

1 NOASC
2 TERRENCE M. JACKSON, ESQ.
3 Nevada Bar No. 00854
4 Law Office of Terrence M. Jackson
5 624 South Ninth Street
6 Las Vegas, NV 89101
7 T: 702-386-0001 / F: 702-386-0085
8 Terry.jackson.esq@gmail.com

9 Counsel for Defendant, *Shan Jonathon Kittredge*

Electronically Filed
Dec 20 2021 02:05 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

10 IN THE EIGHTH JUDICIAL DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 v.

15 SHAN J. KITTREDGE,
16 ID#1202642,

17 Defendant.

District Case No.: A-20-815382-W

C-18-333335-2

Dept.: XXXII

NOTICE OF APPEAL

18 NOTICE is hereby given that the Defendant, SHAN JONATHON KITTREDGE, by and
19 through his attorney, TERRENCE M. JACKSON, ESQ., hereby appeals to the Nevada Supreme
20 Court, from the Notice of Entry of Findings of Fact, Conclusions of Law and Order, file-stamped
21 and dated December 1, 2021, denying his Petition for Post-Conviction Relief.

22 Defendant, SHAN JONATHON KITTREDGE, further states he is indigent and requests that
23 the filing fees be waived.

24 Respectfully submitted this 13th day of December, 2021.

25 /s/ Terrence M. Jackson
26 Terrence M. Jackson, Esquire
27 Nevada Bar No. 00854
28 Law Office of Terrence M. Jackson
624 South Ninth Street
Las Vegas, NV 89101
T: 702-386-0001 / F: 702-386-0085
terry.jackson.esq@gmail.com
Counsel for Defendant, Shan Jonathon Kittredge

1 **CERTIFICATE OF SERVICE**

2 I hereby certify I am an assistant to Terrence M. Jackson, Esq., not a party to this action, and
3 on the 13th day of December, 2021, I served a true, correct and e-filed stamped copy of the
4 foregoing: Defendant, Shan J. Kittredge's, NOTICE OF APPEAL as follows:
5

6 [X] Via Odyssey eFile and Serve to the Eighth Judicial District Court;

7 [X] Via the NSC Drop Box on the 1st floor of the Nevada Court of Appeals, located at 408 E.
8 Clark Avenue in Las Vegas, Nevada;

9 [X] and by United States first class mail to the Nevada Attorney General and the Defendant as
10 follows:
11

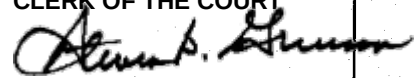
12 STEVEN B. WOLFSON
13 Clark County District Attorney
14 steven.wolfson@clarkcountyda.com

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Jonathon.vanboskerck@clarkcountyda.com

15 SHAN J. KITTREDGE
16 ID#1202642,
17 S.D. C. C.
18 P. O. Box 208
19 Indian Springs, NV 89070-0208

AARON D. FORD
Nevada Attorney General
100 North Carson Street
Carson City, NV 89701

20
21 By: /s/ Ila C. Wills
22 Assistant to T. M. Jackson, Esq.
23
24
25
26
27
28



1 **ASTA**
2 **TERRENCE M. JACKSON, ESQ.**
3 Nevada Bar No. 00854
4 Law Office of Terrence M. Jackson
5 624 South Ninth Street
6 Las Vegas, NV 89101
7 T: 702-386-0001 / F: 702-386-0085
8 Terry.jackson.esq@gmail.com

9 Counsel for Defendant, *Shan Jonathon Kittredge*

10 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 **THE STATE OF NEVADA,**
13 **Plaintiff,**
14 **v.**
15 **SHAN JONATHON KITTREDGE,**
16 **ID #1202642,**
17 **Defendant.**

District Case No.: A-20-815382-W

C-18-333335-2

Dept.: **XXXII**

CASE APPEAL STATEMENT

- 18 1. Appellant(s): SHAN JONATHON KITTREDGE
19 2. Judge: CHRISTY CRAIG
20 3. Appellant(s): SHAN JONATHON KITTREDGE

21 Counsel:

22 Terrence M. Jackson
23 624 South Ninth Street
24 Las Vegas, NV 89101
25 (702) 386-0001

- 26 4. Respondent: STATE OF NEVADA

27 Counsel:

28 Steven B. Wolfson, District Attorney
200 Lewis Avenue
Las Vegas, NV 89101
(702) 671-2700

- 1 5. Appellant(s)'s Attorney Licensed in Nevada: YES
2 Permission Granted: N/A
3 Respondent(s)'s Attorney Licensed in Nevada: YES
4 Permission Granted: N/A
5 6. Appellant Represented by Appointed Counsel in District Court: YES
6 7. Appellant Represented by Appointed Counsel on Appeal: YES
7 8. Appellant Granted Leave to Proceed in Forma Pauperis: YES
8 9. Date Commenced in District Court: August 1, 2018.
9 10. Brief Description of the Nature of the Action: Criminal
10 Type of Judgment or Order Being Appealed:
11 Denial of Post-Conviction Petition Writ of Habeas Corpus.
12 11. NO.
13 Supreme Court Docket Number(s): N/A
14 12. Child Custody or Visitation: N/A
15 Dated this 13th day of December, 2021.

17 /s/ Terrence M. Jackson

18 Terrence M. Jackson, Esquire

19 Nevada Bar No. 00854

20 Law Office of Terrence M. Jackson

21 624 South Ninth Street

22 Las Vegas, NV 89101

23 T: 702-386-0001 / F: 702-386-0085

24 Terry.jackson.esq@gmail.com

25 Counsel for Shan J. Kittredge

26 ...

27 ...

28 ...

1 **CERTIFICATE OF SERVICE**

2 I hereby certify I am an assistant to Terrence M. Jackson, Esq., not a party to this action, and
3 on the 13th day of December, 2021, I served a true, correct and e-filed stamped copy of the
4 foregoing: Defendant, Shan J. Kittredge's, CASE APPEAL STATEMENT as follows:
5

6 [X] Via Odyssey eFile and Serve to the Eighth Judicial District Court;

7 [X] Via the NSC Drop Box on the 1st floor of the Nevada Court of Appeals, located at 408 E.
8 Clark Avenue in Las Vegas, Nevada;

9 [X] and by United States first class mail to the Nevada Attorney General and the Defendant as
10 follows:
11

12 STEVEN B. WOLFSON

13 Clark County District Attorney

14 steven.wolfson@clarkcountyda.com
15

JONATHAN E. VANBOSKERCK

Chief Deputy District Attorney

jonathan.vanboskerck@clarkcountyda.com

16 SHAN J. KITTREDGE

17 ID#1202642

18 S. D. C. C.

19 P. O. BOX 208

Indian Springs, NV 89070-0208
20
21
22

AARON D. FORD

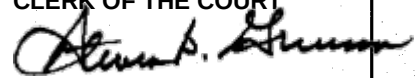
Nevada Attorney General

100 North Carson Street

Carson City, Nevada 89701

23 By: /s/ Ila C. Wills

24 Assistant to T. M. Jackson, Esq.
25
26
27
28



REQT

TERRENCE M. JACKSON, ESQ.
Nevada Bar No. 00854
Law Office of Terrence M. Jackson
624 South Ninth Street
Las Vegas, NV 89101
T: 702-386-0001 / F: 702-386-0085
Terry.jackson.esq@gmail.com

Counsel for Defendant, Shan J. Kittredge

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

SHAN JONATHON KITTREDGE,
#1202642,

Defendant.

District Case No.: A-20-815382-W

C-18-333335-2

Dept.: XXXII

REQUEST FOR TRANSCRIPTS

TO: Kaihla Berndt, Court Recorder
District Court, Department No.: XXXII
Courtroom 16D

Shan J. Kittredge, Defendant named above, requests preparation of the transcript entered below, before the District Court, Department XXXII, Judge Christy Craig, as follows:

Argument with Hearing, held on **October 21, 2021**.

Kaihla Berndt- Please prepare a transcript of any and all proceedings.

This Notice requests a transcript of only those portions of the District Court proceedings which Counsel reasonably and in good faith believes are necessary to determine whether Appellate issues are present. Voir dire examination of jurors, opening statements and closing arguments of trial counsel and reading of jury instructions shall not be transcribed unless specifically requested above.

I recognize that I must personally serve a copy of this form on the above-named court recorder and opposing counsel.

That the above-named court recorder shall have thirty (30) days from the date of service of this document to prepare an original plus two copies at State expense and file with the District Court Clerk the original transcript(s) requested herein.

1 Further, pursuant to NRAP 9(a)(3)(iii), the court recorder shall also deliver copies of the
2 transcript to Appellate's counsel and Respondent counsel no more than thirty (30) days after the date
3 of the Appellate's request.

4 Dated this 13th day of December, 2021.

5 /s/ Terrence M. Jackson

6 Terrence M. Jackson, Esquire

7 Terry.jackson.esq@gmail.com

8 Counsel for Shan J. Kittredge
9

10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on the 13th of December, 2021, I served a true and correct copy of the
12 foregoing Request for Transcripts on:

13 TO: Kaihla Berndt, Court Recorder
14 District Court, Department No.: XXXII, cr 16D
15 200 Lewis Avenue
16 Las Vegas, Nevada 89101
17

18 By: /s/ Ila C. Wills

19 Assistant to Terrence M. Jackson, Esq.
20

21 **CERTIFICATE OF ELECTRONIC FILING**

22 The undersigned hereby certifies that she is an assistant in the office of Terrence M. Jackson,
23 Esquire, and a person of such age and discretion as to be competent to serve papers and that on this
24 13th day of December, 2021, she served the Transcript Request upon the parties to this action:

25 [X] Via Electronic Service (*Odyssey* eFile and Serve) to the Eighth Judicial District Court;
26 [X] Via the NSC Drop Box on the 1st floor of the Nevada Court of Appeals, located at 408 E. Clark
27 Avenue in Las Vegas, Nevada;
28

1 [X] Via the email address of Court Recorder Kaihla Berndt

2

3 STEVEN B. WOLFSON

JONATHON E. VANBOSKERCK

4 Clark County District Attorney

Chief Deputy District Attorney

5 steven.wolfson@clarkcountyyda.com

jonathon.vanboskerck@clarkcountyyda.com

6

7 Kaihla Berndt

8 Court Recorder

9 @ email address:

10 berndtk@clarkcountycourts.us

11

12

13

14 By: /s/ Ila C. Wills

15 Assistant to T. M. Jackson, Esq.

16

17

18

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CASE SUMMARY

CASE NO. A-20-815382-W

Shan Kittredge, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

§
§
§
§
§

Location: **Department 32**
Judicial Officer: **Craig, Christy**
Filed on: **05/22/2020**
Case Number History:
Cross-Reference Case Number: **A815382**

CASE INFORMATION

Related Cases

C-18-333335-2 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Case Status: **05/22/2020 Open**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-20-815382-W
Court Department 32
Date Assigned 01/04/2021
Judicial Officer Craig, Christy

PARTY INFORMATION

Plaintiff	Kittredge, Shan	Jackson, Terrence Michael <i>Retained</i> 702-386-0001(W)
Defendant	State of Nevada	Wolfson, Steven B <i>Retained</i> 702-671-2700(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

05/22/2020	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Kittredge, Shan [1] <i>Post Conviction</i>
05/22/2020	 Motion for Appointment of Attorney Filed By: Plaintiff Kittredge, Shan [2] <i>Motion for Appointment of Counsel</i>
09/02/2020	 Order for Petition for Writ of Habeas Corpus [3] <i>Order for Petition for Writ of Habeas Corpus</i>
11/25/2020	 Response [4] <i>State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) and Motion for Appointment of Counsel</i>
01/04/2021	Case Reassigned to Department 32 <i>Judicial Reassignment to Judge Christy Craig</i>
01/13/2021	 Notice of Appearance Party: Plaintiff Kittredge, Shan

CASE SUMMARY
CASE NO. A-20-815382-W

	<i>[5] Notice of Appearance</i>
01/22/2021	 Order for Production of Inmate <i>[6] Order For Production Of Inmate</i>
05/19/2021	 Stipulation and Order Filed by: Plaintiff Kittredge, Shan <i>[7] Stipulation and Order</i>
05/19/2021	 Clerk's Notice of Nonconforming Document <i>[8] Clerk's Notice of Nonconforming Document</i>
07/01/2021	 Stipulation and Order <i>[9] Stipulation And Order</i>
07/14/2021	 Supplement <i>[10] Supplement to Petitioner's Pro Se Petition</i>
08/18/2021	 Response Filed by: Defendant State of Nevada <i>[11] State's Response to Defendant's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) and Motion for Discovery</i>
10/19/2021	 Reply to Opposition Filed by: Plaintiff Kittredge, Shan <i>[12] Reply to Response to Petitioner's Supplemental Petition for a Writ of Habeas Corpus</i>
12/01/2021	 Findings of Fact, Conclusions of Law and Order <i>[13] Findings of Fact, Conclusions of Law, and Order</i>
12/06/2021	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Defendant State of Nevada <i>[14] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
12/13/2021	 Notice of Appeal (Criminal) Party: Plaintiff Kittredge, Shan <i>[15] Notice of Appeal</i>
12/13/2021	 Case Appeal Statement <i>[16] Case Appeal Statement</i>
12/13/2021	 Request Filed by: Plaintiff Kittredge, Shan <i>[17] Request for Transcripts</i>

HEARINGS

12/22/2020	 Petition for Writ of Habeas Corpus (12:00 PM) (Judicial Officer: Jones, Tierra) 12/22/2020, 01/21/2021, 10/21/2021 Matter Continued; Matter Continued; Denied; Journal Entry Details: <i>Colloquy regarding Mr. Lichensteins's recently filed reply. Argument by Mr. Lichtenstein in support of the petition, noting the Deft.'s competency was not raised at the time the Deft.</i>
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CASE SUMMARY

CASE NO. A-20-815382-W

	entered the plea. Argument by Ms. Goodman in opposition to the petition, noting the Deft. was canvassed on mental health issues and what was going on; submitted on the response. Mr. Lichtenstein submitted. Statement by Deft. COURT stated its FINDINGS and ORDERED, petition DENIED; DIRECTED, the State to prepare the order. ; Matter Continued; Matter Continued; Denied; Matter Continued; Matter Continued; Denied; Journal Entry Details: Court stated Defendant not present and in custody with the Nevada Department of Corrections. Court noted having read Defendant s petition and State s Response; COURT ORDERED, Petition DENIED and stated findings. Defendant s Mother Sofie Kittredge present via blue. Mr. Kittredge advised counsel was to be appointed and that never happened and the habeas corpus was filed as the attorney never helped appeal. Court stated based on the sentence imposed; FURTHER ORDERED previous ruling VACATED and Request for Appointment of Counsel GRANTED. COURT FURTHER ORDERED, matter SET for Confirmation of Counsel. NDC 1/21/2021 1:45 PM CONFIRMATION OF COUNSEL;
01/21/2021	Confirmation of Counsel (11:00 AM) (Judicial Officer: Craig, Christy) Counsel Confirmed;
01/21/2021	 All Pending Motions (11:00 AM) (Judicial Officer: Craig, Christy) Matter Heard; Journal Entry Details: Upon inquiry of court if the office of conflict counsel appointed Mr. Lichtenstein to the case, Mr. Lichtenstein stated they had. COURT ORDERED, confirmation of counsel CONFIRMED. Colloquy regarding setting of schedule for Petition for Writ of Habeas Corpus. COURT ORDERED, filing of writ due May 20, 2021, response by State due September 16, 2021, reply due by October 14, 2021, and matter CONTINUED for argument on October 21, 2021 at 11:00 a.m. Mr. Lichtenstein stated his client will need to be transported. Ms. Thomas stated she will make a note to prepare a trasport order. Court directed Mr. Lichenstein to advise State if his client does not want to be transported. CONTINUED TO: 10/21/2021 11:00 AM CLERK'S NOTE: Minute Order prepared by Nicole McDevitt via listening to JAVS recording. /nm 2/4/2021;
11/30/2021	 Confirmation of Counsel (8:30 AM) (Judicial Officer: Craig, Christy) Confirmation of Counsel Terrence Jackson and Status Check on States Order (Not Received as of 11/19/2021). Counsel Confirmed; Journal Entry Details: Deft. not present, not transported. Mr. Jackson CONFIRMED as Counsel of Record and stated once there is an Order he will file a Notice of Appeal. COURT SO NOTED. NDC;

DISTRICT COURT CIVIL COVER SHEET

A-20-815382-W

Dept. XX

County, Nevada

Case No.

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone):

Shan Kittredge

Defendant(s) (name/address/phone):

State of Nevada

Attorney (name/address/phone):

Attorney (name/address/phone):

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

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

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

May 22, 2020

Date

PREPARED BY CLERK

Signature of initiating party or representative

See other side for family-related case filings.

Heather S. Hume

CLERK OF THE COURT

FFCO

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

SHAN JONATHON KITTREDGE,
#1779637

Defendant.

CASE NO: A-20-815382-W

C-18-333335-2

DEPT NO: XXXII

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

DATE OF HEARING: OCTOBER 21, 2021
TIME OF HEARING: 11:00 AM

THIS MATTER having come on for hearing before the above-entitled Court on the 21st day of October 2021, Defendant present and represented by ALLEN LICHTENSTEIN, Esq., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through LAURA GOODMAN, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

STATEMENT OF THE CASE

On August 1, 2018, the State filed a Superseding Indictment charging Shan Jonathon Kittredge (hereinafter "Petitioner") with the following: Counts 1-5, 8-10, 12-16, 20-21, 27-28, 33-34, 36-37, 40 – Robbery with Use of a Deadly Weapon; Counts 7, 19, 26, 35, 39 – Conspiracy to Commit Robbery; Count 17 – Attempt Robbery with Use of a Deadly Weapon;

1 Counts 6, 11, 18, 25, 31-32, 38, 42 – Burglary while in Possession of a Firearm; Counts 22-
2 24, 29-30, 41, – Assault with a Deadly Weapon; Count 43 – Grand Larceny Auto; Count 44 –
3 Possession of Stolen Vehicle; Counts 45-47 – Assault on Protected Person With Use of a
4 Deadly Weapon; and Count 48 – Resisting Public Officer With Use of a Firearm. Petitioner’s
5 co-defendant was also charged as to Counts 7-11, 19-31, and 35-42. On August 21, 2018,
6 Petitioner pleaded not guilty and waived his right to a speedy trial.

7 On December 19, 2018, Petitioner filed a Motion for Medical Treatment. On January
8 8, 2019, statements were made by defense counsel that Petitioner had sent several kites but
9 had been unable to receive medical attention. A two (2) week continuance was requested for
10 Mr. Frank Toddre, from the Attorney General’s Office, to speak with medical personnel. On
11 January 23, 2019, Mr. Toddre filed a Status Report regarding Petitioner’s treatment. A
12 Declaration from the Director or Nursing Bob Faulkner was attached. On January 24, 2019,
13 this Court noted that Petitioner was being treated and defense counsel concurred. Defense
14 counsel did note that Petitioner was waiting for an MRI and x-rays. The Court then denied the
15 motion.

16 On March 11, 2019, the State filed a Notice of Intent to Seek Punishment as a Habitual
17 Criminal.

18 On March 18, 2019, jury trial began, but Petitioner ultimately decided to plead guilty
19 pursuant to a Guilty Plea Agreement (“GPA”). According to the GPA, “both parties stipulate
20 to a total term of imprisonment of eighteen (18) to forty-five (45) years in the Nevada
21 Department of Corrections.” The Amended Superseding Indictment was also filed and charged
22 Petitioner with: Count 1 – Conspiracy to Commit Robbery; Counts 2-4 – Robbery with Use of
23 a Deadly Weapon; and Count 5 – Resisting Public Officer With Use of a Firearm. On May 8,
24 2019, defense counsel filed a Sentencing Memorandum.

25 On May 14, 2019, the District Court sentenced Petitioner to the Nevada Department of
26 Corrections as follows: Count 1 – a minimum of twenty-eight (28) months with a maximum
27 of seventy-two (72) months; Count 2 – a minimum of forty-eight (48) months and a maximum
28 of one hundred twenty (120) months, plus a consecutive term of a minimum of forty-eight (48)

1 months and a maximum of one hundred twenty (120) months for Use of a Deadly Weapon,
2 concurrent with Count 1; Count 3 – a minimum of forty-eight (48) months and a maximum of
3 one hundred twenty (120) months, plus a consecutive term of a minimum of forty-eight (48)
4 months and a maximum of one hundred twenty (120) months for Use of a Deadly Weapon,
5 consecutive to Count 2; Count 4 – a minimum of forty-eight (48) months and a maximum of
6 one hundred twenty (120) months, plus a consecutive term of a minimum of forty-eight (48)
7 months and a maximum of one hundred twenty (120) months for Use of a Deadly Weapon,
8 concurrent with Count 3; and Count 5 – a minimum of twenty-four (24) months and a
9 maximum of sixty (60) months, consecutive to Count 3, with one hundred fifty-six (156) days
10 credit for time served. Petitioner was further ordered to pay \$4,153.37 in Restitution, with
11 \$2,802 to be paid jointly and severally with the co-defendant. Restitution was ordered in the
12 following amounts: \$400 to Panda Express, \$300 to Duncan Donuts; \$331 to Roberto's Taco
13 Shop; \$100 to Khoury's Mediterranean Restaurant and \$3,022.37 to Albertson's. The
14 aggregate total sentence was eighteen (18) years to forty-five (45) years. The Judgment of
15 Conviction was filed on May 16, 2019.

16 On April 5, 2019, Petitioner filed another Motion for Medical Treatment. According to
17 Petitioner, he had an infection from lesions, and said infection was left untreated with no refills
18 for antibiotics. On April 16, 2019, counsel for the Clark County Detention Center ("CCDC")
19 advised that Petitioner was seen by a doctor, just not as quickly as he would have liked, and
20 Mr. Margolis, on behalf of Mr. Yampolsky advised that Petitioner was now taking antibiotics.
21 Additionally, Petitioner had a follow-up appointment for the bullet in his head. The Court then
22 denied the Motion as moot.

23 On May 14, 2019, defense counsel filed a Notice of Withdrawal of Attorney.

24 On May 22, 2020, Petitioner filed the instant post-conviction Petition for Writ of
25 Habeas Corpus and Motion for Appointment of Counsel. The State filed its Response on
26 November 25, 2020. On January 1, 2021, this Court appointed Allen Lichtenstein, Esq., ("Mr.
27 Lichtenstein") as counsel.
28

1 On July 14, 2021, Mr. Lichtenstein filed the instant Supplemental Petition. On August
2 18, 2021, the State filed its Response to Defendant's Supplemental Petition. On October 19,
3 2021, Mr. Lichtenstein filed a Reply. The matter came before this Court on October 21, 2021,
4 and the Court rules as follows:

5 **ANALYSIS¹**

6 **I. PETITIONER FAILS TO DEMONSTRATE HE IS ENTITLED TO HABEAS**
7 **RELEIF**
8

9 Petitioner claims his counsel was ineffective and that his guilty plea was unknowingly
10 and unintelligently signed. Petition at 7. The Sixth Amendment to the United States
11 Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right...to
12 have the Assistance of Counsel for his defense." The United States Supreme Court has long
13 recognized that "the right to counsel is the right to the effective assistance of counsel."
14 Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v.
15 Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

16 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
17 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of
18 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
19 P.2d at 323. Under Strickland, a defendant must show first that his counsel's representation
20 fell below an objective standard of reasonableness, and second, that but for counsel's errors,
21 there is a reasonable probability that the result of the proceedings would have been different.
22 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100
23 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is
24 no reason for a court deciding an ineffective assistance claim to approach the inquiry in the
25 same order or even to address both components of the inquiry if the defendant makes an
26 insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

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28

¹ Although this Petition appears to be time-barred, since it was filed on May 22, 2020, and the Judgment of Conviction
was filed on May 16, 2019, it is not because the Clerk's Office received it on April 19, 2020.

1 The Court begins with the presumption of effectiveness and then must determine
2 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
3 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
4 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
5 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
6 537 P.2d 473, 474 (1975).

7 Counsel cannot be ineffective for failing to make futile objections or arguments. See
8 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
9 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
10 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
11 (2002). Further, a defendant who contends his attorney was ineffective because he did not
12 adequately investigate must show how a better investigation would have rendered a more
13 favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). A
14 defendant is not entitled to a particular “relationship” with his attorney. Morris v. Slappy, 461
15 U.S. 1, 14, 103 S.Ct. 1610, 1617 (1983).

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

27 “There are countless ways to provide effective assistance in any given case. Even the
28 best criminal defense attorneys would not defend a particular client in the same way.”

1 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
2 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
3 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
4 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s
5 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
6 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

7 Claims for relief devoid of specific factual allegations are “bare” and “naked,” and are
8 insufficient to warrant relief, as are those claims belied and repelled by the record. Hargrove
9 v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “[Petitioner] *must* allege specific facts
10 supporting the claims in the petition[.]...Failure to allege specific facts rather than just
11 conclusions may cause [the] petition to be dismissed.” NRS 34.735(6) (emphasis added).

12 When a conviction is the result of a guilty plea, a defendant must show that there is a
13 “reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and
14 would have *insisted on going to trial*.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370
15 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107
16 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

17 When considering ineffective-assistance-of-counsel claims where the Petitioner
18 pleaded guilty, the Nevada Supreme Court has held that:

19
20 A defendant who pleads guilty upon the advice of counsel may attack the validity
21 of the guilty plea by showing that he received ineffective assistance of counsel
22 under the Sixth Amendment to the United States Constitution. However, guilty
23 pleas are presumptively valid, especially when entered on advice of counsel, and
24 a defendant has a heavy burden to show the district court that he did not enter
25 his plea knowingly, intelligently, or voluntarily. To establish prejudice in the
26 context of a challenge to a guilty plea based upon an assertion of ineffective
27 assistance of counsel, *a defendant must demonstrate a reasonable probability*
28 *that, but for counsel’s errors, he would not have pleaded guilty and would have*
insisted on going to trial.

27 Molina, 120 Nev. 185, 190-91, 87 P.3d 533, 537(internal quotations and citations omitted)
28 (emphasis added). “A reasonable probability is a probability sufficient to undermine

1 confidence in the outcome.” Strickland, 466 U.S. at 694, 104 S.Ct. at 2068. It is counsel’s
2 duty to candidly advise a Petitioner regarding whether or not they believe it would be
3 beneficial for a Petitioner to accept a plea offer, but the ultimate decision of whether or not to
4 accept a plea offer is the Petitioner’s, as it was in this case. Rhyne, 118 Nev. at 8, 38 P.3d at
5 163.

6 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant
7 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction
8 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.
9 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83
10 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined
11 that a defendant lacked standing to challenge the validity of a plea agreement because he had
12 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.
13 468, 477, 958 P.2d 91, 96 (1998).

14 Furthermore, the Nevada Supreme Court has explained:

15 “[A] guilty plea represents a break in the chain of events which has preceded it
16 in the criminal process. When a criminal defendant has solemnly admitted in
17 open court that he is in fact guilty of the offense with which he is charged, he
18 may not thereafter raise independent claims relating to the deprivation of
constitutional rights that occurred prior to the entry of the guilty plea.”

19 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411
20 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). Indeed, entry of a guilty plea “waive[s] all
21 constitutional claims based on events occurring prior to the entry of the plea[], except those
22 involving voluntariness of the plea[] [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also,
23 Kirksey, 112 Nev. at 999, 923 P.2d at 1114 (“Where the defendant has pleaded guilty, the only
24 claims that may be raised thereafter are those involving the voluntariness of the plea itself and
25 the effectiveness of counsel.”).

26 //

27 //

28 //

1 **A. Petitioner’s Claims that Counsel was Ineffective are Nothing More Than Bare**
2 **and Naked Assertions.**

3 According to Petitioner, he complained to his counsel that because of the injury to his
4 head, he did not clearly or intelligently understand what counsel was explaining to him
5 regarding the GPA. Petition at 7, Supplemental Petition at 6-7. Petitioner notes that he sent
6 several kites regarding medical treatment and states that “someone who was shot not once, but
7 twice in the head is under great strain mentally physically as well as spiritually.” Id. Petitioner
8 further claims that counsel was also ineffective because counsel failed to explain to the Court
9 that he needed more time to understand the State’s offer. Petitioner’s claims are nothing more
10 than bare and naked assertions that are belied by the record and suitable for summary denial
11 pursuant to Hargrove. 100 Nev. at 502, 686 P.2d at 225.

12 First, by signing the GPA, Petitioner agreed that he understood the consequences of his
13 plea and that counsel had explained said consequences to him. GPA pp. 2-4. Additionally,
14 Petitioner acknowledged that his plea was entered into voluntarily and knowingly:

15 I have discussed the elements of all of the original charge(s) against me with my
16 attorney and I understand the nature of the charge(s) against me.

17 I understand that the State would have to prove each element of the charge(s)
18 against me at trial.

19 I have discussed with my attorney any possible defenses, defense strategies and
20 circumstances which might be in my favor.

21 All of the foregoing elements, consequences, rights, and waiver of rights have
22 been thoroughly explained to me by my attorney.

23 I believe that pleading guilty and accepting this plea bargain is in my best
24 interest, and that a trial would be contrary to my best interest.

25 *I am signing this agreement voluntarily, after consultation with my attorney, and*
26 *I am not acting under duress or coercion or by virtue of any promises of leniency,*
except for those set forth in this agreement.

27 I am not now under the influence of any intoxicating liquor, a controlled
28 substance or other drug which would in any manner impair my ability to

1 comprehend or understand this agreement or the proceedings surrounding my
2 entry of this plea.

3 My attorney has answered all my questions regarding this guilty plea agreement
4 and its consequences to my satisfaction and I am satisfied with the services
5 provided by my attorney.

6 GPA pp. 5-6. (emphasis added).

7 Furthermore, Petitioner's claims that his head injury "was extremely serious and the
8 medication he received was not sufficient to overbear his will to resist the questioning" is
9 belied by the record. See Petition at 7; Supplemental Petition at 8. During the plea canvass,
10 the following occurred:

11 THE COURT: Okay. Have you ever been treated for any mental illness or
12 addiction to narcotic drugs of any kind?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay, what have you been treated for?

15 THE DEFENDANT: Schizophrenic manic, bipolar, anxiety, depression, and
16 PTSD.

17 THE COURT: And you're not on any medications for those right now?

18 THE DEFENDANT: No, sir.

19 THE COURT: Okay. Do you feel those are relatively well controlled without
20 any medication?

21 THE DEFENDANT: After committing these offenses, I'm trying to stay off
22 drugs, even mental drugs, you know.

23 THE COURT: Okay.

24 THE DEFENDANT: So I'm maintaining.

25 THE COURT: All right, you've mentioned some serious mental health issues.
26 *Do you feel that any of those issues is impacting on your ability to understand*
27 *what's going on here today?*

28 THE DEFENDANT: *No, sir. No, sir.*

1 THE COURT: Do you feel they are impacting on your ability at all to understand
2 what you are charged with and the nature of those charges?

3 THE DEFENDANT: No, not at all.

4 THE COURT: All right. Do you feel they impact upon your ability at all to
5 understand the plea agreement you're entering into with the State?

6 THE DEFENDANT: No, sir.

7
8 THE COURT: And they don't affect your ability to read and understand, for
instance: the amended superseding indictment or the plea agreement?

9 THE DEFENDANT: No, not in any way.

10 THE COURT: Okay. Do you feel you understand what's happening here today?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Tell me in your own words what's happening here today?

13 THE DEFENDANT: *We resolved a plea and went over my plea agreement;*
14 *you're just making sure that I understand.*

15
16 Recorder's Transcript: Jury Trial – Day 1, March 18, 2019 ("RT") pp. 98-99 (emphasis added).
17 Based upon the record, Petitioner understood what was going on at the time he entered his
18 plea.

19 Additionally, the Court informed Petitioner that if at any time he needed to discuss
20 something with counsel, in private, he would be given the opportunity:

21
22 THE COURT: Okay. Now, before accepting your guilty plea, there are a number
23 of questions I'm going to have to ask you to ensure myself that you're entering
24 a valid plea. If you do not understand any of the questions, would you please let
me know so I can rephrase the question?

25 THE DEFENDANT: Yes.

26 THE COURT: Okay. If at any time you wish to take a break in the proceedings
27 so you can discuss matters in private with your attorney, will you let me know
28 that so I can give you the opportunity and chance to do so?

1 THE DEFENDANT: Yes.

2 RT p. 97. Moreover, Petitioner informed the Court that he was pleading guilty without any
3 coercion, that he signed the GPA, and that he discussed the agreement with his attorney. RT
4 p. 107. Petitioner also responded affirmatively that he felt as though he understood the plea
5 agreement. RT p. 108. Further, Petitioner acknowledged that he understood the charges and
6 relevant penalties. RT pp. 102-05.

7 Petitioner's attachment of the Minutes from January 8, 2019, in his pro per Petition, do
8 not provide any support for his claim. On that day, statements were made that Petitioner had
9 not received medical attention. However, on January 23, 2019, counsel from the Attorney
10 General's Office filed a Status Report and Declaration after speaking with medical personnel.
11 According to the Status Report, Petitioner was treated for his alleged wounds and follow-up
12 tests, including x-rays, had been ordered. On January 24, 2019, this Court noted that Petitioner
13 was being treated and defense counsel concurred. Petitioner did not enter into his guilty plea
14 until March 18, 2019, approximately two (2) months after he was given treatment.
15 Accordingly, Petitioner was given medical attention prior to entering his plea. Regardless, the
16 plea canvass evidences that fact that his plea was entered into knowingly and voluntarily.

17 To the extent that the instant Supplemental Petition expands on Petitioner's original
18 claim that counsel failed to fully investigate Petitioner's injuries and his ability to comprehend
19 the proceedings are equally bare and naked assertions. See Hargrove, 100 Nev. at 502, 686
20 P.2d at 225. As discussed *supra*, the court minutes on January 23, 2019, reflect that the
21 Attorney General's Office filed a Status Report and Declaration after speaking with medical
22 personnel regarding Petitioner's injuries. According to the Status Report, Petitioner was
23 treated for his alleged wounds and follow-up tests, including x-rays, had been ordered. On
24 January 24, 2019, this Court noted that Petitioner was being treated and defense counsel
25 concurred. Such treatment was further continued through his plea. On April 16, 2019, counsel
26 for CCDC advised this Court that Petitioner was being seen by a doctor and taking antibiotics.
27 While Petitioner alerted the Court to pain caused by the wound, at no point did Petitioner raise
28 issues regarding his inability to comprehend his current situation. Thus, any claim that counsel

1 failed to investigate Petitioner's medical concerns is belied by the record and subject to
2 summary dismissal pursuant to Hargrove.

3 Regardless, the Supplemental Petition fails to demonstrate what a better investigation
4 into his mental health would have uncovered. Petitioner merely states that he should have
5 received a plethora of diagnostic exams such as "MRIs, CAT scans, x-rays of his head/neck
6 and medical assessments/physicians' impressions/ reports." Supplemental Petition at 7.
7 However, as previously stated, Petitioner was afforded such treatment. See Court Minutes,
8 January 23, 2019; January 24, 2019; and April 16, 2019. Yet, Petitioner still fails to show
9 and/or allege what further testing would have uncovered that was not already included within
10 the Status Report and Declaration. Thus, Petitioner's claim that counsel failed to investigate
11 fails under Molina.

12 As to Petitioner's specific claims against counsel, by signing the GPA, counsel certified
13 that he had fully explained everything to Petitioner prior to his entry of plea:

14
15 I, the undersigned, as the attorney for the Defendant named herein and as an
16 officer of the court hereby certify that:

17 1. I have fully explained to the Defendant the allegations contained in the
18 charge(s) to which guilty pleas are being entered.

19 2. I have advised the Defendant of the penalties for each charge and the
20 restitution that the Defendant may be ordered to pay.

21 3. I have inquired of Defendant facts concerning Defendant's immigration
22 status and explained to Defendant that if Defendant is not a United States citizen
23 any criminal conviction will most likely result in serious negative immigration
24 consequences including but not limited to:

- 25 a. The removal from the United States through deportation;
- 26 b. An inability to reenter the United States;
- 27 c. The inability to gain United States citizenship or legal residency;
- 28 d. An inability to renew and/or retain any legal residency status;
and/or
- e. An indeterminate term of confinement, by with United States
Federal Government based on the conviction and immigration status.

Moreover, I have explained that regardless of what Defendant may have been told by any attorney, no one can promise Defendant that this conviction will not result in negative immigration consequences and/or impact Defendant's ability to become a United States citizen and/or legal resident.

4. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent with the facts known to me and are made with my advice to the Defendant.

5. To the best of my knowledge and belief, the Defendant:

- a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,
- b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily, and
- c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with the Defendant as certified in paragraphs 1 and 2 above.

GPA p. 7. For these reasons, Petitioner failed to show that counsel was ineffective.

B. Petitioner Failed to Establish Prejudice.

Here, Petitioner failed to show that there is a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." See Hill, 474 U.S. 52, 59, 106 S.Ct. 366, 370. Instead, Petitioner made another bare and naked assertion that he was prejudiced because had he been in the right state of mind, he would not have pled guilty and would have proceeded to trial. Petitioner initially faced forty-eight (48) charges, with significantly higher penalties. With the possibility of facing a lengthier sentence, Petitioner cannot now argue that but for the alleged error, he would have gone to trial. Moreover, the plea was entered into during the first day of trial, after voir dire had begun. At any point Petitioner could have told the Court he did not wish to proceed with the GPA and to continue with the trial. Instead, Petitioner was clear that he wanted to enter into this guilty plea. For the reasons stated above, Petitioner's counsel was effective, and his claim is denied.

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1 **II. NRS 34.780(2) PRECLUDES DISCOVERY AS THE WRIT HAS NOT BEEN**
2 **GRANTED, A HEARING HAS NOT BEEN SET, AND GOOD CAUSE HAS**
3 **NOT BEEN SHOWN**

4 Petitioner's request to conduct discovery is suitable only for denial as it is premature
5 and unsupported by a showing of good cause.

6 NRS 34.780(2) reads:

7 *After the writ has been granted and a date set for the hearing, a party may invoke*
8 *any method of discovery available under the Nevada Rules of Civil Procedure*
9 *if, and to the extent that, the judge or justice for good cause shown grants leave*
10 *to do so.*

11 (Emphasis added). A writ is not "granted" for discovery purposes until this Court determines
12 that there is a need for an evidentiary hearing. NRS 34.770(3).

13 This Court has yet to grant any petition or set an evidentiary hearing in this matter. As
14 such, any request for discovery is premature. Thus, this Court lacks authority to order
15 discovery and Petitioner's untimely demand for the privilege of discovery is denied.

16 The Court further finds that Petitioner cannot meet the good cause requirement. The
17 Nevada Supreme Court has yet to address the meaning of good cause in the context of
18 discovery in a post-conviction habeas proceeding. Under the federal rule, good cause exists to
19 allow discovery only where specific allegations provide reason to believe that the petitioner
20 may, if the facts are fully developed, be able to demonstrate that he is entitled to relief. Rule 6
21 of the Federal Rules Governing § 2254 Cases; McDaniel v. U.S. District Court (Jones), 127 F.
22 3d 886, 888 (9th Cir. 1997). However, "*courts should not allow prisoners to use federal*
23 *discovery for fishing expeditions to investigate mere speculation.*" Calderon v. U.S. District
24 Court (Nicolaus), 98 F. 3d 1102, 1106 (9th Cir. 1996) (emphasis added), cert. denied, 520 U.S.
25 1233, 117 S. Ct. 1830 (1997); see also, Stanford v. Parker, 266 F. 3d 442, 460 (6th Cir. 2001);
26 Murphy v. Johnson, 205 F.3d 809, 814 (5th Cir. 2000), cert. denied, 531 U.S. 957, 121 S. Ct.
380 (2000).

27 The Discovery Motion is silent on the question of good cause. Thus, Petitioner's failure
28 to address this mandatory showing is "construed as an admission that the motion is not

meritorious and cause for its denial or as a waiver of all grounds not so supported.” District Court Rules (DCR) Rule 13(2). Nor does the outcome change merely because Petitioner’s underlying matter is criminal in nature: “A party filing a motion must also serve and file with it a memorandum of points and authorities in support of each ground thereof. The absence of such memorandum may be construed either as an admission that the motion is not meritorious and, as cause for its denial or as a waiver of all grounds not supported.” Eighth Judicial District Court Rules (EDCR) Rule 3.20(b); see Polk v. State, 126 Nev. 180, 185, 233 P.3d 357, 360 (2010).

Petitioner’s claim boils down to a fishing expedition in the hopes of finding something to withdraw his plea. Petitioner assumes the existence of additional testing and that any additional testing was not provided to previous defense counsel. Petitioner has done nothing to substantiate his naked assumptions. Petitioner has not shown good cause because he merely speculates about possibilities. Until Petitioner can demonstrate more than mere hoped for conclusions, his request for discovery must be denied as the fishing expedition it is.

ORDER

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

Dated this 1st day of December, 2021



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

9D8 E6A 6730 7AF6
Christy Craig
District Court Judge

BY /s/ Jonathan E. Vanbockerck
JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528

1 CERTIFICATE OF ELECTRONIC TRANSMISSION

2 I hereby certify that service of the above and foregoing was made this 1st day of
3 December, 2021, by electronic transmission to:

4 ALLEN LICHTENSTEIN
5 allaw@lvcoxmail.com

6 BY /s/ *E. Del Padre*
7 E. DEL PADRE
8 Secretary for the District Attorney's Office

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28 JV/GCU

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Shan Kittredge, Plaintiff(s)

CASE NO: A-20-815382-W

7 vs.

DEPT. NO. Department 32

8 State of Nevada, Defendant(s)
9

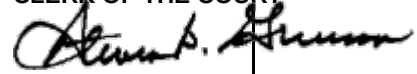
10 **AUTOMATED CERTIFICATE OF SERVICE**

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: 12/1/2021

15 Dept 20 Law Clerk

Dept20lc@clarkcountycourts.us



1 NEFF

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 SHAN KITTREDGE,

6 Petitioner,

Case No: A-20-815382-W

Dept No: XXXII

7 vs.

8 STATE OF NEVADA,

9 Respondent,

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

10
11 PLEASE TAKE NOTICE that on December 1, 2021, the court entered a decision or order in this matter,
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed
to you. This notice was mailed on December 6, 2021.

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 December 2021, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:

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

24 ☒ The United States mail addressed as follows:

25 Shan Kittredge # 1202642
P.O. Box 208
26 Indian Springs, NV 89070

Terrence M. Jackson, Esq.
624 S. Ninth St.
Las Vegas, NV 89101

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
JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

SHAN JONATHON KITTREDGE,
#1779637

Defendant.

CASE NO: A-20-815382-W

C-18-333335-2

DEPT NO: XXXII

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

DATE OF HEARING: OCTOBER 21, 2021
TIME OF HEARING: 11:00 AM

THIS MATTER having come on for hearing before the above-entitled Court on the 21st day of October 2021, Defendant present and represented by ALLEN LICHTENSTEIN, Esq., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through LAURA GOODMAN, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

STATEMENT OF THE CASE

On August 1, 2018, the State filed a Superseding Indictment charging Shan Jonathon Kittredge (hereinafter "Petitioner") with the following: Counts 1-5, 8-10, 12-16, 20-21, 27-28, 33-34, 36-37, 40 – Robbery with Use of a Deadly Weapon; Counts 7, 19, 26, 35, 39 – Conspiracy to Commit Robbery; Count 17 – Attempt Robbery with Use of a Deadly Weapon;

1 Counts 6, 11, 18, 25, 31-32, 38, 42 – Burglary while in Possession of a Firearm; Counts 22-
2 24, 29-30, 41, – Assault with a Deadly Weapon; Count 43 – Grand Larceny Auto; Count 44 –
3 Possession of Stolen Vehicle; Counts 45-47 – Assault on Protected Person With Use of a
4 Deadly Weapon; and Count 48 – Resisting Public Officer With Use of a Firearm. Petitioner’s
5 co-defendant was also charged as to Counts 7-11, 19-31, and 35-42. On August 21, 2018,
6 Petitioner pleaded not guilty and waived his right to a speedy trial.

7 On December 19, 2018, Petitioner filed a Motion for Medical Treatment. On January
8 8, 2019, statements were made by defense counsel that Petitioner had sent several kites but
9 had been unable to receive medical attention. A two (2) week continuance was requested for
10 Mr. Frank Toddre, from the Attorney General’s Office, to speak with medical personnel. On
11 January 23, 2019, Mr. Toddre filed a Status Report regarding Petitioner’s treatment. A
12 Declaration from the Director or Nursing Bob Faulkner was attached. On January 24, 2019,
13 this Court noted that Petitioner was being treated and defense counsel concurred. Defense
14 counsel did note that Petitioner was waiting for an MRI and x-rays. The Court then denied the
15 motion.

16 On March 11, 2019, the State filed a Notice of Intent to Seek Punishment as a Habitual
17 Criminal.

18 On March 18, 2019, jury trial began, but Petitioner ultimately decided to plead guilty
19 pursuant to a Guilty Plea Agreement (“GPA”). According to the GPA, “both parties stipulate
20 to a total term of imprisonment of eighteen (18) to forty-five (45) years in the Nevada
21 Department of Corrections.” The Amended Superseding Indictment was also filed and charged
22 Petitioner with: Count 1 – Conspiracy to Commit Robbery; Counts 2-4 – Robbery with Use of
23 a Deadly Weapon; and Count 5 – Resisting Public Officer With Use of a Firearm. On May 8,
24 2019, defense counsel filed a Sentencing Memorandum.

25 On May 14, 2019, the District Court sentenced Petitioner to the Nevada Department of
26 Corrections as follows: Count 1 – a minimum of twenty-eight (28) months with a maximum
27 of seventy-two (72) months; Count 2 – a minimum of forty-eight (48) months and a maximum
28 of one hundred twenty (120) months, plus a consecutive term of a minimum of forty-eight (48)

1 months and a maximum of one hundred twenty (120) months for Use of a Deadly Weapon,
2 concurrent with Count 1; Count 3 – a minimum of forty-eight (48) months and a maximum of
3 one hundred twenty (120) months, plus a consecutive term of a minimum of forty-eight (48)
4 months and a maximum of one hundred twenty (120) months for Use of a Deadly Weapon,
5 consecutive to Count 2; Count 4 – a minimum of forty-eight (48) months and a maximum of
6 one hundred twenty (120) months, plus a consecutive term of a minimum of forty-eight (48)
7 months and a maximum of one hundred twenty (120) months for Use of a Deadly Weapon,
8 concurrent with Count 3; and Count 5 – a minimum of twenty-four (24) months and a
9 maximum of sixty (60) months, consecutive to Count 3, with one hundred fifty-six (156) days
10 credit for time served. Petitioner was further ordered to pay \$4,153.37 in Restitution, with
11 \$2,802 to be paid jointly and severally with the co-defendant. Restitution was ordered in the
12 following amounts: \$400 to Panda Express, \$300 to Duncan Donuts; \$331 to Roberto's Taco
13 Shop; \$100 to Khoury's Mediterranean Restaurant and \$3,022.37 to Albertson's. The
14 aggregate total sentence was eighteen (18) years to forty-five (45) years. The Judgment of
15 Conviction was filed on May 16, 2019.

16 On April 5, 2019, Petitioner filed another Motion for Medical Treatment. According to
17 Petitioner, he had an infection from lesions, and said infection was left untreated with no refills
18 for antibiotics. On April 16, 2019, counsel for the Clark County Detention Center ("CCDC")
19 advised that Petitioner was seen by a doctor, just not as quickly as he would have liked, and
20 Mr. Margolis, on behalf of Mr. Yampolsky advised that Petitioner was now taking antibiotics.
21 Additionally, Petitioner had a follow-up appointment for the bullet in his head. The Court then
22 denied the Motion as moot.

23 On May 14, 2019, defense counsel filed a Notice of Withdrawal of Attorney.

24 On May 22, 2020, Petitioner filed the instant post-conviction Petition for Writ of
25 Habeas Corpus and Motion for Appointment of Counsel. The State filed its Response on
26 November 25, 2020. On January 1, 2021, this Court appointed Allen Lichtenstein, Esq., ("Mr.
27 Lichtenstein") as counsel.
28

1 On July 14, 2021, Mr. Lichtenstein filed the instant Supplemental Petition. On August
2 18, 2021, the State filed its Response to Defendant's Supplemental Petition. On October 19,
3 2021, Mr. Lichtenstein filed a Reply. The matter came before this Court on October 21, 2021,
4 and the Court rules as follows:

5 **ANALYSIS¹**

6 **I. PETITIONER FAILS TO DEMONSTRATE HE IS ENTITLED TO HABEAS**
7 **RELEIF**
8

9 Petitioner claims his counsel was ineffective and that his guilty plea was unknowingly
10 and unintelligently signed. Petition at 7. The Sixth Amendment to the United States
11 Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right...to
12 have the Assistance of Counsel for his defense." The United States Supreme Court has long
13 recognized that "the right to counsel is the right to the effective assistance of counsel."
14 Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v.
15 Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

16 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
17 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of
18 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
19 P.2d at 323. Under Strickland, a defendant must show first that his counsel's representation
20 fell below an objective standard of reasonableness, and second, that but for counsel's errors,
21 there is a reasonable probability that the result of the proceedings would have been different.
22 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100
23 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is
24 no reason for a court deciding an ineffective assistance claim to approach the inquiry in the
25 same order or even to address both components of the inquiry if the defendant makes an
26 insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

27
28

¹ Although this Petition appears to be time-barred, since it was filed on May 22, 2020, and the Judgment of Conviction
was filed on May 16, 2019, it is not because the Clerk's Office received it on April 19, 2020.

1 The Court begins with the presumption of effectiveness and then must determine
2 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
3 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
4 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
5 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
6 537 P.2d 473, 474 (1975).

7 Counsel cannot be ineffective for failing to make futile objections or arguments. See
8 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
9 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
10 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
11 (2002). Further, a defendant who contends his attorney was ineffective because he did not
12 adequately investigate must show how a better investigation would have rendered a more
13 favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). A
14 defendant is not entitled to a particular “relationship” with his attorney. Morris v. Slappy, 461
15 U.S. 1, 14, 103 S.Ct. 1610, 1617 (1983).

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

27 “There are countless ways to provide effective assistance in any given case. Even the
28 best criminal defense attorneys would not defend a particular client in the same way.”

1 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
2 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
3 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
4 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s
5 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
6 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

7 Claims for relief devoid of specific factual allegations are “bare” and “naked,” and are
8 insufficient to warrant relief, as are those claims belied and repelled by the record. Hargrove
9 v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “[Petitioner] *must* allege specific facts
10 supporting the claims in the petition[.]...Failure to allege specific facts rather than just
11 conclusions may cause [the] petition to be dismissed.” NRS 34.735(6) (emphasis added).

12 When a conviction is the result of a guilty plea, a defendant must show that there is a
13 “reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and
14 would have *insisted on going to trial*.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370
15 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107
16 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

17 When considering ineffective-assistance-of-counsel claims where the Petitioner
18 pleaded guilty, the Nevada Supreme Court has held that:

19
20 A defendant who pleads guilty upon the advice of counsel may attack the validity
21 of the guilty plea by showing that he received ineffective assistance of counsel
22 under the Sixth Amendment to the United States Constitution. However, guilty
23 pleas are presumptively valid, especially when entered on advice of counsel, and
24 a defendant has a heavy burden to show the district court that he did not enter
25 his plea knowingly, intelligently, or voluntarily. To establish prejudice in the
26 context of a challenge to a guilty plea based upon an assertion of ineffective
27 assistance of counsel, *a defendant must demonstrate a reasonable probability*
28 *that, but for counsel’s errors, he would not have pleaded guilty and would have*
insisted on going to trial.

27 Molina, 120 Nev. 185, 190-91, 87 P.3d 533, 537(internal quotations and citations omitted)
28 (emphasis added). “A reasonable probability is a probability sufficient to undermine

1 confidence in the outcome.” Strickland, 466 U.S. at 694, 104 S.Ct. at 2068. It is counsel’s
2 duty to candidly advise a Petitioner regarding whether or not they believe it would be
3 beneficial for a Petitioner to accept a plea offer, but the ultimate decision of whether or not to
4 accept a plea offer is the Petitioner’s, as it was in this case. Rhyne, 118 Nev. at 8, 38 P.3d at
5 163.

6 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant
7 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction
8 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.
9 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83
10 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined
11 that a defendant lacked standing to challenge the validity of a plea agreement because he had
12 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.
13 468, 477, 958 P.2d 91, 96 (1998).

14 Furthermore, the Nevada Supreme Court has explained:

15 “[A] guilty plea represents a break in the chain of events which has preceded it
16 in the criminal process. When a criminal defendant has solemnly admitted in
17 open court that he is in fact guilty of the offense with which he is charged, he
18 may not thereafter raise independent claims relating to the deprivation of
constitutional rights that occurred prior to the entry of the guilty plea.”

19 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411
20 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). Indeed, entry of a guilty plea “waive[s] all
21 constitutional claims based on events occurring prior to the entry of the plea[], except those
22 involving voluntariness of the plea[] [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also,
23 Kirksey, 112 Nev. at 999, 923 P.2d at 1114 (“Where the defendant has pleaded guilty, the only
24 claims that may be raised thereafter are those involving the voluntariness of the plea itself and
25 the effectiveness of counsel.”).

26 //

27 //

28 //

1 **A. Petitioner’s Claims that Counsel was Ineffective are Nothing More Than Bare**
2 **and Naked Assertions.**

3 According to Petitioner, he complained to his counsel that because of the injury to his
4 head, he did not clearly or intelligently understand what counsel was explaining to him
5 regarding the GPA. Petition at 7, Supplemental Petition at 6-7. Petitioner notes that he sent
6 several kites regarding medical treatment and states that “someone who was shot not once, but
7 twice in the head is under great strain mentally physically as well as spiritually.” Id. Petitioner
8 further claims that counsel was also ineffective because counsel failed to explain to the Court
9 that he needed more time to understand the State’s offer. Petitioner’s claims are nothing more
10 than bare and naked assertions that are belied by the record and suitable for summary denial
11 pursuant to Hargrove. 100 Nev. at 502, 686 P.2d at 225.

12 First, by signing the GPA, Petitioner agreed that he understood the consequences of his
13 plea and that counsel had explained said consequences to him. GPA pp. 2-4. Additionally,
14 Petitioner acknowledged that his plea was entered into voluntarily and knowingly:

15 I have discussed the elements of all of the original charge(s) against me with my
16 attorney and I understand the nature of the charge(s) against me.

17 I understand that the State would have to prove each element of the charge(s)
18 against me at trial.

19 I have discussed with my attorney any possible defenses, defense strategies and
20 circumstances which might be in my favor.

21 All of the foregoing elements, consequences, rights, and waiver of rights have
22 been thoroughly explained to me by my attorney.

23 I believe that pleading guilty and accepting this plea bargain is in my best
24 interest, and that a trial would be contrary to my best interest.

25 *I am signing this agreement voluntarily, after consultation with my attorney, and*
26 *I am not acting under duress or coercion or by virtue of any promises of leniency,*
except for those set forth in this agreement.

27 I am not now under the influence of any intoxicating liquor, a controlled
28 substance or other drug which would in any manner impair my ability to

1 comprehend or understand this agreement or the proceedings surrounding my
2 entry of this plea.

3 My attorney has answered all my questions regarding this guilty plea agreement
4 and its consequences to my satisfaction and I am satisfied with the services
5 provided by my attorney.

6 GPA pp. 5-6. (emphasis added).

7 Furthermore, Petitioner's claims that his head injury "was extremely serious and the
8 medication he received was not sufficient to overbear his will to resist the questioning" is
9 belied by the record. See Petition at 7; Supplemental Petition at 8. During the plea canvass,
10 the following occurred:

11 THE COURT: Okay. Have you ever been treated for any mental illness or
12 addiction to narcotic drugs of any kind?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay, what have you been treated for?

15 THE DEFENDANT: Schizophrenic manic, bipolar, anxiety, depression, and
16 PTSD.

17 THE COURT: And you're not on any medications for those right now?

18 THE DEFENDANT: No, sir.

19 THE COURT: Okay. Do you feel those are relatively well controlled without
20 any medication?

21 THE DEFENDANT: After committing these offenses, I'm trying to stay off
22 drugs, even mental drugs, you know.

23 THE COURT: Okay.

24 THE DEFENDANT: So I'm maintaining.

25 THE COURT: All right, you've mentioned some serious mental health issues.
26 *Do you feel that any of those issues is impacting on your ability to understand*
27 *what's going on here today?*

28 THE DEFENDANT: *No, sir. No, sir.*

1 THE COURT: Do you feel they are impacting on your ability at all to understand
2 what you are charged with and the nature of those charges?

3 THE DEFENDANT: No, not at all.

4 THE COURT: All right. Do you feel they impact upon your ability at all to
5 understand the plea agreement you're entering into with the State?

6 THE DEFENDANT: No, sir.

7
8 THE COURT: And they don't affect your ability to read and understand, for
instance: the amended superseding indictment or the plea agreement?

9 THE DEFENDANT: No, not in any way.

10 THE COURT: Okay. Do you feel you understand what's happening here today?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Tell me in your own words what's happening here today?

13 THE DEFENDANT: *We resolved a plea and went over my plea agreement;*
14 *you're just making sure that I understand.*

15
16 Recorder's Transcript: Jury Trial – Day 1, March 18, 2019 ("RT") pp. 98-99 (emphasis added).
17 Based upon the record, Petitioner understood what was going on at the time he entered his
18 plea.

19 Additionally, the Court informed Petitioner that if at any time he needed to discuss
20 something with counsel, in private, he would be given the opportunity:

21
22 THE COURT: Okay. Now, before accepting your guilty plea, there are a number
23 of questions I'm going to have to ask you to ensure myself that you're entering
24 a valid plea. If you do not understand any of the questions, would you please let
me know so I can rephrase the question?

25 THE DEFENDANT: Yes.

26 THE COURT: Okay. If at any time you wish to take a break in the proceedings
27 so you can discuss matters in private with your attorney, will you let me know
28 that so I can give you the opportunity and chance to do so?

1 THE DEFENDANT: Yes.

2 RT p. 97. Moreover, Petitioner informed the Court that he was pleading guilty without any
3 coercion, that he signed the GPA, and that he discussed the agreement with his attorney. RT
4 p. 107. Petitioner also responded affirmatively that he felt as though he understood the plea
5 agreement. RT p. 108. Further, Petitioner acknowledged that he understood the charges and
6 relevant penalties. RT pp. 102-05.

7 Petitioner's attachment of the Minutes from January 8, 2019, in his pro per Petition, do
8 not provide any support for his claim. On that day, statements were made that Petitioner had
9 not received medical attention. However, on January 23, 2019, counsel from the Attorney
10 General's Office filed a Status Report and Declaration after speaking with medical personnel.
11 According to the Status Report, Petitioner was treated for his alleged wounds and follow-up
12 tests, including x-rays, had been ordered. On January 24, 2019, this Court noted that Petitioner
13 was being treated and defense counsel concurred. Petitioner did not enter into his guilty plea
14 until March 18, 2019, approximately two (2) months after he was given treatment.
15 Accordingly, Petitioner was given medical attention prior to entering his plea. Regardless, the
16 plea canvass evidences that fact that his plea was entered into knowingly and voluntarily.

17 To the extent that the instant Supplemental Petition expands on Petitioner's original
18 claim that counsel failed to fully investigate Petitioner's injuries and his ability to comprehend
19 the proceedings are equally bare and naked assertions. See Hargrove, 100 Nev. at 502, 686
20 P.2d at 225. As discussed *supra*, the court minutes on January 23, 2019, reflect that the
21 Attorney General's Office filed a Status Report and Declaration after speaking with medical
22 personnel regarding Petitioner's injuries. According to the Status Report, Petitioner was
23 treated for his alleged wounds and follow-up tests, including x-rays, had been ordered. On
24 January 24, 2019, this Court noted that Petitioner was being treated and defense counsel
25 concurred. Such treatment was further continued through his plea. On April 16, 2019, counsel
26 for CCDC advised this Court that Petitioner was being seen by a doctor and taking antibiotics.
27 While Petitioner alerted the Court to pain caused by the wound, at no point did Petitioner raise
28 issues regarding his inability to comprehend his current situation. Thus, any claim that counsel

1 failed to investigate Petitioner's medical concerns is belied by the record and subject to
2 summary dismissal pursuant to Hargrove.

3 Regardless, the Supplemental Petition fails to demonstrate what a better investigation
4 into his mental health would have uncovered. Petitioner merely states that he should have
5 received a plethora of diagnostic exams such as "MRIs, CAT scans, x-rays of his head/neck
6 and medical assessments/physicians' impressions/ reports." Supplemental Petition at 7.
7 However, as previously stated, Petitioner was afforded such treatment. See Court Minutes,
8 January 23, 2019; January 24, 2019; and April 16, 2019. Yet, Petitioner still fails to show
9 and/or allege what further testing would have uncovered that was not already included within
10 the Status Report and Declaration. Thus, Petitioner's claim that counsel failed to investigate
11 fails under Molina.

12 As to Petitioner's specific claims against counsel, by signing the GPA, counsel certified
13 that he had fully explained everything to Petitioner prior to his entry of plea:

14
15 I, the undersigned, as the attorney for the Defendant named herein and as an
16 officer of the court hereby certify that:

17 1. I have fully explained to the Defendant the allegations contained in the
18 charge(s) to which guilty pleas are being entered.

19 2. I have advised the Defendant of the penalties for each charge and the
20 restitution that the Defendant may be ordered to pay.

21 3. I have inquired of Defendant facts concerning Defendant's immigration
22 status and explained to Defendant that if Defendant is not a United States citizen
23 any criminal conviction will most likely result in serious negative immigration
24 consequences including but not limited to:

- 25 a. The removal from the United States through deportation;
- 26 b. An inability to reenter the United States;
- 27 c. The inability to gain United States citizenship or legal residency;
- 28 d. An inability to renew and/or retain any legal residency status;
and/or
- e. An indeterminate term of confinement, by with United States
Federal Government based on the conviction and immigration status.

Moreover, I have explained that regardless of what Defendant may have been told by any attorney, no one can promise Defendant that this conviction will not result in negative immigration consequences and/or impact Defendant's ability to become a United States citizen and/or legal resident.

4. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent with the facts known to me and are made with my advice to the Defendant.

5. To the best of my knowledge and belief, the Defendant:

- a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,
- b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily, and
- c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with the Defendant as certified in paragraphs 1 and 2 above.

GPA p. 7. For these reasons, Petitioner failed to show that counsel was ineffective.

B. Petitioner Failed to Establish Prejudice.

Here, Petitioner failed to show that there is a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." See Hill, 474 U.S. 52, 59, 106 S.Ct. 366, 370. Instead, Petitioner made another bare and naked assertion that he was prejudiced because had he been in the right state of mind, he would not have pled guilty and would have proceeded to trial. Petitioner initially faced forty-eight (48) charges, with significantly higher penalties. With the possibility of facing a lengthier sentence, Petitioner cannot now argue that but for the alleged error, he would have gone to trial. Moreover, the plea was entered into during the first day of trial, after voir dire had begun. At any point Petitioner could have told the Court he did not wish to proceed with the GPA and to continue with the trial. Instead, Petitioner was clear that he wanted to enter into this guilty plea. For the reasons stated above, Petitioner's counsel was effective, and his claim is denied.

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1 **II. NRS 34.780(2) PRECLUDES DISCOVERY AS THE WRIT HAS NOT BEEN**
2 **GRANTED, A HEARING HAS NOT BEEN SET, AND GOOD CAUSE HAS**
3 **NOT BEEN SHOWN**

4 Petitioner's request to conduct discovery is suitable only for denial as it is premature
5 and unsupported by a showing of good cause.

6 NRS 34.780(2) reads:

7 *After the writ has been granted and a date set for the hearing, a party may invoke*
8 *any method of discovery available under the Nevada Rules of Civil Procedure*
9 *if, and to the extent that, the judge or justice for good cause shown grants leave*
10 *to do so.*

11 (Emphasis added). A writ is not "granted" for discovery purposes until this Court determines
12 that there is a need for an evidentiary hearing. NRS 34.770(3).

13 This Court has yet to grant any petition or set an evidentiary hearing in this matter. As
14 such, any request for discovery is premature. Thus, this Court lacks authority to order
15 discovery and Petitioner's untimely demand for the privilege of discovery is denied.

16 The Court further finds that Petitioner cannot meet the good cause requirement. The
17 Nevada Supreme Court has yet to address the meaning of good cause in the context of
18 discovery in a post-conviction habeas proceeding. Under the federal rule, good cause exists to
19 allow discovery only where specific allegations provide reason to believe that the petitioner
20 may, if the facts are fully developed, be able to demonstrate that he is entitled to relief. Rule 6
21 of the Federal Rules Governing § 2254 Cases; McDaniel v. U.S. District Court (Jones), 127 F.
22 3d 886, 888 (9th Cir. 1997). However, "*courts should not allow prisoners to use federal*
23 *discovery for fishing expeditions to investigate mere speculation.*" Calderon v. U.S. District
24 Court (Nicolaus), 98 F. 3d 1102, 1106 (9th Cir. 1996) (emphasis added), cert. denied, 520 U.S.
25 1233, 117 S. Ct. 1830 (1997); see also, Stanford v. Parker, 266 F. 3d 442, 460 (6th Cir. 2001);
26 Murphy v. Johnson, 205 F.3d 809, 814 (5th Cir. 2000), cert. denied, 531 U.S. 957, 121 S. Ct.
27 380 (2000).

28 The Discovery Motion is silent on the question of good cause. Thus, Petitioner's failure
to address this mandatory showing is "construed as an admission that the motion is not

meritorious and cause for its denial or as a waiver of all grounds not so supported.” District Court Rules (DCR) Rule 13(2). Nor does the outcome change merely because Petitioner’s underlying matter is criminal in nature: “A party filing a motion must also serve and file with it a memorandum of points and authorities in support of each ground thereof. The absence of such memorandum may be construed either as an admission that the motion is not meritorious and, as cause for its denial or as a waiver of all grounds not supported.” Eighth Judicial District Court Rules (EDCR) Rule 3.20(b); see Polk v. State, 126 Nev. 180, 185, 233 P.3d 357, 360 (2010).

Petitioner’s claim boils down to a fishing expedition in the hopes of finding something to withdraw his plea. Petitioner assumes the existence of additional testing and that any additional testing was not provided to previous defense counsel. Petitioner has done nothing to substantiate his naked assumptions. Petitioner has not shown good cause because he merely speculates about possibilities. Until Petitioner can demonstrate more than mere hoped for conclusions, his request for discovery must be denied as the fishing expedition it is.

ORDER

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

Dated this 1st day of December, 2021



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

9D8 E6A 6730 7AF6
Christy Craig
District Court Judge

BY /s/ Jonathan E. Vanbockerck
JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528

1 CERTIFICATE OF ELECTRONIC TRANSMISSION

2 I hereby certify that service of the above and foregoing was made this 1st day of
3 December, 2021, by electronic transmission to:

4 ALLEN LICHTENSTEIN
5 allaw@lvcoxmail.com

6 BY /s/ *E. Del Padre*
7 E. DEL PADRE
8 Secretary for the District Attorney's Office

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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Shan Kittredge, Plaintiff(s)

CASE NO: A-20-815382-W

7 vs.

DEPT. NO. Department 32

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: 12/1/2021

15 Dept 20 Law Clerk

Dept20lc@clarkcountycourts.us

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

December 22, 2020

A-20-815382-W Shan Kittredge, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

**December 22, 2020 12:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Johnson, Eric

COURTROOM: RJC Courtroom 12A

COURT CLERK: Tia Everett

RECORDER: Angie Calvillo

REPORTER:

PARTIES

PRESENT: Merback, William J. Attorney

JOURNAL ENTRIES

- Court stated Defendant not present and in custody with the Nevada Department of Corrections.

Court noted having read Defendant s petition and State s Response; COURT ORDERED, Petition DENIED and stated findings. Defendant s Mother Sofie Kittredge present via blue. Mr. Kittredge advised counsel was to be appointed and that never happened and the habeas corpus was filed as the attorney never helped appeal. Court stated based on the sentence imposed; FURTHER ORDERED previous ruling VACATED and Request for Appointment of Counsel GRANTED. COURT FURTHER ORDERED, matter SET for Confirmation of Counsel.

NDC

1/21/2021 1:45 PM CONFIRMATION OF COUNSEL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 21, 2021

A-20-815382-W Shan Kittredge, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

January 21, 2021 11:00 AM All Pending Motions

HEARD BY: Craig, Christy

COURTROOM: RJC Courtroom 16D

COURT CLERK: Carolyn Jackson

RECORDER: Kaihla Berndt

REPORTER:

PARTIES

PRESENT: Lichtenstein, Allen Attorney
Thomas, Morgan B.A. Attorney

JOURNAL ENTRIES

- Upon inquiry of court if the office of conflict counsel appointed Mr. Lichtenstein to the case, Mr. Lichtenstein stated they had. COURT ORDERED, confirmation of counsel CONFIRMED.

Colloquy regarding setting of schedule for Petition for Writ of Habeas Corpus. COURT ORDERED, filing of writ due May 20, 2021, response by State due September 16, 2021, reply due by October 14, 2021, and matter CONTINUED for argument on October 21, 2021 at 11:00 a.m. Mr. Lichtenstein stated his client will need to be transported. Ms. Thomas stated she will make a note to prepare a transport order. Court directed Mr. Lichtenstein to advise State if his client does not want to be transported.

CONTINUED TO: 10/21/2021 11:00 AM

CLERK'S NOTE: Minute Order prepared by Nicole McDevitt via listening to JAVS recording. /nm
2/4/2021

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

October 21, 2021

A-20-815382-W Shan Kittredge, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

**October 21, 2021 8:30 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Andrea Natali

RECORDER: Kaihla Berndt

REPORTER:

PARTIES

PRESENT: Goodman, Laura Attorney
Lichtenstein, Allen Attorney

JOURNAL ENTRIES

- Colloquy regarding Mr. Lichtenstein's recently filed reply. Argument by Mr. Lichtenstein in support of the petition, noting the Deft.'s competency was not raised at the time the Deft. entered the plea. Argument by Ms. Goodman in opposition to the petition, noting the Deft. was canvassed on mental health issues and what was going on; submitted on the response. Mr. Lichtenstein submitted. Statement by Deft. COURT stated its FINDINGS and ORDERED, petition DENIED; DIRECTED, the State to prepare the order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

November 30, 2021

A-20-815382-W Shan Kittredge, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

November 30, 2021 8:30 AM Confirmation of Counsel

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

COURT CLERK: Shelley Boyle

RECORDER: Kaihla Berndt

REPORTER:

PARTIES

PRESENT: Jackson, Terrence Michael Attorney
Rhoades, Kristina A. Attorney

JOURNAL ENTRIES

- Deft. not present, not transported.

Mr. Jackson CONFIRMED as Counsel of Record and stated once there is an Order he will file a Notice of Appeal. COURT SO NOTED.

NDC

Certification of Copy

State of Nevada }
County of Clark } SS:

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

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

SHAN JONATHON KITTREDGE,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

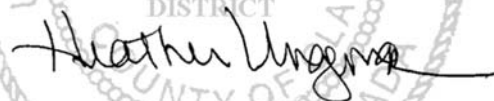
Case No: A-20-815382-W

Dept No: XXXII

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 14 day of December 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

