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Electronically Filed
Sep 23 2022 12:53 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

EDWARD HONABACH,

Case No.: A-20-812948-W

Petitioner,

vs.

Department VII

THE STATE OF NEVADA ET AL.,

Respondents

NOTICE OF APPEAL

Notice is hereby given that EDWARD HONABACH, by and through his counsel JIM HOFFMAN, ESQ., appeals the denial of his petition for post-conviction relief issued by the Court on September 15, 2022.

DATED: September 21, 2022

/s/ Jim Hoffman

JIM HOFFMAN, ESQ.

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DATED: September 21, 2022

JIM HOFFMAN, ESQ.

CASE SUMMARY

CASE NO. A-20-812948-W

Edward Honabach, Plaintiff(s)
vs.
William Gittere, Defendant(s)

§
§
§
§
§
§

Location: **Department 7**
Judicial Officer: **Bell, Linda Marie**
Filed on: **03/27/2020**
Case Number History:
Cross-Reference Case Number: **A812948**
Supreme Court No.: **81402**

CASE INFORMATION

Related Cases
C-16-314092-2 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Statistical Closures
09/15/2022 Other Manner of Disposition
07/23/2020 Summary Judgment

Case Status: **09/15/2022 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-20-812948-W
Court Department 7
Date Assigned 07/05/2022
Judicial Officer Bell, Linda Marie

PARTY INFORMATION





Plaintiff	Honabach, Edward	<i>Lead Attorneys</i> Hoffman, James I. <i>Court Appointed</i> 702-483-1816(W)
Defendant	Gittere, William	Cole, Madilyn M. <i>Retained</i> 702-382-5815(W)
Other	State of Nevada	Wolfson, Steven B <i>Retained</i> 702-671-2700(W)

DATE















EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

03/27/2020	 Writ of Habeas Corpus Party: Plaintiff Honabach, Edward [1] <i>Petitioner's Post-Conviction Writ of Habeas Corpus</i>
03/30/2020	 Notice of Department Reassignment [2] <i>Notice of Department Reassignment and Notice of Hearing</i>
03/31/2020	 Clerk's Notice of Nonconforming Document [3]
06/10/2020	 Motion to Reconsider Filed By: Plaintiff Honabach, Edward [4] <i>Motion for Reconsideration</i>

CASE SUMMARY
CASE NO. A-20-812948-W

06/18/2020	 Clerk's Notice of Hearing <i>[5] Notice of Hearing</i>
06/24/2020	 Notice of Appeal <i>[6]</i>
06/25/2020	 Case Appeal Statement Filed By: Plaintiff Honabach, Edward <i>[7]</i>
07/17/2020	 Opposition to Motion Filed By: Defendant Gittere, William <i>[8] State's Opposition to Defendant's Motion for Reconsideration</i>
07/21/2020	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff Honabach, Edward <i>[9] Findings of Fact, Conclusions of Law and Order</i>
07/23/2020	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Defendant Gittere, William <i>[10] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
07/23/2020	 Order to Statistically Close Case <i>[11] Civil Order to Statistically Close Case</i>
08/18/2020	 Order Denying Motion Filed By: Defendant Gittere, William <i>[12] Order Denying Defendants's Motion For Reconsideration</i>
01/12/2022	 NV Supreme Court Clerks Certificate/Judgment - Reversed <i>[13] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Reversed and Remand</i>
01/21/2022	 Order <i>[14] Order Setting Further Proceedings RE: Supreme Court Order</i>
04/05/2022	 Motion Filed By: Plaintiff Honabach, Edward <i>[15] Ex Parte Motion for Transcripts at State's Expense</i>
04/12/2022	 Order Filed By: Plaintiff Honabach, Edward <i>[16] Ex Parte Order for Transcripts at State's Expense</i>
04/28/2022	 Amended Petition Filed By: Plaintiff Honabach, Edward <i>[17] Amended Petition for Post-Conviction Relief</i>
05/26/2022	 Response <i>[18] State's Response to Petitioners Amended Petition for Writ of Habeas Corpus (Post-Conviction)</i>
07/05/2022	Case Reassigned to Department 7 <i>Pursuant to Administrative Order 22-09 - Case Reassigned from Judge Jerry A. Wiese to Judge Linda Marie Bell</i>

CASE SUMMARY

CASE NO. A-20-812948-W

08/15/2022



Declaration

Filed By: Plaintiff Honabach, Edward
[19] Declaration of Edward Honabach

09/15/2022



Decision and Order

[20] A-20-812948-W Decision and Order

09/20/2022



Notice of Entry of Order

[21] Notice of Entry of Order

09/21/2022



Notice of Appeal (Criminal)

Party: Plaintiff Honabach, Edward
[22] Notice of Appeal

DISPOSITIONS

01/12/2022

Clerk's Certificate (Judicial Officer: Wiese, Jerry A.)

Debtors: William Gittere (Defendant)

Creditors: Edward Honabach (Plaintiff)

Judgment: 01/12/2022, Docketed: 01/20/2022

Comment: Supreme Court No 81402 - "APPEAL REVERSED/REMANDED"

HEARINGS

05/13/2020



Minute Order (3:00 AM) (Judicial Officer: Wiese, Jerry A.)

Minute Order - No Hearing Held;

Journal Entry Details:

At the request of Court, for judicial economy, the PETITION FOR WRIT OF HABEAS CORPUS set for hearing on May 14, 2020 has been CONTINUED to May 28, 2020. 05/28/20 8:30 AM PETITION FOR WRIT OF HABEAS CORPUS CLERK'S NOTE: The above minute order was distributed to all parties 05-13-20.//lk;

05/18/2020



Minute Order (3:00 AM) (Judicial Officer: Wiese, Jerry A.)

Minute Order - No Hearing Held;

Journal Entry Details:


The above-referenced matter is scheduled for hearing on May 28, 2020, with regard to the Petition for Writ of Habeas Corpus. Pursuant to A.O. 20-01 and subsequent Administrative Orders, this matter is deemed "non-essential," and may be decided after a hearing (held by alternative means), decided on the papers, or continued. Having reviewed the papers and pleadings on file, this Court has determined that it would be appropriate to decide this matter on the papers. Consequently, this minute order issues. It should initially be noted that Mr. Honabach was represented by attorney Robert Beckett, at the time of the guilty plea. Mr. Honabach was sentenced on 3/26/2019, to Life Without the Possibility of Parole. Mr. Beckett filed a Motion to Withdraw, and on 4/23/2019, the Motion to Withdraw was Granted, and Travis Akin, Esq., was appointed for Appeal. Although Mr. Akin was appointed to handle Mr. Honabach's direct appeal, he filed and then voluntarily dismissed the appeal, based on the conclusion that an appeal was improper following a guilty plea agreement. Mr. Honabach then filed a Motion to Withdraw Counsel, which was granted on 10/31/2019. Out of an abundance of caution, and because the time for filing a Writ was about to expire, Mr. Akin went above and beyond the call of duty and filed the instant Petition for Writ of Habeas Corpus, on behalf of the Petitioner, Edward Honabach. In the Petition, it is alleged that 1) Petitioner did not voluntarily, intelligently, and knowingly enter his plea agreement, because he did not know that he could receive life without parole. He was of the understanding that he would have a chance at parole; 2) Counsel was ineffective for failing to advise Petitioner that he could receive a sentence of life without the possibility of parole; and 3) Cumulative Error. Mr. Akin indicated that he did not have the opportunity to investigate these claims since he has not been counsel for the Petitioner for many months, and asked that Petitioner be appointed counsel to investigate these claims and file supplemental briefs. The State was apparently served with the Petition for Writ of Habeas Corpus, electronically and via mail, on March 27, 2020. The State has not filed a responsive pleading. The Court notes that the Petitioner has not sought post-


CASE SUMMARY

CASE NO. A-20-812948-W

conviction appointment of counsel for purposes of the Writ Petition, and even if he had, there is nothing complex or difficult about the issues presented, that would require the appointment of counsel. The suggestion that Mr. Honabach was unaware that he could receive "Life Without the Possibility of Parole," is clearly belied by the record. The first page of the Guilty Plea Agreement include the following: **GUILTY PLEA AGREEMENT** I hereby agree to plead guilty to: **FIRST DEGREE KIDNAPPING RESULTING IN SUBSTANTIAL BODILY HARM** (Category A Felony NRS 200.310, 200.320 NOC 50052), as more fully alleged in the charging document attached hereto as Exhibit 1 . My decision to plead guilty is based upon the plea agreement in this case which is as follows: This offer is conditional upon all four (4) Defendants accepting their respective negotiations and being sentenced. All parties agree the State will have the right to argue for Life without the possibility of Parole, and the Defense will argue for Life with the possibility of Parole after fifteen (15) years. All parties agree that no one will seek the term of years. . . . (See Guilty Plea Agreement, filed 2/4/2019, emphasis added.) A plea canvass occurred on February 4, 2019, and the Court accepted Mr. Honabach's plea of guilty, and concluded that Mr. Honabach's plea was made freely and voluntarily, and that he understood the nature of the offense, and the consequences of his plea. As the grounds for the Petition for Writ of Habeas Corpus are clearly belied by the record, and there is no suggestion or evidence of any cumulative error, and other good cause appearing, **IT IS HEREBY ORDERED** that the Petition for Writ of Habeas Corpus is hereby **DENIED**. The Request for Appointment of Counsel is also **DENIED**, as there is no suggestion that the issues presented are complex or difficult, or that counsel is necessary. The Court requests the State prepare an Order consistent with the foregoing, and have it submitted to the Court for signature within 10 days. A Status Check re: Submission and Completion of Order is hereby set for May 28, 2020. As this matter has been resolved on the papers, the hearing set for May 28, 2020, regarding the Petition for Writ of Habeas Corpus, will be taken "off calendar," and there will be no need for any attorney or party to appear on that date as long as the Order has been prepared, and submitted to Chambers. Otherwise, counsel for the State is to appear regarding the Status of the Order. **CLERK'S NOTE:** A copy of the above minute order was distributed 05-18-20./lk ;

05/28/2020 **CANCELED Petition for Writ of Habeas Corpus (8:30 AM)** (Judicial Officer: Wiese, Jerry A.)
Vacated

07/15/2020  **Minute Order (3:00 AM)** (Judicial Officer: Wiese, Jerry A.)
Minute Order - No Hearing Held;
Journal Entry Details:
At the Court's request, **COURT ORDERED**, Status Check set for July 23, 2020 at 8:30 a.m. regarding the submission and completion of the Court's Order on Petition for Writ of Habeas Corpus. Should the Order be submitted to Chambers prior to July 23, 2020 the hearing will be vacated. 07/23/20 8:30 AM STATUS CHECK: SUBMISSION AND COMPLETION OF ORDER **CLERK'S NOTE:** A copy of the above minute order was distributed to all parties with a copy of the minute order dated May 18, 2020./lk;

07/23/2020  **Motion For Reconsideration (8:30 AM)** (Judicial Officer: Wiese, Jerry A.)
Plaintiff's Motion for Reconsideration

MINUTES





Motion Denied;
Journal Entry Details:
Mr. Honabach not present, in custody in the Nevada Department of Corrections. Court advised the Plaintiff was asking the Court to reconsider the Court's decision on a pretrial writ because he said former counsel submitted his petition for habeas corpus without his permission. Court advised the Court did not find a good basis under any of the rules to reconsider the prior decision and noted that counsel did not make any arguments as to why the Court's prior decisions was incorrect. Court noted the argument was that counsel was not supposed to file the petition for habeas corpus; however, if it had not been filed it would now be time barred so there would not be a habeas corpus petition on file. Further, Court noted if it had not been filed there would not have been anything for the Court to rule on and now the Defendant at least had the potential to appeal the habeas corpus decision that the Court made. **COURT ORDERED** motion **DENIED**. Court finds the Defendant is in a better position having the petition filed than he would have been otherwise. State **DIRECTED** to prepare the Order. **NDC CLERK'S NOTE:** A copy of the above minute order was distributed to all parties 08/03/20./lk;

SCHEDULED HEARINGS

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-20-812948-W

	<p>CANCELED Status Check (08/25/2020 at 8:30 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated</i> <i>Status Check: Submitting/Filing of Order on Moyion for Reconsideration</i></p>
07/23/2020	<p>CANCELED Status Check (8:30 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated</i> <i>Status Check: Filing of Order</i></p>
08/25/2020	<p>CANCELED Status Check (8:30 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated</i> <i>Status Check: Submitting/Filing of Order on Moyion for Reconsideration</i></p>
02/10/2022	<p> Further Proceedings (8:30 AM) (Judicial Officer: Wiese, Jerry A.) 02/10/2022, 03/03/2022 <i>Further Proceedings: SC Remand</i> Matter Continued; Matter Heard; Journal Entry Details: <i>All parties present via BlueJeans video conferencing. Sarah Overly, Esq. present for the State. Mr. Hoffman advised he was contacted by Drew Christiansen about this case yesterday and he had not met with the Defendant. Court inquired as to whether the Defendant wanted the Court to appoint him with representation. Defendant confirmed that he would allow the Court to appoint him counsel to assist him with his petition. Court advised the Court would appoint Mr. Hoffman as counsel as long as there was not a conflict. COURT ORDERED, matter CONTINUED for a Status Check regarding confirmation of counsel and to set a briefing schedule for Defendants petition. IN CUSTODY 03/31/22 8:30 AM STATUS CHECK: SET BRIEFING SCHEDULE/CONFIRMATION OF COUNSEL ;</i> Matter Continued; Matter Heard; Journal Entry Details: <i>Defendant not present. State present via BlueJeans video conferencing. Court noted the Defendant was not transported from the Nevada Department of Corrections. Court advised the Defendant should be transported so the Court can ask the Defendant if he would like to supplement his filing or if he would like the Court to appoint counsel for him. COURT ORDERED, matter CONTINUED. Court DIRECTED the State to prepare a transport order. CONTINUED TO: 03/03/22 8:30 AM NDOC;</i></p>
03/31/2022	<p> Status Check (8:30 AM) (Judicial Officer: Wiese, Jerry A.) <i>STATUS CHECK: SET BRIEFING SCHEDULE/ CONFIRM COUNSEL</i> Hearing Set; Journal Entry Details: <i>Mr. Hoffman not present. Colloquy regarding Deft's. contact with Mr. Hoffman. MATTER TRAILED, to allow Mr. Hoffman to appear. MATTER RECALLED, Mr. Hoffman now present. All other parties present as before. Colloquy regarding scheduling. COURT ORDERED, a Hearing and Briefing Schedule SET; Deft's. Writ DUE by 04.28.22, State's Response DUE by 05.27.22. State to prepare the Transport Order. 06/28/22 8:30 AM HEARING RE: WRIT OF HABEAS CORPUS NDC ;</i></p>
06/28/2022	<p> Hearing (8:30 AM) (Judicial Officer: Wiese, Jerry A.) <i>Writ of Habeas Corpus</i></p> <p>MINUTES Matter Heard; Journal Entry Details: <i>COURT NOTED It is inclined to deny on the pleadings, but most of time if that happens the Supreme Court kicks it back asking why there is not an Evidentiary Hearing, and ORDERED, Evidentiary Hearing SET. CUSTODY EVIDENTIARY HEARING 08/16/22 8:30 AM;</i></p> <p>SCHEDULED HEARINGS  Evidentiary Hearing (08/16/2022 at 8:30 AM) (Judicial Officer: Bell, Linda Marie)</p>

CASE SUMMARY

CASE NO. A-20-812948-W

08/16/2022



Evidentiary Hearing (8:30 AM) (Judicial Officer: Bell, Linda Marie)

MINUTES

Set Status Check;

Journal Entry Details:

Mr. Hoffman noted the instant matter was set for an evidentiary hearing and they may be requesting a continuance. Court advised it was not inclined to grant a continuance. Mr. Hoffman indicated he was prepared to proceed. MATTER TRAILED. MATTER RECALLED. Same parties present. Ms. Wyse indicated if the Court wasn't inclined to a continuance, they would be prepared to proceed. MATTER TRAILED to the end of the calendar. MATTER RECALLED. Same parties present. Witness, Edward Honabach, SWORN and TESTIFIED. Court noted the sentencing Transcript was prepared and filed; however, it was not filed into the correct case, and filed into the Co-Def't.'s case C-16-314092-1 on June 18, 2019. Arguments by Mr. Hoffman. Statements by Ms. Wyse. COURT ORDERED, a written Order shall issue, and matter SET for a status check. Parties would not need to appear. 9/1/22 8:30 AM STATUS CHECK: WRITTEN ORDER;

SCHEDULED HEARINGS



Status Check (09/01/2022 at 8:30 AM) (Judicial Officer: Bell, Linda Marie)

STATUS CHECK: WRITTEN ORDER

09/01/2022



Status Check (8:30 AM) (Judicial Officer: Bell, Linda Marie)

STATUS CHECK: WRITTEN ORDER

Denied;

Journal Entry Details:

COURT ORDERED, DENIED and Court will ISSUE a written Decision.;

1 **DAO**

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

4
5 EDWARD HONABACH,

6 Petitioner,

7 vs.

8 THE STATE OF NEVADA,

9 Respondents.

Case No.

A-20-812948-W

Dept. No.

VII

10
11 **DECISION AND ORDER**

12 Petitioner Edward Honabach filed an Amended Post-Conviction Petition for Writ of Habeas
13 Corpus seeking relief from his conviction for First Degree Kidnapping. Mr. Honabach's claims are
14 based on ineffective assistance of counsel related to his guilty plea. The matter came before the
15 Court for an evidentiary hearing on August 16, 2022, and the Court heard testimony from Mr.
16 Honabach. After review of the Petition and other papers, the testimony of witnesses, and the oral
17 argument of the parties, the Court denies Mr. Honabach's Petition for Writ of Habeas Corpus.

18 **I. Factual and Procedural Background**

19 On April 12, 2016, the State charged Petitioner Mr. Honabach with multiple offenses related
20 to the abduction and serious injury to Jose Ismael Salazar-Ortiz. On February 4, 2019, Mr.
21 Honabach along with his three co-defendants pled guilty. An Amended Guilty Plea Agreement was
22 filed in open court and Mr. Honabach pled guilty to one count of First Degree Kidnapping Resulting
23 in Substantial Bodily Harm. The plea negotiation allowed for the State to argue for life without the
24 possibility of parole and for the defense to argue for life with the possibility of parole. On March 26,
25 2019, Mr. Honabach was sentenced to life without the possibility of parole. After sentencing, Mr.
26 Honabach's counsel, Mr. Robert S. Beckett, Esq., withdrew from the case. The Court appointed Mr.
27 Travis D. Akin, Esq. to serve as Mr. Honabach's appellate counsel.

1 Prior to Mr. Akin's appointment, Mr. Honabach filed a Notice of Appeal. On August 13,
2 2019, Mr. Akin filed a Notice of Withdrawal of Appeal on behalf of Mr. Honabach. Mr. Akin
3 represented he had explained the consequences of withdrawing the appeal and that Mr. Honabach
4 consented to the voluntary dismissal. As a result, the Nevada Supreme Court dismissed the appeal.
5 Following the dismissal, Mr. Honabach sent a letter to the Nevada Supreme Court asserting he did
6 not consent to the dismissal of his appeal, did not have contact with Mr. Akin, and had been unaware
7 that his appeal was dismissed.

8 Based on Mr. Honabach's letter, the Nevada Supreme Court ordered Mr. Akin to respond.
9 Mr. Akin filed a copy of a letter he sent to Mr. Honabach. This letter indicated Mr. Akin and Mr.
10 Honabach communicated about the dismissal of the appeal and that Mr. Akin intended to file a post-
11 conviction petition for writ of habeas corpus on behalf of Mr. Honabach. On March 11, 2020, the
12 Nevada Supreme Court ordered that the appeal would remain dismissed. Mr. Honabach then wrote
13 another letter to the Nevada Supreme Court stating that he was unaware whether a petition was filed
14 on his behalf. The Court determined no action would be taken regarding the letter.

15 On March 27, 2020, Mr. Akin filed a post-conviction petition for writ of habeas corpus on
16 behalf of Mr. Honabach and asked the district court to appoint a replacement attorney to file a
17 supplement. The district court denied the petition without any supplement, and denied a subsequent
18 Motion to Reconsider.

19 Mr. Honabach filed an appeal of the denial of his petition. He prevailed on his appeal, and
20 the matter was remanded for an evidentiary hearing.

21 The District Court appointed new counsel for Mr. Honabach, who filed an amended petition.
22 The State responded on May 15, 2022. The matter came before the Court for an evidentiary hearing
23 on August 16, 2022. At the evidentiary hearing, the Court heard testimony from Mr. Honabach, as
24 well as arguments from both parties.

25 II. Discussion

26 Mr. Honabach raises six claims for relief, all related to ineffective assistance of counsel and
27 the voluntariness of his plea. A claim of ineffective assistance of counsel is analyzed under the two-
28 part test laid out in Strickland v. Washington, 466 U.S. 668 (1984). Under Strickland, a defendant

1 alleging ineffective assistance of counsel must show (1) that their counsel's performance was
2 deficient, and (2) that the deficient performance prejudiced the defense. Id. at 687. The Court may
3 consider the two test elements in any order and need not consider both prongs if the defendant
4 makes an insufficient showing on either one. Id. at 697.

5 Counsel's performance is deficient when their representation amounted to incompetence
6 under prevailing professional norms, "not whether it deviated from best practices or most common
7 custom." Harrington v. Richter, 563 U.S. 86, 88 (2011). To find prejudice to the defense in the
8 second half of the Strickland test, the defendant must show "that there is a reasonable probability
9 that, but for counsel's unprofessional errors, the result of the proceeding would have been different."
10 Strickland, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine
11 confidence in the outcome." Id.

12 There is a presumption of effectiveness and the defendant must demonstrate by a
13 preponderance of the evidence that counsel was ineffective. Means v. State, 103 P.3d 25, 32-33
14 (Nev. 2004). A post-conviction petition's claims of ineffective assistance of counsel must be
15 supported with specific factual allegations which would entitle a petitioner to relief if true; "bare" or
16 "naked" allegations are not sufficient to show ineffectiveness of counsel. Hargrove v. State, 686
17 P.2d 222, 225 (Nev. 1984). NRS 34.735(6) states in part, "[Petitioner] must allege specific facts
18 supporting the claims in the petition[.]... Failure to allege specific facts rather than just conclusions
19 may cause your petition to be dismissed." (emphasis added).

20 **A. Mr. Honabach is not entitled to relief because Mr. Honabach has not shown that his**
21 **counsel was ineffective under Strickland.**

22 The amended petition argues that the Judgment of Conviction should be vacated on seven
23 grounds. The first three grounds allege errors made by Mr. Honabach's appellate attorney Mr. Akin.
24 Grounds Four, Five, and Six allege errors made by trial counsel Mr. Beckett which resulted in
25 ineffective assistance of counsel. The final Ground alleges that Mr. Honabach's guilty plea was not
26 voluntary violating the Fifth Amendment. The State filed a response to the amended petition on May
27 26, 2022. The State argues that Mr. Honabach's first six grounds of ineffective assistance of counsel
28 are unmeritorious, and that the final ground should not be considered due to Mr. Honabach freely

1 and voluntarily entering into his guilty plea. The Court finds that Mr. Honabach is not entitled to
2 relief on all grounds of the Petition.

3 **1. Mr. Honabach failed to establish appellate counsel was ineffective for withdrawing Mr.**
4 **Honabach's appeal without his consent.**

5 In his first Ground, Mr. Honabach argues that his appellate counsel, Mr. Akin, was
6 ineffective by withdrawing Mr. Honabach's appeal without his consent. Mr. Akin represented that
7 he withdrew the appeal after explaining to and obtaining consent from Mr. Honabach. In the
8 evidentiary hearing, Mr. Honabach testified that he had asked Mr. Akins not to withdraw his appeal.
9 However, the record indicates that Mr. Akins communicated with Mr. Honabach via letter about the
10 dismissal of the appeal and that Mr. Akin's had intended to file a post-conviction petition for writ of
11 habeas corpus on behalf of Mr. Honabach. Mr. Akins was not at the evidentiary hearing to confirm
12 Mr. Honabach's claims that he indeed communicated to Mr. Akins that he did not want to have his
13 appeal withdrawn.

14 Mr. Honabach has not established that he had an issue to raise on appeal and that he would
15 have been successful. As represented in Toston, the Nevada Supreme Court held that "counsel has a
16 duty to file a direct appeal when the client's desire to challenge the conviction or sentence can be
17 reasonably inferred from the totality of the circumstances, focusing on the information that counsel
18 knew or should have known at the time." Toston v. State, 127 Nev. 979,267 P.3d 795, 801 (2011).
19 There is no indication that Mr. Honabach reserved any issues for appeal, either in the Guilty Plea
20 Agreement itself or in any of the record. Furthermore, under Hargrove, Mr. Honabach has not
21 provided the Court with specific factual allegations that would entitle him to relief. Mr. Honabach's
22 naked allegations during the evidentiary hearing do not meet this standard.

23 The Court finds that Mr. Honabach failed to demonstrate that counsel should have known he
24 wanted an appeal and that withdrawing the appeal itself was deficient. Therefore, Mr. Honabach's
25 Petition is denied on this Ground.

26 **2. Mr. Honabach failed to establish appellate counsel was ineffective for failing to**
27 **challenge the voluntariness of Mr. Honabach's plea on direct appeal.**

28 Mr. Honabach's second Ground is that appellate counsel was ineffective in failing to
challenge the voluntariness of Mr. Honabach's plea. The Court finds that Mr. Akins was not

1 ineffective for failing to challenge the voluntariness of Mr. Honabach's plea on direct Appeal.
2 Challenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate
3 counsel must be first pursued in post-conviction proceedings in the district court. Franklin v. State,
4 110 Nev. 750, 751-52, 877 P.2d 1058, 1059 (1994). Appellate counsel cannot be ineffective for
5 failing to raise a claim that is inappropriate on direct appeal. Therefore, Mr. Honabach's Petition is
6 denied on this Ground.

7 **3. Appellate counsel's errors did not constitute cumulative error.**

8 In his third Ground, Mr. Honabach argues that his trial and appellate counsel's errors
9 cumulated to create prejudice. A finding of cumulative error in the context of a Strickland claim is
10 extraordinarily rare and requires an extensive aggregation of errors. See, e.g., Harris By and through
11 Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). There can be no cumulative error because
12 Mr. Honabach fails to demonstrate that his appellate counsel violated Strickland. Mr. Honabach
13 failed to establish that his appellate counsel was ineffective because Mr. Honabach did not show
14 what claim he would have raised and that he would have likely succeeded on the merits. Mr. Akins
15 had properly raised Mr. Honabach's claims in a timely filed petition instead of a direct appeal.
16 Therefore, the Court denies Mr. Honabach's petition on this Ground.

17 **4. Mr. Honabach failed to establish trial counsel was ineffective when trial counsel failed
to review discovery.**

18 In Ground 4 Mr. Honabach argues that his trial counsel was ineffective because he had failed
19 to review discovery before advising Mr. Honabach to accept the plea offer. At the evidentiary
20 hearing the Court heard testimony from Mr. Honabach relating to the conversations he had with his
21 trial counsel. Mr. Honabach then testified that he would not have taken the plea deal had he known
22 his counsel had failed to review all of the discovery. A post-conviction petitioner's claim of
23 ineffective assistance of counsel must be supported with specific factual allegations which would
24 entitle a petitioner to relief if true; "bare" or "naked" allegations are not sufficient to show
25 ineffectiveness of counsel. Hargrove v. State, 686 P.2d 222, 225 (Nev. 1984).

26 Mr. Honabach testified that the investigator told him Mr. Beckett had not reviewed the
27 discovery. It is impossible for the Court to know what Mr. Beckett did or did not review without the
28

1 benefit of Mr. Beckett's testimony. Failure to review discovery prior to advising a client would be
2 deficient performance however, Mr. Honabach failed to establish Mr. Beckett did not have or review
3 discovery. The Court only heard testimony from Mr. Honabach himself and not his trial attorney.
4 These allegations made at the evidentiary hearing are not supported by specific facts and can be
5 considered "bare" allegations which are not enough to support a post-conviction petitioner's claim
6 of ineffective assistance of counsel under Hargrove. The Court therefore denies Mr. Honabach's
7 claim that his trial counsel was ineffective in regards to this Ground.

8 **5. Mr. Honabach failed to establish trial counsel was ineffective during sentencing.**

9 In Ground 5, Mr. Honabach argues that his trial counsel was ineffective because he failed to
10 prepare him for sentencing and did not file a sentencing memorandum. After looking at the record
11 and reviewing the evidentiary hearing, the Court finds that Mr. Honabach's counsel was not
12 ineffective during sentencing. In regards to the sentencing memorandum, Mr. Honabach has failed to
13 demonstrate that there was a reasonable probability of a different outcome absent counsel's alleged
14 error. See Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (providing that a petitioner
15 claiming counsel did not conduct an adequate investigation must allege what the results of a better
16 investigation would have been and how it would have affected the outcome of the proceedings). Of
17 the four co-defendants, only one filed a sentencing memorandum and the same co-defendant
18 received the exact same sentence. Mr. Honabach fails to demonstrate the probability of a different
19 outcome because it was not the lack of mitigation, but the nature of the crimes the defendants
20 committed that resulted in the sentence that was given:

21 THE COURT: In this case I understand that drugs is a problem for most, if not all, of you,
22 and that drugs and alcohol may have been the factor that caused some of these actions, but I
23 don't know that I consider that an excuse. I don't know that I consider that a good reason to
have committed horrific crimes.

24 Sentencing Transcript, March 26, 2019, at 22.

25 Furthermore, during sentencing Counsel presented testimony as to why Mr. Honabach
26 should be given a sentence that allowed parole, explained mitigating factors that contributed to his
27 actions, such as Mr. Honabach's history of drug use leading up to the crime, how his prolonged drug
28

1 use affected his decision making during the crime, what Mr. Honabach had been doing to improve
2 himself while in jail, and also explained what Mr. Honabach's hopes were if granted the opportunity
3 of parole. Id. at 11-16. Under Strickland, Mr. Honabach has failed to demonstrate that his Counsel
4 was deficient during sentencing. Therefore, the Court denies Mr. Honabach's petition on this
5 Ground.

6 **6. Trial counsel's errors did not cumulate to create prejudice.**

7 In his sixth ground, Mr. Honabach argues that his trial counsel's errors cumulated to create
8 prejudice. A finding of cumulative error in the context of a Strickland claim is extraordinarily rare
9 and requires an extensive aggregation of errors. See, e.g., Harris By and through Ramseyer v. Wood,
10 64 F.3d 1432, 1438 (9th Cir. 1995). Where individual allegations of error are not of constitutional
11 stature or are not errors, there is nothing to cumulate. Turner v. Quarterman, 481 F.3d 292, 301 (5th
12 Cir. 2007). Mr. Honabach has failed to demonstrate that his trial counsel was ineffective by failing
13 to review discovery because his allegations are not supported by specific facts and can be considered
14 "naked" allegations which are not enough to support a post-conviction petitioner's claim of
15 ineffective assistance of counsel under Hargrove. Moreover, Mr. Honabach failed to demonstrate
16 that counsel's performance during sentencing fell below an objective standard of reasonableness or a
17 reasonable probability of a different outcome absent counsel's alleged errors. Therefore, the Court
18 denies Mr. Honabach's petition on this Ground.

19 **B. The record demonstrates Mr. Honabach entered into the guilty plea agreement
20 voluntarily.**

21 In Ground 7, Mr. Honabach argues that he did not want to accept the plea deal, and that he
22 took the deal because he felt pressured by his trial counsel. To be constitutionally valid under the
23 Fifth Amendment, a guilty plea must be entered knowingly, willingly, and understandingly. North
24 Carolina v. Alford, 400 U.S. 25, 37-38 (1985). Mr. Honabach stated that he did not enter into the
25 Guilty Plea Agreement voluntarily, intelligently, and knowingly, because he was unaware that he
26 could receive a sentence of life without the possibility of parole. Mr. Honabach also claims that his
27 plea counsel was ineffective due to failing to advise him that he could receive a sentence of life
28 without the possibility of parole.

1 However, the record would suggest that Mr. Honabach voluntarily accepted the plea deal.
2 On July 21, 2020, the District Court denied a previous petition for writ of habeas corpus filed by Mr.
3 Honabach stating that the Guilty Plea Agreement in this case clearly pointed out that “the State will
4 have the right to argue for life without the possibility of parole, and the defense will argue for life
5 with the possibility of Parole after fifteen (15) years.” Furthermore, on February 4, 2019, the Court
6 had accepted Petitioner’s guilty plea and affirmed that Mr. Honabach was satisfied with his
7 counsel’s representation and his guilty plea was made freely and voluntarily:

8
9 THE COURT: Before I can accept your plea of guilty, I have to be convinced that your plea
is freely and voluntarily made. Are you making your plea freely and voluntarily?

10 MR. HONABACH: Yes, Your Honor.

11 THE COURT: Has anybody forced you or coerced you to accept that plea?

12 MR. HONABACH: No.

13 THE COURT: Has your attorney made any promise to you that are not contained in the
guilty plea agreement?

14 MR. HONABACH: No.

15 THE COURT: Based on all the facts and circumstances, are you satisfied with the services of
your attorney?

16 MR. HONABACH: Yes.

Reporter’s Transcript, Entry of Plea (Feb. 4, 2019).

17 Therefore, the Court denies Mr. Honabach’s Petition on this Ground because he voluntarily
18 and freely entered into his plea.

19 III. Conclusion

20 Mr. Honabach’s claims related to ineffective assistance of counsel do not show that his
21 counsel was both deficient and that the deficiency prejudiced Mr. Honabach’s defense. Therefore,
22 Grounds One through Six are denied. The Court also finds that Mr. Honabach voluntarily and freely
23 entered into his guilty plea. Therefore, Ground Seven is denied and the Court denies Mr. Honabach’s
24 petition for writ of habeas corpus.

25 DATED this day of September __, 2022.

26 Dated this 15th day of September, 2022

27
28 _____
LINDA MARIE BELL
DISTRICT COURT JUDGE

6DA E12 7F94 D622
Linda Marie Bell
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

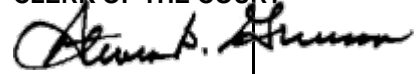
4
5
6 Edward Honabach, Plaintiff(s) CASE NO: A-20-812948-W
7 vs. DEPT. NO. Department 7
8 William Gittere, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/15/2022

15 Travis Akin travis@avalonlg.com
16 Jim Hoffman jim.hoffman.esq@gmail.com
17 Clark County DA pdmotions@clarkcountyda.com
18 Jim Hoffman, Esq. Jim.Hoffman.Esq@gmail.com
19
20
21
22
23
24
25
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NEOJ

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EDWARD HONABACH,

Petitioner,

Case No: A-20-812948-W

Dept. No: VII

vs.

WILLIAM GITTERE,

Respondent,

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on September 15, 2022, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on September 20, 2022.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

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

☒ By e-mail:

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

☒ The United States mail addressed as follows:

Edward Honabach # 1214257	Jim Hoffman, Esq.
P.O. Box 650	P.O Box 231246
Indian Springs, NV 89070	Las Vegas, NV 89105

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

1 **DAO**

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

4
5 EDWARD HONABACH,

6 Petitioner,

7 vs.

8 THE STATE OF NEVADA,

9 Respondents.

Case No.

A-20-812948-W

Dept. No.

VII

10 **DECISION AND ORDER**

11
12 Petitioner Edward Honabach filed an Amended Post-Conviction Petition for Writ of Habeas
13 Corpus seeking relief from his conviction for First Degree Kidnapping. Mr. Honabach's claims are
14 based on ineffective assistance of counsel related to his guilty plea. The matter came before the
15 Court for an evidentiary hearing on August 16, 2022, and the Court heard testimony from Mr.
16 Honabach. After review of the Petition and other papers, the testimony of witnesses, and the oral
17 argument of the parties, the Court denies Mr. Honabach's Petition for Writ of Habeas Corpus.

18 **I. Factual and Procedural Background**

19 On April 12, 2016, the State charged Petitioner Mr. Honabach with multiple offenses related
20 to the abduction and serious injury to Jose Ismael Salazar-Ortiz. On February 4, 2019, Mr.
21 Honabach along with his three co-defendants pled guilty. An Amended Guilty Plea Agreement was
22 filed in open court and Mr. Honabach pled guilty to one count of First Degree Kidnapping Resulting
23 in Substantial Bodily Harm. The plea negotiation allowed for the State to argue for life without the
24 possibility of parole and for the defense to argue for life with the possibility of parole. On March 26,
25 2019, Mr. Honabach was sentenced to life without the possibility of parole. After sentencing, Mr.
26 Honabach's counsel, Mr. Robert S. Beckett, Esq., withdrew from the case. The Court appointed Mr.
27 Travis D. Akin, Esq. to serve as Mr. Honabach's appellate counsel.

1 Prior to Mr. Akin's appointment, Mr. Honabach filed a Notice of Appeal. On August 13,
2 2019, Mr. Akin filed a Notice of Withdrawal of Appeal on behalf of Mr. Honabach. Mr. Akin
3 represented he had explained the consequences of withdrawing the appeal and that Mr. Honabach
4 consented to the voluntary dismissal. As a result, the Nevada Supreme Court dismissed the appeal.
5 Following the dismissal, Mr. Honabach sent a letter to the Nevada Supreme Court asserting he did
6 not consent to the dismissal of his appeal, did not have contact with Mr. Akin, and had been unaware
7 that his appeal was dismissed.

8 Based on Mr. Honabach's letter, the Nevada Supreme Court ordered Mr. Akin to respond.
9 Mr. Akin filed a copy of a letter he sent to Mr. Honabach. This letter indicated Mr. Akin and Mr.
10 Honabach communicated about the dismissal of the appeal and that Mr. Akin intended to file a post-
11 conviction petition for writ of habeas corpus on behalf of Mr. Honabach. On March 11, 2020, the
12 Nevada Supreme Court ordered that the appeal would remain dismissed. Mr. Honabach then wrote
13 another letter to the Nevada Supreme Court stating that he was unaware whether a petition was filed
14 on his behalf. The Court determined no action would be taken regarding the letter.

15 On March 27, 2020, Mr. Akin filed a post-conviction petition for writ of habeas corpus on
16 behalf of Mr. Honabach and asked the district court to appoint a replacement attorney to file a
17 supplement. The district court denied the petition without any supplement, and denied a subsequent
18 Motion to Reconsider.

19 Mr. Honabach filed an appeal of the denial of his petition. He prevailed on his appeal, and
20 the matter was remanded for an evidentiary hearing.

21 The District Court appointed new counsel for Mr. Honabach, who filed an amended petition.
22 The State responded on May 15, 2022. The matter came before the Court for an evidentiary hearing
23 on August 16, 2022. At the evidentiary hearing, the Court heard testimony from Mr. Honabach, as
24 well as arguments from both parties.

25 II. Discussion

26 Mr. Honabach raises six claims for relief, all related to ineffective assistance of counsel and
27 the voluntariness of his plea. A claim of ineffective assistance of counsel is analyzed under the two-
28 part test laid out in Strickland v. Washington, 466 U.S. 668 (1984). Under Strickland, a defendant

1 alleging ineffective assistance of counsel must show (1) that their counsel's performance was
2 deficient, and (2) that the deficient performance prejudiced the defense. Id. at 687. The Court may
3 consider the two test elements in any order and need not consider both prongs if the defendant
4 makes an insufficient showing on either one. Id. at 697.

5 Counsel's performance is deficient when their representation amounted to incompetence
6 under prevailing professional norms, "not whether it deviated from best practices or most common
7 custom." Harrington v. Richter, 563 U.S. 86, 88 (2011). To find prejudice to the defense in the
8 second half of the Strickland test, the defendant must show "that there is a reasonable probability
9 that, but for counsel's unprofessional errors, the result of the proceeding would have been different."
10 Strickland, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine
11 confidence in the outcome." Id.

12 There is a presumption of effectiveness and the defendant must demonstrate by a
13 preponderance of the evidence that counsel was ineffective. Means v. State, 103 P.3d 25, 32-33
14 (Nev. 2004). A post-conviction petition's claims of ineffective assistance of counsel must be
15 supported with specific factual allegations which would entitle a petitioner to relief if true; "bare" or
16 "naked" allegations are not sufficient to show ineffectiveness of counsel. Hargrove v. State, 686
17 P.2d 222, 225 (Nev. 1984). NRS 34.735(6) states in part, "[Petitioner] must allege specific facts
18 supporting the claims in the petition[.]... Failure to allege specific facts rather than just conclusions
19 may cause your petition to be dismissed." (emphasis added).

20 **A. Mr. Honabach is not entitled to relief because Mr. Honabach has not shown that his**
21 **counsel was ineffective under Strickland.**

22 The amended petition argues that the Judgment of Conviction should be vacated on seven
23 grounds. The first three grounds allege errors made by Mr. Honabach's appellate attorney Mr. Akin.
24 Grounds Four, Five, and Six allege errors made by trial counsel Mr. Beckett which resulted in
25 ineffective assistance of counsel. The final Ground alleges that Mr. Honabach's guilty plea was not
26 voluntary violating the Fifth Amendment. The State filed a response to the amended petition on May
27 26, 2022. The State argues that Mr. Honabach's first six grounds of ineffective assistance of counsel
28 are unmeritorious, and that the final ground should not be considered due to Mr. Honabach freely

1 and voluntarily entering into his guilty plea. The Court finds that Mr. Honabach is not entitled to
2 relief on all grounds of the Petition.

3 **1. Mr. Honabach failed to establish appellate counsel was ineffective for withdrawing Mr.**
4 **Honabach's appeal without his consent.**

5 In his first Ground, Mr. Honabach argues that his appellate counsel, Mr. Akin, was
6 ineffective by withdrawing Mr. Honabach's appeal without his consent. Mr. Akin represented that
7 he withdrew the appeal after explaining to and obtaining consent from Mr. Honabach. In the
8 evidentiary hearing, Mr. Honabach testified that he had asked Mr. Akins not to withdraw his appeal.
9 However, the record indicates that Mr. Akins communicated with Mr. Honabach via letter about the
10 dismissal of the appeal and that Mr. Akin's had intended to file a post-conviction petition for writ of
11 habeas corpus on behalf of Mr. Honabach. Mr. Akins was not at the evidentiary hearing to confirm
12 Mr. Honabach's claims that he indeed communicated to Mr. Akins that he did not want to have his
13 appeal withdrawn.

14 Mr. Honabach has not established that he had an issue to raise on appeal and that he would
15 have been successful. As represented in Toston, the Nevada Supreme Court held that "counsel has a
16 duty to file a direct appeal when the client's desire to challenge the conviction or sentence can be
17 reasonably inferred from the totality of the circumstances, focusing on the information that counsel
18 knew or should have known at the time." Toston v. State, 127 Nev. 979,267 P.3d 795, 801 (2011).
19 There is no indication that Mr. Honabach reserved any issues for appeal, either in the Guilty Plea
20 Agreement itself or in any of the record. Furthermore, under Hargrove, Mr. Honabach has not
21 provided the Court with specific factual allegations that would entitle him to relief. Mr. Honabach's
22 naked allegations during the evidentiary hearing do not meet this standard.

23 The Court finds that Mr. Honabach failed to demonstrate that counsel should have known he
24 wanted an appeal and that withdrawing the appeal itself was deficient. Therefore, Mr. Honabach's
25 Petition is denied on this Ground.

26 **2. Mr. Honabach failed to establish appellate counsel was ineffective for failing to**
27 **challenge the voluntariness of Mr. Honabach's plea on direct appeal.**

28 Mr. Honabach's second Ground is that appellate counsel was ineffective in failing to
challenge the voluntariness of Mr. Honabach's plea. The Court finds that Mr. Akins was not

1 ineffective for failing to challenge the voluntariness of Mr. Honabach's plea on direct Appeal.
2 Challenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate
3 counsel must be first pursued in post-conviction proceedings in the district court. Franklin v. State,
4 110 Nev. 750, 751-52, 877 P.2d 1058, 1059 (1994). Appellate counsel cannot be ineffective for
5 failing to raise a claim that is inappropriate on direct appeal. Therefore, Mr. Honabach's Petition is
6 denied on this Ground.

7 **3. Appellate counsel's errors did not constitute cumulative error.**

8 In his third Ground, Mr. Honabach argues that his trial and appellate counsel's errors
9 cumulated to create prejudice. A finding of cumulative error in the context of a Strickland claim is
10 extraordinarily rare and requires an extensive aggregation of errors. See, e.g., Harris By and through
11 Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). There can be no cumulative error because
12 Mr. Honabach fails to demonstrate that his appellate counsel violated Strickland. Mr. Honabach
13 failed to establish that his appellate counsel was ineffective because Mr. Honabach did not show
14 what claim he would have raised and that he would have likely succeeded on the merits. Mr. Akins
15 had properly raised Mr. Honabach's claims in a timely filed petition instead of a direct appeal.
16 Therefore, the Court denies Mr. Honabach's petition on this Ground.

17 **4. Mr. Honabach failed to establish trial counsel was ineffective when trial counsel failed
to review discovery.**

18 In Ground 4 Mr. Honabach argues that his trial counsel was ineffective because he had failed
19 to review discovery before advising Mr. Honabach to accept the plea offer. At the evidentiary
20 hearing the Court heard testimony from Mr. Honabach relating to the conversations he had with his
21 trial counsel. Mr. Honabach then testified that he would not have taken the plea deal had he known
22 his counsel had failed to review all of the discovery. A post-conviction petitioner's claim of
23 ineffective assistance of counsel must be supported with specific factual allegations which would
24 entitle a petitioner to relief if true; "bare" or "naked" allegations are not sufficient to show
25 ineffectiveness of counsel. Hargrove v. State, 686 P.2d 222, 225 (Nev. 1984).

26 Mr. Honabach testified that the investigator told him Mr. Beckett had not reviewed the
27 discovery. It is impossible for the Court to know what Mr. Beckett did or did not review without the
28

1 benefit of Mr. Beckett's testimony. Failure to review discovery prior to advising a client would be
2 deficient performance however, Mr. Honabach failed to establish Mr. Beckett did not have or review
3 discovery. The Court only heard testimony from Mr. Honabach himself and not his trial attorney.
4 These allegations made at the evidentiary hearing are not supported by specific facts and can be
5 considered "bare" allegations which are not enough to support a post-conviction petitioner's claim
6 of ineffective assistance of counsel under Hargrove. The Court therefore denies Mr. Honabach's
7 claim that his trial counsel was ineffective in regards to this Ground.

8 **5. Mr. Honabach failed to establish trial counsel was ineffective during sentencing.**

9 In Ground 5, Mr. Honabach argues that his trial counsel was ineffective because he failed to
10 prepare him for sentencing and did not file a sentencing memorandum. After looking at the record
11 and reviewing the evidentiary hearing, the Court finds that Mr. Honabach's counsel was not
12 ineffective during sentencing. In regards to the sentencing memorandum, Mr. Honabach has failed to
13 demonstrate that there was a reasonable probability of a different outcome absent counsel's alleged
14 error. See Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (providing that a petitioner
15 claiming counsel did not conduct an adequate investigation must allege what the results of a better
16 investigation would have been and how it would have affected the outcome of the proceedings). Of
17 the four co-defendants, only one filed a sentencing memorandum and the same co-defendant
18 received the exact same sentence. Mr. Honabach fails to demonstrate the probability of a different
19 outcome because it was not the lack of mitigation, but the nature of the crimes the defendants
20 committed that resulted in the sentence that was given:

21 THE COURT: In this case I understand that drugs is a problem for most, if not all, of you,
22 and that drugs and alcohol may have been the factor that caused some of these actions, but I
23 don't know that I consider that an excuse. I don't know that I consider that a good reason to
have committed horrific crimes.

24 Sentencing Transcript, March 26, 2019, at 22.

25 Furthermore, during sentencing Counsel presented testimony as to why Mr. Honabach
26 should be given a sentence that allowed parole, explained mitigating factors that contributed to his
27 actions, such as Mr. Honabach's history of drug use leading up to the crime, how his prolonged drug
28

1 use affected his decision making during the crime, what Mr. Honabach had been doing to improve
2 himself while in jail, and also explained what Mr. Honabach's hopes were if granted the opportunity
3 of parole. Id. at 11-16. Under Strickland, Mr. Honabach has failed to demonstrate that his Counsel
4 was deficient during sentencing. Therefore, the Court denies Mr. Honabach's petition on this
5 Ground.

6 **6. Trial counsel's errors did not cumulate to create prejudice.**

7 In his sixth ground, Mr. Honabach argues that his trial counsel's errors cumulated to create
8 prejudice. A finding of cumulative error in the context of a Strickland claim is extraordinarily rare
9 and requires an extensive aggregation of errors. See, e.g., Harris By and through Ramseyer v. Wood,
10 64 F.3d 1432, 1438 (9th Cir. 1995). Where individual allegations of error are not of constitutional
11 stature or are not errors, there is nothing to cumulate. Turner v. Quarterman, 481 F.3d 292, 301 (5th
12 Cir. 2007). Mr. Honabach has failed to demonstrate that his trial counsel was ineffective by failing
13 to review discovery because his allegations are not supported by specific facts and can be considered
14 "naked" allegations which are not enough to support a post-conviction petitioner's claim of
15 ineffective assistance of counsel under Hargrove. Moreover, Mr. Honabach failed to demonstrate
16 that counsel's performance during sentencing fell below an objective standard of reasonableness or a
17 reasonable probability of a different outcome absent counsel's alleged errors. Therefore, the Court
18 denies Mr. Honabach's petition on this Ground.

19 **B. The record demonstrates Mr. Honabach entered into the guilty plea agreement
20 voluntarily.**

21 In Ground 7, Mr. Honabach argues that he did not want to accept the plea deal, and that he
22 took the deal because he felt pressured by his trial counsel. To be constitutionally valid under the
23 Fifth Amendment, a guilty plea must be entered knowingly, willingly, and understandingly. North
24 Carolina v. Alford, 400 U.S. 25, 37-38 (1985). Mr. Honabach stated that he did not enter into the
25 Guilty Plea Agreement voluntarily, intelligently, and knowingly, because he was unaware that he
26 could receive a sentence of life without the possibility of parole. Mr. Honabach also claims that his
27 plea counsel was ineffective due to failing to advise him that he could receive a sentence of life
28 without the possibility of parole.

1 However, the record would suggest that Mr. Honabach voluntarily accepted the plea deal.
2 On July 21, 2020, the District Court denied a previous petition for writ of habeas corpus filed by Mr.
3 Honabach stating that the Guilty Plea Agreement in this case clearly pointed out that “the State will
4 have the right to argue for life without the possibility of parole, and the defense will argue for life
5 with the possibility of Parole after fifteen (15) years.” Furthermore, on February 4, 2019, the Court
6 had accepted Petitioner’s guilty plea and affirmed that Mr. Honabach was satisfied with his
7 counsel’s representation and his guilty plea was made freely and voluntarily:

8
9 THE COURT: Before I can accept your plea of guilty, I have to be convinced that your plea
is freely and voluntarily made. Are you making your plea freely and voluntarily?

10 MR. HONABACH: Yes, Your Honor.

11 THE COURT: Has anybody forced you or coerced you to accept that plea?

12 MR. HONABACH: No.

13 THE COURT: Has your attorney made any promise to you that are not contained in the
guilty plea agreement?

14 MR. HONABACH: No.

15 THE COURT: Based on all the facts and circumstances, are you satisfied with the services of
your attorney?

16 MR. HONABACH: Yes.

Reporter’s Transcript, Entry of Plea (Feb. 4, 2019).

17 Therefore, the Court denies Mr. Honabach’s Petition on this Ground because he voluntarily
18 and freely entered into his plea.

19 III. Conclusion

20 Mr. Honabach’s claims related to ineffective assistance of counsel do not show that his
21 counsel was both deficient and that the deficiency prejudiced Mr. Honabach’s defense. Therefore,
22 Grounds One through Six are denied. The Court also finds that Mr. Honabach voluntarily and freely
23 entered into his guilty plea. Therefore, Ground Seven is denied and the Court denies Mr. Honabach’s
24 petition for writ of habeas corpus.

25 DATED this day of September ___, 2022.

26 Dated this 15th day of September, 2022

27
28 _____
LINDA MARIE BELL
DISTRICT COURT JUDGE

6DA E12 7F94 D622
Linda Marie Bell
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Edward Honabach, Plaintiff(s) | CASE NO: A-20-812948-W
7 vs. | DEPT. NO. Department 7
8 William Gittere, 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 Decision and Order was served via the court's electronic eFile system
13 to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/15/2022

15 Travis Akin | travis@avalonlg.com
16 Jim Hoffman | jim.hoffman.esq@gmail.com
17 Clark County DA | pdmotions@clarkcountyda.com
18 Jim Hoffman, Esq. | Jim.Hoffman.Esq@gmail.com
19
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

May 13, 2020

A-20-812948-W Edward Honabach, Plaintiff(s)
vs.
William Gittere, Defendant(s)

May 13, 2020 3:00 AM Minute Order

HEARD BY: Wiese, Jerry A. **COURTROOM:** Chambers

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- At the request of Court, for judicial economy, the PETITION FOR WRIT OF HABEAS CORPUS set for hearing on May 14, 2020 has been CONTINUED to May 28, 2020.

05/28/20 8:30 AM PETITION FOR WRIT OF HABEAS CORPUS

CLERK'S NOTE: The above minute order was distributed to all parties 05-13-20./ /lk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus**COURT MINUTES****May 18, 2020**

A-20-812948-W Edward Honabach, Plaintiff(s)
 vs.
 William Gittere, Defendant(s)

May 18, 2020 3:00 AM Minute Order

HEARD BY: Wiese, Jerry A. **COURTROOM:** Chambers

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The above-referenced matter is scheduled for hearing on May 28, 2020, with regard to the Petition for Writ of Habeas Corpus. Pursuant to A.O. 20-01 and subsequent Administrative Orders, this matter is deemed "non-essential," and may be decided after a hearing (held by alternative means), decided on the papers, or continued. Having reviewed the papers and pleadings on file, this Court has determined that it would be appropriate to decide this matter on the papers. Consequently, this minute order issues.

It should initially be noted that Mr. Honabach was represented by attorney Robert Beckett, at the time of the guilty plea. Mr. Honabach was sentenced on 3/26/2019, to Life Without the Possibility of Parole. Mr. Beckett filed a Motion to Withdraw, and on 4/23/2019, the Motion to Withdraw was Granted, and Travis Akin, Esq., was appointed for Appeal. Although Mr. Akin was appointed to handle Mr. Honabach's direct appeal, he filed and then voluntarily dismissed the appeal, based on the conclusion that an appeal was improper following a guilty plea agreement. Mr. Honabach then filed a Motion to Withdraw Counsel, which was granted on 10/31/2019. Out of an abundance of caution, and because the time for filing a Writ was about to expire, Mr. Akin went above and beyond the call of duty and filed the instant Petition for Writ of Habeas Corpus, on behalf of the Petitioner, Edward Honabach. In the Petition, it is alleged that 1) Petitioner did not voluntarily, intelligently, and knowingly enter his plea agreement, because he did not know that he could receive life without

parole. He was of the understanding that he would have a chance at parole; 2) Counsel was ineffective for failing to advise Petitioner that he could receive a sentence of life without the possibility of parole; and 3) Cumulative Error. Mr. Akin indicated that he did not have the opportunity to investigate these claims since he has not been counsel for the Petitioner for many months, and asked that Petitioner be appointed counsel to investigate these claims and file supplemental briefs. The State was apparently served with the Petition for Writ of Habeas Corpus, electronically and via mail, on March 27, 2020. The State has not filed a responsive pleading.

The Court notes that the Petitioner has not sought post-conviction appointment of counsel for purposes of the Writ Petition, and even if he had, there is nothing complex or difficult about the issues presented, that would require the appointment of counsel.

The suggestion that Mr. Honabach was unaware that he could receive "Life Without the Possibility of Parole," is clearly belied by the record. The first page of the Guilty Plea Agreement include the following:

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: FIRST DEGREE KIDNAPPING RESULTING IN SUBSTANTIAL BODILY HARM (Category A Felony NRS 200.310, 200.320 NOC 50052), as more fully alleged in the charging document attached hereto as Exhibit 1 .

My decision to plead guilty is based upon the plea agreement in this case which is as follows: This offer is conditional upon all four (4) Defendants accepting their respective negotiations and being sentenced. All parties agree the State will have the right to argue for Life without the possibility of Parole, and the Defense will argue for Life with the possibility of Parole after fifteen (15) years. All parties agree that no one will seek the term of years.

....

(See Guilty Plea Agreement, filed 2/4/2019, emphasis added.)

A plea canvass occurred on February 4, 2019, and the Court accepted Mr. Honabach's plea of guilty, and concluded that Mr. Honabach's plea was made freely and voluntarily, and that he understood the nature of the offense, and the consequences of his plea.

As the grounds for the Petition for Writ of Habeas Corpus are clearly belied by the record, and there is no suggestion or evidence of any cumulative error, and other good cause appearing,

IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus is hereby DENIED. The Request for Appointment of Counsel is also DENIED, as there is no suggestion that the issues presented are complex or difficult, or that counsel is necessary.

The Court requests the State prepare an Order consistent with the foregoing, and have it submitted to the Court for signature within 10 days. A Status Check re: Submission and Completion of Order is hereby set for May 28, 2020.

As this matter has been resolved on the papers, the hearing set for May 28, 2020, regarding the Petition for Writ of Habeas Corpus, will be taken "off calendar," and there will be no need for any attorney or party to appear on that date as long as the Order has been prepared, and submitted to Chambers. Otherwise, counsel for the State is to appear regarding the Status of the Order.

CLERK'S NOTE: A copy of the above minute order was distributed 05-18-20./ /lk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 15, 2020

A-20-812948-W Edward Honabach, Plaintiff(s)
vs.
William Gittere, Defendant(s)

July 15, 2020 3:00 AM Minute Order

HEARD BY: Wiese, Jerry A.

COURTROOM: No Location

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- At the Court's request, COURT ORDERED, Status Check set for July 23, 2020 at 8:30 a.m. regarding the submission and completion of the Court's Order on Petition for Writ of Habeas Corpus. Should the Order be submitted to Chambers prior to July 23, 2020 the hearing will be vacated.

07/23/20 8:30 AM STATUS CHECK: SUBMISSION AND COMPLETION OF ORDER

CLERK'S NOTE: A copy of the above minute order was distributed to all parties with a copy of the minute order dated May 18, 2020./ /lk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 23, 2020

A-20-812948-W Edward Honabach, Plaintiff(s)
vs.
William Gittere, Defendant(s)

**July 23, 2020 8:30 AM Motion For
Reconsideration**

HEARD BY: Wiese, Jerry A.

COURTROOM: RJC Courtroom 14A

COURT CLERK: Lauren Kidd

RECORDER: Trisha Garcia

REPORTER:

PARTIES

PRESENT: Cole, Madilyn M. Attorney

JOURNAL ENTRIES

- Mr. Honabach not present, in custody in the Nevada Department of Corrections.

Court advised the Plaintiff was asking the Court to reconsider the Court's decision on a pretrial writ because he said former counsel submitted his petition for habeas corpus without his permission. Court advised the Court did not find a good basis under any of the rules to reconsider the prior decision and noted that counsel did not make any arguments as to why the Court's prior decisions was incorrect. Court noted the argument was that counsel was not supposed to file the petition for habeas corpus; however, if it had not been filed it would now be time barred so there would not be a habeas corpus petition on file. Further, Court noted if it had not been filed there would not have been anything for the Court to rule on and now the Defendant at least had the potential to appeal the habeas corpus decision that the Court made. COURT ORDERED motion DENIED. Court finds the Defendant is in a better position having the petition filed than he would have been otherwise. State DIRECTED to prepare the Order.

NDC

CLERK'S NOTE: A copy of the above minute order was distributed to all parties 08/03/20./lk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

February 10, 2022

A-20-812948-W Edward Honabach, Plaintiff(s)
vs.
William Gittere, Defendant(s)

February 10, 2022 8:30 AM Further Proceedings

HEARD BY: Wiese, Jerry A.

COURTROOM: RJC Courtroom 14A

COURT CLERK: Lauren Kidd

RECORDER: Vanessa Medina

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Defendant not present. State present via BlueJeans video conferencing.

Court noted the Defendant was not transported from the Nevada Department of Corrections. Court advised the Defendant should be transported so the Court can ask the Defendant if he would like to supplement his filing or if he would like the Court to appoint counsel for him. COURT ORDERED, matter CONTINUED. Court DIRECTED the State to prepare a transport order.

CONTINUED TO: 03/03/22 8:30 AM

NDOC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

March 03, 2022

A-20-812948-W Edward Honabach, Plaintiff(s)
vs.
William Gittere, Defendant(s)

March 03, 2022 8:30 AM Further Proceedings

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Lauren Kidd

RECORDER: Vanessa Medina

REPORTER:

PARTIES

PRESENT: Hoffman, James I. Attorney
Honabach, Edward Plaintiff

JOURNAL ENTRIES

- All parties present via BlueJeans video conferencing. Sarah Overly, Esq. present for the State.

Mr. Hoffman advised he was contacted by Drew Christiansen about this case yesterday and he had not met with the Defendant. Court inquired as to whether the Defendant wanted the Court to appoint him with representation. Defendant confirmed that he would allow the Court to appoint him counsel to assist him with his petition. Court advised the Court would appoint Mr. Hoffman as counsel as long as there was not a conflict. COURT ORDERED, matter CONTINUED for a Status Check regarding confirmation of counsel and to set a briefing schedule for Defendants petition.

IN CUSTODY

03/31/22 8:30 AM STATUS CHECK: SET BRIEFING SCHEDULE/CONFIRMATION OF COUNSEL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

March 31, 2022

A-20-812948-W	Edward Honabach, Plaintiff(s) vs. William Gittere, Defendant(s)
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March 31, 2022 8:30 AM Status Check

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Lauren Kidd
Shelley Boyle

RECORDER: Vanessa Medina

REPORTER:

PARTIES

PRESENT:	Dunn, Ann Marie	Attorney
	Hoffman, James I.	Attorney
	Honabach, Edward	Plaintiff

JOURNAL ENTRIES

- Mr. Hoffman not present. Colloquy regarding Deft's. contact with Mr. Hoffman. MATTER TRAILED, to allow Mr. Hoffman to appear.

MATTER RECALLED, Mr. Hoffman now present. All other parties present as before. Colloquy regarding scheduling. COURT ORDERED, a Hearing and Briefing Schedule SET; Deft's. Writ DUE by 04.28.22, State's Response DUE by 05.27.22. State to prepare the Transport Order.

06/28/22 8:30 AM HEARING RE: WRIT OF HABEAS CORPUS

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

June 28, 2022

A-20-812948-W Edward Honabach, Plaintiff(s)
vs.
William Gittere, Defendant(s)

June 28, 2022 8:30 AM Hearing

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Stephanie Squyres

RECORDER: Vanessa Medina

REPORTER:

PARTIES

PRESENT: Dunn, Ann Marie Attorney
 Hoffman, James I. Attorney
 Honabach, Edward Plaintiff

JOURNAL ENTRIES

- COURT NOTED It is inclined to deny on the pleadings, but most of time if that happens the Supreme Court kicks it back asking why there is not an Evidentiary Hearing, and ORDERED, Evidentiary Hearing SET.

CUSTODY

EVIDENTIARY HEARING 08/16/22 8:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

August 16, 2022

A-20-812948-W Edward Honabach, Plaintiff(s)
vs.
William Gittere, Defendant(s)

August 16, 2022 8:30 AM Evidentiary Hearing

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Courtroom 05B

COURT CLERK: Dara Yorke

RECORDER: Kimberly Estala

REPORTER:

PARTIES

PRESENT: Hoffman, James I. Attorney
Honabach, Edward Plaintiff
Wyse, Seleste A Attorney

JOURNAL ENTRIES

- Mr. Hoffman noted the instant matter was set for an evidentiary hearing and they may be requesting a continuance. Court advised it was not inclined to grant a continuance. Mr. Hoffman indicated he was prepared to proceed. MATTER TRAILED.

MATTER RECALLED. Same parties present. Ms. Wyse indicated if the Court wasn't inclined to a continuance, they would be prepared to proceed. MATTER TRAILED to the end of the calendar.

MATTER RECALLED. Same parties present. Witness, Edward Honabach, SWORN and TESTIFIED. Court noted the sentencing Transcript was prepared and filed; however, it was not filed into the correct case, and filed into the Co-Deft.'s case C-16-314092-1 on June 18, 2019. Arguments by Mr. Hoffman. Statements by Ms. Wyse. COURT ORDERED, a written Order shall issue, and matter SET for a status check. Parties would not need to appear.

9/1/22 8:30 AM STATUS CHECK: WRITTEN ORDER

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

September 01, 2022

A-20-812948-W Edward Honabach, Plaintiff(s)
vs.
William Gittere, Defendant(s)

September 01, 2022 8:30 AM Status Check

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 05B

COURT CLERK: Pharan Burchfield

RECORDER: Kimberly Estala

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, DENIED and Court will ISSUE a written Decision.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

JIM HOFFMAN, ESQ.
P.O. BOX 231246
LAS VEGAS, NV 89105

DATE: September 23, 2022
CASE: A-20-812948-W

RE CASE: EDWARD HONABACH vs. WILLIAM GITTERE

NOTICE OF APPEAL FILED: September 21, 2022

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☐ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☐ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☒ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

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; DISTRICT COURT DOCKET ENTRIES; DECISION AND ORDER; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

EDWARD HONABACH,

Plaintiff(s),

vs.

WILLIAM GITTERE,

Defendant(s),


Case No: A-20-812948-W

Dept No: VII

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 23 day of September 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk