

NOASC
LOWE LAW, L.L.C.
DIANE C. LOWE, ESQ. Nevada Bar No. 14573
7350 West Centennial Pkwy #3085
Las Vegas, Nevada 89131
(725)212-2451 – F: (702)442-0321
Email: DianeLowe@LoweLawLLC.com
Attorney for Petitioner Dujan Looper

Electronically Filed
Oct 18 2022 11:09 AM
Elizabeth A. Brown
Clerk of Supreme Court

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

DUJUAN LOOPER,

Case No.: A-22-856419-W

[NDOC 1120989]

Petitioner,

DEPT NO. XVII

vs.

[stemming from C-12-279379-1]

CALVIN JOHNSON WARDEN OF
HIGH DESERT STATE PRISON

Respondent.

NOTICE OF APPEAL

NOTICE is hereby given that DUJUAN LOOPER, Petitioner above
named, hereby appeals to the Supreme Court of Nevada from the Findings of
Fact, Conclusions of Law and Order entered October 12, 2022, by the Honorable
Carolyn Ellsworth for Sr. Judge Mark Gibbons. Argument consisted of
submission on the Petition for Writ of Habeas Corpus and State Response.

An evidentiary hearing was denied.

1 DATED this 13th day of October, 2022.

2 Respectfully Submitted,

3
4 /s/ Diane C. Lowe, Esq.

5 DIANE C. LOWE, ESQ. Nevada Bar #014573

6 Lowe Law, L.L.C.

7 7350 West Centennial Pkwy #3085

8 Las Vegas, NV 89131

9 Telephone: (725)212-2451 Facsimile: (702)442-0321

10 Attorney for Petitioner Dajuan Looper

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED, by the undersigned that on this 13th day of October, 2022, I served a true and correct copy of the foregoing **Notice of Appeal on the parties listed on the attached service list:**

BY eService E-MAIL: by transmitting a copy of the document in the format to be used for attachments to the electronic-mail address designated by the attorney or the party who has filed a written consent for such manner of service.

By: /s/Diane C Lowe, Esq.

DIANE C. LOWE

LOWE LAW, L.L.C.

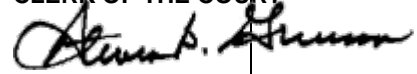
SERVICE LIST

ATTORNEYS OF RECORD	PARTIES REPRESENTED	METHOD OF SERVICE
CLARK COUNTY DISTRICT ATTORNEY'S OFFICE 200 E. Lewis Ave Las Vegas, NV 89101 motions@clarkcountynv.com Nevada Attorney General's Office Wiznetfilings.ag.nv.gov	STATE OF NEVADA	Email Service via eService

I further certify that I served a copy of this document by mailing a true and correct copy thereof, post pre-paid, addressed to Dajuan Looper. NDOC 1120989, High Desert State Prison PO Box 650 Indian Springs, NV 89070-0650.

/s/ Diane C. Lowe, Esq.

Attorney for Dajuan Looper



ASTA
LOWE LAW, L.L.C.
DIANE C. LOWE, ESQ. Nevada Bar No. 14573
7350 West Centennial Pkwy #3085
Las Vegas, Nevada 89131
(725)212-2451 – F: (702)442-0321
Email: DianeLowe@LoweLawLLC.com
Attorney for Petitioner Dujuan Looper

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

DUJUAN LOOPER,

Case No.: A-22-856419-W

[NDOC 1120989]

Petitioner,

DEPT NO. XVII

vs.

[stemming from C-12-279379-1]

CALVIN JOHNSON WARDEN OF
HIGH DESERT STATE PRISON

CASE APPEAL STATEMENT

Respondent.

1. Name of appellant filing this case appeal statement: Dujuan Looper.
2. Identify the judge issuing the decision, judgment, or order appealed from:
The Honorable Carolyn Ellsworth, Department 17 for Sr. Judge Mark Gibbons, Nevada Eighth Judicial District Court.
3. Identify each appellant and the name and address of counsel for each appellant: Appellant: Dujuan Looper; Counsel for Appellant Diane C. Lowe

7350 W Centennial Parkway #3085 Las Vegas, NV. 89131. Nevada Bar # 14573.

4. Identify each respondent and the name and address of appellate counsel if know for each respondent. Respondent: State of Nevada. Counsel for Respondent: Steve Wolfson Esq. Nevada Bar # 1565; Clark County District Attorney 200 Lewis Avenue Las Vegas, Nevada 89155; Aaron D. Ford, Nevada Bar # 7704; Attorney General, 100 North Carson Street Carson City, Nevada 89701.
5. Indicate whether any attorney identified above in response to questions 3 or 4 is not licensed to practice law in Nevada. All attorneys listed above are licensed to practice law in Nevada.
6. Indicate whether appellant was represented by appointed or retained counsel in the district court: Appointed.
7. Indicate whether appellant is represented by appointed or retained counsel on appeal: Appointed.
8. 8. Indicate whether appellant was granted leave to proceed in forma pauperis: Yes.
9. Indicate the date the proceedings in the district court (e.g., date complaint, indictment information, or petition was filed: Criminal complaint filed in

1 Las Vegas Justice Court January 9, 2012; Preliminary Hearing waived
2 February 9, 2019 with criminal bindover to District court the same day.
3
4 Plea entered at a hearing on January 8, 2014. His sentencing hearing was
5 April 28, 2014. The Judgment of Conviction (Plea of Guilty) was filed May
6 23, 2014.
7

8 10. Nature of action: Mr. Looper was charged with 9 criminal counts. His plea
9 agreement was for 3 counts: Count 1 Attempt Sexual Assault with a minor
10 under fourteen years of age (Category B Felony – NRS 193.330, 200.364,
11 200.366); Count 2 – Battery Constituting Domestic Violence – Strangulation
12 (Category C Felony – NRS 200.481; 200.485; 33.018) and Count 3 –
13 Possession of Visual Presentation Depicting Sexual Conduct of a Child
14 (Category B Felony – N.R.S. 200.700, 200.730). There was a fast-track
15 direct appeal 65608 which resulted in a judgment affirmed December 11,
16 2014. He had an attorney appointed for his postconviction writ of habeas
17 corpus action A-18-771898-W. He lost and his attorney fell out of
18 communication with him and failed to file an appeal. He much later filed a
19 pro se appeal May 26, 2022, which was rejected by the Nevada Supreme
20 Court as untimely leaving them without jurisdiction. 84804. Order of
21 Dismissal filed June 16, 2022. He was able to get this attorney appointed,
22 Diane Lowe who filed an in-depth petition for writ of habeas corpus on his
23
24
25
26
27
28

CLARK COUNTY
DISTRICT ATTORNEY'S
OFFICE
200 E. Lewis Ave
Las Vegas, NV 89101
motions@clarkcountynv.gov

[Nevada Attorney General's
Office](http://NevadaAttorneyGeneral.org)
Wiznetfilings.ag.nv.gov

Email Service via
eService

And direct email

I further certify that I served a copy of this document by mailing a true and correct copy thereof, post pre-paid, addressed to Dajuan Looper. NDOC 1120989, High Desert State Prison PO Box 650 Indian Springs, NV 89070-0650.

/s/ Diane C. Lowe, Esq.
Attorney for Dajuan Looper

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-22-856419-W

Dujuan Looper, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

§
§
§
§
§
§

Location: District Court Criminal/Civil
Judicial Officer: Villani, Michael
Filed on: 08/02/2022
Cross-Reference Case Number: A856419
Defendant's Scope ID #: 1871455

CASE INFORMATION

Related Cases
C-12-279379-1 (Writ Related Case)

Statistical Closures
10/12/2022 Other Manner of Disposition

Case Type: **Writ of Habeas Corpus**

Case Status: **10/12/2022 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-22-856419-W
Court District Court Criminal/Civil
Date Assigned 08/02/2022
Judicial Officer Villani, Michael

PARTY INFORMATION

Plaintiff **Looper, Dujuan**

Lead Attorneys

Lowe, Diane Carol
Retained
725-212-2451(W)

Defendant **Nevada State of**


Afshar, John
Retained
702-671-2749(W)


DATE


EVENTS & ORDERS OF THE COURT


INDEX


EVENTS


08/02/2022  Petition for Writ of Habeas Corpus
Filed by: Plaintiff Looper, Dujuan
[1] *Petition for Writ of Habeas Corpus (Post Conviction)*

08/04/2022  Clerk's Notice of Hearing
[2] *Clerk's Notice of Hearing*

09/06/2022  Response
[3] *State's Response to Petition for Writ of Habeas Corpus (Post-Conviction)*

10/12/2022  Findings of Fact, Conclusions of Law and Order
[4] *FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER*

10/13/2022  Notice of Appeal (Criminal)
Party: Plaintiff Looper, Dujuan
[5] *Notice of Appeal*

10/13/2022  Case Appeal Statement
Filed By: Plaintiff Looper, Dujuan

CASE SUMMARY

CASE NO. A-22-856419-W

[6] Case Appeal Statement

10/13/2022



Notice of Entry of Findings of Fact, Conclusions of Law

Notice of Entry of Findings of Fact, Conclusions of Law and Order

HEARINGS

09/19/2022



Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Gibbons, Mark)

Denied;

Journal Entry Details:

Plaintiff not present. Diane Lowe, Esq. not present. State submitted. COURT ORDERED, Petition DENIED as procedurally and time barred. State to prepare the order. NDC;

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

A-22-856419-W

Case No. _____
(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): <div style="text-align: center;">Dajuan Looper</div>	Defendant(s) (name/address/phone): <div style="text-align: center;">Nevada State of</div>
Attorney (name/address/phone): <div style="text-align: center;">Diane Carol Lowe</div>	Attorney (name/address/phone): <div style="text-align: center;">DA</div>

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

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input checked="" type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <div style="margin-left: 150px;"> <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ </div>		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

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

8-4-22

Date

Prepared by Clerk

Signature of initiating party or representative

See other side for family-related case filings.

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JACOB J. VILLANI
Chief Deputy District Attorney
Nevada Bar #011732
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

DISTRICT COURT
CLARK COUNTY, NEVADA

DUJUAN LOOPER,
#1238619

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: **A-22-856419-W**
C-12-279379-1

DEPT NO: **XVII**

FINDINGS OF FACT, CONCLUSIONS

OF LAW AND ORDER

DATE OF HEARING: **SEPTEMBER 19, 2022**
TIME OF HEARING: **8:30 AM**

THIS CAUSE having presented before the Honorable MARK GIBBONS, District Judge, on the 19th day of September, 2022; Petitioner not present, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JACOB J. VILLANI, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

//

//

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On February 15, 2013, pursuant to consolidation of cases C-12-279379 and C-12-
4 279418, the State filed a Second Amended Information in case C-12-279379, charging
5 Defendant Dujuan Don Looper ("Defendant") as follows – Count 1 – Second Degree
6 Kidnapping (Category B Felony- NRS 200.310); Count 2 – Coercion (Category B Felony –
7 NRS 207.190); Counts 3-4 – Child Abuse and Neglect (Category B Felony – NRS 200.508);
8 Count 5 – Battery Constituting Domestic Violence – Strangulation (Category C Felony – NRS
9 200.481, 200.485, 33.018); Count 6 – Sexual Assault with a Minor Under Fourteen Years of
10 Age (Category A Felony – NRS 200.364, 200.366); Count 7 – Lewdness with a Child Under
11 the Age of 14 (Category A Felony – NRS 201.230); Count 8 – Use of Minor in Producing
12 Pornography (Category A Felony – NRS 200.700, 200.710, 200.750); Count 9 – Possession
13 of Visual Presentation Depicting Sexual Conduct of a Child (Category B Felony – NRS
14 200.700, 200.730).

15 On January 8, 2014, Defendant entered into a Guilty Plea Agreement, whereby he
16 agreed to plead guilty to the following charges as contained in a Third Amended Information:
17 Count 1 – Attempt Sexual Assault with a Minor Under Fourteen Years of Age (Category B
18 Felony – NRS 193.330, 200.364, 200.366); Count 2 – Battery Constituting Domestic Violence
19 – Strangulation (Category C Felony – NRS 200.481, 200.485, 33.018); Count 3 – Possession
20 of Visual Presentation Depicting Sexual Conduct of a Child (Category B Felony – NRS
21 200.700, 200.730).

22 On April 28, 2014, Defendant appeared for sentencing and was sentenced to the Nevada
23 Department of Corrections as follows: Count 1 – 96 to 240 months; Count 2 – 19 to 60 months,
24 to run consecutive to Count 1; Count 3 – 19 to 72 months, to run consecutive to Counts 1 and
25 2, with 809 days credit for time served. This Court also imposed a special sentence of lifetime
26 supervision and ordered Defendant to register as a sex offender. The Judgment of Conviction
27 was filed on May 23, 2014.

28 //

1 Defendant filed a Notice of Appeal on May 6, 2014. The Nevada Supreme Court
2 affirmed the conviction on December 11, 2014. Looper v. State, No. 65608 (Dec. 11, 2014).
3 Remittitur issued on January 5, 2015.

4 On January 16, 2015, Defendant filed a Post-Conviction Petition for Writ of Habeas
5 Corpus (“Petition”) and Motion to Appoint Counsel. The State filed an Opposition to
6 Defendant’s Motion to Appoint Counsel on February 2, 2015. On February 4, 2015, this Court
7 appointed counsel. William H. Gamage, Esq., confirmed as counsel on February 11, 2015.

8 On April 18, 2016, Defendant, through counsel, filed a Supplement to Petition for Writ
9 of Habeas Corpus (“Supplement”). On June 13, 2016, the State filed its Response. On July 6,
10 2017, an evidentiary hearing was held on the Petition and the Petition was denied. On August
11 18, 2017, this court filed its Findings of Fact, Conclusions of Law and Order (“Order”). On
12 August 22, 2017, this court filed a Notice of Entry of Findings of Fact, Conclusions of Law
13 and Order.

14 On May 11, 2018, Looper filed a Pro Se Motion to Withdraw Counsel. On June 4, 2018,
15 the motion was granted.

16 On October 25, 2018, Looper filed a Pro Se Motion to Modify Sentence. On November
17 1, 2018, Looper filed a Pro Se Motion to Correct Illegal Sentence. On November 20, 2018, the
18 State filed its Opposition to Defendant’s Motion for Modification of Sentence and Motion to
19 Correct Illegal Sentence. On November 26, 2018, this court denied the motions. This court’s
20 written order was filed on January 9, 2019.

21 On May 26, 2022, Looper filed a Notice of Appeal appealing the court’s denial of his
22 first habeas petition. On July 12, 2022, the Nevada Supreme Court dismissed Looper’s appeal
23 as untimely.

24 On May 26, 2022, Looper filed a Motion for Appointment of Attorney. On July 1, 2022,
25 the State filed an Opposition to Looper’s Motion for Appointment of Specific Counsel. On
26 July 6, 2022, Looper’s Motion was granted and Diane Lowe, Esq. was appointed as counsel.

27 //

28 //

1 On August 2, 2022, Looper, through counsel, filed a Petition for Writ of Habeas Corpus.
2 The State responded. On September 19, 2022, this Court denied the Petition, for the reasons
3 stated below.

4 ANALYSIS

5 **I. THE PETITION IS PROCEDURALLY BARRED.**

6 **A. Application of the Procedural Bars is Mandatory.**

7 The one-year time bar of NRS 34.726 is strictly construed. Gonzales v. State, 118 Nev.
8 590, 593-596, 53 P.3d 901, 902-904 (rejected post-conviction petition filed two days late
9 pursuant to the “clear and unambiguous” provisions of NRS 34.726(1)). Further, the district
10 courts have a *duty* to consider whether post-conviction claims are procedurally barred. State
11 v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005). The
12 Nevada Supreme Court has found that “[a]pplication of the statutory procedural default rules
13 to post-conviction habeas petitions is mandatory,” noting:

14 Habeas corpus petitions that are filed many years after conviction are
15 an unreasonable burden on the criminal justice system. The necessity
16 for a workable system dictates that there must exist a time when a
criminal conviction is final.

17 Id., at 231, 112 P.3d at 1074. Additionally, the Court held that procedural bars “cannot
18 be ignored when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada
19 Supreme Court has granted no discretion to the district courts regarding whether to apply the
20 statutory procedural bars. The procedural bars are so fundamental to the post-conviction
21 process that they must be applied by this Court even if not raised by the State. See Riker, 121
22 Nev. at 231, 112 P.3d at 1074.

23 **B. The Petition is Time-Barred.**

24 The Petition is time-barred pursuant to NRS 34.726(1):

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

- 1 (a) That the delay is not the fault of the petitioner; and
2 (b) That dismissal of the petition as untimely will unduly prejudice
3 the petitioner.

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

9 The one-year time limit for preparing petitions for post-conviction relief under NRS
10 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
11 the Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite
12 evidence presented by the defendant that he purchased postage through the prison and mailed
13 the petition within the one-year time limit.

14 Here, remittitur issued from Looper’s direct appeal on January 9, 2015. Therefore,
15 Looper had until January 9, 2016, to file a timely habeas Petition. Looper filed the instant
16 Petition on August 2, 2022. This is over seven years past Looper’s one-year deadline. As
17 explained below, Looper has not demonstrated good cause or prejudice for the court to ignore
18 this procedural bar.

19 **II. LOOPER CANNOT DEMONSTRATE GOOD CAUSE AND PREJUDICE**
20 **SUFFICIENT TO OVERCOME HIS PROCEDURAL BARS.**

21 Looper’s failure to prove good cause or prejudice requires the dismissal of his Petition.
22 To overcome the procedural bars, a petitioner must demonstrate: (1) good cause for delay in
23 filing his petition or for bringing new claims or repeating claims in a successive petition; and
24 (2) undue or actual prejudice. NRS 34.726(1); NRS 34.800(1); NRS 34.810(3). To establish
25 prejudice “a petitioner must show that errors in the proceedings underlying the judgment
26 worked to the petitioner’s actual and substantial disadvantage.” State v. Huebler, 128 Nev.
27 192, 197, 275 P.3d 91, 94-95 (2012), cert. denied, 568 U.S. 1147, 133 S.Ct. 988 (2013).

28 //

1 “To establish good cause, petitioners must show that an impediment external to the
2 defense prevented their compliance with the applicable procedural rule. A qualifying
3 impediment might be shown where the factual or legal basis for a claim was not reasonably
4 available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003),
5 rehearing denied, 120 Nev. 307, 91 P.3d 35 cert. denied, 543 U.S. 947, 125 S.Ct. 358 (2004);
6 see also, Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003) (“In order to
7 demonstrate good cause, a petitioner must show that an impediment external to the defense
8 prevented him or her from complying with the state procedural default rules”); Pellegrini, 117
9 Nev. at 887, 34 P.3d at 537 (neither ineffective assistance of counsel, nor a physician’s
10 declaration in support of a habeas petition were sufficient “good cause” to overcome a
11 procedural default, whereas a finding by Supreme Court that a defendant was suffering from
12 Multiple Personality Disorder was). An external impediment could be “that the factual or legal
13 basis for a claim was not reasonably available to counsel, or that ‘some interference by
14 officials’ made compliance impracticable.” Id. (quoting Murray v. Carrier, 477 U.S. 478, 488,
15 106 S.Ct. 2639, 2645 (1986)); see also, Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing
16 Harris v. Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)).

17 The Nevada Supreme Court has held that, “appellants cannot attempt to manufacture
18 good cause[.]” Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there must be a
19 “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71 P.3d at
20 506; (quoting, Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), superseded by
21 statute as recognized by, Huebler, 128 Nev. at 197, 275 P.3d at 95, footnote 2). Excuses such
22 as the lack of assistance of counsel when preparing a petition as well as the failure of trial
23 counsel to forward a copy of the file to a petitioner have been found not to constitute good
24 cause. Phelps v. Dir. Nev. Dep’t of Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988),
25 superseded by statute as recognized by, Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145
26 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

27 //

28 //

1 **C. Looper Fails to Establish Good Cause.**

2 Looper alleges that Mr. Gamage, who represented him for his first Petition for Writ of
3 Habeas Corpus (1) failed to inform Looper that the court issued an Order denying the Petition
4 on August 22, 2017, and (2) failed to file an appeal of the court’s denial of the Petition as they
5 had discussed. Petition at 6–7. These claims do not establish good cause.

6 First, Looper was not entitled to effective assistance of counsel in his post-conviction
7 proceedings. The Nevada Supreme Court has “consistently held that the
8 ineffective assistance of post-conviction counsel in a noncapital case may not constitute ‘good
9 cause’ to excuse procedural defaults.” Brown v. McDaniel, 130 Nev. 565, 569, 331 P.3d 867,
10 870 (2014) (citing McKague v. Warden, 112 Nev. 159, 163–65, 912 P.2d 255, 258 (1996));
11 (Crump v. Warden, 113 Nev. 293, 303 & n. 5, 934 P.2d 247, 253 & n. 5 (1997)). “This is
12 because there is no constitutional or statutory right to the assistance of counsel in
13 noncapital post-conviction proceedings, and ‘[w]here there is no right to counsel there can be
14 no deprivation of effective assistance of counsel.’” Id. at 569, 331 P.3d at 870 (quoting
15 McKague, 112 Nev. at 163–65, 912 P.2d at 258. Moreover, Looper was not entitled to an
16 appeal from the denial of his post-conviction petition. “Trial counsel is ineffective if he or she
17 fails to file a **direct appeal**” after a defendant has requested or expressed a desire for one—
18 not an appeal from a Petition for Writ of Habeas Corpus. See Hathaway v. State, 119 Nev.
19 248, 254, 71 P.3d 503, 507 (2003) (emphasis added). Here, Looper did file a direct appeal on
20 May 6, 2014, and the Supreme Court affirmed his Judgment of Conviction on December 11,
21 2014. Thus, Looper was neither entitled to an appeal, nor effective assistance of counsel after
22 his Petition was denied. As such, his claim that his counsel was ineffective for failing to file
23 an appeal cannot be used to establish good cause.

24 All of the cases cited by Looper either refer to the right to a *direct appeal*, or the right
25 to effective assistance of counsel in a capital case where counsel is appointed by statute. Both
26 Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003), and Mann v. State, 118 Nev. 351, 46
27 P.3d 1228, 1229 (2002), cited by Looper deal with the denial of the right to a direct appeal.
28 Harris v. State, 133 Nev. 683, 407 P.3d 348 (Nev. App. 2017), is similarly distinguishable as

1 this case only addressed counsel’s failure to follow through on filing a timely first habeas
2 petition. Thus, Looper cites no support for his contention that he was entitled to an appeal.

3 Further, Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997), cited by Looper
4 specifically states, the “right to effective assistance of counsel arises **only** if that counsel was
5 appointed pursuant to a statutory **mandate**. This right does *not* arise if the counsel was
6 appointed pursuant to the court's **discretion**.” Id. at 303, n.5, 934 P.2d 253, n.5. Here, Looper’s
7 counsel was not appointed by statute, thus, he cannot argue that Mr. Gamage’s alleged
8 ineffective assistance constitutes good cause.

9 Second, Looper’s claim that he was not aware that this court issued an Order denying
10 his first habeas petition is belied by the record. The court’s Notice of Entry of Findings of Fact,
11 Conclusions of Law and Order shows that a copy of the Order was mailed directly to Looper.
12 See Notice of Entry of Findings of Fact, Conclusions of Law and Order, August 22, 2017, at
13 1. Moreover, Looper was present and testified at the July 6, 2017, evidentiary hearing when
14 the court denied his Petition. See generally Evidentiary Hearing, July 6, 2017. Thus, any claim
15 that Looper was not aware that the Petition had been denied or did not know that the court had
16 entered its written findings is belied by the record. Hargrove v. State, 100 Nev. 498, 502, 686
17 P.2d 222, 225 (1984). As such, Looper’s failure to demonstrate good cause necessitates the
18 dismissal of his Petition.

19 **D. Looper Cannot Show Sufficient Prejudice.**

20 Looper’s failure to demonstrate good cause necessitates the dismissal of his petition.
21 However, Looper also fails to demonstrate that he was prejudiced by being unable to appeal
22 the denial of his Petition because his claims lack merit. “A court **must** dismiss a habeas petition
23 if it presents claims that either were or could have been presented in an earlier proceeding,
24 unless the court finds both cause for failing to present the claims earlier or for raising them
25 again and actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646–47, 29 P.3d
26 498, 523 (2001) (emphasis added). To demonstrate prejudice to overcome the procedural bars,
27 a defendant must show “not merely that the errors of [the proceeding] created possibility of
28 prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state

proceedings with error of constitutional dimensions.” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a “substantial reason; one that affords a legal excuse.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)).

The United States Supreme Court has long recognized that “the right to counsel is the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Claims of ineffective assistance of counsel are analyzed under the two-pronged test articulated in Strickland, 466 U.S. 668, 104 S. Ct. 2052 (1984), wherein the defendant must show: 1) that counsel’s performance was deficient, and 2) that the deficient performance prejudiced the defense. Id. at 687, 104 S. Ct. at 2064. Nevada adopted this standard in Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984). “A court may consider the two test elements in any order and need not consider both prongs if the defendant makes an insufficient showing on either one.” Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996); Molina v. State, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004).

“Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). “There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.” Strickland, 466 U.S. at 689, 104 S. Ct. at 689. The question is whether an attorney’s representations amounted to incompetence under prevailing professional norms, “not whether it deviated from best practices or most common custom.” Harrington v. Richter, 562 U.S. 86, 88, 131 S. Ct. 770, 778 (2011). “Effective counsel does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of competence demanded of attorneys in criminal cases.’” Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

//

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, 1011-1012, 103 P.3d 25, 32-33 (2004). Based on
4 the above law, the role of a court in considering allegations of ineffective assistance of counsel
5 is “not to pass upon the merits of the action not taken but to determine whether, under the
6 particular facts and circumstances of the case, trial counsel failed to render reasonably
7 effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing
8 Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)). This analysis does not indicate that
9 the court should “second guess reasoned choices between trial tactics, nor does it mean that
10 defense counsel, to protect himself against allegations of inadequacy, must make every
11 conceivable motion no matter how remote the possibilities are of success.” Donovan, 94 Nev.
12 at 675, 584 P.2d at 711. The role of a court in considering alleged ineffective assistance of
13 counsel is “not to pass upon the merits of the action not taken but to determine whether, under
14 the particular facts and circumstances of the case, trial counsel failed to render reasonably
15 effective assistance.” Id. In essence, the court must “judge the reasonableness of counsel’s
16 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
17 conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066.

18 The Strickland analysis does not “mean that defense counsel, to protect himself against
19 allegations of inadequacy, must make every conceivable motion no matter how remote the
20 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551
21 F.2d at 1166 (9th Cir. 1977)). To be effective, the constitution “does not require that counsel
22 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
23 cannot create one and may disserve the interests of his client by attempting a useless charade.”
24 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984). “Counsel
25 cannot be deemed ineffective for failing to make futile objections, file futile motions, or for
26 failing to make futile arguments.” Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103
27 (2006). Counsel’s strategy decision is a “tactical” decision and will be “virtually
28 unchallengeable absent extraordinary circumstances.” Id. at 846, 921 P.2d at 280; see also

1 Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691,
2 104 S. Ct. at 2066. “Strategic choices made by counsel after thoroughly investigating the
3 plausible options are almost unchallengeable.” Dawson v. State, 108 Nev. 112, 117, 825 P.2d
4 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Trial
5 counsel has the “immediate and ultimate responsibility of deciding if and when to object,
6 which witnesses, if any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8,
7 38 P.3d 163, 167 (2002).

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

18 Even if a petitioner can demonstrate that his counsel's representation fell below an
19 objective standard of reasonableness, he must still demonstrate prejudice by showing a
20 reasonable probability that, but for counsel's errors, the result of the trial would have been
21 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
22 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
23 sufficient to undermine confidence in the outcome.” Id.

24 Here, Looper cannot demonstrate prejudice in being unable to appeal this court's
25 decision. Looper claims that his plea counsel, Marjorie E. Barbeau, Esq., rendered ineffective
26 assistance because she failed to fully inform him of (1) the nature and requirements of sex
27 offender registration; (2) the consequences and procedural aspects of lifetime supervision; and
28 (3) the requirement that he undergo a medical and mental health assessment in order to be

1 eligible for parole. Petition at 16.

2 In its Order denying the Petition, this court explained that Looper was canvassed on
3 whether he understood that he would be subject to sex offender registration, lifetime
4 supervision, and a psychosexual evaluation. Order, August 18, 2017, at 6. Further, Looper's
5 plea agreement contained specific provisions informing Looper of the psychosexual evaluation
6 and sex offender registration requirements. Order, August 18, 2017at 7. Finally, Ms. Barbeau
7 testified at the evidentiary hearing that she went to the Clark County Detention Center
8 ("CCDC") and met with Looper for a lengthy period of time going through not just his file,
9 but all the evidence and the Guilty Plea Agreement. Order, August 18, 2017at 7. Ms. Barbeau
10 further testified that she recalls speaking with Looper about sex offender registration and
11 lifetime supervision. Order, August 18, 2017at 7. Thus, this court denied Looper's claims as
12 they were belied by the record. Order, August 18, 2017at 7. Accordingly, Looper cannot show
13 that he was prejudiced by his inability to appeal the denial of his habeas petition because his
14 claims lack merit. As Looper has failed to show good cause or prejudice sufficient to overcome
15 his procedural bar, the instant Petition should be denied.

16 **III. LOOPER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

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

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

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

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

25 The Nevada Supreme Court has held that if a petition can be resolved without
26 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
27 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
28 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual

1 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
2 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
3 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction
4 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the
5 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it
6 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

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

21 Here, as explained *supra*, Looper was not entitled to effective assistance of counsel in
22 his post-conviction proceedings, nor was he entitled to an appeal of this court’s denial of his
23 habeas petition. Thus, Looper has failed to demonstrate that an expansion of the record on this
24 issue is warranted.

25 //

26 //

27 //

28 //

ORDER

THEREFORE, **IT IS ORDERED** that Defendant's Petition for Post-Conviction Relief shall be and it is hereby DENIED.

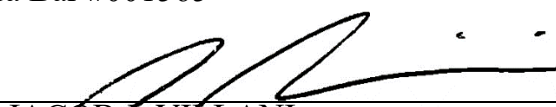
Dated this 12th day of October, 2022



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

7F9 F53 5AAD 9C38
Carolyn Ellsworth
District Court Judge
For: Sr. Judge Mark Gibbons

BY



JACOB J. VILLANI
Chief Deputy District Attorney
Nevada Bar #011732

hjc/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Dajuan Looper, Plaintiff(s)

CASE NO: A-22-856419-W

7 vs.

DEPT. NO. District Court Criminal/Civil

8 Nevada State of, 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: 10/12/2022

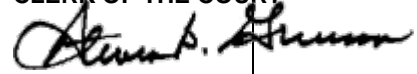
15 DA SVU

DASVUTeam@clarkcountyda.com

16 Diane Lowe

dianelowe@lowelawllc.com

17
18
19
20
21
22
23
24
25
26
27
28



NEFF

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DUJUAN LOOPER,

Petitioner,

vs.

STATE OF NEVADA,

Respondent,

Case No: A-22-856419-W

Dept No: XVII

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

PLEASE TAKE NOTICE that on October 12, 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 October 13, 2022.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 13 day of October 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:

Dujuan Looper # 1120989
P.O. Box 650
Indian Springs, NV 89070

Diane C. Lowe, Esq.
7350 W. Centennial Pkwy. #3085
Las Vegas, NV 89131

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

Heaven S. Linn

CLERK OF THE COURT

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JACOB J. VILLANI
Chief Deputy District Attorney
Nevada Bar #011732
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

DISTRICT COURT
CLARK COUNTY, NEVADA

DUJUAN LOOPER,
#1238619

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: **A-22-856419-W**
C-12-279379-1

DEPT NO: **XVII**

FINDINGS OF FACT, CONCLUSIONS

OF LAW AND ORDER

DATE OF HEARING: **SEPTEMBER 19, 2022**
TIME OF HEARING: **8:30 AM**

THIS CAUSE having presented before the Honorable MARK GIBBONS, District Judge, on the 19th day of September, 2022; Petitioner not present, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JACOB J. VILLANI, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

//

//

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On February 15, 2013, pursuant to consolidation of cases C-12-279379 and C-12-
4 279418, the State filed a Second Amended Information in case C-12-279379, charging
5 Defendant Dujuan Don Looper ("Defendant") as follows – Count 1 – Second Degree
6 Kidnapping (Category B Felony- NRS 200.310); Count 2 – Coercion (Category B Felony –
7 NRS 207.190); Counts 3-4 – Child Abuse and Neglect (Category B Felony – NRS 200.508);
8 Count 5 – Battery Constituting Domestic Violence – Strangulation (Category C Felony – NRS
9 200.481, 200.485, 33.018); Count 6 – Sexual Assault with a Minor Under Fourteen Years of
10 Age (Category A Felony – NRS 200.364, 200.366); Count 7 – Lewdness with a Child Under
11 the Age of 14 (Category A Felony – NRS 201.230); Count 8 – Use of Minor in Producing
12 Pornography (Category A Felony – NRS 200.700, 200.710, 200.750); Count 9 – Possession
13 of Visual Presentation Depicting Sexual Conduct of a Child (Category B Felony – NRS
14 200.700, 200.730).

15 On January 8, 2014, Defendant entered into a Guilty Plea Agreement, whereby he
16 agreed to plead guilty to the following charges as contained in a Third Amended Information:
17 Count 1 – Attempt Sexual Assault with a Minor Under Fourteen Years of Age (Category B
18 Felony – NRS 193.330, 200.364, 200.366); Count 2 – Battery Constituting Domestic Violence
19 – Strangulation (Category C Felony – NRS 200.481, 200.485, 33.018); Count 3 – Possession
20 of Visual Presentation Depicting Sexual Conduct of a Child (Category B Felony – NRS
21 200.700, 200.730).

22 On April 28, 2014, Defendant appeared for sentencing and was sentenced to the Nevada
23 Department of Corrections as follows: Count 1 – 96 to 240 months; Count 2 – 19 to 60 months,
24 to run consecutive to Count 1; Count 3 – 19 to 72 months, to run consecutive to Counts 1 and
25 2, with 809 days credit for time served. This Court also imposed a special sentence of lifetime
26 supervision and ordered Defendant to register as a sex offender. The Judgment of Conviction
27 was filed on May 23, 2014.

28 //

1 Defendant filed a Notice of Appeal on May 6, 2014. The Nevada Supreme Court
2 affirmed the conviction on December 11, 2014. Looper v. State, No. 65608 (Dec. 11, 2014).
3 Remittitur issued on January 5, 2015.

4 On January 16, 2015, Defendant filed a Post-Conviction Petition for Writ of Habeas
5 Corpus (“Petition”) and Motion to Appoint Counsel. The State filed an Opposition to
6 Defendant’s Motion to Appoint Counsel on February 2, 2015. On February 4, 2015, this Court
7 appointed counsel. William H. Gamage, Esq., confirmed as counsel on February 11, 2015.

8 On April 18, 2016, Defendant, through counsel, filed a Supplement to Petition for Writ
9 of Habeas Corpus (“Supplement”). On June 13, 2016, the State filed its Response. On July 6,
10 2017, an evidentiary hearing was held on the Petition and the Petition was denied. On August
11 18, 2017, this court filed its Findings of Fact, Conclusions of Law and Order (“Order”). On
12 August 22, 2017, this court filed a Notice of Entry of Findings of Fact, Conclusions of Law
13 and Order.

14 On May 11, 2018, Looper filed a Pro Se Motion to Withdraw Counsel. On June 4, 2018,
15 the motion was granted.

16 On October 25, 2018, Looper filed a Pro Se Motion to Modify Sentence. On November
17 1, 2018, Looper filed a Pro Se Motion to Correct Illegal Sentence. On November 20, 2018, the
18 State filed its Opposition to Defendant’s Motion for Modification of Sentence and Motion to
19 Correct Illegal Sentence. On November 26, 2018, this court denied the motions. This court’s
20 written order was filed on January 9, 2019.

21 On May 26, 2022, Looper filed a Notice of Appeal appealing the court’s denial of his
22 first habeas petition. On July 12, 2022, the Nevada Supreme Court dismissed Looper’s appeal
23 as untimely.

24 On May 26, 2022, Looper filed a Motion for Appointment of Attorney. On July 1, 2022,
25 the State filed an Opposition to Looper’s Motion for Appointment of Specific Counsel. On
26 July 6, 2022, Looper’s Motion was granted and Diane Lowe, Esq. was appointed as counsel.

27 //

28 //

1 On August 2, 2022, Looper, through counsel, filed a Petition for Writ of Habeas Corpus.
2 The State responded. On September 19, 2022, this Court denied the Petition, for the reasons
3 stated below.

4 **ANALYSIS**

5 **I. THE PETITION IS PROCEDURALLY BARRED.**

6 **A. Application of the Procedural Bars is Mandatory.**

7 The one-year time bar of NRS 34.726 is strictly construed. Gonzales v. State, 118 Nev.
8 590, 593-596, 53 P.3d 901, 902-904 (rejected post-conviction petition filed two days late
9 pursuant to the “clear and unambiguous” provisions of NRS 34.726(1)). Further, the district
10 courts have a *duty* to consider whether post-conviction claims are procedurally barred. State
11 v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005). The
12 Nevada Supreme Court has found that “[a]pplication of the statutory procedural default rules
13 to post-conviction habeas petitions is mandatory,” noting:

14 Habeas corpus petitions that are filed many years after conviction are
15 an unreasonable burden on the criminal justice system. The necessity
16 for a workable system dictates that there must exist a time when a
criminal conviction is final.

17 Id., at 231, 112 P.3d at 1074. Additionally, the Court held that procedural bars “cannot
18 be ignored when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada
19 Supreme Court has granted no discretion to the district courts regarding whether to apply the
20 statutory procedural bars. The procedural bars are so fundamental to the post-conviction
21 process that they must be applied by this Court even if not raised by the State. See Riker, 121
22 Nev. at 231, 112 P.3d at 1074.

23 **B. The Petition is Time-Barred.**

24 The Petition is time-barred pursuant to NRS 34.726(1):

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

- 1 (a) That the delay is not the fault of the petitioner; and
2 (b) That dismissal of the petition as untimely will unduly prejudice
3 the petitioner.

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

9 The one-year time limit for preparing petitions for post-conviction relief under NRS
10 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
11 the Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite
12 evidence presented by the defendant that he purchased postage through the prison and mailed
13 the petition within the one-year time limit.

14 Here, remittitur issued from Looper’s direct appeal on January 9, 2015. Therefore,
15 Looper had until January 9, 2016, to file a timely habeas Petition. Looper filed the instant
16 Petition on August 2, 2022. This is over seven years past Looper’s one-year deadline. As
17 explained below, Looper has not demonstrated good cause or prejudice for the court to ignore
18 this procedural bar.

19 **II. LOOPER CANNOT DEMONSTRATE GOOD CAUSE AND PREJUDICE**
20 **SUFFICIENT TO OVERCOME HIS PROCEDURAL BARS.**

21 Looper’s failure to prove good cause or prejudice requires the dismissal of his Petition.
22 To overcome the procedural bars, a petitioner must demonstrate: (1) good cause for delay in
23 filing his petition or for bringing new claims or repeating claims in a successive petition; and
24 (2) undue or actual prejudice. NRS 34.726(1); NRS 34.800(1); NRS 34.810(3). To establish
25 prejudice “a petitioner must show that errors in the proceedings underlying the judgment
26 worked to the petitioner’s actual and substantial disadvantage.” State v. Huebler, 128 Nev.
27 192, 197, 275 P.3d 91, 94-95 (2012), cert. denied, 568 U.S. 1147, 133 S.Ct. 988 (2013).

28 //

1 “To establish good cause, petitioners must show that an impediment external to the
2 defense prevented their compliance with the applicable procedural rule. A qualifying
3 impediment might be shown where the factual or legal basis for a claim was not reasonably
4 available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003),
5 rehearing denied, 120 Nev. 307, 91 P.3d 35 cert. denied, 543 U.S. 947, 125 S.Ct. 358 (2004);
6 see also, Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003) (“In order to
7 demonstrate good cause, a petitioner must show that an impediment external to the defense
8 prevented him or her from complying with the state procedural default rules”); Pellegrini, 117
9 Nev. at 887, 34 P.3d at 537 (neither ineffective assistance of counsel, nor a physician’s
10 declaration in support of a habeas petition were sufficient “good cause” to overcome a
11 procedural default, whereas a finding by Supreme Court that a defendant was suffering from
12 Multiple Personality Disorder was). An external impediment could be “that the factual or legal
13 basis for a claim was not reasonably available to counsel, or that ‘some interference by
14 officials’ made compliance impracticable.” Id. (quoting Murray v. Carrier, 477 U.S. 478, 488,
15 106 S.Ct. 2639, 2645 (1986)); see also, Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing
16 Harris v. Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)).

17 The Nevada Supreme Court has held that, “appellants cannot attempt to manufacture
18 good cause[.]” Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there must be a
19 “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71 P.3d at
20 506; (quoting, Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), superseded by
21 statute as recognized by, Huebler, 128 Nev. at 197, 275 P.3d at 95, footnote 2). Excuses such
22 as the lack of assistance of counsel when preparing a petition as well as the failure of trial
23 counsel to forward a copy of the file to a petitioner have been found not to constitute good
24 cause. Phelps v. Dir. Nev. Dep’t of Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988),
25 superseded by statute as recognized by, Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145
26 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

27 //

28 //

1 **C. Looper Fails to Establish Good Cause.**

2 Looper alleges that Mr. Gamage, who represented him for his first Petition for Writ of
3 Habeas Corpus (1) failed to inform Looper that the court issued an Order denying the Petition
4 on August 22, 2017, and (2) failed to file an appeal of the court’s denial of the Petition as they
5 had discussed. Petition at 6–7. These claims do not establish good cause.

6 First, Looper was not entitled to effective assistance of counsel in his post-conviction
7 proceedings. The Nevada Supreme Court has “consistently held that the
8 ineffective assistance of post-conviction counsel in a noncapital case may not constitute ‘good
9 cause’ to excuse procedural defaults.” Brown v. McDaniel, 130 Nev. 565, 569, 331 P.3d 867,
10 870 (2014) (citing McKague v. Warden, 112 Nev. 159, 163–65, 912 P.2d 255, 258 (1996));
11 (Crump v. Warden, 113 Nev. 293, 303 & n. 5, 934 P.2d 247, 253 & n. 5 (1997)). “This is
12 because there is no constitutional or statutory right to the assistance of counsel in
13 noncapital post-conviction proceedings, and ‘[w]here there is no right to counsel there can be
14 no deprivation of effective assistance of counsel.’” Id. at 569, 331 P.3d at 870 (quoting
15 McKague, 112 Nev. at 163–65, 912 P.2d at 258. Moreover, Looper was not entitled to an
16 appeal from the denial of his post-conviction petition. “Trial counsel is ineffective if he or she
17 fails to file a **direct appeal**” after a defendant has requested or expressed a desire for one—
18 not an appeal from a Petition for Writ of Habeas Corpus. See Hathaway v. State, 119 Nev.
19 248, 254, 71 P.3d 503, 507 (2003) (emphasis added). Here, Looper did file a direct appeal on
20 May 6, 2014, and the Supreme Court affirmed his Judgment of Conviction on December 11,
21 2014. Thus, Looper was neither entitled to an appeal, nor effective assistance of counsel after
22 his Petition was denied. As such, his claim that his counsel was ineffective for failing to file
23 an appeal cannot be used to establish good cause.

24 All of the cases cited by Looper either refer to the right to a *direct appeal*, or the right
25 to effective assistance of counsel in a capital case where counsel is appointed by statute. Both
26 Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003), and Mann v. State, 118 Nev. 351, 46
27 P.3d 1228, 1229 (2002), cited by Looper deal with the denial of the right to a direct appeal.
28 Harris v. State, 133 Nev. 683, 407 P.3d 348 (Nev. App. 2017), is similarly distinguishable as

1 this case only addressed counsel’s failure to follow through on filing a timely first habeas
2 petition. Thus, Looper cites no support for his contention that he was entitled to an appeal.

3 Further, Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997), cited by Looper
4 specifically states, the “right to effective assistance of counsel arises **only** if that counsel was
5 appointed pursuant to a statutory **mandate**. This right does *not* arise if the counsel was
6 appointed pursuant to the court's **discretion**.” Id. at 303, n.5, 934 P.2d 253, n.5. Here, Looper’s
7 counsel was not appointed by statute, thus, he cannot argue that Mr. Gamage’s alleged
8 ineffective assistance constitutes good cause.

9 Second, Looper’s claim that he was not aware that this court issued an Order denying
10 his first habeas petition is belied by the record. The court’s Notice of Entry of Findings of Fact,
11 Conclusions of Law and Order shows that a copy of the Order was mailed directly to Looper.
12 See Notice of Entry of Findings of Fact, Conclusions of Law and Order, August 22, 2017, at
13 1. Moreover, Looper was present and testified at the July 6, 2017, evidentiary hearing when
14 the court denied his Petition. See generally Evidentiary Hearing, July 6, 2017. Thus, any claim
15 that Looper was not aware that the Petition had been denied or did not know that the court had
16 entered its written findings is belied by the record. Hargrove v. State, 100 Nev. 498, 502, 686
17 P.2d 222, 225 (1984). As such, Looper’s failure to demonstrate good cause necessitates the
18 dismissal of his Petition.

19 **D. Looper Cannot Show Sufficient Prejudice.**

20 Looper’s failure to demonstrate good cause necessitates the dismissal of his petition.
21 However, Looper also fails to demonstrate that he was prejudiced by being unable to appeal
22 the denial of his Petition because his claims lack merit. “A court **must** dismiss a habeas petition
23 if it presents claims that either were or could have been presented in an earlier proceeding,
24 unless the court finds both cause for failing to present the claims earlier or for raising them
25 again and actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646–47, 29 P.3d
26 498, 523 (2001) (emphasis added). To demonstrate prejudice to overcome the procedural bars,
27 a defendant must show “not merely that the errors of [the proceeding] created possibility of
28 prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state

proceedings with error of constitutional dimensions.” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a “substantial reason; one that affords a legal excuse.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)).

The United States Supreme Court has long recognized that “the right to counsel is the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Claims of ineffective assistance of counsel are analyzed under the two-pronged test articulated in Strickland, 466 U.S. 668, 104 S. Ct. 2052 (1984), wherein the defendant must show: 1) that counsel’s performance was deficient, and 2) that the deficient performance prejudiced the defense. Id. at 687, 104 S. Ct. at 2064. Nevada adopted this standard in Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984). “A court may consider the two test elements in any order and need not consider both prongs if the defendant makes an insufficient showing on either one.” Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996); Molina v. State, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004).

“Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). “There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.” Strickland, 466 U.S. at 689, 104 S. Ct. at 689. The question is whether an attorney’s representations amounted to incompetence under prevailing professional norms, “not whether it deviated from best practices or most common custom.” Harrington v. Richter, 562 U.S. 86, 88, 131 S. Ct. 770, 778 (2011). “Effective counsel does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of competence demanded of attorneys in criminal cases.’” Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

//

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, 1011-1012, 103 P.3d 25, 32-33 (2004). Based on
4 the above law, the role of a court in considering allegations of ineffective assistance of counsel
5 is “not to pass upon the merits of the action not taken but to determine whether, under the
6 particular facts and circumstances of the case, trial counsel failed to render reasonably
7 effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing
8 Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)). This analysis does not indicate that
9 the court should “second guess reasoned choices between trial tactics, nor does it mean that
10 defense counsel, to protect himself against allegations of inadequacy, must make every
11 conceivable motion no matter how remote the possibilities are of success.” Donovan, 94 Nev.
12 at 675, 584 P.2d at 711. The role of a court in considering alleged ineffective assistance of
13 counsel is “not to pass upon the merits of the action not taken but to determine whether, under
14 the particular facts and circumstances of the case, trial counsel failed to render reasonably
15 effective assistance.” Id. In essence, the court must “judge the reasonableness of counsel’s
16 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
17 conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066.

18 The Strickland analysis does not “mean that defense counsel, to protect himself against
19 allegations of inadequacy, must make every conceivable motion no matter how remote the
20 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551
21 F.2d at 1166 (9th Cir. 1977)). To be effective, the constitution “does not require that counsel
22 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
23 cannot create one and may disserve the interests of his client by attempting a useless charade.”
24 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984). “Counsel
25 cannot be deemed ineffective for failing to make futile objections, file futile motions, or for
26 failing to make futile arguments.” Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103
27 (2006). Counsel’s strategy decision is a “tactical” decision and will be “virtually
28 unchallengeable absent extraordinary circumstances.” Id. at 846, 921 P.2d at 280; see also

1 Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691,
2 104 S. Ct. at 2066. “Strategic choices made by counsel after thoroughly investigating the
3 plausible options are almost unchallengeable.” Dawson v. State, 108 Nev. 112, 117, 825 P.2d
4 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Trial
5 counsel has the “immediate and ultimate responsibility of deciding if and when to object,
6 which witnesses, if any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8,
7 38 P.3d 163, 167 (2002).

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

18 Even if a petitioner can demonstrate that his counsel's representation fell below an
19 objective standard of reasonableness, he must still demonstrate prejudice by showing a
20 reasonable probability that, but for counsel's errors, the result of the trial would have been
21 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
22 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
23 sufficient to undermine confidence in the outcome.” Id.

24 Here, Looper cannot demonstrate prejudice in being unable to appeal this court's
25 decision. Looper claims that his plea counsel, Marjorie E. Barbeau, Esq., rendered ineffective
26 assistance because she failed to fully inform him of (1) the nature and requirements of sex
27 offender registration; (2) the consequences and procedural aspects of lifetime supervision; and
28 (3) the requirement that he undergo a medical and mental health assessment in order to be

1 eligible for parole. Petition at 16.

2 In its Order denying the Petition, this court explained that Looper was canvassed on
3 whether he understood that he would be subject to sex offender registration, lifetime
4 supervision, and a psychosexual evaluation. Order, August 18, 2017, at 6. Further, Looper's
5 plea agreement contained specific provisions informing Looper of the psychosexual evaluation
6 and sex offender registration requirements. Order, August 18, 2017 at 7. Finally, Ms. Barbeau
7 testified at the evidentiary hearing that she went to the Clark County Detention Center
8 ("CCDC") and met with Looper for a lengthy period of time going through not just his file,
9 but all the evidence and the Guilty Plea Agreement. Order, August 18, 2017 at 7. Ms. Barbeau
10 further testified that she recalls speaking with Looper about sex offender registration and
11 lifetime supervision. Order, August 18, 2017 at 7. Thus, this court denied Looper's claims as
12 they were belied by the record. Order, August 18, 2017 at 7. Accordingly, Looper cannot show
13 that he was prejudiced by his inability to appeal the denial of his habeas petition because his
14 claims lack merit. As Looper has failed to show good cause or prejudice sufficient to overcome
15 his procedural bar, the instant Petition should be denied.

16 **III. LOOPER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

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

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

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

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

25 The Nevada Supreme Court has held that if a petition can be resolved without
26 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
27 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
28 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual

1 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
2 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
3 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction
4 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the
5 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it
6 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

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

21 Here, as explained *supra*, Looper was not entitled to effective assistance of counsel in
22 his post-conviction proceedings, nor was he entitled to an appeal of this court’s denial of his
23 habeas petition. Thus, Looper has failed to demonstrate that an expansion of the record on this
24 issue is warranted.

25 //

26 //

27 //

28 //

ORDER

THEREFORE, **IT IS ORDERED** that Defendant's Petition for Post-Conviction Relief shall be and it is hereby DENIED.

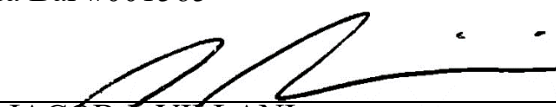
Dated this 12th day of October, 2022



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

7F9 F53 5AAD 9C38
Carolyn Ellsworth
District Court Judge
For: Sr. Judge Mark Gibbons

BY



JACOB J. VILLANI
Chief Deputy District Attorney
Nevada Bar #011732

hjc/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Dajuan Looper, Plaintiff(s)

CASE NO: A-22-856419-W

7 vs.

DEPT. NO. District Court Criminal/Civil

8 Nevada State of, 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: 10/12/2022

15 DA SVU

DASVUTeam@clarkcountyda.com

16 Diane Lowe

dianelowe@lowelawllc.com

17
18
19
20
21
22
23
24
25
26
27
28

A-22-856419-W Dajuan Looper, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

September 19, 2022 08:30 AM Petition for Writ of Habeas Corpus

HEARD BY: Gibbons, Mark COURTROOM: RJC Courtroom 11A

COURT CLERK: Albrecht, Samantha

RECORDER: Santi, Kristine

REPORTER:

PARTIES PRESENT:

Jacob J. Villani Attorney for Defendant

Nevada State of Defendant

JOURNAL ENTRIES

Plaintiff not present. Diane Lowe, Esq. not present.

State submitted. COURT ORDERED, Petition DENIED as procedurally and time barred. State to prepare the order.

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; 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

DUJUAN LOOPER,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

Case No: A-22-856419-W

Dept No: XVII

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 13 day of October 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk