corpus
24 (Post-Conviction) (hereinafter “Petition”), Motion for Appointment of Counsel and Request
25 for Evidentiary Hearing. The State’s Supplemental Response now follows.

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1 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
2 (1993).

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

14 The court begins with the presumption of effectiveness and then must determine
15 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
16 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
17 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
18 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
19 537 P.2d 473, 474 (1975).

20 Counsel cannot be ineffective for failing to make futile objections or arguments. See
21 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
22 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
23 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
24 (2002).

25 Based on the above law, the role of a court in considering allegations of ineffective
26 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
27 whether, under the particular facts and circumstances of the case, trial counsel failed to render
28 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 The decision not to call witnesses is within the discretion of trial counsel, and will not
17 be questioned unless it was a plainly unreasonable decision. See Rhyne v. State, 118 Nev. 1,
18 38 P.3d 163 (2002); see also Dawson v. State, 108 Nev. 112, 825 P.2d 593 (1992). Strickland
19 does not enact Newton's third law for the presentation of evidence, requiring for every
20 prosecution expert an equal and opposite expert from the defense. In many instances cross-
21 examination will be sufficient to expose defects in an expert's presentation. When defense
22 counsel does not have a solid case, the best strategy can be to say that there is too much doubt
23 about the State's theory for a jury to convict. Harrington v. Richter, 131 S.Ct. 770, 791, 578
24 F.3d. 944 (2011). “Strategic choices made by counsel after thoroughly investigating the
25 plausible options are almost unchallengeable.” Dawson v. State, 108 Nev. 112, 117, 825 P.2d
26 593, 596 (1992).

27 Even if a defendant can demonstrate that his counsel's representation fell below an
28 objective standard of reasonableness, he must still demonstrate prejudice and show a

1 reasonable probability that, but for counsel's errors, the result of the trial would have been
2 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
3 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability
4 sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89,
5 694, 104 S. Ct. at 2064-65, 2068).

6 The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the
7 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
8 the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
9 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
10 be supported with specific factual allegations, which if true, would entitle the petitioner to
11 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked"
12 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
13 34.735(6) states in relevant part, "[Petitioner] must allege specific facts supporting the claims
14 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
15 petition to be dismissed." (emphasis added).

16 In this case, Petitioner argues that trial counsel was ineffective because he failed to
17 notify him of the Marcum notice. Petition, at 3. The magistrate may order an accused to answer
18 the charges filed against him or her upon a finding that a public offense has been committed,
19 and slight or marginal evidence that the Appellant committed the crime. See, Sheriff v. Hodes,
20 96 Nev. 184, 186, 606 P.2d 178, 180 (1980); Beasley v. Lamb, 79 Nev. 78, 80, 378 P.2d 524,
21 525 (1963); State v. Fuchs, 78 Nev. 63, 65, 368 P.2d 869, 869 (1962). The State only must
22 present enough evidence to support a reasonable inference that the accused committed the
23 crime and does not need to negate all possible inferences as to doubt. See, Lamb v. Holsten,
24 85 Nev. 566, 568, 459 P.2d 771, 772 (1969); Johnson v. State, 82 Nev. 338, 341, 418 P.2d
25 495, 496 (1966). Further, the State may present a case based solely on circumstantial evidence.
26 See, Howard v. Sheriff, 93 Nev. 30, 31, 559 P.2d 827, 827 (1977). Finally, the Nevada
27 Supreme Court has explicitly held that a probable cause hearing is "not a substitute for trial,"
28 and that the "full and complete exploration of all facets of the case" should be reserved for

1 trial. Marcum v. Sheriff, 85 Nev. 175, 178, 451 P.2d 845, 847 (1969); see also, Robertson v.
2 Sheriff, 85 Nev. 681, 683, 462 P.2d 528, 529 (1969).

3 In a grand jury proceeding, neither a criminal defendant nor his or her counsel have a
4 right to be present. NRS 172.145; NRS 172.235; Maiden v. State, 84 Nev. 443, 445, 442 P.2d
5 902, 904 (1968). However, a defendant has a right to testify before a grand jury considering
6 an indictment against him or her. NRS 172.241(1); Sheriff v. Bright, 108 Nev. 498, 501, 835
7 P.2d 782, 784-85 (1992). NRS 172.241 governs the right of certain persons to appear before
8 the Grand Jury and it provides that the district attorney's notice upon a person whose
9 indictment is being considered by a grand jury is adequate if it is given to the person, or the
10 person's attorney of record, and gives the person not less than 5 days judicial days to submit a
11 request to testify to the district attorney. NRS 172.241(2)(a).

12 The Nevada Supreme Court has held that a defendant must be given reasonable notice
13 that a grand jury will meet and consider returning an indictment against him. Sheriff v.
14 Marcum, 105 Nev. 824, 783 P.2d 1389 (1989). In order for a defendant to exercise his
15 statutory right to testify before the grand jury, he must be given reasonable notice that he is
16 the target of a grand jury investigation. Id. at 826, 783 P.2d at 1390.

17 In Solis-Ramirez, the Nevada Supreme Court held that "reasonable" notice under NRS
18 172.241 required the State to inform the target of the investigation of the actual time, date and
19 place of the grand jury hearing otherwise the statutory right to testify would be meaningless.
20 Solis-Ramirez v. District Court, 112 Nev. 344, 913 P.2d 1293 (1996). In Solis-Ramirez, the
21 defendant received a Marcum notice indicating that the State intended to obtain a Grand Jury
22 indictment against him but failed to include the date, time, or location. Solis-Ramirez, 112
23 Nev. at 346, 913 P.2d at 1294. The Nevada Supreme Court held that the notice to the defendant
24 placed the ultimate "burden on him to call the district attorney's office from jail and located
25 the information regarding the date, time, and location of the hearing" and ordered the district
26 court to dismiss the indictment. Solis-Ramirez, 112 Nev. at 347, 913 P.2d at 1295. However,
27 it was not the legislature's intent that the right to testify be interpreted so expansively.
28 Therefore, in 1998, the legislature amended NRS 172.241 to clarify that notice is adequate if

1 it simply “advises the person that he may testify before the grand jury only if he submits a
2 written request to the district attorney and includes an address where the district attorney may
3 send a notice of the date, time and place of the scheduled proceeding of the grand jury.” NRS
4 172.241(2)(b). This legislative change places the burden on the person receiving notice of a
5 grand jury investigation to respond with written notice of their intent to testify before they are
6 entitled to details of the date, time, and place where they may appear to testify.

7 On April 15, 2021, the State provided Petitioner with Marcum notice. Exhibit 1.
8 Petitioner does not deny that the State properly notified counsel:

9 The State of Nevada did their part in giving Craig a proper notice
10 but he failed to give Petitioner “any” type of notice . . .”

11 Petition, at 3. Petitioner’s only contention is that trial counsel should have told him about the
12 notice. This is insufficient to establish prejudice. Only if the defendant demonstrates actual
13 prejudice based on lack of notice must the district court dismiss an Indictment. Hill v. State,
14 124 Nev. 546, 188 P.3d 51; Lisle v. State, 114 Nev. 221, 224, 954 P.2d 744, 746 (1998).
15 Implicit in the decisions of most district courts addressing claims of basic unfairness, which
16 violates due process within grand jury proceedings, “is the concept that substantial prejudice
17 to the defendant must be demonstrated before the province of the independent grand jury is
18 invaded.” Sheriff v. Keeney, 106 Nev. 213, 216, 791 P.2d 55, 57 (1990).

19 Therefore, even if Petitioner did not receive adequate notice from his attorney, any error
20 in the Grand Jury proceedings connected with the charging decision is harmless beyond a
21 reasonable doubt where a defendant was convicted after trial beyond a reasonable doubt,
22 because the conviction establishes that probable cause undoubtedly existed to bind the
23 defendant over for trial. In United States v. Mechanik, the United States Supreme Court held
24 that the jury's guilty verdict in prosecution for drug-related offenses and conspiracy established
25 probable cause to charge the defendants with those offenses and thus rendered harmless any
26 error in the grand jury's charging decision. United States v. Mechanik, 475 U.S. 66, 106 S. Ct.
27 938 (1986) (cited approvingly by and applied in the Marcum context in Lisle v. State, 114
28 Nev. 221, 224-225, 954 P.2d 744, 746-747 (1998)). The United States Supreme Court

1 concluded that the jury's subsequent guilty verdict means not only that there was probable
2 cause to believe that the defendants were guilty as charged, but also that they are in fact guilty
3 as charged beyond a reasonable doubt. Measured by the jury's verdict, then, any error in
4 the grand jury proceeding connected with the charging decision was harmless beyond a
5 reasonable doubt. Mechanik, 475 U.S. at 70, 106 S. Ct. at 941–42.

6 The Nevada Supreme Court has also suggested that a jury verdict of guilt may render
7 harmless an error in the grand jury proceedings. Dettloff v. State, 120 Nev. 588, 596, 97 P.3d
8 586, 591 (2004). The Nevada Supreme Court found that the jury convicting Dettloff under a
9 higher burden of proof cured any irregularities that may have occurred during the grand jury
10 proceedings. Dettloff, 120 Nev. at 596, 97 P.3d at 591.

11 The State presented substantial evidence of Petitioner's guilt during the Grand Jury
12 proceeding. Brionta testified that Petitioner and Mimi started a fight with her and Jaylon. Prior
13 to and during this fight, she saw Petitioner with a gun. She heard a gunshot and saw Petitioner
14 waving the gun around. Petitioner was the only person in the area that she saw with a gun. Her
15 testimony established probable cause that Petitioner murdered Jaylon with a deadly weapon.
16 As such, there was substantial evidence for the Grand Jury to indict Petitioner. Additionally,
17 there is nothing in the transcripts that the Grand Jury held his absence against him.

18 Furthermore, Petitioner cannot face prejudice as a jury found him guilty beyond a
19 reasonable doubt. Any error associated with his lack of notice is harmless beyond a reasonable
20 doubt due to his conviction. Thus, Petitioner's claim of ineffective assistance of trial counsel
21 for allegedly failing to present Petitioner's testimony and exculpatory evidence to the Grand
22 Jury is moot because a jury has already found Petitioner guilty of the charged offense beyond
23 a reasonable doubt. Weber v. State, 121 Nev. 554, 585, 119 P.3d 107, 128 (2005). There is no
24 evidence whatsoever to suggest that Petitioner's testimony or any exculpatory evidence
25 Petitioner may have presented would have negated the probable cause evidence offered by the
26 State. As such, this Court should deny Petitioner's claim.

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1 II. PETITIONER IS NOT ENTITLED TO COUNSEL

2 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
3 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
4 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
5 Supreme Court similarly observed that “[t]he Nevada Constitution...does not guarantee a right
6 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right to
7 counsel provision as being coextensive with the Sixth Amendment to the United States
8 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)
9 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
10 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
11 164, 912 P.2d at 258.

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

15 A petition may allege that the Defendant is unable to pay the costs
16 of the proceedings or employ counsel. If the court is satisfied that
17 the allegation of indigency is true and the petition *is not dismissed*
18 *summarily*, the court may appoint counsel at the time the court
orders the filing of an answer and a return. In making its
determination, the court may consider whether:

- 19 (a) The issues are difficult;
20 (b) The Defendant is unable to comprehend the proceedings; or
21 (c) Counsel is necessary to proceed with discovery.
22

23 (emphasis added). Accordingly, under NRS 34.750, it is clear that the Court has discretion in
24 determining whether to appoint counsel.

25 More recently, the Nevada Supreme Court examined whether a district court
26 appropriately denied a defendant’s request for appointment of counsel based upon the factors
27 listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-
28 Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75,

1 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the defendant
2 filed a pro se postconviction petition for writ of habeas corpus and requested counsel be
3 appointed. Id. The district court ultimately denied the petitioner's petition and his appointment
4 of counsel request. Id. In reviewing the district court's decision, the Nevada Supreme Court
5 examined the statutory factors listed under NRS 34.750 and concluded that the district court's
6 decision should be reversed and remanded. Id. The Court explained that the petitioner was
7 indigent, his petition could not be summarily dismissed, and he had in fact satisfied the
8 statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor, the Court concluded that
9 because petitioner had represented he had issues with understanding the English language
10 which was corroborated by his use of an interpreter at his trial, that was enough to indicate that
11 the petitioner could not comprehend the proceedings. Id. Moreover, the petitioner had
12 demonstrated that the consequences he faced—a minimum eighty-five (85) year sentence—
13 were severe and his petition may have been the only vehicle for which he could raise his
14 claims. Id. at 76-77, 391 P.3d at 761-62. Finally, his ineffective assistance of counsel claims
15 may have required additional discovery and investigation beyond the record. Id.

16 Pursuant to NRS 34.750, Petitioner has not demonstrated that counsel should be
17 appointed. As a preliminary matter, Petitioner's request is suitable only for summary denial as
18 he has failed to provide any specific facts to support his bare and naked request. Hargrove v.
19 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

20 Notwithstanding summary denial, Petitioner's request should still be denied as he has
21 failed to meet any of the additional statutory factors under NRS 34.750. The issues Petitioner
22 raises are not difficult. Petitioner raises a meritless claim since there was substantial evidence
23 to support probable cause at the grand jury hearing. Additionally, Petitioner cannot establish
24 prejudice because he was convicted by a jury. As such, counsel is not necessary as the issue is
25 not difficult.

26 Additionally, there has been no indication that Petitioner is unable to comprehend the
27 proceedings. Unlike the petitioner in Renteria-Novoa who faced difficulties understanding the
28 English language, here Petitioner has failed to demonstrate any inability to understand these

1 proceedings. By filing the instant petition, Petitioner demonstrates he understands that a
2 Petition for Writ of Habeas Corpus is how you bring a claim of ineffective assistance of
3 counsel. Additionally, he is able to research and apply case law. As such, he can comprehend
4 the proceedings.

5 Finally, counsel is not necessary to proceed with further discovery in this case. Given
6 that Petitioner's claim is meritless, no additional discovery is necessary. Due to habeas relief
7 not being warranted, there is no need for additional discovery, let alone counsel's assistance
8 to conduct such investigation. Therefore, Petitioner's request should be denied.

9 **III. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

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

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

19 The Nevada Supreme Court has held that if a petition can be resolved without
20 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
21 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
22 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
23 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
24 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
25 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that "[a] defendant seeking post-conviction
26 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the
27 record"). "A claim is 'belied' when it is contradicted or proven to be false by the record as it
28 existed at the time the claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

1 It is improper to hold an evidentiary hearing simply to make a complete record. *See*
2 State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The
3 district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted
4 ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary
5 hearing.”). Further, the United States Supreme Court has held that an evidentiary hearing is
6 not required simply because counsel’s actions are challenged as being unreasonable strategic
7 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge
8 post hoc rationalization for counsel’s decision making that contradicts the available evidence
9 of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis
10 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain
11 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (*citing*
12 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the
13 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466
14 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

15 Here, Petitioner requests an evidentiary hearing for his claim. There is no need for an
16 evidentiary hearing because Petitioner is not entitled to any relief. Petitioner’s claim fails as
17 he is unable to establish prejudice. As such, Petitioner would not be entitled to relief even if
18 counsel were deficient. No need exists to expand the record, as all claims can be disposed of
19 based on the existing record. Thus, Petitioner’s request for an evidentiary hearing should be
20 denied.

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1 CONCLUSION

2 Based on the foregoing, the State requests that this Court deny the Petition for Writ of
3 Habeas Corpus (Post-Conviction), Motion for Appointment of Counsel, and Request for
4 Evidentiary Hearing.

5 DATED this 10th day of February, 2022.

6 Respectfully submitted,

7 STEVEN WOLFSON
8 Clark County District Attorney
9 Nevada Bar #001565

10 BY /s/ TALEEN PANDUKHT
11 TALEEN PANDUKHT
12 Chief Deputy District Attorney
13 Nevada Bar #005734

14 CERTIFICATE OF MAILING

15 I hereby certify that service of the above and foregoing was made this 10th day of
16 February, 2022, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

17 JAMEL GIBBS, BAC#1056675
18 HIGH DESERT STATE PRISON
19 22010 COLD CREEK ROAD
20 P.O. BOX 650
21 INDIAN SPRINGS, NEVADA 89070

22 BY /s/ L.M.
23 Secretary for the District Attorney's Office
24
25
26
27

28 21CRN000371/TRP/ee/lm/GU

District Court
Clark County, Nevada

Jamel Gibbs #1056675

Petitioner,

Case NO: A-21-844881-W

C-21-355769-1

V.

The State of Nevada

Respondant

Dept NO: X

"Motion for Change of Address"

Comes now, Jamel Gibbs, herein above respectfully
moves this Honorable Court for an Notice to change
Address From "High Desert State Prison", P.O Box
650, Indian Springs NV, 89070 TO, "Southern
Desert Correctional Center", P.O Box 208,
Indian Springs, NV 89070.

Dated this 4th day of February, 2022

Respectfully Submitted

x Jamel Gibbs

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FEB 09 2022

CLERK OF THE COURT

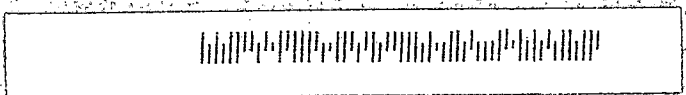
JANE GIBBS #1056675

"Southern Desert Connection Center"

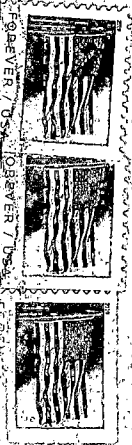
PO Box 208,

Indian Springs, Nevada

89070



Las Vegas P&DC 89199
MON 07 FEB 2022 PM



200 Lewis Ave 3rd fl
Department 108th Judicial District
Court
Las Vegas Nevada 89155

Southern Desert
Correctional Center
FEB 07 2022
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**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

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

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

February 18, 2022

Attorney:	Jeannie N Hua	Case Number:	A-21-844881-W
	Law Office of Jeannie N Hua Inc	Department:	C-21-355769-1
	Attn Jeannie N Hua		Department 10
	5550 Painted Mirage Road Suite		
	320		
	Las Vegas NV 89149		
Defendant:	Jamel Gibbs		

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: **Petitioner's Response To Respondents Answer**

Rule 3.70. Papers which May Not be Filed

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

Cordially yours,

DC Criminal Desk # 27

District Court
Clark County, Nevada

Jamel Gibbs
#10560075 Petitioner

V.

State of Nevada

NO. A-21-844881-W

Petitioner's response to respondents

ANSWER

Dept. 10

The Court directed respondent to "File and Serve
an Answer in accordance with rule 5 of the rules
Governing Section 2254 in the United States
District Courts"

I.
State Court Record

RECEIVED

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CLERK OF THE COURT

Respectfully
Submitted

Petitioner

v. Jamel Gibbs et al.

II.

1. Statement of facts \ case

On March 3rd, 2021 at approximately 1840 hours officers responded to 3940 Scoot Robinson Blvd, in reference to a person reporting who stated a male was just shot. The subject was later identified as Taylon Tiffith and he was laying in the driveway of the Hidden Canyon Village Condos.

2. On March 5th, 2021 an arrest warrant was signed and issued from North Las Vegas Judge, Judge Hood.

3. On March 24, 2021 Petitioner was located and picked up by the FBI Criminal Apprehension Team, taken into custody and booked 1 count of Open Murder. (Case number. 21CR000371. Dept 1.)

4. On April 13th, 2021 Petitioner appeared in Justice Court Petitioner's lawyer, Craig Mueller, ESQ asked for a continuance ~~and~~ due to state giving him the discovery on that same very court date. Preliminary was reset to May 12th, 2021.

5. On May 5th, 2021 at approximately 1:36^{pm} a Grand Jury hearing was held that Petitioner had no knowledge of. (G.J case no. 19B61287X)

6. On May 10th Petitioner was arraigned on the new indictment Count 1: Open Murder d/w Count 2: Possession of Firearm by Prohibited Person. Pled NOT Guilty and Invoked the 60 day RULE.

III. LEGAL Argument

A. Petitioner did not receive effective Assistance of Counsel:

The Sixth Amendment to the U.S constitution guarantees the right to effective counsel. Strickland V. Washington, 476 US, 688, 104 S Ct. 2052, 70 L.Ed. 2d 674 (1984). A defendant is entitled to a new trial if he can show (1) that, ~~before~~ trial counsel's performance was defective; and (2) a reasonable probability that, but deficient

1 Performance, the outcome of the proceedings would have been different.
2 A Petitioner can meet this standard by showing that counsel failed
3 to conduct adequate pre-trial investigation. Jones V. Wood, 114 F.
4 3d 1002 (9th cir 1997) "Before an attorney can make a reasonable
5 strategic choice against pursuing a certain line of investigation.
6 the attorney must obtain the facts needed to make the ~~decision~~
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9 As discussed in the original Petition, Mr Gibbs did not receive
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11 investigation. Sheriff, Humboldt County V. Marcum, 105 Nev.
12 824, 783, P.2d 1384, 1989 Nev Lexis 311 (Nev 1989) clearly states "
13 Reasonable notice is required before a defendant is indicted by a
14 grand jury". See also Maiden V. State, 84 Nev. 443, 445, 442
15 P.2d 902, 904 (1968) "In a grand jury proceedings, neither a
16 criminal defendant nor his or her counsel have a right to be present.
17 However, a defendant has a right to testify before a grand jury considering
18 an indictment against him or her". By Craig Mueller not giving Petitioner
19 notice of him being a target in a Grand Jury investigation is clearly a
20 violation of his constitutional privilege to testify in front of a grand jury.
21 If Mr Mueller would have provided Mr. Gibbs with a reasonable notice,
22 Mr Gibbs would have wanted to invoke his constitutional right to testify
23 in front of a grand jury. Gibbs was available and willing to do so if had
24 been notified, and if asked, Gibbs would have testified to the following:
25 1. On 3-3-2021 Taylor Tiffitt and Brianta Terrell came to Michaela
26 Parkers home to drop off Tiffitt's and Parkers daughter. 2. Tiffitt
27 called Parker three minutes later to advise her that he still had the

1 Daughters phone, and to meet at the front gate of the condos to give it to
2 her. 3 When Gibbs and Parker left the house to meet, the daughter
3 stayed home. 4 Gibbs never had a firearm and when approaching the
4 front gate, Tiffith and Terrell were already out of the car. 5 People were
5 outside driving in and out of the front gates. 6 When Terrell and Tiffith
6 started fighting Parker, people started to try and break them up. Gibbs
7 never exited the vehicle. 7 When the shots rang out people started to run
8 and drive away including Gibbs. 8 Gibbs never seen who started
9 shooting. This information that petitioner wanted the grand jury to hear
10 was critical, it would have said to the grand jury that Gibbs did not
11 murder any-one, let alone had a firearm. B. Craig Mueller not giving
12 petitioner notice made ^{him} prejudice to the fact that; Mueller didn't give Gibbs
13 a golden opportunity to defend his-self. "Only if the defendant demonstrate
14 actual prejudice based on lack of notice must the district court dismiss an
15 indictment" Hill V. State, 124 Nev, 546, 188 P3d 51. Mr Mueller did
16 not make a reasonable strategic choice to not give Gibbs the marcum
17 notice that is required to his then client Jamal Gibbs. That is not
18 just a constitutional violation but a 6th Amendment, right to effective counsel
19 and it ~~is a~~ ^{is} Amendment due Process Violation. If he would
20 have given any notice it would have been very different outcome of this
21 case.

22 B. Gibbs was Prejudice ^{by} Counsel's errors.
23 The prejudice effect of counsel's errors must be considered cumulatively
24 rather than individually. Williams V. Taylor, 529 U.S. 362, 120 S. Ct. 1495,
25 1515, 146 L. Ed. 2d 389 (2000); Harris V. Wood, 124 F.3d, 1432, 1438-
26 39 (9th Cir 1995) (holding that conclusion on Strickland) Here, ~~an~~ in the
27 case at hand, on April, 15, 2021 the DA properly gave Craig Mueller

ex. Marcan notice on his then Client Jamel Gibbs. Mr Mueller failed to give Gibbs any type of notice. If Petitioner gotten any type of notice, he would have invoked his constitutional right to testify in front of a grand jury, and what he would have testified would have persuade the grand jury from charging him. Trial Counsel Prejudiced Gibbs by not giving Gibbs the opportunity to testify vital information before the Grand Jury. The respondent seems to not understand how Craig Mueller Prejudiced his then Client Mr Gibbs; it's quite simple; the state send's notice, Craig dosent notify Gibbs, now Gibbs cant provide information that would likely exonerate him from being charged with such charges....

Witch means: MUELLAR PREJUDICED Gibbs! This is more than a "harmless error", in fact this error is the stem of the outcome of the Petitioner case. The same testimony Brionta Terrell testified ~~not~~ at trial, was at the Grand Jury hearing. Nothing! Terrell Never testified that the Petitioner Murdered anyone; let alone shoot anything. Her testimony was clearly that she seen Petitioner with a gun and she heard a gunshot. So by Craig not giving the Petitioner the opportunity to Present his Defence to such a weak testimony from Terrell means CRAIG PREJUDICED Gibbs!

C. Petitioner is entitled to Evidentiary hearing.

Fortunately, the Supreme Court has constructed the "failed to develop" language, ~~in~~ narrowly, holding that "A failure to develop the factual basis of a claim is not established unless there is a lack of diligence, or some greater fault, attributable to the prisoner or the prisoners counsel" Williams V. Taylor, 529 U.S. 420, 432, 140 L. Ed. 2d 435 (2000); Keeney V. Tamaayo-Reyes, 504 U.S. 1112 S.Ct. 1715 (1992) (entitled to an evidentiary hearing if cause can be shown for failure to develop the facts in the state court proceedings and actual Prejudice resulted from that failure, or a fundamental miscarriage

of Justice would result from a failure to hold a hearing) In the Present case, Petitioner has fully developed the factual basis of this claim meaning, Petitioner is entitled to an evidentiary hearing because the alleged facts if Proven, would ~~cause to be~~ give Gibbs ~~relief~~ relief. Gibbs' constitutional right was violated by not getting the marcum notice from his trial counsel, so the only true way knowing if Gibbs recieved the notice or not is throw a evidentiary hearing. When a colorable Sixth Amendment claim is presented, and where material facts are in dispute involving inconsistencies beyond the record, an Evidentiary hearing is necessary; United States V. Write, 538 Fed. Appx. 237. If a factual dispute exists, an evidentiary hearing must be held. Bender V. United States, 387 F.2d 628, 630. Habeas court must hold an evidentiary hearing to determine the truth of Petitioners claim when a factual dispute exist; Stokes V. United States, 652 F.2d 1, 2 (7th Cir 1981). Expanding The Record is Necessary. By expanding the record, one of the documents that may be presented is the actual "Marcum Notice" it self. This document may back up the Petitioners claim by showing and Proving to the courts that Petitioner never recieved this notice by Petitioners signature not being on this notice. Thus, Petitioner should be granted a evidentiary hearing.

D. Petitioner is Entitled to Counsel.

"The District Court must ~~evaluate~~ evaluate the likelihood of Success on the merits as well as the ability of the Petitioner to articulate his claim prose in light of the complexity of the legal issues involved"; Weygant V. Lock, 719 F.2d 952, 954 (4th Cir. 1983). Appointment of Counsel in a habeas case is to be made considering a variety of factors, including the merits of the litigants claims, the nature of the factual issues raised in the claims, and the complexity of the issues presented; Engberg V. Wyoming, 2003 2005 F.3d 1109, 1122 (10th Cir 2001). The resprandant seems to feel that Petitioner is not entitled to Counsel for some odd reason.

1 NRS 34.750 reads: "A petition may allege that the Defendant is unable
2 to pay the cost of the proceedings or employ counsel. If the court is satisfied that
3 the allegation of indigency is true and the petition is not dismissed summarily,
4 the court may appoint counsel at the time the court orders the filing of an
5 answer and a return. In making its determination, the court may consider
6 whether: (A) The issues are difficult (B) The defendant is unable to comprehend the
7 proceedings; or (C) Counsel is necessary to proceed with discovery." It's obvious
8 that the indigency is true and that petition is not dismissed summarily, but
9 also, the claim that Petitioner is raising is very difficult, and could use
10 needed help from counsel. Just because Petitioner is able to comprehend
11 and understands the English language doesn't mean he isn't entitled to
12 counsel. The Claim that Petitioner raises has more than enough "Merit" by
13 establishing the (1) Cause and (2) Prejudice... The very important two Prong
14 test, ~~and~~ "Witch means"; additional discovery is necessary and needed counsel
15 is also necessary. ~~The Petitioner should be granted counsel.~~
16 Additional Discovery can Back up Petitioner's Claim by Obtaining The "Marcum
17 Notice" and showing and Proving to the courts that Petitioner never received the
18 notice by his signature not being on there, and by having counsel, Petitioner can
19 do just that. Thus, Petitioner Should be granted Counsel.
20 Ex Jurisdiction Still in District Court.
21 ~~Pursuant~~ Pursuant to NRS 177.155, the supreme court retains control
22 and supervision of ^{case} from the filing of the notice of appeal until the issuance of
23 the certificate of Judgment" Buffington 110 Nev. at 1212, 868 P.2d at 1044.
24 The Respondant seems to keep quoting Buffington as if Buffington's case
25 was identical to Petitioner's. In Buffington's Particular case, he never had an
26 Petition for Writ Of Habeas Corpus While his Appeal was pending, so of
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~~On the basis of the Nevada Supreme Court's decision in the~~
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But the respondent requesting this court to decline to address this Petition on
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request.

IV Conclusion

The Court Should Grant the Writ of Habeas Corpus. In the
alternate, it should grant an evidentiary hearing on the claim.

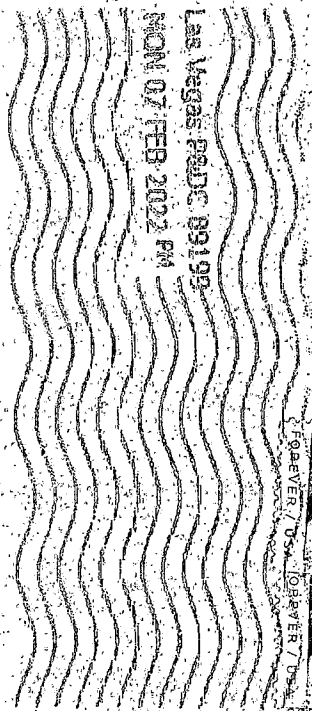
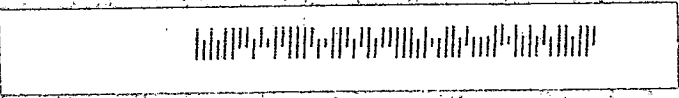
Dated 4th day of February, 2022

Respectfully Submitted

#10510075

X Jamel Gibbs Jy
Petitioner

JAMIE GIBBS #10566075
"Southern Desert Connection Center"
PO Box 208,
Indian Springs, Nevada
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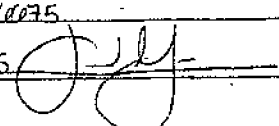
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Respectfully Submitted

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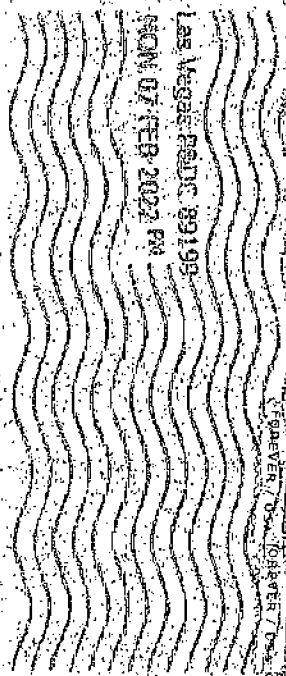
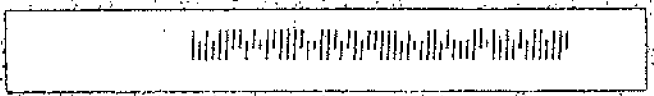
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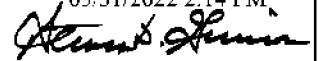


Las Vegas, NV 89199
FEB 07 11:00 AM



200 Lewis / 3rd
Department 10.8th Judicial District
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Southern District
United States District Court
FEB 07 2022
OUTGOING MAIL



CLERK OF THE COURT

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #005734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMAL GIBBS,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-844881-W

(C-21-355769-1)

DEPT NO: X

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: MARCH 9, 2022
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable TIERRA JONES, District Judge, on the 9th day of March 2022, Petitioner not being present, the State being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ALEXANDER CHEN, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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

2 **PROCEDURAL HISTORY**

3 An Indictment was filed on May 6, 2021, charging Jamel Gibbs (hereinafter
4 “Petitioner”) with one count of Murder with Use of a Deadly Weapon and one count of
5 Ownership or Possession of Firearm by Prohibited Person. Trial proceeded on July 20, 2021.
6 On July 23, 2021, the jury returned a verdict of guilty of Second-Degree Murder with Use of
7 a Deadly Weapon. The State subsequently dismissed the Ownership or Possession of Firearm
8 by Prohibited Person charge.

9 On July 28, 2021, Petitioner filed a Motion for New Trial. The State’s Opposition was
10 filed on July 29, 2021. On August 30, 2021, the Court denied Petitioner’s Motion for New
11 Trial.

12 On October 8, 2021, Petitioner was sentenced to Life with the Possibility of Parole after
13 ten (10) years in the Nevada Department of Corrections (hereinafter “NDOC”), plus a
14 consecutive minimum of forty-eight (48) months and a maximum of one hundred twenty (120)
15 months in the NDOC for use of a deadly weapon, with one hundred ninety-nine (199) days
16 credit for time served.

17 The Judgment of Conviction was filed on October 12, 2021.

18 On October 16, 2021, Petitioner filed a Notice of Appeal.

19 On November 1, 2021, Petitioner’s Motion to Withdraw Attorney of Record and
20 Request for Appointment of Appellate Counsel was granted. On November 29, 2021, Jeannie
21 Hua, Esq. was appointed as appellate counsel. Petitioner’s appeal is currently still pending
22 under Nevada Supreme Court Case No. 83672.

23 On December 2, 2021, Petitioner filed the instant Petition for Writ of Habeas Corpus
24 (Post-Conviction) (hereinafter “Petition”), Motion for Appointment of Counsel and Request
25 for Evidentiary Hearing. On January 21, 2022, the State filed its Response.

26 On February 9, 2022, this Court ordered the State to file a Supplemental Response. On
27 February 10, 2022, the State filed its Supplemental Response. On March 4, 2022, Petitioner
28 filed a Reply to the State’s Supplemental Response.

1 On March 9, 2022, this Court denied the Petition, finding as follows.

2 **FACTUAL BACKGROUND¹**

3 On May 3, 2021, around 6:30 PM, Brionta Terrell (hereinafter “Brionta”) and Jaylon
4 Tiffith (hereinafter “Jaylon”) drove to Hidden Canyon Villas to drop off Jaylon’s daughter,
5 Navaeh. Navaeh lived at the apartment complex with her mother, Mimi. At the time, Mimi
6 and Petitioner were in a relationship. Upon arriving, Brionta saw Petitioner in his garage.

7 After dropping Navaeh off and leaving, Mimi called Brionta to let her know Navaeh
8 left her phone in the car. Brionta and Jaylon returned the complex and saw Petitioner driving
9 with Mimi and Navaeh. Petitioner stopped his car behind Brionta and both Petitioner and Mimi
10 exited the car. Brionta noticed that Petitioner had a firearm. Without provocation, Petitioner
11 and Mimi started to argue with Brionta and Jaylon.

12 As the argument escalated, Mimi started to throw rocks at Brionta’s car. Jaylon
13 attempted to intervene and prevent Mimi from throwing rocks. Jaylon was unsuccessful as
14 Mimi pulled Brionta out of the car starting a fight. Jaylon attempted to break up the fight, but
15 Petitioner joined the fight and started to punch Brionta.

16 Jaylon disengaged and went to get his daughter who was in Petitioner’s car. While in
17 the midst of the fight, Brionta heard a gunshot and saw Petitioner waving his gun around.
18 Petitioner then quickly got in the car and fled the scene.

19 Brionta looked around and saw Jaylon on the floor. She noticed a gunshot wound in his
20 head. When Brionta called 911, Mimi ran off. Jaylon died as a result of the gunshot wound.

21 **ANALYSIS**

22 **I. PETITIONER DID NOT RECEIVE INEFFECTIVE ASSISTANCE OF**
23 **COUNSEL**

24 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
25 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
26 defense.” The United States Supreme Court has long recognized that “the right to counsel is
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28 ¹ The transcripts for Petitioner’s jury trial have been requested. Since they have not been filed,
this Court relies upon the Grand Jury Transcripts.

1 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
2 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
3 (1993).

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

15 The court begins with the presumption of effectiveness and then must determine
16 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
17 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
18 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
19 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
20 537 P.2d 473, 474 (1975).

21 Counsel cannot be ineffective for failing to make futile objections or arguments. See
22 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
23 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
24 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
25 (2002).

26 Based on the above law, the role of a court in considering allegations of ineffective
27 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
28 whether, under the particular facts and circumstances of the case, trial counsel failed to render

1 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
2 (1978). This analysis does not mean that the court should “second guess reasoned choices
3 between trial tactics nor does it mean that defense counsel, to protect himself against
4 allegations of inadequacy, must make every conceivable motion no matter how remote the
5 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
6 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
7 cannot create one and may disserve the interests of his client by attempting a useless charade.”
8 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

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

17 The decision not to call witnesses is within the discretion of trial counsel, and will not
18 be questioned unless it was a plainly unreasonable decision. See Rhyne v. State, 118 Nev. 1,
19 38 P.3d 163 (2002); see also Dawson v. State, 108 Nev. 112, 825 P.2d 593 (1992). Strickland
20 does not enact Newton's third law for the presentation of evidence, requiring for every
21 prosecution expert an equal and opposite expert from the defense. In many instances cross-
22 examination will be sufficient to expose defects in an expert's presentation. When defense
23 counsel does not have a solid case, the best strategy can be to say that there is too much doubt
24 about the State's theory for a jury to convict. Harrington v. Richter, 131 S.Ct. 770, 791, 578
25 F.3d. 944 (2011). “Strategic choices made by counsel after thoroughly investigating the
26 plausible options are almost unchallengeable.” Dawson v. State, 108 Nev. 112, 117, 825 P.2d
27 593, 596 (1992).

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1 Even if a defendant can demonstrate that his counsel's representation fell below an
2 objective standard of reasonableness, he must still demonstrate prejudice and show a
3 reasonable probability that, but for counsel's errors, the result of the trial would have been
4 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
5 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability
6 sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89,
7 694, 104 S. Ct. at 2064-65, 2068).

8 The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the
9 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
10 the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
11 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
12 be supported with specific factual allegations, which if true, would entitle the petitioner to
13 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked"
14 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
15 34.735(6) states in relevant part, "[Petitioner] must allege specific facts supporting the claims
16 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
17 petition to be dismissed." (emphasis added).

18 In this case, Petitioner argues that trial counsel was ineffective because he failed to
19 notify him of the Marcum notice. Petition, at 3. The magistrate may order an accused to answer
20 the charges filed against him or her upon a finding that a public offense has been committed,
21 and slight or marginal evidence that the Appellant committed the crime. See, Sheriff v. Hodes,
22 96 Nev. 184, 186, 606 P.2d 178, 180 (1980); Beasley v. Lamb, 79 Nev. 78, 80, 378 P.2d 524,
23 525 (1963); State v. Fuchs, 78 Nev. 63, 65, 368 P.2d 869, 869 (1962). The State only must
24 present enough evidence to support a reasonable inference that the accused committed the
25 crime and does not need to negate all possible inferences as to doubt. See, Lamb v. Holsten,
26 85 Nev. 566, 568, 459 P.2d 771, 772 (1969); Johnson v. State, 82 Nev. 338, 341, 418 P.2d
27 495, 496 (1966). Further, the State may present a case based solely on circumstantial evidence.
28 See, Howard v. Sheriff, 93 Nev. 30, 31, 559 P.2d 827, 827 (1977). Finally, the Nevada

1 Supreme Court has explicitly held that a probable cause hearing is “not a substitute for trial,”
2 and that the “full and complete exploration of all facets of the case” should be reserved for
3 trial. Marcum v. Sheriff, 85 Nev. 175, 178, 451 P.2d 845, 847 (1969); see also, Robertson v.
4 Sheriff, 85 Nev. 681, 683, 462 P.2d 528, 529 (1969).

5 In a grand jury proceeding, neither a criminal defendant nor his or her counsel have a
6 right to be present. NRS 172.145; NRS 172.235; Maiden v. State, 84 Nev. 443, 445, 442 P.2d
7 902, 904 (1968). However, a defendant has a right to testify before a grand jury considering
8 an indictment against him or her. NRS 172.241(1); Sheriff v. Bright, 108 Nev. 498, 501, 835
9 P.2d 782, 784-85 (1992). NRS 172.241 governs the right of certain persons to appear before
10 the Grand Jury and it provides that the district attorney’s notice upon a person whose
11 indictment is being considered by a grand jury is adequate if it is given to the person, or the
12 person’s attorney of record, and gives the person not less than 5 days judicial days to submit a
13 request to testify to the district attorney. NRS 172.241(2)(a).

14 The Nevada Supreme Court has held that a defendant must be given reasonable notice
15 that a grand jury will meet and consider returning an indictment against him. Sheriff v.
16 Marcum, 105 Nev. 824, 783 P.2d 1389 (1989). In order for a defendant to exercise his
17 statutory right to testify before the grand jury, he must be given reasonable notice that he is
18 the target of a grand jury investigation. Id. at 826, 783 P.2d at 1390.

19 In Solis-Ramirez, the Nevada Supreme Court held that “reasonable” notice under NRS
20 172.241 required the State to inform the target of the investigation of the actual time, date and
21 place of the grand jury hearing otherwise the statutory right to testify would be meaningless.
22 Solis-Ramirez v. District Court, 112 Nev. 344, 913 P.2d 1293 (1996). In Solis-Ramirez, the
23 defendant received a Marcum notice indicating that the State intended to obtain a Grand Jury
24 indictment against him but failed to include the date, time, or location. Solis-Ramirez, 112
25 Nev. at 346, 913 P.2d at 1294. The Nevada Supreme Court held that the notice to the defendant
26 placed the ultimate “burden on him to call the district attorney’s office from jail and located
27 the information regarding the date, time, and location of the hearing” and ordered the district
28 court to dismiss the indictment. Solis-Ramirez, 112 Nev. at 347, 913 P.2d at 1295. However,

1 it was not the legislature's intent that the right to testify be interpreted so expansively.
2 Therefore, in 1998, the legislature amended NRS 172.241 to clarify that notice is adequate if
3 it simply "advises the person that he may testify before the grand jury only if he submits a
4 written request to the district attorney and includes an address where the district attorney may
5 send a notice of the date, time and place of the scheduled proceeding of the grand jury." NRS
6 172.241(2)(b). This legislative change places the burden on the person receiving notice of a
7 grand jury investigation to respond with written notice of their intent to testify before they are
8 entitled to details of the date, time, and place where they may appear to testify.

9 On April 15, 2021, the State provided Petitioner with Marcum notice. Exhibit 1.
10 Petitioner does not deny that the State properly notified counsel:

11 The State of Nevada did their part in giving Craig a proper notice
12 but he failed to give Petitioner "any" type of notice . . ."

13 Petition, at 3. Petitioner's only contention is that trial counsel should have told him about the
14 notice. This is insufficient to establish prejudice. Only if the defendant demonstrates actual
15 prejudice based on lack of notice must the district court dismiss an Indictment. Hill v. State,
16 124 Nev. 546, 188 P.3d 51; Lisle v. State, 114 Nev. 221, 224, 954 P.2d 744, 746 (1998).
17 Implicit in the decisions of most district courts addressing claims of basic unfairness, which
18 violates due process within grand jury proceedings, "is the concept that substantial prejudice
19 to the defendant must be demonstrated before the province of the independent grand jury is
20 invaded." Sheriff v. Keeney, 106 Nev. 213, 216, 791 P.2d 55, 57 (1990).

21 Therefore, even if Petitioner did not receive adequate notice from his attorney, any error
22 in the Grand Jury proceedings connected with the charging decision is harmless beyond a
23 reasonable doubt where a defendant was convicted after trial beyond a reasonable doubt,
24 because the conviction establishes that probable cause undoubtedly existed to bind the
25 defendant over for trial. In United States v. Mechanik, the United States Supreme Court held
26 that the jury's guilty verdict in prosecution for drug-related offenses and conspiracy established
27 probable cause to charge the defendants with those offenses and thus rendered harmless any
28 error in the grand jury's charging decision. United States v. Mechanik, 475 U.S. 66, 106 S. Ct.

1 938 (1986) (cited approvingly by and applied in the Marcum context in Lisle v. State, 114
2 Nev. 221, 224-225, 954 P.2d 744, 746-747 (1998)). The United States Supreme Court
3 concluded that the jury's subsequent guilty verdict means not only that there was probable
4 cause to believe that the defendants were guilty as charged, but also that they are in fact guilty
5 as charged beyond a reasonable doubt. Measured by the jury's verdict, then, any error in
6 the grand jury proceeding connected with the charging decision was harmless beyond a
7 reasonable doubt. Mechanik, 475 U.S. at 70, 106 S. Ct. at 941-42.

8 The Nevada Supreme Court has also suggested that a jury verdict of guilt may render
9 harmless an error in the grand jury proceedings. Dettloff v. State, 120 Nev. 588, 596, 97 P.3d
10 586, 591 (2004). The Nevada Supreme Court found that the jury convicting Dettloff under a
11 higher burden of proof cured any irregularities that may have occurred during the grand jury
12 proceedings. Dettloff, 120 Nev. at 596, 97 P.3d at 591.

13 The State presented substantial evidence of Petitioner's guilt during the Grand Jury
14 proceeding. Brionta testified that Petitioner and Mimi started a fight with her and Jaylon. Prior
15 to and during this fight, she saw Petitioner with a gun. She heard a gunshot and saw Petitioner
16 waving the gun around. Petitioner was the only person in the area that she saw with a gun. Her
17 testimony established probable cause that Petitioner murdered Jaylon with a deadly weapon.
18 As such, there was substantial evidence for the Grand Jury to indict Petitioner. Additionally,
19 there is nothing in the transcripts that the Grand Jury held his absence against him.

20 Furthermore, Petitioner cannot face prejudice as a jury found him guilty beyond a
21 reasonable doubt. Any error associated with his lack of notice is harmless beyond a reasonable
22 doubt due to his conviction. Thus, Petitioner's claim of ineffective assistance of trial counsel
23 for allegedly failing to present Petitioner's testimony and exculpatory evidence to the Grand
24 Jury is moot because a jury has already found Petitioner guilty of the charged offense beyond
25 a reasonable doubt. Weber v. State, 121 Nev. 554, 585, 119 P.3d 107, 128 (2005). There is no
26 evidence whatsoever to suggest that Petitioner's testimony or any exculpatory evidence
27 Petitioner may have presented would have negated the probable cause evidence offered by the
28 State. As such, this Court denies Petitioner's claim.

1 II. PETITIONER IS NOT ENTITLED TO COUNSEL

2 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
3 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
4 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
5 Supreme Court similarly observed that “[t]he Nevada Constitution...does not guarantee a right
6 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right to
7 counsel provision as being coextensive with the Sixth Amendment to the United States
8 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)
9 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
10 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
11 164, 912 P.2d at 258.

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

15 A petition may allege that the Defendant is unable to pay the costs
16 of the proceedings or employ counsel. If the court is satisfied that
17 the allegation of indigency is true and the petition *is not dismissed*
18 *summarily*, the court may appoint counsel at the time the court
19 orders the filing of an answer and a return. In making its
20 determination, the court may consider whether:

- 21 (a) The issues are difficult;
- 22 (b) The Defendant is unable to comprehend the proceedings; or
- 23 (c) Counsel is necessary to proceed with discovery.

24 (emphasis added). Accordingly, under NRS 34.750, it is clear that the Court has discretion in
25 determining whether to appoint counsel.

26 More recently, the Nevada Supreme Court examined whether a district court
27 appropriately denied a defendant’s request for appointment of counsel based upon the factors
28 listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-

1 Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75,
2 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the defendant
3 filed a pro se postconviction petition for writ of habeas corpus and requested counsel be
4 appointed. Id. The district court ultimately denied the petitioner's petition and his appointment
5 of counsel request. Id. In reviewing the district court's decision, the Nevada Supreme Court
6 examined the statutory factors listed under NRS 34.750 and concluded that the district court's
7 decision should be reversed and remanded. Id. The Court explained that the petitioner was
8 indigent, his petition could not be summarily dismissed, and he had in fact satisfied the
9 statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor, the Court concluded that
10 because petitioner had represented he had issues with understanding the English language
11 which was corroborated by his use of an interpreter at his trial, that was enough to indicate that
12 the petitioner could not comprehend the proceedings. Id. Moreover, the petitioner had
13 demonstrated that the consequences he faced—a minimum eighty-five (85) year sentence—
14 were severe and his petition may have been the only vehicle for which he could raise his
15 claims. Id. at 76-77, 391 P.3d at 761-62. Finally, his ineffective assistance of counsel claims
16 may have required additional discovery and investigation beyond the record. Id.

17 Pursuant to NRS 34.750, Petitioner has not demonstrated that counsel should be
18 appointed. As a preliminary matter, Petitioner's request is suitable only for summary denial as
19 he has failed to provide any specific facts to support his bare and naked request. Hargrove v.
20 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

21 Notwithstanding summary denial, Petitioner's request should still be denied as he has
22 failed to meet any of the additional statutory factors under NRS 34.750. The issues Petitioner
23 raises are not difficult. Petitioner raises a meritless claim since there was substantial evidence
24 to support probable cause at the grand jury hearing. Additionally, Petitioner cannot establish
25 prejudice because he was convicted by a jury. As such, counsel is not necessary as the issue is
26 not difficult.

27 Additionally, there has been no indication that Petitioner is unable to comprehend the
28 proceedings. Unlike the petitioner in Renteria-Novoa who faced difficulties understanding the

English language, here Petitioner has failed to demonstrate any inability to understand these proceedings. By filing the instant petition, Petitioner demonstrates he understands that a Petition for Writ of Habeas Corpus is how you bring a claim of ineffective assistance of counsel. Additionally, he is able to research and apply case law. As such, he can comprehend the proceedings.

Finally, counsel is not necessary to proceed with further discovery in this case. Given that Petitioner's claim is meritless, no additional discovery is necessary. Due to habeas relief not being warranted, there is no need for additional discovery, let alone counsel's assistance to conduct such investigation. Therefore, Petitioner's request is denied.

III. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING

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

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

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that "[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is 'belied' when it is contradicted or proven to be false by the record as it

1 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

2 It is improper to hold an evidentiary hearing simply to make a complete record. *See*
3 State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The
4 district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted
5 ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary
6 hearing.”). Further, the United States Supreme Court has held that an evidentiary hearing is
7 not required simply because counsel’s actions are challenged as being unreasonable strategic
8 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge
9 post hoc rationalization for counsel’s decision making that contradicts the available evidence
10 of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis
11 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain
12 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (*citing*
13 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the
14 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466
15 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

16 Here, Petitioner requests an evidentiary hearing for his claim. There is no need for an
17 evidentiary hearing because Petitioner is not entitled to any relief. Petitioner’s claim fails as
18 he is unable to establish prejudice. As such, Petitioner would not be entitled to relief even if
19 counsel were deficient. No need exists to expand the record, as all claims can be disposed of
20 based on the existing record. Thus, Petitioner’s request for an evidentiary hearing is denied.

21 ORDER

22 Based on the foregoing, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
23 Corpus (Post-Conviction), Motion for Appointment of Counsel, and Request for Evidentiary

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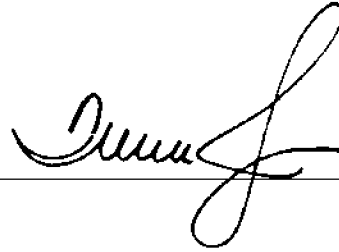
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1 Hearing shall be, and is, hereby denied.

Dated this 31st day of March, 2022

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6 Respectfully submitted,

929 77A D7CA 87E9
Tierra Jones
District Court Judge

7 STEVEN WOLFSON
8 Clark County District Attorney
9 Nevada Bar #001565

10
11 By /s/ TALEEN PANDUKHT
12 TALEEN PANDUKHT
13 Chief Deputy District Attorney
14 Nevada Bar #005734

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1 **CSERV**

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

5
6 **Jamel Gibbs, Plaintiff(s)**

CASE NO: A-21-844881-W

7 **vs.**

DEPT. NO. Department 10

8 **State of Nevada, Defendant(s)**
9


10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 **Service Date: 3/31/2022**

15 **Dept 10 Law Clerk**

dept10lc@clarkcountycourts.us



1 NEFF

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 JAMEL GIBBS,

6 Petitioner,

Case No: A-21-844881-W

Dept No: X

7 vs.

8 STATE OF NEVADA,

9 Respondent,
10

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

11 PLEASE TAKE NOTICE that on March 31, 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 April 6, 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 6 day of April 2022, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

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

23
24 ☒ The United States mail addressed as follows:

25 Jamel Gibbs # 1056675
P.O. Box 208
Indian Springs, NV 89070
26

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

Heather S. Hume

CLERK OF THE COURT

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #005734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMAL GIBBS,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-844881-W

(C-21-355769-1)

DEPT NO: X

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: MARCH 9, 2022
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable TIERRA JONES, District Judge, on the 9th day of March 2022, Petitioner not being present, the State being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ALEXANDER CHEN, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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

2 **PROCEDURAL HISTORY**

3 An Indictment was filed on May 6, 2021, charging Jamel Gibbs (hereinafter
4 “Petitioner”) with one count of Murder with Use of a Deadly Weapon and one count of
5 Ownership or Possession of Firearm by Prohibited Person. Trial proceeded on July 20, 2021.
6 On July 23, 2021, the jury returned a verdict of guilty of Second-Degree Murder with Use of
7 a Deadly Weapon. The State subsequently dismissed the Ownership or Possession of Firearm
8 by Prohibited Person charge.

9 On July 28, 2021, Petitioner filed a Motion for New Trial. The State’s Opposition was
10 filed on July 29, 2021. On August 30, 2021, the Court denied Petitioner’s Motion for New
11 Trial.

12 On October 8, 2021, Petitioner was sentenced to Life with the Possibility of Parole after
13 ten (10) years in the Nevada Department of Corrections (hereinafter “NDOC”), plus a
14 consecutive minimum of forty-eight (48) months and a maximum of one hundred twenty (120)
15 months in the NDOC for use of a deadly weapon, with one hundred ninety-nine (199) days
16 credit for time served.

17 The Judgment of Conviction was filed on October 12, 2021.

18 On October 16, 2021, Petitioner filed a Notice of Appeal.

19 On November 1, 2021, Petitioner’s Motion to Withdraw Attorney of Record and
20 Request for Appointment of Appellate Counsel was granted. On November 29, 2021, Jeannie
21 Hua, Esq. was appointed as appellate counsel. Petitioner’s appeal is currently still pending
22 under Nevada Supreme Court Case No. 83672.

23 On December 2, 2021, Petitioner filed the instant Petition for Writ of Habeas Corpus
24 (Post-Conviction) (hereinafter “Petition”), Motion for Appointment of Counsel and Request
25 for Evidentiary Hearing. On January 21, 2022, the State filed its Response.

26 On February 9, 2022, this Court ordered the State to file a Supplemental Response. On
27 February 10, 2022, the State filed its Supplemental Response. On March 4, 2022, Petitioner
28 filed a Reply to the State’s Supplemental Response.

1 On March 9, 2022, this Court denied the Petition, finding as follows.

2 **FACTUAL BACKGROUND¹**

3 On May 3, 2021, around 6:30 PM, Brionta Terrell (hereinafter “Brionta”) and Jaylon
4 Tiffith (hereinafter “Jaylon”) drove to Hidden Canyon Villas to drop off Jaylon’s daughter,
5 Navaeh. Navaeh lived at the apartment complex with her mother, Mimi. At the time, Mimi
6 and Petitioner were in a relationship. Upon arriving, Brionta saw Petitioner in his garage.

7 After dropping Navaeh off and leaving, Mimi called Brionta to let her know Navaeh
8 left her phone in the car. Brionta and Jaylon returned the complex and saw Petitioner driving
9 with Mimi and Navaeh. Petitioner stopped his car behind Brionta and both Petitioner and Mimi
10 exited the car. Brionta noticed that Petitioner had a firearm. Without provocation, Petitioner
11 and Mimi started to argue with Brionta and Jaylon.

12 As the argument escalated, Mimi started to throw rocks at Brionta’s car. Jaylon
13 attempted to intervene and prevent Mimi from throwing rocks. Jaylon was unsuccessful as
14 Mimi pulled Brionta out of the car starting a fight. Jaylon attempted to break up the fight, but
15 Petitioner joined the fight and started to punch Brionta.

16 Jaylon disengaged and went to get his daughter who was in Petitioner’s car. While in
17 the midst of the fight, Brionta heard a gunshot and saw Petitioner waving his gun around.
18 Petitioner then quickly got in the car and fled the scene.

19 Brionta looked around and saw Jaylon on the floor. She noticed a gunshot wound in his
20 head. When Brionta called 911, Mimi ran off. Jaylon died as a result of the gunshot wound.

21 **ANALYSIS**

22 **I. PETITIONER DID NOT RECEIVE INEFFECTIVE ASSISTANCE OF**
23 **COUNSEL**

24 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
25 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
26 defense.” The United States Supreme Court has long recognized that “the right to counsel is
27

28 ¹ The transcripts for Petitioner’s jury trial have been requested. Since they have not been filed,
this Court relies upon the Grand Jury Transcripts.

1 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
2 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
3 (1993).

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

15 The court begins with the presumption of effectiveness and then must determine
16 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
17 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
18 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
19 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
20 537 P.2d 473, 474 (1975).

21 Counsel cannot be ineffective for failing to make futile objections or arguments. See
22 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
23 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
24 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
25 (2002).

26 Based on the above law, the role of a court in considering allegations of ineffective
27 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
28 whether, under the particular facts and circumstances of the case, trial counsel failed to render

1 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
2 (1978). This analysis does not mean that the court should “second guess reasoned choices
3 between trial tactics nor does it mean that defense counsel, to protect himself against
4 allegations of inadequacy, must make every conceivable motion no matter how remote the
5 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
6 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
7 cannot create one and may disserve the interests of his client by attempting a useless charade.”
8 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

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

17 The decision not to call witnesses is within the discretion of trial counsel, and will not
18 be questioned unless it was a plainly unreasonable decision. See Rhyne v. State, 118 Nev. 1,
19 38 P.3d 163 (2002); see also Dawson v. State, 108 Nev. 112, 825 P.2d 593 (1992). Strickland
20 does not enact Newton's third law for the presentation of evidence, requiring for every
21 prosecution expert an equal and opposite expert from the defense. In many instances cross-
22 examination will be sufficient to expose defects in an expert's presentation. When defense
23 counsel does not have a solid case, the best strategy can be to say that there is too much doubt
24 about the State's theory for a jury to convict. Harrington v. Richter, 131 S.Ct. 770, 791, 578
25 F.3d. 944 (2011). “Strategic choices made by counsel after thoroughly investigating the
26 plausible options are almost unchallengeable.” Dawson v. State, 108 Nev. 112, 117, 825 P.2d
27 593, 596 (1992).

28 ///

1 Even if a defendant can demonstrate that his counsel's representation fell below an
2 objective standard of reasonableness, he must still demonstrate prejudice and show a
3 reasonable probability that, but for counsel's errors, the result of the trial would have been
4 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
5 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability
6 sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89,
7 694, 104 S. Ct. at 2064-65, 2068).

8 The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the
9 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
10 the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
11 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
12 be supported with specific factual allegations, which if true, would entitle the petitioner to
13 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked"
14 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
15 34.735(6) states in relevant part, "[Petitioner] must allege specific facts supporting the claims
16 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
17 petition to be dismissed." (emphasis added).

18 In this case, Petitioner argues that trial counsel was ineffective because he failed to
19 notify him of the Marcum notice. Petition, at 3. The magistrate may order an accused to answer
20 the charges filed against him or her upon a finding that a public offense has been committed,
21 and slight or marginal evidence that the Appellant committed the crime. See, Sheriff v. Hodes,
22 96 Nev. 184, 186, 606 P.2d 178, 180 (1980); Beasley v. Lamb, 79 Nev. 78, 80, 378 P.2d 524,
23 525 (1963); State v. Fuchs, 78 Nev. 63, 65, 368 P.2d 869, 869 (1962). The State only must
24 present enough evidence to support a reasonable inference that the accused committed the
25 crime and does not need to negate all possible inferences as to doubt. See, Lamb v. Holsten,
26 85 Nev. 566, 568, 459 P.2d 771, 772 (1969); Johnson v. State, 82 Nev. 338, 341, 418 P.2d
27 495, 496 (1966). Further, the State may present a case based solely on circumstantial evidence.
28 See, Howard v. Sheriff, 93 Nev. 30, 31, 559 P.2d 827, 827 (1977). Finally, the Nevada

1 Supreme Court has explicitly held that a probable cause hearing is “not a substitute for trial,”
2 and that the “full and complete exploration of all facets of the case” should be reserved for
3 trial. Marcum v. Sheriff, 85 Nev. 175, 178, 451 P.2d 845, 847 (1969); see also, Robertson v.
4 Sheriff, 85 Nev. 681, 683, 462 P.2d 528, 529 (1969).

5 In a grand jury proceeding, neither a criminal defendant nor his or her counsel have a
6 right to be present. NRS 172.145; NRS 172.235; Maiden v. State, 84 Nev. 443, 445, 442 P.2d
7 902, 904 (1968). However, a defendant has a right to testify before a grand jury considering
8 an indictment against him or her. NRS 172.241(1); Sheriff v. Bright, 108 Nev. 498, 501, 835
9 P.2d 782, 784-85 (1992). NRS 172.241 governs the right of certain persons to appear before
10 the Grand Jury and it provides that the district attorney’s notice upon a person whose
11 indictment is being considered by a grand jury is adequate if it is given to the person, or the
12 person’s attorney of record, and gives the person not less than 5 days judicial days to submit a
13 request to testify to the district attorney. NRS 172.241(2)(a).

14 The Nevada Supreme Court has held that a defendant must be given reasonable notice
15 that a grand jury will meet and consider returning an indictment against him. Sheriff v.
16 Marcum, 105 Nev. 824, 783 P.2d 1389 (1989). In order for a defendant to exercise his
17 statutory right to testify before the grand jury, he must be given reasonable notice that he is
18 the target of a grand jury investigation. Id. at 826, 783 P.2d at 1390.

19 In Solis-Ramirez, the Nevada Supreme Court held that “reasonable” notice under NRS
20 172.241 required the State to inform the target of the investigation of the actual time, date and
21 place of the grand jury hearing otherwise the statutory right to testify would be meaningless.
22 Solis-Ramirez v. District Court, 112 Nev. 344, 913 P.2d 1293 (1996). In Solis-Ramirez, the
23 defendant received a Marcum notice indicating that the State intended to obtain a Grand Jury
24 indictment against him but failed to include the date, time, or location. Solis-Ramirez, 112
25 Nev. at 346, 913 P.2d at 1294. The Nevada Supreme Court held that the notice to the defendant
26 placed the ultimate “burden on him to call the district attorney’s office from jail and located
27 the information regarding the date, time, and location of the hearing” and ordered the district
28 court to dismiss the indictment. Solis-Ramirez, 112 Nev. at 347, 913 P.2d at 1295. However,

1 it was not the legislature's intent that the right to testify be interpreted so expansively.
2 Therefore, in 1998, the legislature amended NRS 172.241 to clarify that notice is adequate if
3 it simply "advises the person that he may testify before the grand jury only if he submits a
4 written request to the district attorney and includes an address where the district attorney may
5 send a notice of the date, time and place of the scheduled proceeding of the grand jury." NRS
6 172.241(2)(b). This legislative change places the burden on the person receiving notice of a
7 grand jury investigation to respond with written notice of their intent to testify before they are
8 entitled to details of the date, time, and place where they may appear to testify.

9 On April 15, 2021, the State provided Petitioner with Marcum notice. Exhibit 1.
10 Petitioner does not deny that the State properly notified counsel:

11 The State of Nevada did their part in giving Craig a proper notice
12 but he failed to give Petitioner "any" type of notice . . ."

13 Petition, at 3. Petitioner's only contention is that trial counsel should have told him about the
14 notice. This is insufficient to establish prejudice. Only if the defendant demonstrates actual
15 prejudice based on lack of notice must the district court dismiss an Indictment. Hill v. State,
16 124 Nev. 546, 188 P.3d 51; Lisle v. State, 114 Nev. 221, 224, 954 P.2d 744, 746 (1998).
17 Implicit in the decisions of most district courts addressing claims of basic unfairness, which
18 violates due process within grand jury proceedings, "is the concept that substantial prejudice
19 to the defendant must be demonstrated before the province of the independent grand jury is
20 invaded." Sheriff v. Keeney, 106 Nev. 213, 216, 791 P.2d 55, 57 (1990).

21 Therefore, even if Petitioner did not receive adequate notice from his attorney, any error
22 in the Grand Jury proceedings connected with the charging decision is harmless beyond a
23 reasonable doubt where a defendant was convicted after trial beyond a reasonable doubt,
24 because the conviction establishes that probable cause undoubtedly existed to bind the
25 defendant over for trial. In United States v. Mechanik, the United States Supreme Court held
26 that the jury's guilty verdict in prosecution for drug-related offenses and conspiracy established
27 probable cause to charge the defendants with those offenses and thus rendered harmless any
28 error in the grand jury's charging decision. United States v. Mechanik, 475 U.S. 66, 106 S. Ct.

1 938 (1986) (cited approvingly by and applied in the Marcum context in Lisle v. State, 114
2 Nev. 221, 224-225, 954 P.2d 744, 746-747 (1998)). The United States Supreme Court
3 concluded that the jury's subsequent guilty verdict means not only that there was probable
4 cause to believe that the defendants were guilty as charged, but also that they are in fact guilty
5 as charged beyond a reasonable doubt. Measured by the jury's verdict, then, any error in
6 the grand jury proceeding connected with the charging decision was harmless beyond a
7 reasonable doubt. Mechanik, 475 U.S. at 70, 106 S. Ct. at 941-42.

8 The Nevada Supreme Court has also suggested that a jury verdict of guilt may render
9 harmless an error in the grand jury proceedings. Dettloff v. State, 120 Nev. 588, 596, 97 P.3d
10 586, 591 (2004). The Nevada Supreme Court found that the jury convicting Dettloff under a
11 higher burden of proof cured any irregularities that may have occurred during the grand jury
12 proceedings. Dettloff, 120 Nev. at 596, 97 P.3d at 591.

13 The State presented substantial evidence of Petitioner's guilt during the Grand Jury
14 proceeding. Brionta testified that Petitioner and Mimi started a fight with her and Jaylon. Prior
15 to and during this fight, she saw Petitioner with a gun. She heard a gunshot and saw Petitioner
16 waving the gun around. Petitioner was the only person in the area that she saw with a gun. Her
17 testimony established probable cause that Petitioner murdered Jaylon with a deadly weapon.
18 As such, there was substantial evidence for the Grand Jury to indict Petitioner. Additionally,
19 there is nothing in the transcripts that the Grand Jury held his absence against him.

20 Furthermore, Petitioner cannot face prejudice as a jury found him guilty beyond a
21 reasonable doubt. Any error associated with his lack of notice is harmless beyond a reasonable
22 doubt due to his conviction. Thus, Petitioner's claim of ineffective assistance of trial counsel
23 for allegedly failing to present Petitioner's testimony and exculpatory evidence to the Grand
24 Jury is moot because a jury has already found Petitioner guilty of the charged offense beyond
25 a reasonable doubt. Weber v. State, 121 Nev. 554, 585, 119 P.3d 107, 128 (2005). There is no
26 evidence whatsoever to suggest that Petitioner's testimony or any exculpatory evidence
27 Petitioner may have presented would have negated the probable cause evidence offered by the
28 State. As such, this Court denies Petitioner's claim.

1 II. PETITIONER IS NOT ENTITLED TO COUNSEL

2 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
3 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
4 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
5 Supreme Court similarly observed that “[t]he Nevada Constitution...does not guarantee a right
6 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right to
7 counsel provision as being coextensive with the Sixth Amendment to the United States
8 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)
9 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
10 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
11 164, 912 P.2d at 258.

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

15 A petition may allege that the Defendant is unable to pay the costs
16 of the proceedings or employ counsel. If the court is satisfied that
17 the allegation of indigency is true and the petition *is not dismissed*
18 *summarily*, the court may appoint counsel at the time the court
19 orders the filing of an answer and a return. In making its
20 determination, the court may consider whether:

- 21 (a) The issues are difficult;
22 (b) The Defendant is unable to comprehend the proceedings; or
23 (c) Counsel is necessary to proceed with discovery.

24 (emphasis added). Accordingly, under NRS 34.750, it is clear that the Court has discretion in
25 determining whether to appoint counsel.

26 More recently, the Nevada Supreme Court examined whether a district court
27 appropriately denied a defendant’s request for appointment of counsel based upon the factors
28 listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-

1 Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75,
2 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the defendant
3 filed a pro se postconviction petition for writ of habeas corpus and requested counsel be
4 appointed. Id. The district court ultimately denied the petitioner's petition and his appointment
5 of counsel request. Id. In reviewing the district court's decision, the Nevada Supreme Court
6 examined the statutory factors listed under NRS 34.750 and concluded that the district court's
7 decision should be reversed and remanded. Id. The Court explained that the petitioner was
8 indigent, his petition could not be summarily dismissed, and he had in fact satisfied the
9 statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor, the Court concluded that
10 because petitioner had represented he had issues with understanding the English language
11 which was corroborated by his use of an interpreter at his trial, that was enough to indicate that
12 the petitioner could not comprehend the proceedings. Id. Moreover, the petitioner had
13 demonstrated that the consequences he faced—a minimum eighty-five (85) year sentence—
14 were severe and his petition may have been the only vehicle for which he could raise his
15 claims. Id. at 76-77, 391 P.3d at 761-62. Finally, his ineffective assistance of counsel claims
16 may have required additional discovery and investigation beyond the record. Id.

17 Pursuant to NRS 34.750, Petitioner has not demonstrated that counsel should be
18 appointed. As a preliminary matter, Petitioner's request is suitable only for summary denial as
19 he has failed to provide any specific facts to support his bare and naked request. Hargrove v.
20 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

21 Notwithstanding summary denial, Petitioner's request should still be denied as he has
22 failed to meet any of the additional statutory factors under NRS 34.750. The issues Petitioner
23 raises are not difficult. Petitioner raises a meritless claim since there was substantial evidence
24 to support probable cause at the grand jury hearing. Additionally, Petitioner cannot establish
25 prejudice because he was convicted by a jury. As such, counsel is not necessary as the issue is
26 not difficult.

27 Additionally, there has been no indication that Petitioner is unable to comprehend the
28 proceedings. Unlike the petitioner in Renteria-Novoa who faced difficulties understanding the

English language, here Petitioner has failed to demonstrate any inability to understand these proceedings. By filing the instant petition, Petitioner demonstrates he understands that a Petition for Writ of Habeas Corpus is how you bring a claim of ineffective assistance of counsel. Additionally, he is able to research and apply case law. As such, he can comprehend the proceedings.

Finally, counsel is not necessary to proceed with further discovery in this case. Given that Petitioner's claim is meritless, no additional discovery is necessary. Due to habeas relief not being warranted, there is no need for additional discovery, let alone counsel's assistance to conduct such investigation. Therefore, Petitioner's request is denied.

III. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING

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

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

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that "[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is 'belied' when it is contradicted or proven to be false by the record as it

1 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

2 It is improper to hold an evidentiary hearing simply to make a complete record. *See*
3 State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The
4 district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted
5 ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary
6 hearing.”). Further, the United States Supreme Court has held that an evidentiary hearing is
7 not required simply because counsel’s actions are challenged as being unreasonable strategic
8 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge
9 post hoc rationalization for counsel’s decision making that contradicts the available evidence
10 of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis
11 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain
12 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (*citing*
13 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the
14 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466
15 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

16 Here, Petitioner requests an evidentiary hearing for his claim. There is no need for an
17 evidentiary hearing because Petitioner is not entitled to any relief. Petitioner’s claim fails as
18 he is unable to establish prejudice. As such, Petitioner would not be entitled to relief even if
19 counsel were deficient. No need exists to expand the record, as all claims can be disposed of
20 based on the existing record. Thus, Petitioner’s request for an evidentiary hearing is denied.

21 ORDER

22 Based on the foregoing, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
23 Corpus (Post-Conviction), Motion for Appointment of Counsel, and Request for Evidentiary

24 ///

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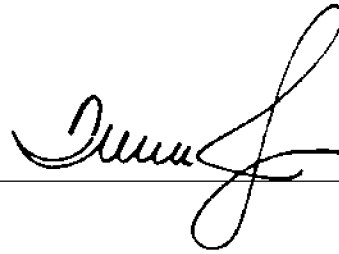
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1 Hearing shall be, and is, hereby denied.

Dated this 31st day of March, 2022

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6 Respectfully submitted,

929 77A D7CA 87E9
Tierra Jones
District Court Judge

7 STEVEN WOLFSON
8 Clark County District Attorney
9 Nevada Bar #001565

10
11 By /s/ TALEEN PANDUKHT
12 TALEEN PANDUKHT
13 Chief Deputy District Attorney
14 Nevada Bar #005734

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Jamel Gibbs, Plaintiff(s)

CASE NO: A-21-844881-W

7 vs.

DEPT. NO. Department 10

8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/31/2022

15 Dept 10 Law Clerk

dept10lc@clarkcountycourts.us

Heather S. Shuman
CLERK OF THE COURT

8th Judicial District
Court Clark County Nevada

Jamel Gibbs
Petitioner

Case NO. A-21-844881-W

Dept NO. 10

Vs.

State of Nevada
Respondant

"Notice of Appeal"

you will Please take notice, that comes now, Jamel Gibbs (1056675) is coming as an Appellant to the Nevada Supreme Court. This Appeal is taken from the final Judgment entered on March 31, 2022, denying the Petition for Writ of habeas Corpus

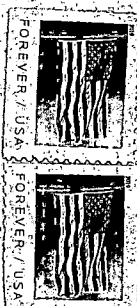
Dated: this 10th day of April 2022

By: Jamel Gibbs #1056675

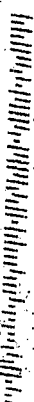
x [Signature]
In Proper Person

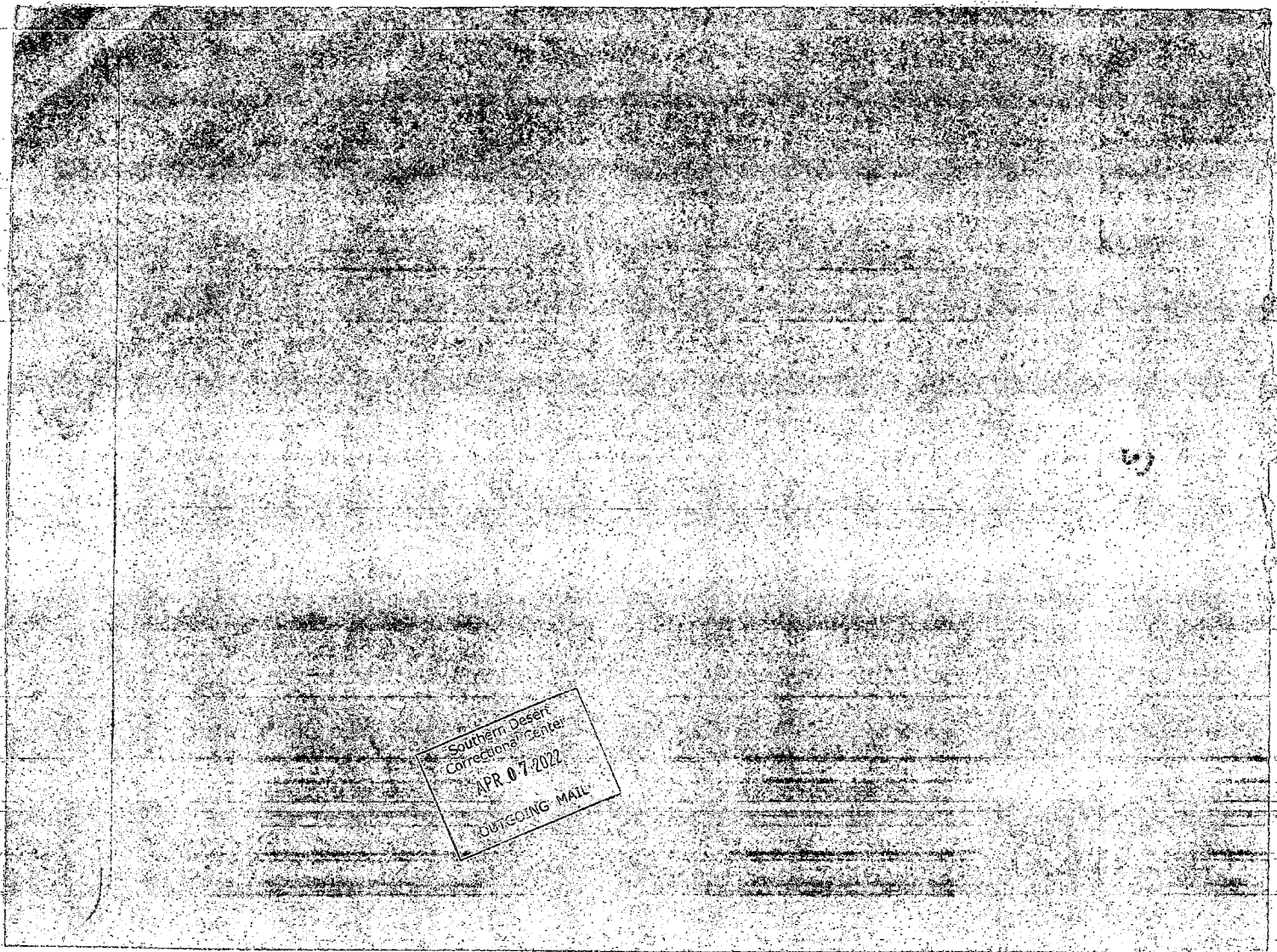
#10566675

Jamel Gibbs
SDCC PO Box 208
Indian Springs, NV
84070



200 Lewis Ave. 3rd
Department 10, 8th Judicial
District Court
Las Vegas, Nevada
89155





Southern Desert
Correctional Center
APR 07 2022
OUTGOING MAIL



1 ASTA

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

10 JAMEL GIBBS,

11 Plaintiff(s),

12 vs.

13 STATE OF NEVADA,

14 Defendant(s),
15

Case No: A-21-844881-W

Dept No: X

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Jamel Gibbs

20 2. Judge: Tierra Jones

21 3. Appellant(s): Jamel Gibbs

22 Counsel:

23 Jamel Gibbs #1056675
24 P.O. Box 208
Indian Spring, NV 89070

25 4. Respondent (s): State of Nevada

26 Counsel:

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

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

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

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

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

7 8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A

8 ***Expires 1 year from date filed*

9 Appellant Filed Application to Proceed in Forma Pauperis: Yes,
Date Application(s) filed: December 2, 2021

10 9. Date Commenced in District Court: February 2, 2021

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

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

13 11. Previous Appeal: No

14 Supreme Court Docket Number(s): N/A

15 12. Child Custody or Visitation: N/A

16 13. Possibility of Settlement: Unknown

17 Dated This 13 day of April 2022.

18 Steven D. Grierson, Clerk of the Court

19
20
21 /s/ Amanda Hampton

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

25 cc: Jamel Gibbs
26
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

February 09, 2022

A-21-844881-W Jamel Gibbs, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

**February 09, 2022 8:30 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT: Chen, Alexander G. Attorney
State of Nevada Defendant

JOURNAL ENTRIES

- Mr. Gibbs not present an in the Nevada Department of Corrections. COURT ORDERED, Matter CONTINUED for the State to file a supplemental response.

03/09/22 8:30 A.M. PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

March 09, 2022

A-21-844881-W Jamel Gibbs, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

**March 09, 2022 8:30 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire
Deriontae Green

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT: Chen, Alexander G. Attorney
Walls, Tina M, ESQ Attorney

JOURNAL ENTRIES

- APPEARANCE CONTINUED: Ms. Walls present as a friend of the Court, via video on behalf of Mr. Gibbs through bluejeans technology.

Deft. not present and in the Nevada Department of Corrections. Counsel submitted the matter on the pleadings. Court Stated its Findings and ORDERED, Petition for Writ of Habeas Corpus, DENIED. State to prepare Findings of Fact and Conclusions of Law consistent with their Supplemental opposition.

Clerk's Note: A copy of these minutes mailed to Jamel Gibbs ID # 1056675 SDCC P.O. Box 208 Indian Springs, Nevada 89070 /tb

PRINT DATE: 04/29/2022

Page 2 of 2

Minutes Date: February 09, 2022

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated April 21, 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 117.

JAMEL GIBBS,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

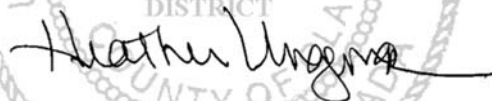
Case No: A-21-844881-W

Dept. No: X

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 29 day of April 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

