

# IN THE SUPREME COURT OF THE STATE OF NEVADA

CEASAR SANCHAZ VALENCIA,,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Electronically Filed  
Dec 07 2022 11:52 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No: A-20-815616-W  
*Related Case C-16-315580-1*  
Docket No: 85694

## RECORD ON APPEAL

**ATTORNEY FOR APPELLANT**  
CEASAR VALENCIA #94307,  
PROPER PERSON  
P.O. BOX 208  
INDIAN SPRINGS, NV 89070

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

A-20-815616-W Ceasar Valencia, Plaintiff(s) vs. State of Nevada, Defendant(s)

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**VOLUME:**      **PAGE NUMBER:**

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Case No. C-116-315580-1  
Dept. No. 29

FILED

MAY 28 2020

*John D. Blum*  
CLERK OF COURT

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

Cesar Sanchez Valencia  
Petitioner, #94307

PETITION FOR WRIT  
OF HABEAS CORPUS  
(POSTCONVICTION)

A-20-815616-W  
Dept. 29

Johnson werden High Desert State Prison  
The State of Nevada  
Respondent.

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert STATE Prison Clark County
2. Name and location of court which entered the judgment of conviction under attack: EIGHTH Judicial District Court Clark County Las Vegas NV
3. Date of judgment of conviction: 2-6-18
4. Case number: C-315580-1
5. Length of sentence: Aggregate Total 108 to 312 months

RECEIVED

MAY - 4 2020

CLERK OF THE COURT

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

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

Yes ..... No ☒

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

7. Nature of offense involved in conviction being challenged: Count 1 Assault w/weapon on protected person

Count 2 Possession of Fire Arm by prohibited person  
Count 3 & 4 Possession of controlled substance  
Count 3 trafficking

8. What was your plea? (check one)

(a) Not guilty ☒

(b) Guilty .....

(c) Guilty but mentally ill .....

(d) Nolo contendere .....

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

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

(a) Jury ☒

(b) Judge without a jury .....

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

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

13. If you did appeal, answer the following:

(a) Name of court: Nevada Supreme Court

(b) Case number or citation: NO 25282

(c) Result: Order of Affirmance

(d) Date of result: April 12 2019 Reorder May 7 2019

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

1 14. If you did not appeal, explain briefly why you did not: N/A

2  
3  
4 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any  
5 petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ..... No X.

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

7 (a) (1) Name of court: .....

8 (2) Nature of proceeding: .....

9  
10 (3) Grounds raised: N/A  
11  
12

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

14 (5) Result: .....

15 (6) Date of result: N/A

16 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:  
17

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

19 (1) Name of court: .....

20 (2) Nature of proceeding: .....

21 (3) Grounds raised: N/A

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

23 (5) Result: .....

24 (6) Date of result: .....

25 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:  
26

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

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

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

Citation or date of decision: .....

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

Citation or date of decision: .....

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

Citation or date of decision: .....

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

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

(a) Which of the grounds is the same: .....

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

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

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

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

7 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment  
8 under attack? Yes ..... No X  
9 If yes, state what court and the case number: .....  
10 .....

11 21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on  
12 direct appeal: Steven W. H. Public Defenders Office and Gregory E. Loya ESQ  
13 Alexis Ploninett  
14 .....

15 22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under  
16 attack? Yes ..... No X  
17 If yes, specify where and when it is to be served, if you know: .....  
18 .....

19 23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the  
20 facts supporting each ground. If necessary you may attach pages stating additional grounds and facts  
21 supporting same.  
22  
23  
24  
25  
26  
27  
28

(a) Ground One: Conviction And/or Sentence are unconstitutional IN Violation of Sixth and ~~Fourth~~ Amendments As guaranteed By The Nevada and United States Constitutions.

Supporting facts: Ineffective Assistance of Counsel through the entire initial Preliminary Process and PRe Trial

Public Defender Mr Steven WSK was Appointed During Justice Court Arraignment and preliminary hearing banded over to District Court when he first talk to me I him to come see me at the CCDC before the preliminary hearing which he failed to do so I was requesting additional discovery of victim Statements I also explained to him that I was being charged for something I didn't do, that the police fabricated this charge of Assault with a deadly weapon and that the day of my arrest I was threaten by police officer that I did not recognize but he was yelling at me that he should of shot me yesterday he also was trying to get at me but detective Bryant pushed him off told him to stop already but prior to that the same officer could not identify me because I heard Detective Bryant say you sure that's not him do you recognize Valencia is the passenger take a good look at him then at that point he said ya that's him I still didn't understand why he was threaten me until I was booked into CCDC that I was being charged with Assault on an officer

1 That's why I was requesting that Mr Lisk to come visit me  
2 in person at CCDC which he failed and on the day of the prelim  
3 ary. I asked why did you not visit me his response was  
4 that he was busy with a trial. I also asked him why you  
5 never responded to my voice mails I left for him.  
6 so he responded with the same thing that he was done with  
7 trial so I explained that I don't want a preliminary hearing  
8 I'm going to waive it and he got real upset with me I asked  
9 him if I have this hearing are you going to file a writ  
10 when we get to District Court his response was no so  
11 I waived my preliminary hearing and asked him  
12 to be ready for trial that I was going to invoke my  
13 speedy trial because I would like to have my trial  
14 because I'm innocent of this Assault with the gun then  
15 he Mr Lisk threaten me that I was going to be found guilty  
16 and that they the state will habeatualize me I explained  
17 that I will never accept a deal to something I did not  
18 do I can't accept that I will take a Deal for the drugs  
19 but not for the gun or Assault this was at my preliminary  
20 hearing. On June 10 2016 was the next time I spoke or seen  
21 him Mr Lisk I explained to Mr Lisk to be ready for trial  
22 because I wasn't taking a deal for the gun only two felonies  
23 for the possession of drugs Mr Lisk was giving me a look  
24 like anger the look that he really wanted to yell at me  
25 I felt like Mr Lisk was Adlebaeking for the state because  
26 he would negotiate a deal I want to go talk to the DA and ask  
27 if they would offer a deal for the drugs this was on Jun 10 2016  
28 I ask him to request additional Discovery like my DNA and all  
Video to file some suppressing motions Mr Lisk responded

1. explained that he will not file any motions for me because  
2. I waived my preliminary hearing that there was nothing he could  
3. do for me now alright then come see me at CCDC in person  
4. before my calendar call so that we can be ready for trial  
5. Mr Lisk said I will. Mr Lisk never showed up to visit me I called  
6. the Public Defenders the receptionist always transferred my calls  
7. to Mr Lisk voicemail I left numerous messages after  
8. what seemed like a hundred attempts I spoke to Mr Lisk  
9. a few days before calendar call that's when he informed  
10. me that he had file a discovery motion and that he would  
11. be requesting a continuance. I explained to Mr Lisk that would  
12. be filing a complaint with the State bar for ineffective  
13. because no I would have to waive my speedy trial  
14. Mr Lisk had failed to prepare for trial and you never  
15. come to visit at CCDC before the calendar call. On July  
16. 19 2016 Mr Lisk was ineffective for filing the Discovery  
17. Motion on same day for calendar call so because of  
18. his ineffectiveness I had to waive my speedy trial  
19. and request Alternate Counsel the hearing continued  
20. for July 26 2016 to request Mr Lisk to be dismissed  
21. I explained to the court that Mr Lisk was ineffective  
22. he wants me to plead guilty to something I'm innocent  
23. why is he forcing me threatening he explained  
24. the elements of of the trafficking and possession  
25. all contributing with with the possession being a lesser  
26. included offense in trafficking Mr Lisk stated to  
27. the court that regards with MS Holleran they  
28. were in the process of working that they were



1 always in communication with regards to the discovery  
2 issues and everything. So with regard to that he didn't feel  
3 that MS O'Halloran Mr Lusk withheld any information  
4 about this to me again counsel was an advocate to the state  
5 instead of the defense MS O'Halloran insisted that there  
6 was no video footage but there was body cam  
7 footage of K9 unit that was processed by MS O'Halloran.  
8 On Mr Lusk Discovery there was request for video footage  
9 I was asking for that video because the of the way one  
10 of the officers was threaten that he should or shot killed  
11 me. All of this information Mr Lusk knew but he failed  
12 to investigate or inform me that he had communication  
13 with MS O'Halloran so that K9 video that was released  
14 Nov 12016 in it there was PDF files which are logged  
15 or recorded that there was video footage deleted this  
16 information was deleted by MS O'Halloran all by District Attorney  
17 So Mr Lusk knew about this video and Mr Lusk should of  
18 had notes turned over in the case file for Mr Coyer  
19 unless he kept them on what did he do to them By Mr Lusk  
20 failing to investigate all the aspects of the case had  
21 irreparable injurious effect on the preliminary hearing  
22 and calendar call which are critical stages of the criminal  
23 process because it is at this juncture counsel learns of charges  
24 the evidence realized upon for said charges and there  
25 sufficiency. The Court has held "Sixth Amendment guaranty  
26 to Accused is guaranteed that he not stand alone against  
27 state at any stage of prosecution formal or informal in court  
28 or out where counsel's absence might derogate Accuseds

1 right to fair. States V Wade 388 US 218, 87 Sct 1926 (1967)  
2 And actual or constructive denial of the assistance of  
3 Counsel Altogether is legally presumed to result in prejudice  
4 So are various kinds of state interference with counsel  
5 assistance. See United States V Cronk ante at 659<sup>11</sup>  
6 concluding that prejudice in these circumstances is  
7 so likely that case by case - inquiry into prejudice  
8 is not worth the cost Ante at 658 Thus herein lies  
9 sufficient cause and prejudice Therefore this case must  
10 be reversed and remanded for evidentiary hearing  
11 to prevent manifest injustice

12  
13 The actions of Counsel violates the  
14 Sixth and Fourteenth Amendments to the  
15 US and Nevada constitutions

16 Relief is Warranted

17 // //

18 // //

19 // //

(b) Grand Two: Conviction And/or Sentence are unconstitutional  
In Violation of Fifth, Sixth and Fourteenth Amendments  
Right to effective Assistance of pre-trial, trial  
and Appellate counsel As Guaranteed By Nevada and  
United States Constitutions;

Supporting facts: On August 9 2016 Mr Coyer  
was confirmed a counsel on that hearing a trial date  
was requested it was set for status check negotiations  
/ trial setting on August 23 2016 I requested  
to discharge Mr Coyer I informed the Court  
that I have filed a complaint to State Bar. Mr Coyer  
who declined to file Motions and conduct investigation  
or provide discovery. The Court did advise me to inform  
Mr Coyer about my day of arrest and I spoke to Mr  
Coyer off CCDC visit between the Dates of August 9th  
2016 and before August 25th 2016 During this visit  
I explained to Mr Coyer that there was some money  
that was forfeiture case he responded with what do  
you want me to do with that? so I said you would  
explain it to me I know that I must respond to  
the court in Dept 23 with a verified answer or I will  
not be able to claim my money my property if a default  
Judgment goes through his response was yes or no your  
own on that case because I don't practice civil and the  
Court doesn't pay me for me to represent you on that  
case so I asked so there is nothing you could help me  
with? he responded with no I ask again if you advice

1 me to accept a plea deal I will have to forfeit my money  
2 he responded with yes. I ask him that I ask if he could  
3 get a deal for drugs because I was innocent of assault with  
4 gun. I ask to request additional discovery he explained to me  
5 that he don't request nothing until 30 days before trial  
6 I told him the trial date was set for 7-25-16 I then explain  
7 that my constitutional rights were violated because Police  
8 were making this charge up of assault with the weapon  
9 Police say there was a chase I would like to request  
10 Dash cam footage and body cam footages he told me  
11 that didn't exist. I asked him could you at least show me  
12 what video footage ~~available~~ then response was that  
13 it was my word against the officers word and Mr. Coyer  
14 responded with me personally I'm going with the officers  
15 word OK I say are you going to be ready for trial coming  
16 up he told me he would have to get familiar with the  
17 case I explained that I was asking for discovery to  
18 be ready for trial so your not going to request nothing on ~~my~~ my  
19 case. They claim my money is proceeds from drugs but my  
20 charges as you can see very clear are possession not for  
21 purpose of sale Mr. Coyer gave me his personal opinion he  
22 explained that I shouldn't get my money back because of the  
23 simple fact that I was in possession of drugs and I ask if  
24 at trial what are the elements of trafficking this type of charge  
25 he explained to me that just the amount of the substance  
26 that's enough to convict on trial I ask ~~what~~ about the intent  
27 for sell or delivery or the other elements responded with  
28 no just possession at this point I could not trust him

1 because he is an advocate for the state not for the defense.  
2 I try again to talk with Mr Coyer about the brady motion  
3 the one Mr Lusk filed that was in the process of additional discovery  
4 but he knew that there was an opposition from the state all these motions  
5 were placed off calendar the court explained that since I had alternate  
6 Counsel that you will <sup>rep</sup> file my discovery motion you know Lusk  
7 requesting all evidence in the case all I was getting that he was  
8 less than truthful like he was creating a road block  
9 to getting anything I also remember that he explained that  
10 my case was going to have to be put on the back burner  
11 that my file was just going to be put on a shelf on the OAS  
12 office collecting dust the one who's comments No I said I disagree I will want to have my trial soon I need discovery he  
13 explained to me I don't file nothing with the courts Mr Coyer  
14 explained to me his practice in requesting evidence or discovery  
15 materials which was by him sending a note or letter to the prosecutor  
16 and then they will give him some type of response and he leaves a  
17 paper trail I later found out that in my case file Mr Coyer had  
18 in his possession that opposition motion from the State he never responded  
19 to me that he was in possession of it and also the discovery  
20 motion that Mr Lusk had filed. again he hasn't inform me of those  
21 motions I later found out he was withholding from me these documents  
22 but he wants to lie to me about his discovery practice but he already  
23 had a response in the file his loyalty was with the state not the  
24 defense Mr Coyer was ineffective for failure to provide me  
25 with <sup>those</sup> copy's or even inform me on them so on the visit at CCDC  
26 I asked him to request video of the police chase to file  
27 a suppression motion because if they claim that there  
28 was a traffic violation his response was you need a civil rights

1. lawyer for that claim like I told you I don't do civil  
2. I cannot help you there I do not practice civil I only do  
3. criminal so you wouldn't be able to represent me on  
4. a 4th violation amendment to suppress or could I  
5. not even get advice or help me at all with my forfeiture  
6. or criminal they took my money and you can't even give me  
7. some advice or nothing to help me how could I put my trust  
8. in you at all I know you could ask the courts or something  
9. for some kind of assistance how can you say you are an advocate  
10. for me and my rights when all you're doing is being an obstacle  
11. obstructing me from getting my money back if you can't be  
12. ready for trial I don't want you on my case his response  
13. was that you can't get rid of me the court appointed  
14. me to the case ok well we'll see about that on August 23 2016  
15. I told the court and I told Mr. Coyer I don't want you on my  
16. case because your loyalty is with the prosecutor not with me.  
17. his response was again I already told you you can't  
18. get rid of me ok then I will continue prose I tried to  
19. be good with Mr. Coyer but he has conflicting interest  
20. because Mr. Lisk and Mr. Coyer both work with the public  
21. Defenders Office Mr. Coyer for several years then he  
22. went on to open his private practice but for sure they use  
23. to be co-workers, now Mr. Coyer has a heavily escalated  
24. and don't even have a supervisor gets paroled by the court and  
25. saves money on defending indigent defendants he's been ineffective  
26. before and on August 25 2016 oral motion to dismiss counsel  
27. Granted

28. Relieved as Warranted

(C) Ground Three: IN Violation of the Sixth and Fourteenth Amendments US Const and Nevada Const Art 1 Sect 33.

Trial Counsel was ineffective ~~in~~ failing to meet or confer and or have any pre-trial contact whatsoever with Petitioner

I seen Mr Coyer on the February 28 2017 court hearing and next time I seen him was Nov 14 2017 never explained to me nothing about the trial and the only thing that was mentioned was who was going to be doing the trial with him and he asked who I wanted I said to get that lawyer on the news who got charged dismissed that was all he never mentioned who he was going to call for witnesses or any trial preparation nothing never review any evidence. Petitioner has the constitutional right to be represented by competent counsel and in this case the lack of the most basic right to effectiveness was lost to Petitioner by and through the total abandonment by Counsel during critical stages of the criminal process to such extent as to render Petitioner's pretrial investigation and conviction and sentence fundamentally unfair and unconstitutional and although the Courts have Petitioner had no constitutional right to "meaningful" relationship with appointed counsel so long as lawyer acted as clients advocate Plumlee v.asto 512 F3d 1204 (2008) CA9 Nev. cert den (2008) 553 US 1085 128 Sct 2885, 171 L Ed 822 with the exception that this case is significantly different Petitioner was extremely prejudiced by the Abandonment of counsel Relief is Warranted

(d) Ground four: IN Violation of the The Sixth and  
fourteenth Amendment US Const. And ~~the~~ constitution  
New const. Art 1 sect 3, 8.

Trial Counsel was ineffective In failing to conduct  
an independant DNA Testing of the evidence and for  
failing to present expert witnesses, in violation  
of the Sixth and fourteenth Amendment US Const  
in this case officer Jacobitz discovered a firearm  
body cam footage shows that officer Jacobitz is  
claiming that Cesar was holding the firearm like this  
with two hands and elbows up in front of the  
chest and that his partner saw everything  
at trial he change his story by saying that  
Cesar had the gun in the waist and with one  
hand turned with his torso and officer Houston  
testified that he never saw the suspect point the  
gun Mr Coyer During a visit when he produce me this  
DNA Report told me he was going to have it explained  
how the DNA and finger prints would of have been  
on the gun from some who was hold it running from police  
he failed to hire any Defense experts and  
During trial I asked him when are you going to present  
the DNA evidence he replied he was not I told him  
that I was going to tell the court and Alexis Plunkett  
Mr Coyer told me not to because I was going to get the judge  
mad so he after a while told me that those are state witnesses  
they don't have to bring them so and on Monday he subpoena  
them prejudice is shown that Mr Coyer was ineffective



## Deficient Performance

MRS 50.275 provides for expert witnesses testimony or opinion if such expert testimony or specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue. See *Pineda v State* 88 P3d 827, 833 (Nev 2004)

here counsel was <sup>well</sup> aware that of the intentions not to present expert witness on DNA and fingerprints tested because they matched the officers Jacobitz but counsel failed to do independent because he already mentioned in the record that he was not going to spend any ~~resources~~ on the case the DNA results were of four individuals at least one being a female but Cesar Valenzuela is excluded as a possible contributor to patrol or major DNA if counsel would of had Defense expert why there was no DNA left behind with some one who was holding the gun with ~~two hands~~ and the DNA was incomplete there were the bullets with which were never tested leave the results inconclusive also the State expert testified that she did not get a buccal swab from anyone to eliminate any potential contributors to the DNA profiles concluding trial counsel was ineffective in failing to offer expert testimony finally had counsel conducted an independent DNA testing on the gun and bullets counsel would have been able to run a DNA comparison on the mixture of DNA profiles with contained at least ~~four~~ four different individuals the ~~se~~ four other individuals were potential witnesses ~~to~~ suspects to the issue that a deadly weapon and who was actually was in possession of the Rifle ~~even~~ not the Prisoner

## Prejudicial Effect

The prejudicial effect of counsel's over all deficient performance is obvious and irreparable to the highest magnitude as petitioner Cesar Valencia was ultimately denied his right to present an adequate theory to his defense and put the state ~~DNA~~ evidence through a proper adversarial testing especially as it could not been disputed that Petitioner Cesar Valencia <sup>DNA</sup> could not been found on the ground or the product of transfer evidence. Furthermore as to the state witnesses crystal may did not attempted to run the mixture of profiles through a state and nationwide data base to determine who the other contributors of DNA could have belong too, counsel's failure to conduct this independent procedure prejudice Petitioner Cesar Valencia to the highest degree because counsel's actions or lack thereof, eliminated the opportunity at discovery potential witnesses and suspects when considering the prejudicial effect of counsel's actions or lack thereof there is absolute no tactical justification for the course of action trial counsel chose finding ineffectiveness for failure to call witnesses whose testimony could have base defense theory. Under the Sixth Amendment and the dictates of Strickland counsel's actions or lack thereof demonstrates deficient performance that caused prejudice and a reasonable probability that for counsel's errors the results of the trial would have been different Wiggins v Smith 539 US 123 Oct 25 272 S36 (2003). The actions of counsel violates the Sixth and Fourteenth Amendment to the US Constitution and Nevada Constitution's Nev. Const Art 1, Sect 3, 8.

Reiff's Warranted  
7/1/11

1 (a) Grand Five: Petitioners Conviction AND/or Sentence are  
2 unconstitutional IN violation OF Sixth AND Fourteenth  
3 Amendment Right to effective ASSISTANCE OF Pre trial  
4 trial AND APPELLATE COUNSEL AS Guaranteed By The  
5 NEVADA Constitution USCA VI, XIV; Nev Const  
6 Art I Sect 3, 8

7  
8 Trial Counsel was ineffective for failure to  
9 correct the record and to preserve the denial  
10 of the conditional waiver of Self Representation  
11 on hearing Date NOV 1 2016 upon request for co-counsel  
12 to obtain legal materials before waiving this right to  
13 self representation the court state: AND YOU WOULD  
14 have Another opportunity if you felt that you become  
15 incompetent to ask that Mr Coyer be removed  
16 as long as it's not a tactic designed to delay the trial  
17 That was the condition with the court that I would be  
18 able or if the court would honor this condition  
19 for the opportunity that was the understanding. NOV 1  
20 2018 Mr Coyer has failed to present this facted  
21 to the Supreme Court and During the court hearing of  
22 January 19 I explained and ask Mr Coyer I don't want you  
23 on the case he failed to provide any legal materials and all  
24 Mr Coyer would say for sure it's your constitutional right  
25 but I told him to object and preserve the record for  
26 Appeal cause all he would say don't worry about  
27 we will bring it back on Appeal  
28 Reiterated & warranted

1 (b) Ground Six: Petitioner's Conviction And/or Sentence are  
2 UNCONSTITUTIONAL IN VIOLATION OF SIXTH AND FOURTEENTH  
3 AMENDMENTS AS GUARANTEED BY THE NEVADA CONSTITUTION  
4 USCA VI, XIV; NEV CONST ART 1 SECT 3, 8

5  
6  
7 Trial Court on August 25 2016 defendant's oral motion  
8 to dismiss counsel Granted. Court stated it will consider  
9 a motion to Appoint counsel if Defendant changes his mind  
10 ON NOV 1 2016 on a hearing for Access to the Courts motion  
11 Defendant made oral request to proceed with co-counsel  
12 Judge Scotti explained to either represent yourself or Appoint  
13 Mr Coyer Argued to the Appeal that Petitioner reluctantly  
14 agreed to have prior counsel re-appointed. But the agree-  
15 ment with the court was that Judge Scotti report  
16 AND YOU WOULD HAVE ANOTHER OPPORTUNITY  
17 IF YOU FELT THAT YOU BECAME INCOMPET-  
18 TIBLE TO ASK THAT HE BE REMOVED  
19 AS LONG AS THAT WASN'T A TACTIC DES-  
20 IGNED TO DELAY THE TRIAL. ON February 28 2017  
21 Mr Coyer failed to remind the court that the waiver  
22 to self representation was conditional. I kept telling  
23 Mr Coyer Judge Scotti told me that I would have the  
24 opportunity to withdraw Mr Coyer but on NOV 8 2016  
25 I ACCEPTED Mr Coyer but the court made an order  
26 to Mr Coyer would provide me with legal materials  
27 that's why I ACCEPTED ON NOV 8 2016 that was the order  
28 of the court for Mr Coyer was to provide legal materials.  
Relief us warranted Page 20

1 (c) Ground seven: Conviction And/or Sentence are  
2 Unconstitutional IN Violation OF Sixth AND Fourteenth  
3 AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE  
4 OF PRE TRIAL TRIAL AND APPELLATE COUNSEL  
5 AS GUARANTEED BY THE NEVADA AND  
6 UNITED Constitution.

7  
8 Mr Coyer failed to provide legal materials  
9 On NOV 8 2016 Judge Scotti made an order  
10 for those materials and for the order giving approval  
11 request funding so Mr Coyer could provide effective defense  
12 Petitioner requested that the court make that order before  
13 accepting Mr Coyer and on Feb 28 2017 Mr Coyer denied  
14 that he got back on to help provide those materials by  
15 stating that: I think I got back on for whatever  
16 reason I don't recall if it was his request or  
17 not and also told the court to reconsider because  
18 the way the record was made by the previous judge  
19 so even after I told Mr Coyer he went on a Ad  
20 told the judge that I stand ready to represent  
21 him if you let me stay on the case. Petitioner  
22 explained to the court that Mr Coyer has denying me research  
23 if I wanted anything to request from commissary he could even  
24 provide a legal ~~for~~ the order from the court was to provide  
25 he was depriving everything that he agreed to do so it  
26 shows that Mr Coyer was forced dishonestly in presence  
27 of the law denying my constitutional rights  
28 Relief is warranted

1 (d) Ground EIGHT: Petitioners Sentence are unconstitutional  
2 IN Violation of EIGHTH AND fourteenth Amendments  
3 AS Guaranteed by The Nevada Constitution AND US  
4 CONSTITUTIONS

5  
6 A Court has the discretion to make the decision  
7 to dismiss the Court did not weigh or was  
8 presented with the facts of those prior convictions  
9 Case No C224558 is an illegal sentence and Mr Coyer  
10 failed to object to that JOC it was Amended  
11 2 times on March 29 2007 the Defendant was  
12 not present in court and was not represented by counsel  
13 Although Nev Stat 207.010 renders a Defendant with three  
14 qualifying convictions a habitual criminal the statute gives  
15 a sentencing court only discretion not to adjudge  
16 the defendant the decision to adjudge an individual  
17 is not an attractive one. Sentencing court has broad  
18 discretion to dismiss the court failed to exercise  
19 its discretion or it was failed to be provided with  
20 mitigating facts by counsel, also invoke and reserve to  
21 Interim Amend with the provisions of Assembly  
22 Bill 236 Section 86 amendments NRS 207.10  
23 Petitioner also request that this Court Allow him to develop  
24 the necessary facts and documents and other evidence  
25 he will need to prove his claims

26  
27 Evendinary hearing IS Requested

1 (a) brandine Petitioners Conviction And/or Sentence  
2 are UNCONSTITUTIONAL IN Violation of Sixth AND  
3 Fourteenth Amendments Right to EFFECTIVE ASSISTANCE  
4 OF TRIAL COUNSEL AS GUARANTEED BY  
5 THE NEVADA AND UNITED STATES CONSTITUTIONS

6  
7 INEFFECTIVE ASSISTANCE OF COUNSEL  
8 BOTH COUNSEL MS PLUNKETT MR COYER  
9 Failed to Request change of Venue for a Jury  
10 who explained to the Court that MS PLUNKETT  
11 had Brought cell phones into the Jail on that  
12 all that he seen on the news the bad publicity  
13 Failed to object and Preserve for Appeal  
14 Failed to object to the admission of the bag with  
15 the gun that the officers made to the Jury  
16 that was ex felon possession of the Fire Arm  
17 so when the officer testified and failed to  
18 object so they failed to initially object to  
19 the testimony so failure to do so cause prejudice  
20 so failure to object to this issue was practically  
21 precluded for review and counsel also failed  
22 to object to prejudicial testimony from the officers Jacobitz  
23 when K9 body on footage he is say that the  
24 suspect is hold the Gun with two hands  
25 and Mr Coyer and MS Plunkett failed to object  
26 and correct that and along with DNA experts  
27 for the defense would of had a different result at trial  
28 Relief is Warranted Nevada follows the rule of exclusion concerning  
Page 23 evidence of other offense

(b) Grand Jury Petitioner Conviction And/or Sentence are  
Unconstitutional IN Violation OF Sixth AND Fourteenth  
Amendment Right TO Effective ASSISTANCE OF  
Trial Trial AND Appellate Counsel AS Guaranteed  
By THE NEVADA AND UNITED STATES CONSTITUTIONS.

Counsel failed to and deprived Criminal Defendant  
of his only viable defense which certainly renders  
the resultant trial fundamentally unfair or unreliable.  
Mr. Coyer failed to prevent and preventing Petitioner's  
defense a defense the police fabrication will be supported  
by DNA fingerprints and by a witness who said or gave a voluntary  
statement Eric Gilbert was at the crime scene and  
Page 9 claiming that he said I don't know who so after the the  
fact who ya'll chasing at first and the officers asked  
him how do you know after the fact? what was the situation  
with that you knew who we were chasing that he got put in handcuffs  
got put in the car and on page 15 of voluntary statement he Eric  
Gilbert Answer And that's what I said I came I did not know  
who ya'll chasing or nothing I did not recognize the person you  
you know what I'm saying I did not know that was his.  
Mr. Coyer failed to subpoena or to interview a witness Eric Gilbert  
or a viable witness. Mr. Coyer failed to subpoena Metro Records for  
dashcam footage. failed to correct the irreparable misstatement  
cause from the prosecutor failed to object to inconsistencies  
with the reported crime and request which picture was used for the  
reel view marked



1 (C) Ground Eleven; Petitioner's Conviction AND/or Sentence  
2 are unconstitutional In Violation of his Fifth, Sixth AND  
3 Fourteenth AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE  
4 OF Trial and Appellate Counsel AS guaranteed by  
5 The NEVADA AND UNITED STATES CONSTITUTIONS.

6  
7 Mr Cayer failed to prepare for trial and Counsel's  
8 failure to investigate the facts failure to call witnesses  
9 failure to make an opening statement failure to consider  
10 the legal cognizable Defense that could render a  
11 sentence of life in prison is unreliable. Mr Cayer has  
12 a duty to instruct the jury on exculpatory evidence  
13 which the state's business he failed to instruct  
14 on DNA Exculpatory he failed to prepare for Appeal  
15 He day & finally spoke with him he told me it was too late  
16 that my Appeal was already in the courts The deprivation  
17 of the right to counsel is so inconsistent with the right to  
18 fair trial Although a criminal defendant enjoys the right to  
19 conflict free representation in order to demonstrate an actual  
20 conflict of interest the defendant must show that his Attorney  
21 was actively representing conflicting interest and that the conflict  
22 adversely affected the Attorney's performance. However forcing  
23 a defendant to go to trial with an attorney with whom he  
24 has an irreconcilable conflict amounts to constructive  
25 denial of the Sixth Amendment right to counsel. Mr Cayer  
26 was aware that we had an irreconcilable conflict and refused  
27 to withdraw from the case failed to advise regarding the new counsel  
28 or Requesting Appointment of new counsel

(d) Ground Twelve: Petitioner's Conviction AND/or Sentence ARE UNCONSTITUTIONAL IN VIOLATION OF HIS FIFTH SIXTH AND FOURTEENTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL AS GUARANTEED BY THE NEVADA AND UNITED STATES CONSTITUTIONS

COUNSEL FAILURE TO assess whether THE IDENTIFICATION procedures were "so unnecessary suggestive and conducive to irreparable mistaken identification" that Petitioner was denied due process of law OR APPELLATE COUNSEL failed to raise all issues due to the lock to order issue whether the District Court erred during jury selection and whether the District Court erred when setting jury instructions the Hebert trial treatment and whether cumulative error warrants reversal and that the state withheld or concealed video footage and Mr. Coyle refused to provide copies of ALL Records and request to Korel Menos Kant Attorney never responded to the request

### CONCLUSION

That the Cumulative Effect of the ERRORS of Trial Counsel DENIED Defendant Due process and a fair trial under the Fifth Sixth And Fourteenth Amendments to the NEVADA AND UNITED STATES CONSTITUTIONS

1 Petitioner incorporates the facts evidence and argument  
2 from Ground 1 thru 12 as though fully set forth herein  
3 Petitioner contends that EACH of these claims<sup>8</sup> instances  
4 of ineffective assistance of his trial and/or Appellate  
5 counsel entitle him to relief, and collectively the cumulative  
6 effect denied him due process and a fair trial under  
7 the 5th, 6th and 14th Amendments to United STATES Const  
8 AND Nevada Constitution Nev Const Art 1, Sect 3, 8.  
9 Petitioner also request that this Court allow him to  
10 develop the necessary facts, witnesses, testimony  
11 documents and other evidence he will need to prove  
12 his claims of ineffectiveness of his trial and/or Appellate  
13 counsel, in form of interrogatories, Request for admissions  
14 Request for production of documents, Subpoenas for depositions  
15 This will allow for a productive evidentiary hearing that  
16 can be heard on the merits. To Prevail on his claim of  
17 ineffective assistance of counsel petitioner must show that his  
18 Counsel's conduct fell below an objective standard of reasonableness  
19 and outside the wide range of professionally competent assistance.  
20 Strickland v Washington 4166 US 668, 690, 104 Sct 2052,  
21 80 L. Ed 2d 674. To Succeed on a petition petitioners counsel  
22 errors must be so serious "as to deprive the petitioner counsel of  
23 of a fair trial. a trial whose result is reliable." Lockhart v Fretwell  
24 506 US 364, 369-70, 113 Sct 838, 122 L Ed 2d 180 (1993)  
25 (quoting Strickland 4166 US at 687) In other words petitioner  
26 must show that there is a reasonable probability that,  
27 but for Counsel's unprofessional errors the result of the  
28

proceeding would have been different. "Benefiel v Davis,  
357 F.2d 655, 662 (5th Cir. 1966) (quoting Strickland 466 U.S.  
at 694) the Defendant in this case believes that if he were  
allowed to proceed he could prove beyond a reasonable  
doubt that the allegations herein are true and the outcome  
of the proceedings would have been different.

The Court has held in Haines v Kerner 404 U.S. 59  
21, 92 S.Ct. 594 (1972) that: "1. The United States  
Supreme Court holds allegations of pro se complaint to less  
stringent standards than formal pleadings drafted by lawyers  
and" 2. A complaint should not be dismissed for failure  
to state a claim unless it appears beyond doubt that the  
plaintiff can prove no set of facts in support of his  
claims which would entitle him to relief."

Therefore this case must be reversed remanded for evidentiary  
hearing to prevent manifest injustice.

And Notwithstanding the preliminary issues identified herein  
Petitioner ~~reservely~~ reserves the right to Alter or Amend this  
Petition to add or remove issues should petitioner  
deem it appropriate.

Relief is warranted

llh  
thl  
llh

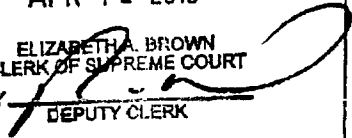
IN THE SUPREME COURT OF THE STATE OF NEVADA

CEASAR SANCHAZ VALENCIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 75282

FILED

APR 12 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of assault on a protected person with use of a deadly weapon, trafficking in a controlled substance, ownership or possession of a firearm by a prohibited person, and two counts of possession of a controlled substance. Eighth Judicial District Court, Clark County; Mark B. Bailus, Judge. Valencia raises two contentions on appeal.<sup>1</sup>

Valencia first argues that the district court erred by denying his request to represent himself. Although the Sixth Amendment of the United States Constitution guarantees a defendant the right to self-representation, *Faretta v. California*, 422 U.S. 806, 819-20 (1975), a district court may deny a self-representation request that is "untimely, equivocal, or made for the purpose of delay." *Watson v. State*, 130 Nev. 764, 782, 335 P.3d 157, 170 (2014). A district court's decision to deny a motion for self-representation is reviewed for an abuse of discretion. See *Vanisi v. State*, 117 Nev. 330, 340-41, 22 P.3d 1164, 1171 (2001).

<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

Valencia argues that he "clearly and unequivocally requested to exercise his constitutional right to represent himself," yet the record shows his requests, for the most part, were for a different attorney, not self-representation. After granting Valencia's first request for alternate counsel, the district court brought up self-representation during a subsequent hearing, where Valencia was, again, requesting alternate counsel. At that hearing, the district court advised Valencia that his right to counsel did not include counsel of his choice and thus told Valencia that he could represent himself if he was unhappy with his options. There were occasions where Valencia expressed a desire to represent himself, but they were sandwiched between shifting requests for alternate counsel, "co-counsel," and an investigator.

Even at the hearing when Valencia was *Faretta*-canvassed, he vacillated between telling the court that he wished to represent himself, requesting a new attorney, and asking if there was any "going back" once he made his decision on self-representation. *See Stenson v. Lambert*, 504 F.3d 873, 883 (9th Cir. 2007) (analyzing whether a self-representation request was equivocal by reviewing "the record as whole"). The record here supports that Valencia's requests mainly consisted of his frustration with his lack of resources to prepare his defense, unhappiness with his counsel, and his belief that the State was withholding discovery, as opposed to a clear request to represent himself. *See Gallego v. State*, 117 Nev. 348, 360, 23 P.3d 227, 235-36 (2001) (reiterating that an unequivocal request for self-representation can be conditional but still "must speak to self-representation and not simply to a dissatisfaction with current counsel"), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 263 P.3d 235 (2011); *see also Brewer v. Williams*, 430 U.S. 387, 404 (1977) (concluding

that because a defendant's self-representation motion involves the mutually exclusive constitutional rights to either be represented by counsel or not, a court must "indulge in every reasonable presumption against [a defendant's] waiver" of his right to counsel); *Adams v. Carroll*, 875 F.2d 1441, 1444 (9th Cir. 1989) ("Because a defendant normally gives up more than he gains when he elects self-representation, we must be reasonably certain that he in fact wishes to represent himself.").

The district court could have better articulated the basis for denying Valencia's final request to discharge counsel, beyond stating that he "waived" the right to represent himself. Indeed Valencia's actions subsequent to the *Faretta* canvass included seeking to have co-counsel appointed, accepting the reappointment of counsel, and waiving the previously granted right to self-representation. Nonetheless, we conclude that it was not an abuse of discretion to deny Valencia's self-representation request since the record as a whole demonstrates Valencia did not make an unequivocal request to represent himself. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (recognizing that a correct result will not be reversed simply because it is based on the wrong reasoning).

Second, Valencia argues that the district court abused its discretion by denying his motion for a mistrial after the State elicited previously excluded prejudicial evidence. The evidence at issue was an officer's testimony that Valencia was an ex-felon. Before the officer's testimony, the parties and district court took several measures to redact any reference to Valencia's felon status on the exhibits and pleadings, including bifurcating the charge of possession of a firearm by a prohibited person. Nonetheless, the officer testified that one of Valencia's charges was "ex-felon in possession of firearm," in response to the State asking him to

read from the front of the evidence bag containing the firearm for chain of custody purposes. When Valencia failed to object, the district court intervened and took a recess to discuss the situation with the parties outside of the jury's presence. Valencia moved for a mistrial, which the district court denied noting that Valencia failed to initially object to the testimony, the bag had already been admitted without objection, and it was a passing comment that would not be permitted to be expanded on or argued in closing. In an effort to not draw further attention to the testimony, Valencia refused the district court's offer to give a curative instruction, but did ask the court to not send the bag back with the jury to review as an exhibit, which was granted.


A defendant's motion for mistrial may be granted where prejudice has denied the defendant a fair trial. *Rudin v. State*, 120 Nev. 121, 144, 86 P.3d 572, 587 (2004). However, "[t]he trial court has discretion to determine whether a mistrial is warranted, and its judgment will not be overturned absent an abuse of discretion." *Id.* at 142, 86 P.3d at 586. Where the district court denies a defendant's motion for a mistrial based upon prejudicial testimony solicited by the prosecutor, this court reviews for harmless error, *Parker v. State*, 109 Nev. 383, 389, 849 P.2d 1062, 1066 (1993), which will be found "where the prejudicial effect of the statement is not strong and where there is otherwise strong evidence of defendant's guilt." *Id.*

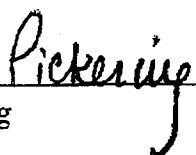
Here, the record supports that Valencia was not denied a fair trial as the evidence bag that the officer read from had already been admitted without objection from Valencia and neither the State nor Valencia realized it contained the ex-felon language. Further, the district court offered to issue a contemporaneous curative instruction, which,



Valencia declined. Accordingly, the district court properly found that the prejudicial effect was minimal as the ex-felon testimony was a passing comment that the district court did not permit to be expounded on. Additionally, strong evidence supported Valencia's convictions, including multiple eyewitnesses and evidence found on his person. Therefore, we conclude that the district court did not abuse its discretion in denying Valencia's motion for a mistrial and that, nevertheless, any error would be deemed harmless. See *Rice v. State*, 108 Nev. 43, 44, 824 P.2d 281, 282 (1992) (concluding that an error was harmless beyond a reasonable doubt where the defendant refused a curative instruction after jury heard inadvertent and unsolicited trial references that indicated he had engaged in prior criminal activity). We therefore

ORDER the judgment of the district court AFFIRMED.

  
Gibbons, C.J.

  
Pickering, J.

  
Cadish, J.

cc: Hon. Mark B. Bailus, District Judge  
Coyer Law Office  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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exhibit  
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**EIGHTH JUDICIAL DISTRICT COURT  
CLERK OF THE COURT**

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

Steven D. Grierson  
Clerk of the Court

Brandi J. Wendel  
Court Division Administrator

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January 26, 2017

**Attorney:** Gregory E. Coyer  
Coyer Law Office  
Attn Gregory E Coyer  
600 S Tonopah Drive - Suite 220  
Las Vegas NV 89106

**Case Number:** C-16-315580-1  
**Department:** Department 2

**Defendant:** Ceasar Sanchaz Valencia

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70. Also included are the Case Summary and Minutes for A-16-738293-C.

Pleadings: **Subpoena For Production Of Documentary Evidence And Of Objects, Notice Of Motion & Certificate Of Mailing**

**Rule 3.70. Papers which May Not be Filed**

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

Cordially yours,

DC Criminal Desk # 18

CS

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**November 01, 2016**

C-16-315580-1      State of Nevada  
                                 vs  
                                 Ceasar Valencia

**November 01, 2016      9:00 AM      Motion**

**HEARD BY:** Scotti, Richard F.

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Kory Schlitz

**RECORDER:** Dalayne Easley

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Demonte, Noreen C.	Attorney
	State of Nevada	Plaintiff
	Valencia, Ceasar Sanchaz	Defendant

**JOURNAL ENTRIES**

- Upon Court's inquiry, Ms. Demonte indicated she did not respond to Defendant's Motion due to Defendant serving the wrong party, the State does not represent Clark County Detention Center (CCDC); Defendant needed to serve Las Vegas Metropolitan Police Department (LVMPD). Colloquy between Court and State regarding counsel for LVMPD. Upon Court's inquiry, Ms. Demonte suggested LVMPD has in house counsel that would appear. COURT directed Defendant to serve his Motion on CCDC and LVMPD. Defendant made an oral request to proceed with co-counsel to help obtain the materials requested. Court reviewed the history of Defendant's requesting to represent himself, and noted the Court would be inclined to reappoint Mr. Coyer as counsel of record, not as co-counsel. Court advised Defendant can re-file his Motion to withdraw Mr. Coyer if parties are incompatible as long as the removal is not a tactic to delay trial. Colloquy between the Court and Defendant regarding legal materials requested. Upon Court's inquiry, Defendant requested Mr. Coyer be confirmed as counsel of record. COURT ORDERED, Defendant's Oral Motion for Re-appointment of Counsel, GRANTED. Court directed Defendant to provide a copy of his brief to Mr. Coyer. COURT FURTHER ORDERED, status check SET and matter CONTINUED.

PRINT DATE: 10/17/2019

Page 4 of 7

Minutes Date: August 25, 2016

CUSTODY(COC)

11/8/16 9:00 A.M. STATUS CHECK: CONFIRMATION OF COUNSEL (GREGORY COYER)...  
DEFENDANT'S PRO PER MOTION TO RIGHT OF ACCESS TO THE COURTS

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder at the Regional  
Justice Center of: Gregory Coyer Esq.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**November 08, 2016**

C-16-315580-1      State of Nevada  
                                 vs  
                                 Ceasar Valencia

**November 08, 2016      9:00 AM      All Pending Motions**

**HEARD BY:** Scotti, Richard F.      **COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Shelly Landwehr

**RECORDER:** Dalayne Easley

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Coyer, Gregory E.	Attorney
	Demonte, Noreen C.	Attorney
	State of Nevada	Plaintiff
	Valencia, Ceasar Sanchaz	Defendant

**JOURNAL ENTRIES**

- Court stated there was a Feratta canvas after which defendant elected to represent himself and has now changed his mind. Court inquired if Mr. Coyer was available.

Mr. Coyer stated he was not sure that is what defendant is requesting. Mr. Coyer informed the Court regarding the jail's highly restrictive access to the library highly restrictive in which defendant has to ask for a specific case or statute and then it is copied for defendant. Further, defendant is still being charged for materials to represent himself. Mr. Coyer stated those are some of the reasons defendant is rethinking his choice to represent himself.

Ms. DeMonte stated defendant had previously requested co-counsel and wanted defendant to be clear he is either representing himself or he is not. Court stated it made that clear last date.

Mr. Coyer stated it is the Court's task to ensure the defendant receives due process and if the defendant's library access fails to meet the due process threshold, Mr. Coyer believes the Court can

PRINT DATE: 10/17/2019

Page 1 of 7

Minutes Date: November 08, 2016

and should intervene.

Court stated it believes that would be a separate civil rights action as the underlying court would not have jurisdiction.

Mr. Coyer further advised there is a corresponding forfeiture case pending and defendant wants assistance in that matter and Mr. Coyer informed defendant this Court does not appoint counsel in civil matters. Further Mr. Coyer's contract with Clark County requires that he not solicit business from Court appointed clients.

Statement by defendant regarding the civil matter. Defendant stated he cannot rely on Mr. Coyer's advice on the same conduct that arises from the civil action. Court stated Mr. Coyer can provide names of resources with respect to pro bono for the civil action.

Court inquired whether defendant wanted Mr. Coyer to represent him in the criminal matter. Colloquy regarding what Mr. Coyer could provide with respects to materials, resources and copies, within the jail's guidelines. Defendant declined the services of Mr. Coyer and stated he intends to continue in pro se and requested an investigator to help with his defense.

Court stated he believes it is a bad decision. Defendant inquired if Mr. Coyer would be able to provide a book on the Hollis case. Mr. Coyer stated if it is something he can get into the jail, he will do so. Upon Court's inquiry, defendant stated he would accept Mr. Coyer's representation.

COURT ORDERED, defendant's motion DENIED as moot and ORDERED, Greg Coyer, Esq., APPOINTED to represent defendant in this matter.

Colloquy regarding the charges for research. Court stated it is willing to sign an order approving requisite funding. Defendant stated he has previously been charged and requested the order to be retroactive to include those costs. Colloquy. Court DIRECTED Mr. Coyer to file a separate motion with the total amount and it will determine whether it is an appropriate expenditure.

CUSTODY (COC)



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*C. R. [Signature]*  
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO. C224558

DEPT. NO. XIV

CESAR VALENCIA  
aka Cesar Sanchaz Valencia  
#1588390

Defendant.

AMENDED JUDGMENT OF CONVICTION  
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of POSSESSION OF STOLEN VEHICLE (Category C Felony) in violation of NRS 205.273; thereafter, on the 13<sup>th</sup> day of November, 2006, the Defendant was present in court for sentencing with his counsel, MARISA BORDER, Deputy Public Defender, and good cause appearing,

THE DEFENDANT WAS THEREBY ADJUDGED guilty of said offense and, in addition to the \$25.00 Administrative Fee, the Defendant was sentenced as follows: TO A MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS, in the Nevada Department of Corrections (NDC), to run

APR 13 2007


CLERK OF THE COURT

1 CONSECUTIVE to C223991; with ONE HUNDRED EIGHTY-FOUR (184) days credit  
2 for time served.

3 THEREAFTER, on the 29<sup>th</sup> day of March, 2007, the Defendant was not present  
4 in court and was not represented by counsel, and good cause appearing to amend the  
5 Judgment of Conviction; now therefore,  
6

7 IT IS HEREBY ORDERED the Defendant's sentence to be amended to delete  
8 CONSECUTIVE to C223991 time.  
9

10 DATED this 11<sup>th</sup> day of April, 2007  
11

12   
13 DONALD M. MOSLEY  
14 DISTRICT JUDGE  
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BEFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 24th day of the month of April, 2020.

CM  
\*Ceasar Valentin #94307

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

### VERIFICATION

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

CM  
\*Ceasar Valentin Sanchez #94307

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

### AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number C-16-315880-1 Does not contain the social security number of any person.

CM  
\*Ceasar Valentin Sanchez #94307

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

### CERTIFICATE OF SERVICE BY MAIL

I, Ceasar Valentin Sanchez, hereby certify pursuant to N.R.C.P. 5(b), that on this 24th day of the month of April, 2020, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Warden High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070

Attorney General of Nevada  
100 North Carson Street  
Carson City, Nevada 89701

Clark County District Attorney's Office  
200 Lewis Avenue  
Las Vegas, Nevada 89155

clerk of the court  
200 Lewis Ave  
Las Vegas NV 89105

CM  
\*Ceasar Valentin Sanchez #94307

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

\* Print your name and NDOC back number and sign

43

Cesar Valencia #94307  
High Desert State Prison  
PO Box 1650  
Indian Springs NV 89070  
Please Return Fire Stamp copy

~~Post~~  
~~Mail~~  
3/16/20

Clerk of the Court  
200 Lewis Av 3rd Fl  
Las Vegas NV 89155

Hastler  
04/29/2020  
US POSTAGE \$003.20  
ZIP 89101  
0115112600516

Case No. C-16-315580-1

Dept. No. 29

FILED

MAY 28 2020

*Ann. L. Linn*  
CLERK OF COURT

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

A-20-815616-W  
Dept. 29

Cesar Valencia Sanchez  
Petitioner, #94307

MOTION FOR THE APPOINTMENT  
OF COUNSEL

Johnson Warden High Desert Prison  
-vs-  
THE STATE OF NEVADA  
Respondents.

REQUEST FOR EVIDENTIARY HEARING

COMES NOW, the Petitioner, Cesar Sanchez Valencia, proceeding pro se, within the  
above entitled cause of action and respectfully requests this Court to consider the appointment of counsel  
for Petitioner for the prosecution of this action.

This motion is made and based upon the matters set forth here, N.R.S. 34.750(1)(2), affidavit of  
Petitioner, the attached Memorandum of Points and Authorities, as well as all other pleadings and  
documents on file within this case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

This action commenced by Petitioner Cesar Sanchez Valencia, in state custody,  
pursuant to Chapter 34, et seq., petition for Writ of Habeas Corpus (Post-Conviction).

II. STATEMENT OF THE FACTS

To support the Petitioner's need for the appointment of counsel in this action, he states the  
following:

1. The merits of claims for relief in this action are of Constitutional dimension, and  
Petitioner is likely to succeed in this case.

2. Petitioner is incarcerated at the \_\_\_\_\_ Petitioner is unable to undertake the ability, as an attorney would or could, to investigate crucial facts involved within the Petition for Writ of Habeas Corpus.
3. The issues presented in the Petition involves a complexity that Petitioner is unable to argue effectively.
4. Petitioner does not have the current legal knowledge and abilities, as an attorney would have, to properly present the case to this Court coupled with the fact that appointed counsel would be of service to the Court, Petitioner, and the Respondents as well, by sharpening the issues in this case, shaping the examination of potential witnesses and ultimately shortening the time of the prosecution of this case.
5. Petitioner has made an effort to obtain counsel, but does not have the funds necessary or available to pay for the costs of counsel, see Declaration of Petitioner.
6. Petitioner would need to have an attorney appointed to assist in the determination of whether he should agree to sign consent for a psychological examination.
7. The prison severely limits the hours that Petitioner may have access to the Law Library, and as well, the facility has very limited legal research materials and sources.
8. While the Petitioner does have the assistance of a prison law clerk, he is not an attorney and not allowed to plead before the Courts and like Petitioner, the legal assistants have limited knowledge and expertise.
9. The Petitioner and his assisting law clerks, by reason of their imprisonment, have a severely limited ability to investigate, or take depositions, expand the record or otherwise litigate this action.
10. The ends of justice will be served in this case by the appointment of professional and competent counsel to represent Petitioner.

## II. ARGUMENT

Motions for the appointment of counsel are made pursuant to N.R.S. 34.750, and are addressed to the sound discretion of the Court. Under Chapter 34.750 the Court may request an attorney to represent any


such person unable to employ counsel. On a Motion for Appointment of Counsel pursuant to N.R.S. 34.750, the District Court should consider whether appointment of counsel would be of service to the indigent petitioner, the Court, and respondents as well, by sharpening the issues in the case, shaping examination of witnesses, and ultimately shortening trial and assisting in the just determination.

In order for the appointment of counsel to be granted, the Court must consider several factors to be met in order for the appointment of counsel to be granted; (1) The merits of the claim for relief; (2) The ability to investigate crucial factors; (3) whether evidence consists of conflicting testimony effectively treated only by counsel; (4) The ability to present the case; and (5) The complexity of the legal issues raised in the petition.

### III. CONCLUSION

Based upon the facts and law presented herein, Petitioner would respectfully request this Court to weigh the factors involved within this case, and appoint counsel for Petitioner to assist this Court in the just determination of this action

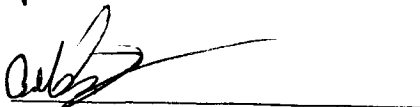
Dated this 24th day of April, 2020.

  
Petitioner.

### VERIFICATION

I declare, affirm and swear under the penalty of perjury that all of the above facts, statements and assertions are true and correct of my own knowledge. As to any such matters stated upon information or belief, I swear that I believe them all to be true and correct.

Dated this 24th day of April, 2020.

  
Petitioner, pro per.



CERTIFICATE OF SERVICE BY MAIL

I, Cesar Sanchez Valencia, hereby certify pursuant to N.R.C.P.

5(b), that on this 24th day of April, of the year 2020, I mailed a true and correct copy of the foregoing Motion for Leave to Proceed in Forma Pauperis; Affidavit in Support of Motion for Leave to Proceed in Forma Pauperis; Motion for the Appointment of Counsel; and Request for Evidentiary Hearing, addressed to:

Clerk of the Court  
Name

Clark County District Attorney Nevada Attorney General  
Name

200 Lewis Av 3rd Fl  
Las Vegas NV 89155-1160  
Address

200 Lewis Av  
Post Office Box 552212  
Las Vegas NV 89155  
Address

100 North carson st  
Carson NV 89701  
Address

Cesar Valencia Sanchez #94307  
Petitioner

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DOCUMENT,  
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50 - 66  
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Case No. E-16-315580-1

Dept. No. 29

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

Caesar Valencia Sanchez  
Petitioner, #94307

Johnson Warder <sup>-vs-</sup> High Desert State  
Prison  
The STATE OF NEVADA  
Respondents.

A-20-815616-W  
Dept. 29

ORDER APPOINTING COUNSEL

Petitioner, Caesar Valencia Sanchez, has filed a proper person REQUEST FOR APPOINTMENT OF COUNSEL, to represent him on his Petition for Writ of Habeas Corpus (Post-Conviction), in the above-entitled action.

The Court has reviewed Petitioner's Request and the entire file in this action, and Good Cause Appearing, IT IS HEREBY ORDERED, that petitioner's Request for Appointment of Counsel is GRANTED.

IT IS FURTHER ORDERED that \_\_\_\_\_, Esq., is appointed to represent Petitioner on his Post-Conviction for Writ of Habeas Corpus.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Submitted by:

\_\_\_\_\_  
DISTRICT COURT JUDGE

Caesar Valencia Sanchez #94307  
Petitioner, In Proper Person

**AFFIRMATION**  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION FOR

THE APPOINTMENT OF COUNSEL  
(Title of Document)

filed in District Court Case No. C-16-315580-1

☒ Does not contain the social security number of any person.

-OR-


☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-OR-

B. For the administration of a public program or  
for an application for a federal or state grant.

  
(Signature)

4-24-20  
(Date)

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U.S. MAIL**



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

5 Ceasar Valencia,

6 Petitioner,

7 vs.

8 State of Nevada; Johnson, Warden of IIDSP,

9 Respondent,

Case No: A-20-815616-W  
Department 29

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

10  
11 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on  
12 May 28, 2020. The Court has reviewed the Petition and has determined that a response would assist the  
13 Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good  
14 cause appearing therefore,

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

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

19 Calendar on the 28th day of July, 2020, at the hour of

20  
21 8:30 am  
22 \_\_\_\_\_ o'clock for further proceedings.

23  
24   
25 \_\_\_\_\_  
26 District Court Judge  
27  
28



1 NOCH

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

5 \*\*\*\*

6 Ceasar Valencia, Plaintiff(s)

Case No.: A-20-815616-W

7 vs.

Department 29

8 State of Nevada, Defendant(s)

9  
10 **NOTICE OF CHANGE OF HEARING**

11 The hearing on the Petition for Writ of Habeas Corpus, presently set for 7-28-20 @ 8:30am,  
12 has been moved to the 28th day of July, 2020, at 10:15 AM and will be heard by Judge  
13 David M Jones.  
14

15 STEVEN D. GRIERSON, CEO/Clerk of the Court

16 By: /s/ Allison Behrhorst

17 Allison Behrhorst

18 Deputy Clerk of the Court  
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1 **CERTIFICATE OF SERVICE**

2

3 I hereby certify that this 2nd day of June, 2020

4 ☒ The foregoing Notice of Change of Hearing was electronically served to all registered  
5 parties for case number A-20-815616-W.

6 /s/ Allison Behrhorst  
7 Allison Behrhorst  
8 Deputy Clerk of the Court

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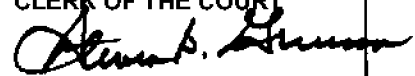
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**FCL**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**KAREN MISHLER**  
Chief Deputy District Attorney  
Nevada Bar #013730  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**THE STATE OF NEVADA,**  
  
**Plaintiff,**

**-vs-**

**CEASAR SANCHAZ VALENCIA,**  
**#1588390**

**Defendant.**

**CASE NO: A-20-815616-W**

**DEPT NO: XXIX**

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

**DATE OF HEARING: July 28, 2020**  
**TIME OF HEARING: 10:15 AM**

THIS CAUSE having come on for hearing before the Honorable DAVID JONES, District Judge, on the 28th day of July, 2020, the Petitioner not being present, proceeding in proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through NOREEN DEMONTE, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT, CONCLUSIONS OF LAW**

**STATEMENT OF THE CASE**

On June 9, 2016, the State filed an Information charging Petitioner Ceasar Sanchaz Valencia (hereinafter "Petitioner") with one count of Assault on a Protected Person With Use

1 of a Deadly Weapon, one count of Ownership or Possession of Firearm by Prohibited Person,  
2 one count of Trafficking in Controlled Substance, and two counts of Possession of Controlled  
3 Substance. On June 10, 2016, Petitioner was arraigned on the Information, at which time he  
4 entered a plea of not guilty and invoked his right to a speedy trial.

5 On November 27, 2017, the matter proceeded to trial. On December 1, 2017, the jury  
6 rendered its verdict of guilty as to all counts. On January 25, 2018, Petitioner was sentenced  
7 to the Nevada Department of Corrections, pursuant to the small habitual criminal statute, as  
8 follows: Count 1 – a minimum of 84 months and a maximum of 240 months; Count 2 – a  
9 minimum of 24 months and a maximum of 72 months, concurrent to Count 1; Count 3 – a  
10 minimum of 12 months and a maximum of 48 months, concurrent with Count 2; Count 4 – a  
11 minimum of 12 months and a maximum of 48 months, concurrent with Count 3; Count 5 – a  
12 minimum of 24 months and a maximum of 72 months, concurrent to Count 4. Petitioner's total  
13 aggregate sentence was a minimum of 108 months and a maximum of 312 months. Petitioner  
14 received 615 days credit for time served. The Judgment of Conviction was filed on February  
15 6, 2018.

16 On March 1, 2018, Petitioner filed a Notice of Appeal. The Nevada Supreme Court  
17 affirmed Petitioner's Judgment of Conviction, and remittitur issued on May 7, 2019.

18 On May 28, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus (Post-  
19 Conviction) (hereinafter "the Petition"). This Court denies the Petition, for the reasons stated  
20 below.

### 21 ANALYSIS

#### 22 **THE PETITION IS UNTIMELY, WITH NO GOOD CAUSE PRESENTED TO** 23 **OVERCOME THE PROCEDURAL BAR**

24 The Petition is time-barred with no good cause shown for delay. Pursuant to NRS  
25 34.726(1):

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

1 good cause for delay exists if the petitioner demonstrates to the satisfaction of  
2 the court:

3 (a) That the delay is not the fault of the petitioner; and

4 (b) That dismissal of the petition as untimely will unduly prejudice the  
5 petitioner.

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

11 The one-year time limit for preparing petitions for post-conviction relief under NRS  
12 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),  
13 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite  
14 evidence presented by the defendant that he purchased postage through the prison and mailed  
15 the Notice within the one-year time limit. Furthermore, the Nevada Supreme Court has held  
16 that the district court has a duty to consider whether a defendant's post-conviction petition  
17 claims are procedurally barred. State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225,  
18 231, 112 P.3d 1070, 1074 (2005).

19 Here, Petitioner's Judgment of Conviction was filed on May 7, 2019. Petitioner filed  
20 the Petition on May 28, 2020, several weeks after the one-year time bar had passed.

21 Therefore, this Petition is untimely and must be dismissed absent a showing of good cause.

22 Pursuant to NRS 34.726, a showing of good cause may overcome procedural bars.  
23 Good cause sufficient to overcome the time bar exists when 1) the delay is not the fault of the  
24 petitioner and 2) dismissal of the petition as untimely will unduly prejudice the petitioner. NRS  
25 34.726(1). "To establish good cause, appellants *must* show that an impediment external to the  
26 defense prevented their compliance with the applicable procedural rule. A qualifying  
27 impediment might be shown where the factual or legal basis for a claim was not reasonably  
28 available at the time of default." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003)  
(emphasis added). "[A]ppellants cannot attempt to manufacture good cause[.]" Id., 81 P.3d at

1 526. To find good cause there must be a "substantial reason; one that affords a legal excuse."  
2 Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003) (quoting Colley v. State, 105 Nev. 235,  
3 236, 773 P.2d 1229, 1230 (1989)). Clearly, any delay in filing of the petition must not be the  
4 fault of the petitioner. NRS 34.726(1)(a). Claims of ineffective assistance of counsel do not  
5 constitute good cause if those claims themselves are procedurally defaulted. Stewart v.  
6 LaGrand, 526 U.S. 115, 120, 119 S.Ct. 1018, 1021 (1999).

7 Petitioner has failed to demonstrate good cause for filing a time-barred Petition. He has  
8 failed entirely to even address the issue of good cause. Accordingly, this Court cannot address  
9 the time-barred claims contained in the Petition.

10 **ORDER**

11 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus  
12 (Post-Conviction) shall be, and it is, hereby denied.

13 DATED this 7th day of August, 2020.

14   
15 DISTRICT JUDGE

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

19 BY

18   
19 KAREN MISHLER  
20 Chief Deputy District Attorney  
21 Nevada Bar #013730

for

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 CERTIFICATE OF SERVICE

2 I certify that on the 10th day of August, 2020, I mailed a copy of the foregoing Findings  
3 of Fact, Conclusions of Law, and Order to:

4 CEASAR VALENCIA, BAC #94307  
5 H.D.S.P.  
6 P.O. BOX 650  
7 INDIAN SPRINGS, NV 89070

8 BY

  
Secretary for the District Attorney's Office



1 NEFF

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

4 CEASAR VALENCIA,

5  
6 Petitioner,

Case No: A-20-815616-W

Dept No: XXIX

7 vs.

8 STATE OF NEVADA; ET.AL.,

9 Respondent,

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

10  
11 **PLEASE TAKE NOTICE** that on August 7, 2020, the court entered a decision or order in this matter, a  
true and correct copy of which is attached to this notice.

12 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
13 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is  
14 mailed to you. This notice was mailed on August 11, 2020.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

17  
18  
19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 11 day of August 2020, I served a copy of this Notice of Entry on the  
following:

21 ☒ By e-mail:

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

23  
24 ☒ The United States mail addressed as follows:

25 Ceasar Valencia # 94307  
P.O. Box 650  
Indian Springs, NV 89070

26  
27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk



**FCL**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**KAREN MISHLER**  
Chief Deputy District Attorney  
Nevada Bar #013730  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**THE STATE OF NEVADA,**  
  
**Plaintiff,**

**-vs-**

**CEASAR SANCHAZ VALENCIA,**  
**#1588390**

**Defendant.**

**CASE NO: A-20-815616-W**

**DEPT NO: XXIX**

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

**DATE OF HEARING: July 28, 2020**  
**TIME OF HEARING: 10:15 AM**

THIS CAUSE having come on for hearing before the Honorable DAVID JONES, District Judge, on the 28th day of July, 2020, the Petitioner not being present, proceeding in proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through NOREEN DEMONTE, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT, CONCLUSIONS OF LAW**

**STATEMENT OF THE CASE**

On June 9, 2016, the State filed an Information charging Petitioner Ceasar Sanchaz Valencia (hereinafter "Petitioner") with one count of Assault on a Protected Person With Use

1 of a Deadly Weapon, one count of Ownership or Possession of Firearm by Prohibited Person,  
2 one count of Trafficking in Controlled Substance, and two counts of Possession of Controlled  
3 Substance. On June 10, 2016, Petitioner was arraigned on the Information, at which time he  
4 entered a plea of not guilty and invoked his right to a speedy trial.

5 On November 27, 2017, the matter proceeded to trial. On December 1, 2017, the jury  
6 rendered its verdict of guilty as to all counts. On January 25, 2018, Petitioner was sentenced  
7 to the Nevada Department of Corrections, pursuant to the small habitual criminal statute, as  
8 follows: Count 1 – a minimum of 84 months and a maximum of 240 months; Count 2 – a  
9 minimum of 24 months and a maximum of 72 months, concurrent to Count 1; Count 3 – a  
10 minimum of 12 months and a maximum of 48 months, concurrent with Count 2; Count 4 – a  
11 minimum of 12 months and a maximum of 48 months, concurrent with Count 3; Count 5 – a  
12 minimum of 24 months and a maximum of 72 months, concurrent to Count 4. Petitioner's total  
13 aggregate sentence was a minimum of 108 months and a maximum of 312 months. Petitioner  
14 received 615 days credit for time served. The Judgment of Conviction was filed on February  
15 6, 2018.

16 On March 1, 2018, Petitioner filed a Notice of Appeal. The Nevada Supreme Court  
17 affirmed Petitioner's Judgment of Conviction, and remittitur issued on May 7, 2019.

18 On May 28, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus (Post-  
19 Conviction) (hereinafter "the Petition"). This Court denies the Petition, for the reasons stated  
20 below.

### 21 ANALYSIS

#### 22 **THE PETITION IS UNTIMELY, WITH NO GOOD CAUSE PRESENTED TO** 23 **OVERCOME THE PROCEDURAL BAR**

24 The Petition is time-barred with no good cause shown for delay. Pursuant to NRS  
25 34.726(1):

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



1 good cause for delay exists if the petitioner demonstrates to the satisfaction of  
2 the court:

3 (a) That the delay is not the fault of the petitioner; and

4 (b) That dismissal of the petition as untimely will unduly prejudice the  
5 petitioner.

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

11 The one-year time limit for preparing petitions for post-conviction relief under NRS  
12 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),  
13 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite  
14 evidence presented by the defendant that he purchased postage through the prison and mailed  
15 the Notice within the one-year time limit. Furthermore, the Nevada Supreme Court has held  
16 that the district court has a duty to consider whether a defendant's post-conviction petition  
17 claims are procedurally barred. State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225,  
18 231, 112 P.3d 1070, 1074 (2005).

19 Here, Petitioner's Judgment of Conviction was filed on May 7, 2019. Petitioner filed  
20 the Petition on May 28, 2020, several weeks after the one-year time bar had passed.

21 Therefore, this Petition is untimely and must be dismissed absent a showing of good cause.

22 Pursuant to NRS 34.726, a showing of good cause may overcome procedural bars.  
23 Good cause sufficient to overcome the time bar exists when 1) the delay is not the fault of the  
24 petitioner and 2) dismissal of the petition as untimely will unduly prejudice the petitioner. NRS  
25 34.726(1). "To establish good cause, appellants *must* show that an impediment external to the  
26 defense prevented their compliance with the applicable procedural rule. A qualifying  
27 impediment might be shown where the factual or legal basis for a claim was not reasonably  
28 available at the time of default." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003)  
(emphasis added). "[A]ppellants cannot attempt to manufacture good cause[.]" Id., 81 P.3d at

1 526. To find good cause there must be a "substantial reason; one that affords a legal excuse."  
2 Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003) (quoting Colley v. State, 105 Nev. 235,  
3 236, 773 P.2d 1229, 1230 (1989)). Clearly, any delay in filing of the petition must not be the  
4 fault of the petitioner. NRS 34.726(1)(a). Claims of ineffective assistance of counsel do not  
5 constitute good cause if those claims themselves are procedurally defaulted. Stewart v.  
6 LaGrand, 526 U.S. 115, 120, 119 S.Ct. 1018, 1021 (1999).

7 Petitioner has failed to demonstrate good cause for filing a time-barred Petition. He has  
8 failed entirely to even address the issue of good cause. Accordingly, this Court cannot address  
9 the time-barred claims contained in the Petition.

10 **ORDER**

11 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus  
12 (Post-Conviction) shall be, and it is, hereby denied.

13 DATED this 7th day of August, 2020.

14   
15 \_\_\_\_\_  
DISTRICT JUDGE

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

18 BY   
19 \_\_\_\_\_ for

KAREN MISHLER  
Chief Deputy District Attorney  
Nevada Bar #013730

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

CERTIFICATE OF SERVICE

I certify that on the 10th day of August, 2020, I mailed a copy of the foregoing Findings of Fact, Conclusions of Law, and Order to:

CEASAR VALENCIA, BAC #94307  
H.D.S.P.  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070

BY

  
Secretary for the District Attorney's Office

*Steven D. Grierson*

OSCC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*

CEASAR VALENCIA, PLAINTIFF(S)      CASE NO.: A-20-815616-W  
VS.  
STATE OF NEVADA, DEFENDANT(S)      DEPARTMENT 29

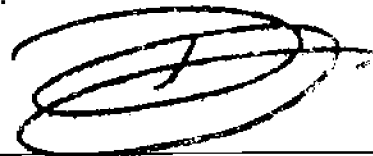
**CIVIL ORDER TO STATISTICALLY CLOSE CASE**

Upon review of this matter and good cause appearing,  
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to  
statistically close this case for the following reason:

**DISPOSITIONS:**

- ☐ Default Judgment
- ☐ Judgment on Arbitration
- ☐ Stipulated Judgment
- ☐ Summary Judgment
- ☐ Involuntary Dismissal
- ☐ Motion to Dismiss by Defendant(s)
- ☐ Stipulated Dismissal
- ☐ Voluntary Dismissal
- ☐ Transferred (before trial)
- ☐ Non-Jury – Disposed After Trial Starts
- ☐ Non-Jury – Judgment Reached
- ☐ Jury – Disposed After Trial Starts
- ☐ Jury – Verdict Reached
- ☒ Other Manner of Disposition

DATED this 13th day of August, 2020.



DAVID M JONES  
DISTRICT COURT JUDGE

27

FILED

SEP 02 2020

1 Ceasar Sanchez Valencia #94307  
2 INDIAN SPRINGS Nevada 89707  
3 Petitioner Pro Se

CLERK OF COURT

DISTRICT COURT  
CLARK COUNTY NEVADA

Ceasar Sanchez Valencia

Case No A-20-815616-W

Petitioner

Dept No 29

WARDEN Johnson High Desert State  
PRISON THE STATE OF NEVADA

NOTICE OF Appeal

Respondents

NOTICE OF APPEAL

TO: THE STATE OF NEVADA STEVEN B. WOLFSON, DISTRICT ATTORNEY  
CLARK COUNTY NEVADA AND DEPT 29 OF THE EIGHTH  
JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR  
THE CLARK COUNTY

NOTICE is hereby given that Petitioner CEASAR SANCHEZ

VALENCIA #94307 presently incarcerated in the High  
Desert State Prison appeals to the Supreme Court of  
the STATE OF Nevada from the EIGHTH Judicial District  
Court Judgment of conviction and Sentence and Denial  
of Petition For Writ of Habeas Corpus (Post Conviction)  
and Request to Proceed in form Pauper is also Request  
For the Appointment of Counsel / Request for Evidentiary  
Hearing entered against Petitioner on or about July 28th  
2020

by Ceasar Sanchez Valencia  
#94307  
PO BOX 650  
Indian Springs NV  
89707

Dated this 15th of August 2020

RECEIVED  
AUG 24 2020  
CLERK OF THE COURT

FILED

1949

RECEIVED

CLERK OF THE COURT  
JAN 5 1949  
RECEIVED

CERTIFICATE OF MAILING

THE undersigned does hereby certify that on the  
12th day of August 2020 I did deposit in the  
United States Post Office at High Desert STATE  
Prison legal library, First class Postage fully  
Paid - a true copy of the above and foregoing  
Notice of Appeal; Petition For writ Habeas Corpus  
(Post Conviction) addressed to the following

① Steven B Wolfson  
Clark County District Attorney  
Criminal Appeals  
200 Lewis Av  
Las Vegas NV 89155

② ADAM PAUL LAXALT  
Nevada Attorney General  
100 North Carson Street  
Carson City NV 89701

③ Clerk of the Court Dept 29  
200 Lewis Av 3rd Floor  
Las Vegas NV 89155

cc: Cesar Sandoval  
Valencia #94307  
P.O. Box 650  
Indian Springs NV 89120

To clerk of the Court Dept 29

I would like to request court minutes case  
Summary Dates of September 3rd 2019 and  
Feb 4th 2020 also March 3rd 2020 and  
For August 4th 2020 I need to know  
the status for my motion in contempt Gregory  
Coyer for failing to forward entire case  
file I know that if my motion is denied  
in August 4 2020 I would ask to please  
re file and calendar I would highly appreciate  
I will later submit a motion for contempt  
because Gregory Coyer has failed or  
has refused to forward case file with  
three or more DISC body Cam Audio of  
CAD and other PDF Files I need to get  
those Records please let me know how  
I could get these records Mr Coyer  
is refusing my mail and phone calls  
can you please remind him the court has  
already made an order to send me my  
entire case file Thank you

case # C-16-35580-1

respectfully

Cesar Valencia  
#94309

refiling motion for contempt

Gregory Coyer filed July 13 2020

please re calendar

Robert 650

Indiana Springs  
NV 89009

RECEIVED

AUG 24 2020

CLERK OF THE COURT



Cesar Valenzuela #94357  
PO Box 650  
Indian Springs NV 89127  
Please Return File Stamped copy

LAS VEGAS  
NV 89100  
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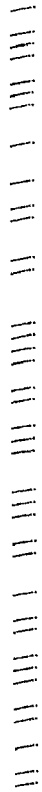
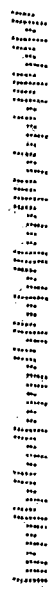
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Clerk of the Court  
Dept 29  
200 Lewis Av 3rd Floor  
Las Vegas NV 89155

Legal  
Mail

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HIGH DESERT STATE PRISON  
AUG 17 2020  
UNIT 8 C/D





1 ASTA

2  
3  
4  
5  
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**  
7 **STATE OF NEVADA IN AND FOR**  
8 **THE COUNTY OF CLARK**

9 CEASAR SANCHEZ VALENCIA,

10 Plaintiff(s),

11 vs.

12  
13 JOHNSON WARDEN, HIGH DESERT STATE  
14 PRISON; THE STATE OF NEVADA,

15 Defendant(s),

Case No: A-20-815616-W

Dept No: XXIX

16  
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Ceasar Sanchez Valencia

19 2. Judge: David M. Jones

20 3. Appellant(s): Ceasar Sanchez Valencia

21 Counsel:

22  
23 Ceasar Sanchez Valencia #94307  
24 P.O. Box 650  
Indian Springs, NV 89070

25 4. Respondent (s): Johnson Warden, High Desert State Prison; The State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney  
28 200 Lewis Ave.

Las Vegas, NV 89155-2212

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

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

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

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

8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: N/A  
*\*\*Expires 1 year from date filed*

Appellant Filed Application to Proceed in Forma Pauperis: Yes,  
Date Application(s) filed: May 28, 2020

9. Date Commenced in District Court: May 28, 2020

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

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

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 3 day of September 2020.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton

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

cc: Ceasar Sanchez Valencia

1 Cesar Valencia #94307  
2 Petitioner In Propria Personam  
3 Post Office Box 650 [HDSP]  
4 Indian Springs, Nevada 89018

27  
**FILED**

SEP 23 2020

Allyson  
CLERK OF COURT

5 **DISTRICT COURT**  
6 **CLARK COUNTY, NEVADA**

7 Cesar Sanchez Valencia #94307

8 Petitioner

9 vs.

10 THE STATE OF NEVADA

11 Respondent

Case No. A-20-818616-4

Dept No. 29

Docket \_\_\_\_\_

12 **NOTICE OF MOTION**

13 **YOU WILL PLEASE TAKE NOTICE, that**

14 Petitioner Cesar Valencia  
15 MOTION FOR COURT TO RECONSIDER Petition Habeas Corpus

16 will come on for hearing before the above-entitled Court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
17 at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ M. In Department \_\_\_\_\_ of said Court.

18 CC:FILE

19 **DATED:** this 22 day of August, 2020.

20 BY: Cesar Sanchez Valencia  
21 [Signature] # 94307  
22 /In Propria Personam

23 **RECEIVED**

24 **SEP 17 2020**

25 **CLERK OF THE COURT**

FILED

SEP 23 2020

CLERK OF COURT

Cesar Sanchez Valencia #94307  
PO Box 650

INDIAN SPRINGS NV  
89707

Petitioner Pro per DISTRICT COURT

CLARK COUNTY NEVADA

Cesar Valencia #94307

Petitioner

case No: A-20-815616-W

Dept No: XXIX

STATE OF NEVADA ET AL.

Respondent

REQUEST FOR EVIDENTIARY  
HEARING

MOTION FOR THE COURT TO RECONSIDER  
PETITION THERE IS GOOD CAUSE AND  
UNIQUE PREJUDICE TO EXCUSE PROCEDURAL  
TIME BAR

COMES NOW, Petitioner Cesar Sanchez Valencia pro per  
and respectfully moves this Honorable Court for Reconsideration  
for Writ of Habeas Corpus (Post conviction).

This Motion is based on all papers and pleadings on file  
with the clerk of the court which are hereby incorporated by  
this Reference the Points and Authorities herein and att  
ached Affidavit of Petitioner and based upon pursuant  
to Nevada Revised statutes chapter 34 NRS  
34.226 and Nevada Constitution.

## POINTS AND AUTHORITIES

IT is Respectfully requested of the Honorable  
DAVID JONES District Judge to reconsider  
Petition Writ Habeas Corpus Post Conviction  
Petitioner can establish good cause to  
overcome procedural bars Pursuant to NRS  
34.226 Good cause sufficient to overcome  
the time bar exists when (1) the delay is  
not the fault of the Petitioner and (2) dismissal  
of Petition as untimely will unduly prejudice  
the Petitioner. NRS 34.226(1) To establish good  
cause appellants must show that an impediment  
external to the defense prevented their compliance  
with the applicable procedural rule. Petitioner  
prepared the Petition 24th of April 2020  
mailed it to clerk of the Court by  
24th of April 2020 and it was Received  
on 4th of May 2020 The 1 year deadline  
was 7th of May 2020 Due to the clerk  
of the Court not filing the Petition May 4th  
when Received The Delay of Filing was  
interference by officials made compliance  
impracticable The grounds raised in Petition  
are of ineffective of counsel at Trial  
and Appeal counsel was so ineffective  
as to violate the Sixth Amendment  
so that dismissal of the Petition as untimely  
will unduly prejudice the Petitioner

The one year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In Gonzalez v State 118 Nev 590 596 S3 P3d 901 904 (2002) the Nevada Supreme Court rejected a habeas petition that was filed two days late despite evidence presented by the defendant that he purchased postage through the prison and mailed the notice within one year limit. Clearly this is NOT what Petitioner is faced with. Petitioner never intended for Petition to be filed after the 1 year limit. Petitioner mailed and it was received by Court clerk 3 day before the deadline. The delay of filing was the fault of Petitioner. This is all due to Global Pandemic. The COVID 19 restrictions and the court is well aware of the flooding of the 15th Floor at the regional Justice Center the Courts being backed up for damage of the flooding and that was where the Dept 29 was located and the Dept 29 banking from floor to floor moving the court specifically Dept 29 moving around practically out of a box. That's why Petitioner Requesting Honorable David Jones District Judge knows that because of this is not the fault of Petitioner. The Petition is stamped Received.



1 May 4 2020 clerk of the Court the Delay  
2 of 24 days I'm requesting this for the  
3 Court's Reconsideration I have requested  
4 Several times for status of the Petition  
5 to clerk of the Court never was given  
6 any notice The order states Petitioner  
7 failed to demonstrate good cause. I hope  
8 Court to find Good Cause there must be  
9 a substantial reason one that affords  
10 a legal excuse again this is what  
11 we are faced here. See Harris v Warden  
12 114 Nev 107 959 & 960 n 4, 964 P2d 785, 787  
13 § n 4, (1998) explaining that good cause "must  
14 be some impediment external to the defense"  
15 and noting such an impediment could include  
16 "some interference by officials that made  
17 compliance impracticable" (quoting Murray  
18 v. Carrier, 477 US 478 488 91 L. Ed 2d 397  
19 106 Sct 2639 (1986) (quoting Brown v Allen 344  
20 US 443 486 97 L Ed 469 73 Sct 397 (1953))  
21 the untimely filing of Cesser Valencia's  
22 petition in the district court was the result  
23 of official interference. Furthermore The  
24 Nevada Supreme Court has held that the  
25 District Court has a duty to consider whether  
26 a Defendant's post conviction petition claims  
27 are procedurally barred. STATE v Eighth Judicial Dist  
28 Court Richards 121 Nev 252 31, 112 P3d 1070 (2005)

1 WHEREFORE the undersigned prays  
2 that the Honorable David Jones Dept 29  
3 District Judge Grants this Motion for  
4 Reconsider Petition Habeas Corpus Post conviction  
5 and Appellate to Proceed Informa Poppers  
6 Motion for Request Appointment of Counsel  
7 Generally good cause under Nev Stat 34726(1)  
8 for not filing a post conviction habeas means a  
9 substantial Reason one the affords a legal error  
10 Petitioner has good cause and dismissal  
11 of Petition as untimely is established that  
12 Petitioner could under prejudice grounds  
13 of counsel at trial and appeal was so ineffective  
14 and also other claims of both amendments  
15 that are not considered Harmless error clearly  
16 any delay after clerk received Petition for  
17 Ruling after May 4th is not the fault of  
18 the Petitioner

19 conclusion.

20 Based upon the facts and law presented herein  
21 Petitioner would respectfully request this Court  
22 to weigh the factors involved within this case  
23 and Reconsider Petition and Appoint Counsel  
24 for Petitioner to assist this Court in the  
25 just determination of this action

26 Dated this 22 of August 2020

27 Ceasorthalene #9439  
28 Petitioner

## Verification

I declare a firm and swear under the  
penalty of perjury that all of the above  
facts, statements and assertions are  
true and correct of my own knowledge  
as to any such matters stated upon information  
or belief I swear that I believe them all  
to be true and correct.

Dated 22nd of August 2020

respectfully Submitted  
Cesar Valencia #94327  
PO Box 650  
Indian Springs NV  
89502

petitioner proper

**CERTIFICATE OF SERVICE BY MAILING**

I, Cesar Valenzuela #94302 hereby certify, pursuant to NRCP 5(b), that on this 22  
day of August, 2020, I mailed a true and correct copy of the foregoing, "Motion  
for Court to Reconsider Petition Habeas Corpus"  
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

Clerk of the Court Dept 29  
200 Lewis Ave  
Las Vegas NV 89155

Nevada Attorney General  
100 North Carson St  
Carson City NV 89101

Clark County District Attorney  
200 Lewis Ave  
Postbox 85020  
Las Vegas NV 89155

CC:FILE

DATED: this 22 day of August, 2020.

Cesar Valenzuela #94302  
Perkman /In Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion for  
Court to Reconsider Petition for Habeas Corpus  
(Title of Document)

filed in District Court Case number A-20-815616-W

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

[Signature]  
Signature

August 22 2020  
Date

Cesar Valenzuela #94302  
Print Name

Petitioner  
Title

Caesar Valencia #941307  
Pobox 650  
Indian Springs NV 89107  
Please Return File Stamp copy

local  
Ment

3762

Clerk of The Court  
Dept 29  
200 Vegas NW 3rd Fl  
Las Vegas NV 89155

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FILED

OCT - 7 2020

CLERK OF COURT

Cesar Sanchez Valencia #94307  
Petitioner / In proper person  
PO BOX 650  
INDIAN SPRINGS NV 89707

DISTRICT COURT  
CLARK COUNTY NEVADA

Cesar Sanchez Valencia #94307

Petitioner,

v THE STATE OF NEVADA

Calvin Johnson Warden HOSP

Respondent.

Case No A-20-815616-W  
Dept No 29

MOTION AND ORDER COURT APPEARANCE

IN THE ALTERNATIVE. FOR APPEARANCE

BY TELEPHONE OR VIDEO CONFERENCE

Petitioner Cesar Sanchez Valencia #94307, proceeding pro se, Requests that this Honorable Court order appearance, in the alternative, that he be made available to appear by telephone or by Video conference at the hearing in the instant case that is scheduled for \_\_\_\_\_ at Regional Justice Center Court Dept 29 Las Vegas Clark County Nevada.

RECEIVED

OCT 06 2020

CLERK OF THE COURT

1 IN support of this Motion, I allege the following:  
2 (1) I am an inmate incarcerated at High Desert State  
3 Prison "NDOC" My mandatory release date is  
4 Jan 26 2030.  
5 (2) The Department of Corrections is required to  
6 transport offenders to and from court if an  
7 inmate is required or request to appear  
8 before a court in this state.

9  
10 NRS 209.274 Transportation of Offender to Appear  
11 Before Court states: "(1) Except as otherwise  
12 provided in this section, when an offender is  
13 required or requested to appear before a Court  
14 in this state, the Department shall transport the  
15 offender to and from Court on the day  
16 scheduled for his appearance.

17 2) If notice is not provided within the time set  
18 forth in NRS 50.215, the Department shall  
19 transport the offender to Court on the date  
20 scheduled for his appearance if it is possible to  
21 transport the offender in the usual manner for  
22 the transportation of offenders by the Department.  
23 If it is not possible for Department to transport  
24 the offender in the usual manner,

25 (a) The Department shall make the offender available  
26 on the date scheduled for his appearance to provide  
27 testimony by telephone or video conference,  
28 if so requested by the Court.



1 (b) The Department shall provide for special  
2 Transportation of the offender to and from the  
3 Court, if the Court so orders. If the Court  
4 orders Special transportation, it shall order  
5 the County in which the Court is located to  
6 reimburse the Department for any cost incurred for  
7 the special transportation.

8 (c) The Court may order the county Sheriff to  
9 transport the offender to and from the court  
10 at the Expense of the County."

11 (3) My presence is required at the hearing because  
12 THE HEARING WILL BE EVIDENTIARY  
13 HEARING

14 My petition raises material issues of fact that  
15 can be determined only in my presence.

16 See Walker v Johnston, 312 U.S. 255 (1941) (government's  
17 contention that allegations are improbable and unbelievable  
18 cannot serve to deny the petitioner an opportunity to  
19 support them by evidence). The Nevada Supreme  
20 Court has held that the presence of petitioner  
21 for habeas corpus relief is required at any evidentiary  
22 hearing conducted on the merits of the claim  
23 asserted in petition. See Gebbers v Nevada, 118 Nev.  
24 500 (2002).

25 (4) The prohibition against ex parte communication  
26 requires that I be present at any hearing at which  
27 the State is present and at which issues

1 Concerning the claims raised in my petition  
2 are addressed, U.S. Const, amends. V, VI.

3 (5). If a person incarcerated in a state prison is  
4 required or is requested to appear as a witness  
5 in any action, the Department of Corrections  
6 must be notified in writing not less than 7 business  
7 days before the date scheduled for his appearance  
8 in court if the inmate is incarcerated in a prison  
9 located more than 40 miles from Las Vegas.

10 NRS 50.215, (4) If a person is incarcerated in prison  
11 located 41 miles or more from Las Vegas, The Department  
12 of Corrections must be notified in writing not  
13 less than 14 business days before the date scheduled  
14 for the person's appearance in court.

15 (6) Indian Springs Nevada is located approximately  
16 36 miles from Las Vegas, Nevada.

17 (7). If there is insufficient time to provide the required  
18 notice to the Department of Corrections for me to  
19 be transported to hearing, I respectfully requesting  
20 that this Honorable Court order the WARDEN  
21 to make me available on the date of the  
22 scheduled appearance by Telephone, or video  
23 conference, pursuant to NRS 209, 274(2)(A),  
24 so that I may provide relevant testimony and/or  
25 or be present for the evidentiary hearing.

(8) The rules of the institution prohibit me from placing telephone calls from the institution, except for collect calls, unless special arrangements are made with prison staff. Nev. Admin. Code DOC 718.01. However, arrangements for my telephone appearance can be made by contacting the following staff member at my institution Calvin Johnson Warden at High Desert State Prison whose telephone number is 702-879-6789

Dated this 28th day of September 2020

Cesar Valencia #1437  
PO Box 650  
Indian Springs NV  
89707

AFFIDAVIT OF MOTION ORDER THE WARDEN  
TO MAKE ME AVAILABLE APPEARANCE  
BY TELEPHONE/OR VIDEO CONFERENCE  
PURSUANT TO NRS 209.274.

STATE OF NEVADA )

VS

COUNTY OF CLARK)

I, petitioner Cesar Sanchez Valencia #94307, do hereby  
affirm under penalty of perjury that the assertions  
of this Affidavit are true.

(1) That I am the petitioner in the above entitled action  
and that I make this Affidavit in support of Motion  
AND ORDER Court Appearance IN THE ALTERNATE Appearance  
by Telephone OR VIDEO Conference. Attached hereto.

(2) That I am over eighteen (18) years of age; of sound mind  
and have a personal knowledge of and am capable to testify  
to the matter as stated herein.

(4) That on \_\_\_\_\_ day of \_\_\_\_\_ 2020, I have  
hearing scheduled at \_\_\_\_\_ am on Sept 29 and request  
the Court to ORDER the DOC to transport me for Set hearing  
REQUEST THIS Honorable Court ORDER WARDEN TO MAKE  
ME AVAILABLE APPEARANCE BY TELEPHONE/OR VIDEO  
CONFERENCE PURSUANT TO NRS 209.274.

Dated this 28th day of September, 2020

By Cesar Sanchez Valencia #94307  
PO Box 650  
Indian Springs NV 89307

**CERTIFICATE OF SERVICE BY MAILING**

I, Cesar Valencia, hereby certify, pursuant to NRCP 5(b), that on this 28  
day of September, 2020, I mailed a true and correct copy of the foregoing, "MOTION /  
ADD ORDER COURT Appearance IN THE ATTORNEY by"  
Telephone / or VIDEO CONFERENCE  
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

Clerk of the Court  
200 Lewis St 3rd Fl  
Las Vegas NV 89155

District Attorney  
200 Lewis St  
P.O. Box 552215  
Las Vegas NV 89155-2212

Calvin Johnson Warden  
High Desert State Prison  
P.O. Box 1650  
Indian Springs NV 89007

Attorney General of Nevada  
100 North Carson St  
Carson City NV 89701

CC: FILE

DATED: this 28 day of Sept, 2020.

Cesar Valencia

#94307

/In Propria Personam

Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion

AND ORDER Court Appearance by Telephone or VIDEO  
(Title of Document)

filed in District Court Case number A-20-815616-W

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

[Signature]  
Signature

Sept 28th 2020  
Date

Cesar Valenzuela  
Print Name

Petitioner  
Title

8

Cesar Valencia #94307  
PO Box 6510  
Indian Springs WV 89205  
Please Return Pre Stamp Copy

Legal  
mail

3762

clerk of the court  
200 Lewis Ave 3rd Fl  
Las Vegas NV 89155

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23

Case No. A-20-815616-4

Dept. No. 29

**FILED**

OCT - 7 2020

*Alfred J. Blum*  
CLERK OF COURT

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

Cesar Sanchez Valenzuela #94307

Petitioner

vs.  
Calvin Johnson Warden #140SP  
The STATE OF NEVADA

Respondents

Case No. A-20-815616-4

Dept No. 29

Docket \_\_\_\_\_

**NOTICE OF MOTION**

YOU WILL PLEASE TAKE NOTICE, that Cesar Valenzuela #94307  
MOTION FOR Court Appearance by Telephone or VIDEO Conference  
will come on for hearing before the above-entitled Court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ M. In Department \_\_\_\_\_, of said Court.

CC:FILE

DATED: this 28th day of September, 2020

BY Cesar Valenzuela # 94307  
/In Propria Personam

RECEIVED  
OCT 16 6 30 PM '20  
CLERK OF THE COURT



*Heather S. Hume*  
CLERK OF THE COURT

1 NOH

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5 Ceasar Valencia,

CASE NO.: A-20-815616-W

6 Petitioner,

DEPT. NO.: II

7 vs.

8  
9 State of Nevada; Johnson, Warden of  
10 HDSP,

11 Respondent.

12 NOTICE OF HEARING

13 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

14 PLEASE TAKE NOTICE that the undersigned will bring a Status Check regarding the  
15 Post-Conviction Petition for a Writ of Habeas Corpus and Court of Appeals Order of Reversal  
16 and Remand filed in this case on for hearing on **June 9, 2021 at the hour of 9:30 a.m.**, or as  
17 soon thereafter as counsel can be heard.  
18

19 The Blue Jeans meeting ID is 589556619; <https://bluejeans.com/589556619>. To  
20 call into the meeting please dial 1-408-419-1715 or 1-408-915-6290.  
21

22 Dated this 11th day of May, 2021

23 *Carli Kierny*  
24

25 408 9CD 2958 4306  
26 Carli Kierny  
27 District Court Judge  
28

Carli Kierny  
District Court Judge

Department II  
Las Vegas, NV 89155

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Ceasar Valencia, Plaintiff(s)

CASE NO: A-20-815616-W

7 vs.

DEPT. NO. Department 2

8 State of Nevada, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 5/11/2021

15 NOREEN DEMONTE

nykosn@co.clark.nv.us

16  
17 If indicated below, a copy of the above mentioned filings were also served by mail  
18 via United States Postal Service, postage prepaid, to the parties listed below at their last  
known addresses on 5/12/2021

19 Ceasar Valencia

HDSP

P.O. Box 650

Indian Springs, NV, 89070

IN THE SUPREME COURT OF THE STATE OF NEVADA

CEASAR SANCHAZ VALENCIA, A/K/A  
CEASAR SANCHEZ VALENCIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 81745  
District Court Case No. A815616; ~~C315580~~

**FILED**

JUN - 3 2021

*Elizabeth A. Brown*  
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order."

Judgment, as quoted above, entered this 07 day of May, 2021.

IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
June 02, 2021.

Elizabeth A. Brown, Supreme Court Clerk

By: Kaitlin Meetze  
Administrative Assistant

A-20-815616-W  
CCJR  
NV Supreme Court Clerks Certificate/Judgm  
4956355



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CEASAR SANCHAZ VALENCIA, A/K/A  
CEASAR SANCHEZ VALENCIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 81745-COA

**FILED**

MAY 07 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK 0

**ORDER OF REVERSAL AND REMAND**

Ceasar Sanchaz Valencia appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on May 28, 2020. Eighth Judicial District Court, Clark County; David M. Jones, Judge.


We previously ordered the State to show cause why the district court's order denying the petition as untimely should not be reversed. See *Valencia v. State*, Docket No. 81745-COA (Order to Show Cause, April 9, 2021). Although Valencia's petition was filed outside the one-year time limit, see NRS 34.726(1), it was received by the clerk of the district court within the one-year time limit. And it is the clerk's duty, not the parties', to file submitted documents. See *Sullivan v. Eighth Judicial Dist. Court*, 111 Nev. 1367, 1372, 904 P.2d 1039, 1042 (1995).

In its response, the State concedes the clerk received the petition within the one-year time limit. Because the record demonstrates the district court clerk received the petition within the one-year time limit

for filing the petition, we conclude the district court erred by denying the petition as untimely.<sup>1</sup> Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_  
Gibbons C.J.

  
\_\_\_\_\_  
Tao J.

  
\_\_\_\_\_  
Bulla J.

cc: Hon. David M. Jones, District Judge  
Ceasar Sanchaz Valencia  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

---

<sup>1</sup>The State opposes remand, arguing this court should affirm the denial of Valencia's petition based on the merits of his claims. A disposition on the merits will require factual findings, which is the province of the district court. *Cf. Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005) (noting an appellate court will defer to the district court's factual findings). We therefore decline to consider the merits of Valencia's claims on appeal in the first instance.

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

CEASAR SANCHAZ VALENCIA, A/K/A  
CEASAR SANCHEZ VALENCIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 81745**  
District Court Case No. A815616; ~~63-15580~~

**REMITTITUR**

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: June 02, 2021

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze  
Administrative Assistant

cc (without enclosures):  
Hon. David M. Jones, District Judge  
Ceasar Sanchaz Valencia  
Clark County District Attorney

**RECEIPT FOR REMITTITUR**

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on JUN - 3 2021.

**HEATHER UNGERMANN**

**Deputy** District Court Clerk

**RECEIVED  
APPEALS**

**JUN - 3 2021**

**CLERK OF THE COURT**



**RSPN**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**KAREN MISHLER**  
Chief Deputy District Attorney  
Nevada Bar #013730  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

CEASAR SANCHAZ VALENCIA,  
#1588390

Defendant.

CASE NO: A-20-815616-W  
DEPT NO: II

**STATE'S RESPONSE TO DEFENDANT'S PETITION  
FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

DATE OF HEARING: AUGUST 19, 2021  
TIME OF HEARING: 12:30 PM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through KAREN MISHLER, Chief Deputy District Attorney, and moves this Honorable Court for an order denying the Defendant's Petition for Post-Conviction Relief heretofore filed in the above entitled matter.

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

**POINTS AND AUTHORITIES**

**STATEMENT OF THE CASE**

On June 9, 2016, the State filed an Information charging Petitioner Ceasar Sanchaz Valencia (hereinafter "Petitioner") with one count of Assault on a Protected Person With Use

1 of a Deadly Weapon, one count of Ownership or Possession of Firearm by Prohibited Person,  
2 one count of Trafficking in Controlled Substance, and two counts of Possession of Controlled  
3 Substance. On June 10, 2016, Petitioner was arraigned on the Information, at which time he  
4 entered a plea of not guilty and invoked his right to a speedy trial.

5 On November 27, 2017, the matter proceeded to trial. On December 1, 2017, the jury  
6 rendered its verdict of guilty as to all counts. On January 25, 2018, Petitioner was sentenced  
7 to the Nevada Department of Corrections, pursuant to the small habitual criminal statute, as  
8 follows: Count 1 – a minimum of 84 months and a maximum of 240 months; Count 2 – a  
9 minimum of 24 months and a maximum of 72 months, concurrent to Count 1; Count 3 – a  
10 minimum of 12 months and a maximum of 48 months, concurrent with Count 2; Count 4 – a  
11 minimum of 12 months and a maximum of 48 months, concurrent with Count 3; Count 5 – a  
12 minimum of 24 months and a maximum of 72 months, concurrent to Count 4. Petitioner's total  
13 aggregate sentence was a minimum of 108 months and a maximum of 312 months. Petitioner  
14 received 615 days credit for time served. The Judgment of Conviction was filed on February  
15 6, 2018.

16 On March 1, 2018, Petitioner filed a Notice of Appeal. The Nevada Supreme Court  
17 affirmed Petitioner's Judgment of Conviction, and remittitur issued on May 7, 2019.

18 On May 28, 2020,<sup>1</sup> Petitioner filed the instant Petition for Writ of Habeas Corpus (Post-  
19 Conviction) (hereinafter "Petition"). On July 28, 2020, the Court denied the Petition. The  
20 Findings of Fact, Conclusions of Law were filed on August 7, 2020. On appeal, the Nevada  
21 Supreme Court reversed the denial of the Petition, finding that the Petition was timely filed.  
22 The Nevada Supreme Court remanded the matter back to this Court, with instructions to  
23 consider the Petition's claims on their merits. The State responds to the arguments raised in  
24 the Petition as follows.

25 ///

26 ///

27 ///

28 <sup>1</sup>The Petition reflects that though it was filed on May 28, 2020, it was received by the clerk of the court on May 4, 2020.



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1 **ARGUMENT**

2 **I. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

3  
4 All of the claims Petitioner raises are contradicted by the record, not cognizable on  
5 habeas review, barred from further consideration, or are bare and naked allegations. The  
6 majority of Petitioner's claims are ineffective-assistance-of-counsel claims. To demonstrate  
7 ineffective assistance of trial counsel, a petitioner must show counsel's performance was  
8 deficient in that it fell below an objective standard of reasonableness, and prejudice resulted  
9 in that there was a reasonable probability of a different outcome in the absence of counsel's  
10 deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 2063  
11 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the  
12 Strickland test). Both components – deficient performance and prejudice – must be shown.  
13 Strickland, 466 U.S. at 687, 104 S.Ct. at 2065. “[T]here is no reason for a court deciding an  
14 ineffective assistance claim to approach the inquiry in the same order or even to address both  
15 components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697,  
16 104 S. Ct. at 2069.

17 Importantly, claims of ineffective assistance of counsel asserted in a petition for post-  
18 conviction relief must be supported with specific factual allegations, which if true, would  
19 entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225  
20 (1984). NRS 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts  
21 supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just  
22 conclusions may cause your petition to be dismissed.” (emphasis added). “Bare” and “naked”  
23 allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled  
24 by the record. Id. “A claim is ‘belied’ when it is contradicted or proven to be false by the  
25 record as it existed at the time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46  
26 P.3d 1228, 1230 (2002).

27 The court begins with the presumption of effectiveness and then must determine  
28 whether the defendant has demonstrated by a preponderance of the evidence that counsel was

1 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
2 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
3 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
4 537 P.2d 473, 474 (1975).

5 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
6 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
7 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
8 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
9 (2002).

10 Based on the above law, the role of a court in considering allegations of ineffective  
11 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
12 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
13 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
14 (1978). This analysis does not mean that the court should “second guess reasoned choices  
15 between trial tactics nor does it mean that defense counsel, to protect himself against  
16 allegations of inadequacy, must make every conceivable motion no matter how remote the  
17 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel  
18 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
19 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
20 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S.Ct. 2039, 2046 n.19 (1984).

21 “There are countless ways to provide effective assistance in any given case. Even the  
22 best criminal defense attorneys would not defend a particular client in the same way.”  
23 Strickland, 466 U.S. at 689, 104 S.Ct. at 689. “Strategic choices made by counsel after  
24 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
25 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
26 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's  
27 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
28 conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066.

1  
2 **a. Ground One: Ineffective Assistance of Trial Counsel During the**  
3 **Preliminary Process**

4 Petitioner alleges that his initial counsel, Deputy Public Defender Steven Lisk, provided  
5 ineffective assistance during the “preliminary process and pretrial.” Petition at 6. Specifically,  
6 Petitioner alleges that Mr. Lisk did not visit him in jail, wanted him to accept a plea  
7 negotiation, and did not provide him with discovery. Id. at 6-10.

8 These allegations regarding Mr. Lisk, even if accepted as true, are insufficient to meet  
9 the Strickland standard because Petitioner cannot demonstrate that he was prejudiced as a  
10 result of Mr. Lisk’s conduct. Mr. Lisk did not represent Petitioner at trial. He withdrew as  
11 counsel and Gregory E. Coyer was appointed to represent Petitioner. Thus, Petitioner cannot  
12 demonstrate a reasonable probability that the outcome of the trial would have been different  
13 in the absence of these alleged errors. Petitioner does not even allege this is the case, as he  
14 maintains he was prejudiced, not at trial, but at the preliminary hearing and calendar call.  
15 Accordingly, Petitioner is not entitled to relief on this claim.

16 **b. Ground Two: Ineffective Assistance of Trial Counsel**  
17

18 Petitioner alleges his trial counsel was ineffective for failing to assist him with a civil  
19 forfeiture case. Petitioner has failed to state a claim for which he is entitled to relief. Based on  
20 Petitioner’s own account of counsel’s conduct, this does not amount to ineffective assistance.  
21 Counsel’s statement to Petitioner that he was not appointed to represent him in a civil matter  
22 was correct; counsel was appointed to represent Petitioner only in the criminal case. Further,  
23 Petitioner does not explain how counsel’s supposed failure to assist him in this forfeiture case  
24 prejudiced him in the criminal trial. Accordingly, this claim must be summarily denied.

25 Petitioner also alleges there was body camera footage in this case that counsel failed to  
26 provide to him. This allegation is contradicted by the record, and therefore must be dismissed.  
27 See Mann, 118 Nev. at 354, 46 P.3d at 1230; Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.  
28 At trial, Officer Houston testified that neither he nor Officer Jacobitz was wearing body-worn

1 camera on the date of the incident, and that at the time body-worn camera was not standardly  
2 issued for department personnel. Trial Transcript, C315580, Day 2, pp. 133, 146-47.  
3 Furthermore, trial counsel obtained the radio traffic from the incident and admitted it at trial.  
4 Id. at 138. Counsel also repeatedly used the radio traffic during cross-examination of Officer  
5 Houston. Id. at 138-46. Thus, trial counsel did in fact ensure he obtained discovery from the  
6 State, and at trial presented the best documentation of the incident that was available to him.

7 Petitioner also complains about counsel advising him as to the elements of Trafficking  
8 in Controlled Substance, and states that by doing so counsel was an “advocate for the state,  
9 not for the defense.” Petition at 12-13. Based on Petitioner’s own pleading, it appears counsel  
10 correctly informed Petitioner that the key element of the offense was the amount of the  
11 controlled substance, and that it did not require separate proof of intent to sell. See NRS  
12 453.3385. Providing Petitioner with accurate information as to the charges he was facing was  
13 clearly not deficient performance; in fact it was counsel’s duty to do so. Accordingly,  
14 Petitioner is not entitled to relief on this claim.

15 **c. Ground Three Ineffective Assistance of Trial Counsel for Inadequate Pre-**  
16 **Trial Contact**

17 Petitioner alleges his trial counsel was ineffective for failing to meet and communicate  
18 with him. Petition at 15. Petitioner fails to provide any specificity as to how this alleged lack  
19 of communication amounted to deficient performance or prejudiced him at trial. See  
20 Strickland, 466 U.S. at 697, 104 S.Ct. at 2069. See also NRS 34.735 (stating that failure to  
21 raise specific facts rather than conclusions may cause a petition to be dismissed); Hargrove,  
22 100 Nev. at 502-03, 686 P.2d at 225.

23 Here, rather than plead any specific facts relating to this alleged lack of communication,  
24 Petitioner simply asserts that he “was extremely prejudiced by the abandonment of counsel.”  
25 Petition at 15. He fails to state what additional communication was needed or demonstrate that  
26 additional communication with counsel would have changed the outcome of his trial. Nor does  
27 he explain how he was “abandoned” by counsel. The record reveals Petitioner’s counsel  
28 extensively cross-examined witnesses at trial, presented a strong closing argument alleging

1 that the State had not met its burden, and represented Petitioner on appeal. Trial Transcript,  
2 C315580, Day 2, pp. 125-46, 149-52; Day 3, pp. 114-45, 149-50; Day 4, pp. 34-36, 53-59,  
3 115-25; Day 5, pp. 3-22, 32-34, 79-90. This is hardly evidence of abandonment. This  
4 conclusory claim is completely lacking in factual support. Accordingly, Petitioner is not  
5 entitled to relief on this claim.

6 **d. Ground 4: Ineffective Assistance of Trial Counsel for Failure to Conduct**  
7 **DNA Testing and Present Expert Witnesses**

8 Petitioner alleges that counsel was ineffective for failing to conduct independent DNA  
9 testing of the evidence and for failing to present expert witnesses. Petition at 16-18. Not calling  
10 an expert witness or having independent testing performed is not *per se* deficient performance.  
11 If counsel and the client understand the evidence to be presented by the State and the possible  
12 outcomes of that evidence, “counsel is not required to unnecessarily exhaust all available  
13 public or private resources.” Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).  
14 Further, “strategic choices”—such as choice of witnesses—“made after thorough investigation  
15 of law and facts relevant to plausible options are virtually unchallengeable.” Strickland, 466  
16 U.S. at 691, 104 S. Ct. at 2064; Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). And  
17 simply because the State presented a DNA expert does not mean a defense expert was also  
18 required. See Harrington v. Richter, 562 U.S. 111, 131 S. Ct. 770, 791, 578 F.3d 944 (2011).  
19 (“Strickland does not enact Newton’s third law for the presentation of evidence, requiring for  
20 every prosecution expert an equal and opposite expert for the defense.”).

21 Further, Petitioner fails to specify precisely how independent DNA testing or hiring an  
22 expert DNA witness would have rendered a different trial outcome probable. The DNA expert  
23 testimony presented by the State at trial did not inculcate Petitioner. In fact, Petitioner was  
24 excluded as a contributor to the major DNA profile on the firearm recovered from the scene.  
25 Trial Transcript, C315580, Day 4, pp. 29, 35. In closing, defense counsel argued to the jury  
26 that these results exculpated Petitioner. Trial Transcript, C315580, Day 5, pp. 80, 86. It is  
27 highly improbable that further DNA testing or testimony would have benefited Petitioner,  
28

1 when clearly DNA evidence was not the basis for his conviction. Accordingly, Petitioner is  
2 not entitled to relief on this claim.

3 **e. Ground Five: Ineffective Assistance of Trial Counsel Regarding the Denial**  
4 **of Petitioner's Request for Self-Representation**

5 Petitioner alleges trial counsel was ineffective for "failure to correct the record and to  
6 preserve the denial of the conditional waiver of self representation..." Petition at 19. Petitioner  
7 also cited a statement made by the district court at a hearing on November 1, 2016, in which  
8 the court indicated Petitioner could request to have counsel removed if he felt he and counsel  
9 had become "incompatible." *Id.* Petitioner's claim is facially unclear because he is claiming  
10 that counsel failed to correct the record while simultaneously citing a statement directly from  
11 the record in an attempt to support this claim. He appears to believe that counsel failed to  
12 present this statement by the district court to the Nevada Supreme Court on direct appeal.

13 This claim is both contradicted by the record and barred under the law of the case  
14 doctrine. *See Mann*, 118 Nev. at 354, 46 P.3d at 1230; *Hargrove*, 100 Nev. at 502, 686 P.2d  
15 at 225; *Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975). Trial counsel also  
16 represented Petitioner on direct appeal, wherein he argued that the district court erred by  
17 denying Petitioner's request to represent himself. *Valencia v. State*, Docket No. 75282 (Order  
18 of Affirmance, Apr. 12, 2019). The Nevada Supreme Court concluded that this claim was  
19 meritless, noting "the record as a whole demonstrates Petitioner did not make an unequivocal  
20 request to represent himself." *Valencia v. State*, Docket No. 75282 (Order of Affirmance, Apr.  
21 12, 2019), at 3. Accordingly, this claim is also barred by the law of the case doctrine.

22 "The law of a first appeal is law of the case on all subsequent appeals in which the facts  
23 are substantially the same." *Hall*, 91 Nev. At 315, 535 P.2d at 798 (quoting *Walker v. State*,  
24 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). "The doctrine of the law of the case cannot be  
25 avoided by a more detailed and precisely focused argument subsequently made after reflection  
26 upon the previous proceedings." *Id.* at 316, 535 P.2d at 799. Under the law of the case doctrine,  
27 issues previously decided on direct appeal may not be reargued in a habeas petition. *Pellegrini*  
28 *v. State*, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing *McNelton v. State*, 115 Nev. 396,

1 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, the district court cannot overrule the  
2 Nevada Supreme Court. NEV. CONST. Art. VI § 6. Therefore, the district court is barred from  
3 granting Petitioner any relief on this claim.

4 **f. Ground Six: Ineffective Assistance of Trial Counsel for Failure to Remind**  
5 **the Court that His Waiver of Self-Representation Was Conditional**

6 This claim is substantially similar to Ground Five. Petitioner appears to believe trial  
7 counsel was under a duty to “remind the Court that the waiver to self representation was  
8 conditional.” Petition at 20. It is unclear why Petitioner interpreted what occurred at the  
9 November 1, 2016 hearing in the district court as amounting to a conditional waiver of his  
10 right to self-representation, or why he believes it was trial counsel’s duty to bring this to the  
11 court’s attention, particularly considering that trial counsel was not present at the November  
12 1, 2016 hearing. The court was merely informing Petitioner that should he wish in the future  
13 to move for the removal of trial counsel, he could do so. Petitioner was certainly aware that he  
14 had the right to do so, as he had moved for the dismissal of previous counsel and filed  
15 numerous pro per motions. Regardless, for the reasons stated above, any claim regarding the  
16 district court’s denial of Petitioner’s request for self-representation is barred under the law of  
17 the case doctrine. Accordingly, the district court was barred from granting Petitioner any relief  
18 on this claim.

19 **g. Ground Seven: Ineffective Assistance of Trial Counsel for Failure to**  
20 **Provide Legal Materials**

21 Petitioner alleges trial counsel failed to provide him with legal materials. Petition at 21.  
22 This is a bare and naked claim suitable only for summary denial. See Hargrove, 100 Nev. at  
23 502, 686 P.2d at 225. Petitioner fails to identify what specific materials he believes should  
24 have been provided to him, or how provision of these materials would have rendered a  
25 different result probable at trial. Accordingly, Petitioner is not entitled to relief on this claim.

26 ///

27 ///

28 ///



1                   **h. Ground Eight: Ineffective Assistance of Trial Counsel for Failure to Object**  
2                   **to Certified Judgment of Conviction; Imposition of Habitual Sentence**

3                   As a preliminary matter, to the extent Petitioner appears to contend that the district  
4                   court erred by sentencing him pursuant to the habitual criminal statute, this is a substantive  
5                   claim that has been waived for habeas review. NRS 34.810(1) reads:

6                   The court shall dismiss a petition if the court determines that:

7                   (a) The petitioner's conviction was upon a plea of guilty or guilty  
8                   but mentally ill and the petition is not based upon an allegation  
9                   that the plea was involuntarily or unknowingly or that the plea was  
                    entered without effective assistance of counsel.

10                  (b) *The petitioner's conviction was the result of a trial and the*  
                    *grounds for the petition could have been:*

11                  1. . . ]

                    (2) *Raised in a direct appeal or a prior petition for a writ of habeas*  
                    *corpus or postconviction relief.*

12                  The Nevada Supreme Court has held that while claims of ineffective assistance of trial  
13                  and appellate counsel are appropriately raised for the first time in post-conviction proceedings,  
14                  “all other claims that are appropriate for a direct appeal must be pursued on direct appeal, or  
15                  they will be *considered waived in subsequent proceedings.*” Franklin v. State, 110 Nev. 750,  
16                  752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other grounds by Thomas  
17                  v. State, 115 Nev. 148, 979 P.2d 222 (1999)). See also NRS 34.724(2)(a) (stating that a post-  
18                  conviction petition is not a substitute for a direct appeal); Evans v. State, 117 Nev. 609, 646–  
19                  47, 29 P.3d 498, 523 (2001). Accordingly, Petitioner is not entitled to relief on his claim that  
20                  the sentencing court erred by imposing a habitual criminal sentence.

21                  As to Petitioner's claim that counsel should have objected to the admission of one of  
22                  the certified judgments of conviction that the State admitted at sentencing, the only argument  
23                  Petitioner offers in support of this claim is his bare assertion that “Case No. C224558 is an  
24                  illegal sentence.” Petition at 22. For Count 1, Petitioner was sentenced pursuant to the small  
25                  habitual criminal statute, and a prison sentence of 84 to 240 months was imposed. At the time  
26                  of Petitioner's sentencing, a defendant was eligible for small habitual criminal treatment upon  
27                  the proof of two prior felony convictions. NRS 207.010(1)(a). At sentencing, the State  
28                  admitted four certified judgments of conviction. Certified judgments of conviction are prima

1 facie evidence of a defendant's previous convictions. NRS 207.016(5). Thus, counsel could  
2 not have raised a valid legal objection to the certified judgments of conviction. To do so would  
3 have been futile, and counsel cannot be found ineffective for failure to raise futile objections  
4 or motions. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Furthermore,  
5 Petitioner only claims one of his admitted convictions was invalid. Even if that conviction had  
6 not been presented, the State still presented three other certified judgments of conviction. This  
7 was more than enough to adjudicate Petitioner as a habitual criminal. Thus, Petitioner cannot  
8 demonstrate he was prejudiced. Accordingly, Petitioner is not entitled to relief on this claim.

9  
10 **i. Ground Nine: Ineffective Assistance of Trial Counsel for Failure to Request  
a Change of Venue**

11 Petitioner claims that counsel "failed to request change of venue for a jury who  
12 explained to the court that Ms. Plunkett had brought cell phones into the jail on that all that he  
13 seen on the news..." Petition at 23. To the best the State can ascertain, Petitioner appears to  
14 claim that trial counsel Gregory Coyer should have requested a change of venue due to there  
15 having been local media coverage regarding an incident involving Mr. Coyer's co-counsel Ms.  
16 Plunkett bringing a cell phone into the Clark County Detention Center. This claim is nearly  
17 incomprehensible, and is entirely lacking in support or explanation as to why Petitioner  
18 believes a change in venue was warranted, or how he was prejudiced. This is a bare and naked  
19 allegation suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

20 Further, a motion to change venue would have been futile, and counsel cannot be held  
21 ineffective for failing to file a futile motion. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. A  
22 request for a change in venue must comply with the requirements of NRS 174.455(1), which  
23 states that "[a] criminal action prosecuted by indictment, information or complaint may be  
24 removed from the court in which it is pending, on application of the defendant or state, *on the*  
25 *ground that a fair and impartial trial cannot be had* in the county where the indictment,  
26 information or complaint is pending." (emphasis added). Additionally, a motion to change  
27 venue cannot be granted by the district court until after voir dire examination of the  
28 jury. NRS 174.455(2). Such a motion requires a demonstration that members of the jury were

1 biased against the defendant, not defendant's counsel. See Rhyne, 118 Nev. at 11, 38 P.3d at  
2 169. There is nothing in the record of voir dire in this case indicating that any members of the  
3 jury were prejudiced against Petitioner. Thus, any request for a change in venue would have  
4 been futile. Accordingly, Petitioner is not entitled to relief on this claim.

5 To the extent Petitioner appears to claim that counsel failed to object to the "admittance  
6 of the bag with the gun", this claim was raised on direct appeal and rejected by the Nevada  
7 Supreme Court. See Valencia v. State, Docket No. 75282 (Order of Affirmance, Apr. 12,  
8 2019), at 03-05. The Nevada Supreme Court stated as follows:

9 Petitioner was not denied a fair trial as the evidence bag that the officer read  
10 from had already been admitted without objection from Petitioner and neither  
11 the State nor Petitioner realized it contained the ex-felon language...the district  
12 court properly found that the prejudicial effect was minimal as the ex-felon  
13 testimony was a passing comment that the district court did not permit to be  
14 expounded on.

15 Id. at 04-05.

16 This holding is the law of the case and this issue cannot be revisited in a habeas petition. See  
17 Pellegrini, 117 Nev. at 879, 34 P.3d at 532. Petitioner also ignores the fact that trial counsel  
18 requested a mistrial based on the witness inadvertently reading this information from the bag  
19 containing the firearm. Trial Transcript, C315580, Day 4, p. 86-93.

20 To the extent Petitioner claims trial counsel should have objected to "perjured  
21 testimony", Petitioner fails to support his claim that this testimony was perjured, beyond  
22 simply making this bare allegation. Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. It is highly  
23 improbable that counsel objecting to a witness's testimony and asserting the witness was  
24 committing perjury would have benefited Petitioner in any way, as such an objection would  
25 be at best improper, and at worst outright misconduct, as counsel is not permitted to testify,  
26 nor is counsel permitted to express a personal opinion as to whether or not a witness is being  
27 truthful. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990) ("It is improper  
28 argument for counsel to characterize a witness as a liar."). Further, whether or not to object is

1 a strategic decision, which is virtually unchallengeable. Dawson v. State, 108 Nev. 112, 117,  
2 825 P.2d 593, 596 (1992). Accordingly, Petitioner is not entitled to relief on this claim.

3  
4 **j. Ground Ten: Ineffective Assistance of Trial Counsel for Not Presenting a**  
5 **Defense, Subpoenaing Witnesses or Requesting Video Footage**

6 Petitioner alleged that trial counsel deprived him of a defense. Petition at 24. Petitioner  
7 appears to believe that trial counsel should have presented a defense that the police fabricated  
8 the incident and maintains that this fabrication can be shown by DNA, fingerprints, and  
9 witness Eric Gilbert. Id. To the extent Petitioner maintains his counsel did not present a  
10 defense, this claim is contradicted by the record and thus does not entitle Petitioner to relief.  
11 See, e.g., Mann, 118 Nev. at 354, 46 P.3d at 1230. As to his complaint that counsel did not  
12 present a defense of “police fabrication”, the decision not to raise such a defense was a  
13 strategic choice within the sole discretion of counsel. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d  
14 163, 167 (2002) (stating that trial counsel has the “immediate and ultimate responsibility of  
15 deciding if and when to object, which witnesses, if any, to call, and what defenses to  
16 develop.”).

17 The record reveals that DNA and fingerprint analyses were performed on the recovered  
18 firearm, and those results were presented at trial. Trial Transcript, C315580, Day 4, pp. 19-30,  
19 42-59. Neither Petitioner’s DNA nor his fingerprints were found on the firearm, but despite  
20 Petitioner’s claims, this did not establish that the police “fabricated” this incident.  
21 Furthermore, trial counsel argued in closing that these results exonerated Petitioner. Trial  
22 Transcript, C315580, Day 5, pp. 80, 86. Contrary to Petitioner’s assertion, trial counsel did in  
23 fact present a defense. Though trial counsel did not allege that the testifying police officers  
24 had fabricated the entire incident, counsel presented the far more reasonable argument that the  
25 police were mistaken as to the identity of the perpetrator and had rushed to judgment in  
26 identifying Petitioner. Id. at 79-90. The decision to present this particular defense was within  
27 the discretion of trial counsel. Rhyne, 118 Nev. at 8, 38 P.3d at 167 (2002).

28 ///

1 As to Petitioner's contention that police fabrication could have been proven through  
2 the witness Eric Gilbert, Petitioner fails to provide a cogent explanation as to how this  
3 individual would have done so. The record reveals that Eric Gilbert attempted to steal the  
4 moped that Petitioner was riding on the date of the initial police incident. Trial Transcript,  
5 C315580 Day 3, pp. 57, 62. Petitioner refers to a voluntary statement presumably made by  
6 Eric Gilbert, but none of the purported statements point to police fabrication or another  
7 individual as the perpetrator. Thus, this is a bare allegation that must be summarily denied.  
8 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.

9 Petitioner is also not entitled to relief on his claims that trial counsel failed to subpoena  
10 witnesses. The decision not to call witnesses is within the discretion of trial counsel and will  
11 not be questioned unless it was a plainly unreasonable decision. See Rhyne, 118 Nev. at 8, 38  
12 P.3d at 168 (2002); Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992). "[T]he  
13 trial lawyer alone is entrusted with decisions regarding legal tactics such as deciding what  
14 witnesses to call." Rhyne, 118 Nev. at 8, 38 P.3d at 167. When defense counsel does not have  
15 a solid case, the best strategy can be to say that there is too much doubt about the State's theory  
16 for a jury to convict. See Harrington, 562 U.S. at 111, 131 S. Ct. at 791. Further, Petitioner  
17 fails to identify the supposed alibi witness he believes counsel should have called, or any  
18 helpful information that could have been presented through Eric Gilbert's testimony. To  
19 satisfy the Strickland standard and establish ineffectiveness for failure to interview or obtain  
20 witnesses, a petitioner must allege *in the pleadings* the substance of the missing witness'  
21 testimony, and demonstrate how such testimony would have resulted in a more favorable  
22 outcome. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004); State v. Haberstroh,  
23 119 Nev. 173, 185, 69 P.3d 676, 684 (2003). Petitioner has clearly not met this burden.

24 As to Petitioner's claim that counsel failed to subpoena "dashcam footage", nothing in  
25 the record indicates that there was such footage in this case. Further, Petitioner fails to  
26 adequately explain how such footage, even if it existed, would have altered the outcome of his  
27 trial. The testimony at trial was that Petitioner pointed a firearm at Officer Jacobitz during a  
28 foot pursuit in an alleyway, and thus any sort of "dashcam" would not have captured the

1 incident. Trial Transcript, C315580, Day 3, pp. 37-40. Thus, Petitioner's allegation that  
2 counsel did not obtain dashcam footage, even if true, would not entitle him to relief. See  
3 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Accordingly, this claim must be summarily  
4 denied.

5 As to Petitioner's claim that counsel failed to request the photograph used for  
6 identification, Petitioner fails to specify how this alleged failure amounted to deficient  
7 performance or how it prejudiced him at trial. Accordingly, this claim must be summarily  
8 denied.

9 As to his claims that counsel failed to correct misinformation from the prosecutor and  
10 failed to object to inconsistencies, these bare allegations are entirely vague with no citation to  
11 the record. Petitioner also fails to specify the misinformation and the inconsistencies to which  
12 he refers. Petitioner has not met his burden to present specific factual allegations. See  
13 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Accordingly, these claims must be summarily  
14 denied.

15 **k. Ground Eleven: Ineffective Assistance of Trial Counsel for Failure to**  
16 **Investigate and Prepare for Trial**

17 Petitioner raises several broad allegations that must be summarily denied pursuant to  
18 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. He alleges that counsel failed to investigate,  
19 but fails to specify what matters should have been investigated, or to show how a better  
20 investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at  
21 192, 87 P.3d at 538. He repeats his allegation that counsel failed to call witnesses, but does  
22 not specify what witnesses should have been called or the expected substance of such  
23 testimony. He complains that counsel did not make an opening statement, but fails to explain  
24 how this amounted to deficient performance or how it prejudiced him. He also raises a nearly  
25 incomprehensible allegation that counsel failed to raise a legally cognizable defense that could  
26 render a sentence of life in prison unreliable. It is entirely unclear what Petitioner even means  
27 by a life sentence being "unreliable" or what defense he believes counsel should have raised.  
28 This claim is so devoid of specificity that it must be summarily denied.

1 As to Petitioner's claim that counsel failed to instruct the jury as to the exculpatory  
2 value of the DNA evidence, this claim is belied by the record. Mann, 118 Nev. at 354, 46 P.3d  
3 at 1230. During closing argument, trial counsel explicitly stated to the jury that the DNA and  
4 fingerprint results exonerated Petitioner. Trial Transcript, C315580 Day 5, p. 80. Accordingly,  
5 this claim must be denied.

6 To the extent that Petitioner appears to maintain counsel was ineffective on appeal,  
7 Petitioner has not met his burden of pleading specific facts to demonstrate ineffectiveness of  
8 appellate counsel. See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).  
9 Petitioner merely makes a conclusory assertion that counsel failed to prepare for appeal.  
10 Accordingly, this claim must be denied.

11 To the extent Petitioner appears to claim that counsel had a conflict of interest, he also  
12 fails to present specific factual allegations. A conflict of interest arises when counsel's loyalty  
13 to a client is threatened by his responsibilities to another client or person, or by his own  
14 interests. Jefferson v. State, 133 Nev. 874, 876, 410 P.3d 1000, 1002 (Nev. App. 2017).  
15 Petitioner fails to identify the alleged conflict; he merely presents a conclusory assertion that  
16 there was an irreconcilable conflict. Accordingly, he is not entitled to relief on this claim.

17  
18 **I. Ground Twelve: Ineffective Assistance of Trial Counsel for Suggestive**  
19 **Identification; Ineffectiveness of Appellate Counsel; Errors by District**  
20 **Court in Jury Selection, Jury Instruction, and Sentencing**

21 All of Petitioner's claims under this ground are bare and naked allegations that are plead  
22 in a conclusory manner, with no accompanying argument or factual explanation. Accordingly,  
23 all of these claims must be summarily denied pursuant to Hargrove, 100 Nev. at 502-03, 686  
24 P.2d at 225.

25 Further, as to Petitioner's allegations that the district court erred during jury selection  
26 and the setting of jury instructions, as well as by sentencing Petitioner pursuant to the habitual  
27 criminal statute, these are all claims that could have been raised on direct appeal. Accordingly,  
28 they cannot be considered on habeas review. See NRS 34.724(2)(a); Evans, 117 Nev. at 646–  
47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059.

1           **II.     PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

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

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

12           The Nevada Supreme Court has held that if a petition can be resolved without  
13 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.  
14 1328, 885 P.2d 603 (1994); Mann, 118 Nev. at 356, 46 P.3d at 1231. A defendant is entitled  
15 to an evidentiary hearing if his petition is supported by specific factual allegations, which, if  
16 true, would entitle him to relief unless the factual allegations are repelled by the record.  
17 Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. at 503, 686  
18 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not entitled to an  
19 evidentiary hearing on factual allegations belied or repelled by the record”). “A claim is  
20 ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the  
21 claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to hold an  
22 evidentiary hearing simply to make a complete record. See State v. Eighth Judicial Dist. Court,  
23 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered itself the  
24 ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a record as  
25 possible.’ This is an incorrect basis for an evidentiary hearing.”).

26           Further, the United States Supreme Court has held that an evidentiary hearing is not  
27 required simply because counsel’s actions are challenged as being unreasonable strategic  
28 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge  
post hoc rationalization for counsel’s decision making that contradicts the available evidence  
of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis



1 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain  
2 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (citing  
3 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the  
4 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466  
5 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

6 Petitioner’s claims do not require an evidentiary hearing. An expansion of the record is  
7 unnecessary because Petitioner has failed to assert any meritorious claims and the Petition can  
8 be disposed of with the existing record, as discussed *supra*. Marshall, 110 Nev. at 1331, 885  
9 P.2d at 605; Mann, 118 Nev. at 356, 46 P.3d at 1231. Therefore, Petitioner’s request for an  
10 evidentiary hearing should be denied.

### 11 CONCLUSION

12 For the foregoing reasons, the State respectfully requests that the Petition for Writ of  
13 Habeas Corpus (Post-conviction) be denied.

14 DATED this 15th day of June, 2021.

15 Respectfully submitted,

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

18 BY /s/ KAREN MISHLER  
19 KAREN MISHLER  
20 Chief Deputy District Attorney  
Nevada Bar #013730

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1 CERTIFICATE OF SERVICE

2 I certify that on the 15th day of June, 2021, I mailed a copy of the foregoing State's  
3 Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) to:

4 CEASAR VALENCIA, BAC #94307  
5 H.D.S.P.  
6 P.O. BOX 650  
7 INDIAN SPRINGS, NV 89070

8 BY



Secretary for the District Attorney's Office



1 **OPPS**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 KAREN MISHLER  
6 Chief Deputy District Attorney  
7 Nevada Bar #013730  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 CEASAR SANCHAZ VALENCIA,  
13 #1588390

14 Defendant.

CASE NO: A-20-815616-W  
DEPT NO: II

15 **STATE'S RESPONSE TO DEFENDANT'S PETITION**  
16 **FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

17 DATE OF HEARING: AUGUST 19, 2021  
18 TIME OF HEARING: 12:30 PM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
20 District Attorney, through KAREN MISHLER, Chief Deputy District Attorney, and moves  
21 this Honorable Court for an order denying the Defendant's Petition for Post-Conviction Relief  
22 heretofore filed in the above entitled matter.

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

26 **POINTS AND AUTHORITIES**

27 **STATEMENT OF THE CASE**

28 On June 9, 2016, the State filed an Information charging Petitioner Ceasar Sanchaz  
Valencia (hereinafter "Petitioner") with one count of Assault on a Protected Person With Use

1 of a Deadly Weapon, one count of Ownership or Possession of Firearm by Prohibited Person,  
2 one count of Trafficking in Controlled Substance, and two counts of Possession of Controlled  
3 Substance. On June 10, 2016, Petitioner was arraigned on the Information, at which time he  
4 entered a plea of not guilty and invoked his right to a speedy trial.

5 On November 27, 2017, the matter proceeded to trial. On December 1, 2017, the jury  
6 rendered its verdict of guilty as to all counts. On January 25, 2018, Petitioner was sentenced  
7 to the Nevada Department of Corrections, pursuant to the small habitual criminal statute, as  
8 follows: Count 1 – a minimum of 84 months and a maximum of 240 months; Count 2 – a  
9 minimum of 24 months and a maximum of 72 months, concurrent to Count 1; Count 3 – a  
10 minimum of 12 months and a maximum of 48 months, concurrent with Count 2; Count 4 – a  
11 minimum of 12 months and a maximum of 48 months, concurrent with Count 3; Count 5 – a  
12 minimum of 24 months and a maximum of 72 months, concurrent to Count 4. Petitioner's total  
13 aggregate sentence was a minimum of 108 months and a maximum of 312 months. Petitioner  
14 received 615 days credit for time served. The Judgment of Conviction was filed on February  
15 6, 2018.

16 On March 1, 2018, Petitioner filed a Notice of Appeal. The Nevada Supreme Court  
17 affirmed Petitioner's Judgment of Conviction, and remittitur issued on May 7, 2019.

18 On May 28, 2020,<sup>1</sup> Petitioner filed the instant Petition for Writ of Habeas Corpus (Post-  
19 Conviction) (hereinafter "Petition"). On July 28, 2020, the Court denied the Petition. The  
20 Findings of Fact, Conclusions of Law were filed on August 7, 2020. On appeal, the Nevada  
21 Supreme Court reversed the denial of the Petition, finding that the Petition was timely filed.  
22 The Nevada Supreme Court remanded the matter back to this Court, with instructions to  
23 consider the Petition's claims on their merits. The State responds to the arguments raised in  
24 the Petition as follows.

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28 <sup>1</sup>The Petition reflects that though it was filed on May 28, 2020, it was received by the clerk of the court on May 4, 2020.

1 **STATEMENT OF THE FACTS**

2 On May 19, 2016, Las Vegas Metropolitan Police ("LVMPD") Officers Houston and  
3 Jacobitz attempted to conduct a traffic stop on Petitioner after they observed him operating a  
4 moped at a high rate of speed and failing to stop at a stop sign. Officer Jacobitz activated the  
5 patrol car's lights and sirens, and followed Petitioner until he appeared to stop and got off the  
6 moped. The officers exited their patrol car and were approximately five to eight feet away  
7 from Petitioner. Petitioner turned to face the officers, but then dropped the moped and ran  
8 away from the officers.

9 The officers pursued Petitioner on foot. Officer Jacobitz observed a firearm in  
10 Petitioner's right hand and yelled "gun" to alert Officer Houston of the presence of a firearm.  
11 Petitioner raised the firearm and pointed it at Officer Jacobitz, however, Petitioner's elbow hit  
12 a pole which caused the gun to fall to the ground.

13 Officer Jacobitz remained with the firearm while Officer Houston continued chasing  
14 Petitioner. While waiting with the firearm, Officer Jacobitz saw two men (unrelated to this  
15 case) attempt to steal the moped that Petitioner had abandoned. Having to react quickly to this  
16 attempt theft, Officer Jacobitz retrieved the firearm without gloves so that the firearm would  
17 not be left unattended while he addressed the moped theft. Officer Jacobitz observed that the  
18 firearm was loaded and contained six rounds. Although Officer Houston continued the foot  
19 chase, ultimately Petitioner was able to flee the scene.

20 On May 21, 2016, officers arrested Petitioner during a felony vehicle stop after  
21 conducting surveillance on Petitioner. During a search of his person incident to arrest, officers  
22 located 11.60 grams of heroin, 3.1 grams of methamphetamine, 2.400 grams of cocaine, 2.67  
23 grams of methamphetamine, and \$946 in US Currency.

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## **ARGUMENT**

### **I. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

All of the claims Petitioner raises are contradicted by the record, not cognizable on habeas review, barred from further consideration, or are bare and naked allegations. The majority of Petitioner's claims are ineffective-assistance-of-counsel claims. To demonstrate ineffective assistance of trial counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice resulted in that there was a reasonable probability of a different outcome in the absence of counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 2063 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the Strickland test). Both components – deficient performance and prejudice – must be shown. Strickland, 466 U.S. at 687, 104 S.Ct. at 2065. “[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697, 104 S. Ct. at 2069.

Importantly, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). NRS 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed.” (emphasis added). “Bare” and “naked” allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled by the record. Id. “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel

1 does not mean errorless counsel, but rather counsel whose assistance is “[w]ithin the range of  
2 competence demanded of attorneys in criminal cases.” Jackson v. Warden, 91 Nev. 430, 432,  
3 537 P.2d 473, 474 (1975).

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

9 Based on the above law, the role of a court in considering allegations of ineffective  
10 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
11 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
12 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
13 (1978). This analysis does not mean that the court should “second guess reasoned choices  
14 between trial tactics nor does it mean that defense counsel, to protect himself against  
15 allegations of inadequacy, must make every conceivable motion no matter how remote the  
16 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel  
17 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
18 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
19 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S.Ct. 2039, 2046 n.19 (1984).

20 “There are countless ways to provide effective assistance in any given case. Even the  
21 best criminal defense attorneys would not defend a particular client in the same way.”  
22 Strickland, 466 U.S. at 689, 104 S.Ct. at 689. “Strategic choices made by counsel after  
23 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
24 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
25 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s  
26 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s  
27 conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066.

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1                   **a. Ground One: Ineffective Assistance of Trial Counsel During the**  
2                   **Preliminary Process**

3                   Petitioner alleges that his initial counsel, Deputy Public Defender Steven Lisk, provided  
4                   ineffective assistance during the “preliminary process and pretrial.” Petition at 6. Specifically,  
5                   Petitioner alleges that Mr. Lisk did not visit him in jail, wanted him to accept a plea  
6                   negotiation, and did not provide him with discovery. Id. at 6-10.

7                   These allegations regarding Mr. Lisk, even if accepted as true, are insufficient to meet  
8                   the Strickland standard because Petitioner cannot demonstrate that he was prejudiced as a  
9                   result of Mr. Lisk’s conduct. Mr. Lisk did not represent Petitioner at trial. He withdrew as  
10                  counsel and Gregory E. Coyer was appointed to represent Petitioner. Thus, Petitioner cannot  
11                  demonstrate a reasonable probability that the outcome of the trial would have been different  
12                  in the absence of these alleged errors. Petitioner does not even allege this is the case, as he  
13                  maintains he was prejudiced, not at trial, but at the preliminary hearing and calendar call.  
14                  Accordingly, Petitioner is not entitled to relief on this claim.

15                   **b. Ground Two: Ineffective Assistance of Trial Counsel**  
16

17                  Petitioner alleges his trial counsel was ineffective for failing to assist him with a civil  
18                  forfeiture case. Petitioner has failed to state a claim for which he is entitled to relief. Based on  
19                  Petitioner’s own account of counsel’s conduct, this does not amount to ineffective assistance.  
20                  Counsel’s statement to Petitioner that he was not appointed to represent him in a civil matter  
21                  was correct; counsel was appointed to represent Petitioner only in the criminal case. Further,  
22                  Petitioner does not explain how counsel’s supposed failure to assist him in this forfeiture case  
23                  prejudiced him in the criminal trial. Accordingly, this claim must be summarily denied.

24                  Petitioner also alleges there was body camera footage in this case that counsel failed to  
25                  provide to him. This allegation is contradicted by the record, and therefore must be dismissed.  
26                  See Mann, 118 Nev. at 354, 46 P.3d at 1230; Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.  
27                  At trial, Officer Houston testified that neither he nor Officer Jacobitz was wearing body-worn  
28                  camera on the date of the incident, and that at the time body-worn camera was not standardly



1 issued for department personnel. Trial Transcript, C315580, Day 2, pp. 133, 146-47.  
2 Furthermore, trial counsel obtained the radio traffic from the incident and admitted it at trial.  
3 Id. at 138. Counsel also repeatedly used the radio traffic during cross-examination of Officer  
4 Houston. Id. at 138-46. Thus, trial counsel did in fact ensure he obtained discovery from the  
5 State, and at trial presented the best documentation of the incident that was available to him.

6 Petitioner also complains about counsel advising him as to the elements of Trafficking  
7 in Controlled Substance, and states that by doing so counsel was an “advocate for the state,  
8 not for the defense.” Petition at 12-13. Based on Petitioner’s own pleading, it appears counsel  
9 correctly informed Petitioner that the key element of the offense was the amount of the  
10 controlled substance, and that it did not require separate proof of intent to sell. See NRS  
11 453.3385. Providing Petitioner with accurate information as to the charges he was facing was  
12 clearly not deficient performance; in fact, it was counsel’s duty to do so. Accordingly,  
13 Petitioner is not entitled to relief on this claim.

14 **c. Ground Three Ineffective Assistance of Trial Counsel for Inadequate Pre-**  
15 **Trial Contact**

16 Petitioner alleges his trial counsel was ineffective for failing to meet and communicate  
17 with him. Petition at 15. Petitioner fails to provide any specificity as to how this alleged lack  
18 of communication amounted to deficient performance or prejudiced him at trial. See  
19 Strickland, 466 U.S. at 697, 104 S.Ct. at 2069. See also NRS 34.735 (stating that failure to  
20 raise specific facts rather than conclusions may cause a petition to be dismissed); Hargrove,  
21 100 Nev. at 502-03, 686 P.2d at 225.

22 Here, rather than plead any specific facts relating to this alleged lack of communication,  
23 Petitioner simply asserts that he “was extremely prejudiced by the abandonment of counsel.”  
24 Petition at 15. He fails to state what additional communication was needed or demonstrate that  
25 additional communication with counsel would have changed the outcome of his trial. Nor does  
26 he explain how he was “abandoned” by counsel. The record reveals Petitioner’s counsel  
27 extensively cross-examined witnesses at trial, presented a strong closing argument alleging  
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1 that the State had not met its burden, and represented Petitioner on appeal. Trial Transcript,  
2 C315580, Day 2, pp. 125-46, 149-52; Day 3, pp. 114-45, 149-50; Day 4, pp. 34-36, 53-59,  
3 115-25; Day 5, pp. 3-22, 32-34, 79-90. This is hardly evidence of abandonment. This  
4 conclusory claim is completely lacking in factual support. Accordingly, Petitioner is not  
5 entitled to relief on this claim.

6 **d. Ground 4: Ineffective Assistance of Trial Counsel for Failure to Conduct**  
7 **DNA Testing and Present Expert Witnesses**

8  
9 Petitioner alleges that counsel was ineffective for failing to conduct independent DNA  
10 testing of the evidence and for failing to present expert witnesses. Petition at 16-18. Not calling  
11 an expert witness or having independent testing performed is not *per se* deficient performance.  
12 If counsel and the client understand the evidence to be presented by the State and the possible  
13 outcomes of that evidence, “counsel is not required to unnecessarily exhaust all available  
14 public or private resources.” Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).  
15 Further, “strategic choices”—such as choice of witnesses—“made after thorough investigation  
16 of law and facts relevant to plausible options are virtually unchallengeable.” Strickland, 466  
17 U.S. at 691, 104 S. Ct. at 2064; Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). And  
18 simply because the State presented a DNA expert does not mean a defense expert was also  
19 required. See Harrington v. Richter, 562 U.S. 111, 131 S. Ct. 770, 791, 578 F.3d 944 (2011).  
20 (“Strickland does not enact Newton’s third law for the presentation of evidence, requiring for  
21 every prosecution expert an equal and opposite expert for the defense.”).

22 Further, Petitioner fails to specify precisely how independent DNA testing or hiring an  
23 expert DNA witness would have rendered a different trial outcome probable. The DNA expert  
24 testimony presented by the State at trial did not inculcate Petitioner. In fact, Petitioner was  
25 excluded as a contributor to the major DNA profile on the firearm recovered from the scene.  
26 Trial Transcript, C315580, Day 4, pp. 29, 35. In closing, defense counsel argued to the jury  
27 that these results exculpated Petitioner. Trial Transcript, C315580, Day 5, pp. 80, 86. It is  
28 highly improbable that further DNA testing or testimony would have benefited Petitioner,

1 when clearly DNA evidence was not the basis for his conviction. Accordingly, Petitioner is  
2 not entitled to relief on this claim.

3 **e. Ground Five: Ineffective Assistance of Trial Counsel Regarding the Denial**  
4 **of Petitioner's Request for Self-Representation**

5  
6 Petitioner alleges trial counsel was ineffective for "failure to correct the record and to  
7 preserve the denial of the conditional waiver of self-representation..." Petition at 19. Petitioner  
8 also cited a statement made by the district court at a hearing on November 1, 2016, in which  
9 the court indicated Petitioner could request to have counsel removed if he felt he and counsel  
10 had become "incompatible." *Id.* Petitioner's claim is facially unclear because he is claiming  
11 that counsel failed to correct the record while simultaneously citing a statement directly from  
12 the record in an attempt to support this claim. He appears to believe that counsel failed to  
13 present this statement by the district court to the Nevada Supreme Court on direct appeal.

14 This claim is both contradicted by the record and barred under the law of the case  
15 doctrine. *See Mann*, 118 Nev. at 354, 46 P.3d at 1230; *Hargrove*, 100 Nev. at 502, 686 P.2d  
16 at 225; *Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975). Trial counsel also  
17 represented Petitioner on direct appeal, wherein he argued that the district court erred by  
18 denying Petitioner's request to represent himself. *Valencia v. State*, Docket No. 75282 (Order  
19 of Affirmance, Apr. 12, 2019). The Nevada Supreme Court concluded that this claim was  
20 meritless, noting "the record as a whole demonstrates Petitioner did not make an unequivocal  
21 request to represent himself." *Valencia v. State*, Docket No. 75282 (Order of Affirmance, Apr.  
22 12, 2019), at 3. Accordingly, this claim is also barred by the law of the case doctrine.

23 "The law of a first appeal is law of the case on all subsequent appeals in which the facts  
24 are substantially the same." *Hall*, 91 Nev. At 315, 535 P.2d at 798 (quoting *Walker v. State*,  
25 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). "The doctrine of the law of the case cannot be  
26 avoided by a more detailed and precisely focused argument subsequently made after reflection  
27 upon the previous proceedings." *Id.* at 316, 535 P.2d at 799. Under the law of the case doctrine,  
28 issues previously decided on direct appeal may not be reargued in a habeas petition. *Pellegrini*

1 v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelton v. State, 115 Nev. 396,  
2 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, the district court cannot overrule the  
3 Nevada Supreme Court. NEV. CONST. Art. VI § 6. Therefore, the district court is barred from  
4 granting Petitioner any relief on this claim.

5 **f. Ground Six: Ineffective Assistance of Trial Counsel for Failure to Remind**  
6 **the Court that His Waiver of Self-Representation Was Conditional**

7  
8 This claim is substantially similar to Ground Five. Petitioner appears to believe trial  
9 counsel was under a duty to “remind the Court that the waiver to self-representation was  
10 conditional.” Petition at 20. It is unclear why Petitioner interpreted what occurred at the  
11 November 1, 2016 hearing in the district court as amounting to a conditional waiver of his  
12 right to self-representation, or why he believes it was trial counsel’s duty to bring this to the  
13 court’s attention, particularly considering that trial counsel was not present at the November  
14 1, 2016 hearing. The court was merely informing Petitioner that should he wish in the future  
15 to move for the removal of trial counsel, he could do so. Petitioner was certainly aware that he  
16 had the right to do so, as he had moved for the dismissal of previous counsel and filed  
17 numerous pro per motions. Regardless, for the reasons stated above, any claim regarding the  
18 district court’s denial of Petitioner’s request for self-representation is barred under the law of  
19 the case doctrine. Accordingly, the district court was barred from granting Petitioner any relief  
20 on this claim.

21 **g. Ground Seven: Ineffective Assistance of Trial Counsel for Failure to**  
22 **Provide Legal Materials**

23 Petitioner alleges trial counsel failed to provide him with legal materials. Petition at 21.  
24 This is a bare and naked claim suitable only for summary denial. See Hargrove, 100 Nev. at  
25 502, 686 P.2d at 225. Petitioner fails to identify what specific materials he believes should  
26 have been provided to him, or how provision of these materials would have rendered a  
27 different result probable at trial. Accordingly, Petitioner is not entitled to relief on this claim.  
28

1                   **h. Ground Eight: Ineffective Assistance of Trial Counsel for Failure to Object**  
2                   **to Certified Judgment of Conviction; Imposition of Habitual Sentence**

3                   As a preliminary matter, to the extent Petitioner appears to contend that the district  
4                   court erred by sentencing him pursuant to the habitual criminal statute, this is a substantive  
5                   claim that has been waived for habeas review. NRS 34.810(1) reads:

6                   The court shall dismiss a petition if the court determines that:

7                   (a) The petitioner's conviction was upon a plea of guilty or guilty  
8                   but mentally ill and the petition is not based upon an allegation  
9                   that the plea was involuntarily or unknowingly or that the plea was  
                    entered without effective assistance of counsel.

10                  (b) *The petitioner's conviction was the result of a trial and the*  
                    *grounds for the petition could have been:*

11                  1. . . .]

                    (2) *Raised in a direct appeal or a prior petition for a writ of habeas*  
                    *corpus or postconviction relief.*

12                  The Nevada Supreme Court has held that while claims of ineffective assistance of trial  
13                  and appellate counsel are appropriately raised for the first time in post-conviction proceedings,  
14                  “all other claims that are appropriate for a direct appeal must be pursued on direct appeal, or  
15                  they will be *considered waived in subsequent proceedings.*” Franklin v. State, 110 Nev. 750,  
16                  752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other grounds by Thomas  
17                  v. State, 115 Nev. 148, 979 P.2d 222 (1999)). See also NRS 34.724(2)(a) (stating that a post-  
18                  conviction petition is not a substitute for a direct appeal); Evans v. State, 117 Nev. 609, 646–  
19                  47, 29 P.3d 498, 523 (2001). Accordingly, Petitioner is not entitled to relief on his claim that  
20                  the sentencing court erred by imposing a habitual criminal sentence.

21                  As to Petitioner's claim that counsel should have objected to the admission of one of  
22                  the certified judgments of conviction that the State admitted at sentencing, the only argument  
23                  Petitioner offers in support of this claim is his bare assertion that “Case No. C224558 is an  
24                  illegal sentence.” Petition at 22. For Count 1, Petitioner was sentenced pursuant to the small  
25                  habitual criminal statute, and a prison sentence of 84 to 240 months was imposed. At the time  
26                  of Petitioner's sentencing, a defendant was eligible for small habitual criminal treatment upon  
27                  the proof of two prior felony convictions. NRS 207.010(1)(a). At sentencing, the State  
28

1 admitted four certified judgments of conviction. Certified judgments of conviction are prima  
2 facie evidence of a defendant's previous convictions. NRS 207.016(5). Thus, counsel could  
3 not have raised a valid legal objection to the certified judgments of conviction. To do so would  
4 have been futile, and counsel cannot be found ineffective for failure to raise futile objections  
5 or motions. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Furthermore,  
6 Petitioner only claims one of his admitted convictions was invalid. Even if that conviction had  
7 not been presented, the State still presented three other certified judgments of conviction. This  
8 was more than enough to adjudicate Petitioner as a habitual criminal. Thus, Petitioner cannot  
9 demonstrate he was prejudiced. Accordingly, Petitioner is not entitled to relief on this claim.

10 **i. Ground Nine: Ineffective Assistance of Trial Counsel for Failure to Request**  
11 **a Change of Venue**

12 Petitioner claims that counsel "failed to request change of venue for a jury who  
13 explained to the court that Ms. Plunkett had brought cell phones into the jail on that all that he  
14 seen on the news..." Petition at 23. To the best the State can ascertain, Petitioner appears to  
15 claim that trial counsel Gregory Coyer should have requested a change of venue due to there  
16 having been local media coverage regarding an incident involving Mr. Coyer's co-counsel Ms.  
17 Plunkett bringing a cell phone into the Clark County Detention Center. This claim is nearly  
18 incomprehensible and is entirely lacking in support or explanation as to why Petitioner  
19 believes a change in venue was warranted, or how he was prejudiced. This is a bare and naked  
20 allegation suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

21 Further, a motion to change venue would have been futile, and counsel cannot be held  
22 ineffective for failing to file a futile motion. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. A  
23 request for a change in venue must comply with the requirements of NRS 174.455(1), which  
24 states that "[a] criminal action prosecuted by indictment, information or complaint may be  
25 removed from the court in which it is pending, on application of the defendant or state, *on the*  
26 *ground that a fair and impartial trial cannot be had* in the county where the indictment,  
27 information or complaint is pending." (emphasis added). Additionally, a motion to change  
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1 venue cannot be granted by the district court until after voir dire examination of the  
2 jury. NRS 174.455(2). Such a motion requires a demonstration that members of the jury were  
3 biased against the defendant, not defendant's counsel. See Rhyne, 118 Nev. at 11, 38 P.3d at  
4 169. There is nothing in the record of voir dire in this case indicating that any members of the  
5 jury were prejudiced against Petitioner. Thus, any request for a change in venue would have  
6 been futile. Accordingly, Petitioner is not entitled to relief on this claim.

7 To the extent Petitioner appears to claim that counsel failed to object to the "admittance  
8 of the bag with the gun", this claim was raised on direct appeal and rejected by the Nevada  
9 Supreme Court. See Valencia v. State, Docket No. 75282 (Order of Affirmance, Apr. 12,  
10 2019), at 03-05. The Nevada Supreme Court stated as follows:

11 Petitioner was not denied a fair trial as the evidence bag that the officer read  
12 from had already been admitted without objection from Petitioner and neither  
13 the State nor Petitioner realized it contained the ex-felon language...the district  
14 court properly found that the prejudicial effect was minimal as the ex-felon  
15 testimony was a passing comment that the district court did not permit to be  
16 expounded on.

17 Id. at 04-05.

18 This holding is the law of the case and this issue cannot be revisited in a habeas petition. See  
19 Pellegrini, 117 Nev. at 879, 34 P.3d at 532. Petitioner also ignores the fact that trial counsel  
20 requested a mistrial based on the witness inadvertently reading this information from the bag  
21 containing the firearm. Trial Transcript, C315580, Day 4, p. 86-93.

22 To the extent Petitioner claims trial counsel should have objected to "perjured  
23 testimony", Petitioner fails to support his claim that this testimony was perjured, beyond  
24 simply making this bare allegation. Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. It is highly  
25 improbable that counsel objecting to a witness's testimony and asserting the witness was  
26 committing perjury would have benefited Petitioner in any way, as such an objection would  
27 be at best improper, and at worst outright misconduct, as counsel is not permitted to testify,  
28 nor is counsel permitted to express a personal opinion as to whether or not a witness is being  
truthful. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990) ("It is improper

argument for counsel to characterize a witness as a liar.”). Further, whether or not to object is a strategic decision, which is virtually unchallengeable. Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992). Accordingly, Petitioner is not entitled to relief on this claim.

**j. Ground Ten: Ineffective Assistance of Trial Counsel for Not Presenting a Defense, Subpoenaing Witnesses or Requesting Video Footage**

Petitioner alleged that trial counsel deprived him of a defense. Petition at 24. Petitioner appears to believe that trial counsel should have presented a defense that the police fabricated the incident and maintains that this fabrication can be shown by DNA, fingerprints, and witness Eric Gilbert. Id. To the extent Petitioner maintains his counsel did not present a defense, this claim is contradicted by the record and thus does not entitle Petitioner to relief. See, e.g., Mann, 118 Nev. at 354, 46 P.3d at 1230. As to his complaint that counsel did not present a defense of “police fabrication”, the decision not to raise such a defense was a strategic choice within the sole discretion of counsel. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002) (stating that trial counsel has the “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop.”).

The record reveals that DNA and fingerprint analyses were performed on the recovered firearm, and those results were presented at trial. Trial Transcript, C315580, Day 4, pp. 19-30, 42-59. Neither Petitioner’s DNA nor his fingerprints were found on the firearm, but despite Petitioner’s claims, this did not establish that the police “fabricated” this incident. Furthermore, trial counsel argued in closing that these results exonerated Petitioner. Trial Transcript, C315580, Day 5, pp. 80, 86. Contrary to Petitioner’s assertion, trial counsel did in fact present a defense. Though trial counsel did not allege that the testifying police officers had fabricated the entire incident, counsel presented the far more reasonable argument that the police were mistaken as to the identity of the perpetrator and had rushed to judgment in identifying Petitioner. Id. at 79-90. The decision to present this particular defense was within the discretion of trial counsel. Rhyne, 118 Nev. at 8, 38 P.3d at 167 (2002).



1 As to Petitioner's contention that police fabrication could have been proven through  
2 the witness Eric Gilbert, Petitioner fails to provide a cogent explanation as to how this  
3 individual would have done so. The record reveals that Eric Gilbert attempted to steal the  
4 moped that Petitioner was riding on the date of the initial police incident. Trial Transcript,  
5 C315580 Day 3, pp. 57, 62. Petitioner refers to a voluntary statement presumably made by  
6 Eric Gilbert, but none of the purported statements point to police fabrication or another  
7 individual as the perpetrator. Thus, this is a bare allegation that must be summarily denied.  
8 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.

9 Petitioner is also not entitled to relief on his claims that trial counsel failed to subpoena  
10 witnesses. The decision not to call witnesses is within the discretion of trial counsel and will  
11 not be questioned unless it was a plainly unreasonable decision. See Rhyne, 118 Nev. at 8, 38  
12 P.3d at 168 (2002); Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992). "[T]he  
13 trial lawyer alone is entrusted with decisions regarding legal tactics such as deciding what  
14 witnesses to call." Rhyne, 118 Nev. at 8, 38 P.3d at 167. When defense counsel does not have  
15 a solid case, the best strategy can be to say that there is too much doubt about the State's theory  
16 for a jury to convict. See Harrington, 562 U.S. at 111, 131 S. Ct. at 791. Further, Petitioner  
17 fails to identify the supposed alibi witness he believes counsel should have called, or any  
18 helpful information that could have been presented through Eric Gilbert's testimony. To  
19 satisfy the Strickland standard and establish ineffectiveness for failure to interview or obtain  
20 witnesses, a petitioner must allege *in the pleadings* the substance of the missing witness'  
21 testimony and demonstrate how such testimony would have resulted in a more favorable  
22 outcome. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004); State v. Haberstroh,  
23 119 Nev. 173, 185, 69 P.3d 676, 684 (2003). Petitioner has clearly not met this burden.

24 As to Petitioner's claim that counsel failed to subpoena "dashcam footage", nothing in  
25 the record indicates that there was such footage in this case. Further, Petitioner fails to  
26 adequately explain how such footage, even if it existed, would have altered the outcome of his  
27 trial. The testimony at trial was that Petitioner pointed a firearm at Officer Jacobitz during a  
28 foot pursuit in an alleyway, and thus any sort of "dashcam" would not have captured the

1 incident. Trial Transcript, C315580, Day 3, pp. 37-40. Thus, Petitioner's allegation that  
2 counsel did not obtain dashcam footage, even if true, would not entitle him to relief. See  
3 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Accordingly, this claim must be summarily  
4 denied.

5 As to Petitioner's claim that counsel failed to request the photograph used for  
6 identification, Petitioner fails to specify how this alleged failure amounted to deficient  
7 performance or how it prejudiced him at trial. Accordingly, this claim must be summarily  
8 denied.

9 As to his claims that counsel failed to correct misinformation from the prosecutor and  
10 failed to object to inconsistencies, these bare allegations are entirely vague with no citation to  
11 the record. Petitioner also fails to specify the misinformation and the inconsistencies to which  
12 he refers. Petitioner has not met his burden to present specific factual allegations. See  
13 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Accordingly, these claims must be summarily  
14 denied.

15 **k. Ground Eleven: Ineffective Assistance of Trial Counsel for Failure to**  
16 **Investigate and Prepare for Trial**

17 Petitioner raises several broad allegations that must be summarily denied pursuant to  
18 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. He alleges that counsel failed to investigate  
19 but fails to specify what matters should have been investigated, or to show how a better  
20 investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at  
21 192, 87 P.3d at 538. He repeats his allegation that counsel failed to call witnesses but does not  
22 specify what witnesses should have been called or the expected substance of such testimony.  
23 He complains that counsel did not make an opening statement but fails to explain how this  
24 amounted to deficient performance or how it prejudiced him. He also raises a nearly  
25 incomprehensible allegation that counsel failed to raise a legally cognizable defense that could  
26 render a sentence of life in prison unreliable. It is entirely unclear what Petitioner even means  
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1 by a life sentence being “unreliable” or what defense he believes counsel should have raised.  
2 This claim is so devoid of specificity that it must be summarily denied.

3 As to Petitioner’s claim that counsel failed to instruct the jury as to the exculpatory  
4 value of the DNA evidence, this claim is belied by the record. Mann, 118 Nev. at 354, 46 P.3d  
5 at 1230. During closing argument, trial counsel explicitly stated to the jury that the DNA and  
6 fingerprint results exonerated Petitioner. Trial Transcript, C315580 Day 5, p. 80. Accordingly,  
7 this claim must be denied.

8 To the extent that Petitioner appears to maintain counsel was ineffective on appeal,  
9 Petitioner has not met his burden of pleading specific facts to demonstrate ineffectiveness of  
10 appellate counsel. See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).  
11 Petitioner merely makes a conclusory assertion that counsel failed to prepare for appeal.  
12 Accordingly, this claim must be denied.

13 To the extent Petitioner appears to claim that counsel had a conflict of interest, he also  
14 fails to present specific factual allegations. A conflict of interest arises when counsel’s loyalty  
15 to a client is threatened by his responsibilities to another client or person, or by his own  
16 interests. Jefferson v. State, 133 Nev. 874, 876, 410 P.3d 1000, 1002 (Nev. App. 2017).  
17 Petitioner fails to identify the alleged conflict; he merely presents a conclusory assertion that  
18 there was an irreconcilable conflict. Accordingly, he is not entitled to relief on this claim.

19  
20 **I. Ground Twelve: Ineffective Assistance of Trial Counsel for Suggestive**  
21 **Identification; Ineffectiveness of Appellate Counsel; Errors by District**  
22 **Court in Jury Selection, Jury Instruction, and Sentencing**

23 All of Petitioner’s claims under this ground are bare and naked allegations that are plead  
24 in a conclusory manner, with no accompanying argument or factual explanation. Accordingly,  
25 all of these claims must be summarily denied pursuant to Hargrove, 100 Nev. at 502-03, 686  
26 P.2d at 225.

27 Further, as to Petitioner’s allegations that the district court erred during jury selection  
28 and the setting of jury instructions, as well as by sentencing Petitioner pursuant to the habitual

1 criminal statute, these are all claims that could have been raised on direct appeal. Accordingly,  
2 they cannot be considered on habeas review. See NRS 34.724(2)(a); Evans, 117 Nev. at 646–  
3 47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059.

## 4 5 **II. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

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

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

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

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

16 The Nevada Supreme Court has held that if a petition can be resolved without  
17 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.  
18 1328, 885 P.2d 603 (1994); Mann, 118 Nev. at 356, 46 P.3d at 1231. A defendant is entitled  
19 to an evidentiary hearing if his petition is supported by specific factual allegations, which, if  
20 true, would entitle him to relief unless the factual allegations are repelled by the record.  
21 Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. at 503, 686  
22 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not entitled to an  
23 evidentiary hearing on factual allegations belied or repelled by the record”). “A claim is  
24 ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the  
25 claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to hold an  
26 evidentiary hearing simply to make a complete record. See State v. Eighth Judicial Dist. Court,  
27 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered itself the  
28 ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a record as  
possible.’ This is an incorrect basis for an evidentiary hearing.”).

1 Further, the United States Supreme Court has held that an evidentiary hearing is not  
2 required simply because counsel's actions are challenged as being unreasonable strategic  
3 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge  
4 post hoc rationalization for counsel's decision making that contradicts the available evidence  
5 of counsel's actions, neither may they insist counsel confirm every aspect of the strategic basis  
6 for his or her actions. Id. There is a "strong presumption" that counsel's attention to certain  
7 issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Id. (citing  
8 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the  
9 *objective* reasonableness of counsel's performance, not counsel's *subjective* state of mind. 466  
10 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

11 Petitioner's claims do not require an evidentiary hearing. An expansion of the record is  
12 unnecessary because Petitioner has failed to assert any meritorious claims and the Petition can  
13 be disposed of with the existing record, as discussed *supra*. Marshall, 110 Nev. at 1331, 885  
14 P.2d at 605; Mann, 118 Nev. at 356, 46 P.3d at 1231. Therefore, Petitioner's request for an  
15 evidentiary hearing should be denied.

### 16 CONCLUSION

17 For the foregoing reasons, the State respectfully requests that the Petition for Writ of  
18 Habeas Corpus (Post-conviction) be denied.

19  
20 DATED this 15th day of June, 2021.

21 Respectfully submitted,

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

24  
25 BY /s/ Karen Mishler  
26 KAREN MISHLER  
27 Chief Deputy District Attorney  
28 Nevada Bar #013730

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CERTIFICATE OF SERVICE

I hereby certify that service of Document Name, was made this 15<sup>th</sup> day of June, 2021,  
by Mail via United States Postal Service to:

CEASAR VALENCIA, BAC #94307  
H.D.S.P.  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070

/s/ Kristian Falcon

Secretary for the District Attorney's Office

km/DVU

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*Alvin J. Smith*  
CLERK OF THE COURT

Case No. A-20-815616-W

Dept. No. IT

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

Cesar Sanchez Valencia  
Petitioner, #94307

**MOTION FOR THE APPOINTMENT  
OF COUNSEL**

-vs-

THE STATE OF NEVADA  
Respondents.

**REQUEST FOR EVIDENTIARY HEARING**

COMES NOW the Petitioner, Cesar Valencia, proceeding pro se, within the  
above entitled cause of action and respectfully requests this Court to consider the appointment of counsel  
for Petitioner for the prosecution of this action.

This motion is made and based upon the matters set forth here, N.R.S. 34.750(1)(2), affidavit of  
Petitioner, the attached Memorandum of Points and Authorities, as well as all other pleadings and  
documents on file within this case.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. STATEMENT OF THE CASE**

This action commenced by Petitioner Cesar Valencia, in state custody,  
pursuant to Chapter 34, et seq., petition for Writ of Habeas Corpus (Post-Conviction).

**II. STATEMENT OF THE FACTS**

To support the Petitioner's need for the appointment of counsel in this action, he states the

following:

1. The merits of claims for relief in this action are of Constitutional dimension, and  
Petitioner is likely to succeed in this case.

RECEIVED  
JUN 28 2021  
CLERK OF THE COURT



3. Petitioner is incarcerated at the Ely State Prison in Ely, Nevada. Petitioner is unable to undertake the ability, as an attorney would or could, to investigate crucial facts involved within the Petition for Writ of Habeas Corpus.
- 4 3. The issues presented in the Petition involves a complexity that Petitioner is unable to argue effectively.
- 5 4. Petitioner does not have the current legal knowledge and abilities, as an attorney would have, to properly present the case to this Court coupled with the fact that appointed counsel would be of service to the Court, Petitioner, and the Respondents as well, by sharpening the issues in this case, shaping the examination of potential witnesses and ultimately shortening the time of the prosecution of this case.
- 6 5. Petitioner has made an effort to obtain counsel, but does not have the funds necessary or available to pay for the costs of counsel, see Declaration of Petitioner.
- 7 6. Petitioner would need to have an attorney appointed to assist in the determination of whether he should agree to sign consent for a psychological examination.
- 8 7. The prison severely limits the hours that Petitioner may have access to the Law Library, and as well, the facility has very limited legal research materials and sources.
- 9 8. While the Petitioner does have the assistance of a prison law clerk, he is not an attorney and not allowed to plead before the Courts and like Petitioner, the legal assistants have limited knowledge and expertise.
- 10 9. The Petitioner and his assisting law clerks, by reason of their imprisonment, have a severely limited ability to investigate, or take depositions, expand the record or otherwise litigate this action.
- 11 10. The ends of justice will be served in this case by the appointment of professional and competent counsel to represent Petitioner.

## II. ARGUMENT

Motions for the appointment of counsel are made pursuant to N.R.S. 34.750, and are addressed to the sound discretion of the Court. Under Chapter 34.750 the Court may request an attorney to represent any

such person unable to employ counsel. On a Motion for Appointment of Counsel pursuant to N.R.S. 34.750, the District Court should consider whether appointment of counsel would be of service to the indigent petitioner, the Court, and respondents as well, by sharpening the issues in the case, shaping examination of witnesses, and ultimately shortening trial and assisting in the just determination.

In order for the appointment of counsel to be granted, the Court must consider several factors to be met in order for the appointment of counsel to be granted; (1) The merits of the claim for relief; (2) The ability to investigate crucial factors; (3) whether evidence consists of conflicting testimony effectively treated only by counsel; (4) The ability to present the case; and (5) The complexity of the legal issues raised in the petition.

### III. CONCLUSION

Based upon the facts and law presented herein, Petitioner would respectfully request this Court to weigh the factors involved within this case, and appoint counsel for Petitioner to assist this Court in the just determination of this action

Dated this 22 day of June, 2021


*HDSP*  
*PO BOX 650*  
*Indian Springs*  
*NV 89020*  
~~Ely State Prison~~  
~~P.O. Box 1989~~  
~~Ely, Nevada 89301~~

  
Petitioner.

### VERIFICATION

I declare, affirm and swear under the penalty of perjury that all of the above facts, statements and assertions are true and correct of my own knowledge. As to any such matters stated upon information or belief, I swear that I believe them all to be true and correct.

Dated this 22 day of June, 2021.

  
Petitioner, pro per.

**CERTIFICATE OF SERVICE BY MAIL**

I, Cesar Valencia #94307, hereby certify pursuant to N.R.C.P.

5(b), that on this 22 day of June, of the year 2021, I mailed a true and correct copy of the foregoing, MOTION FOR THE APPOINTMENT OF COUNSEL; REQUEST FOR EVIDENTIARY HEARING, to the following:

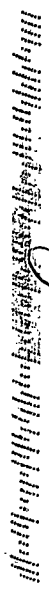
<u>clerk of the court</u> Name	<u>District Attorney</u> Name	<u>Nilda Attorney General</u> Name
<u>200 1st St SW</u> <u>Las Vegas NV 89105</u> Address	<u>200 1st St SW</u> <u>Las Vegas NV 89105</u> Address	<u>100 W Carson St</u> <u>Carson City NV 89701</u> Address

[Signature]  
Petitioner

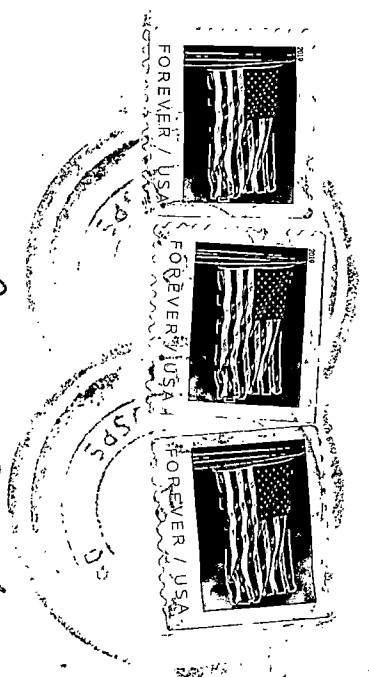
Caesar Valencia #911307  
PO Box 650  
Indian Springs NV 89107

Leah  
Mann

8910185300 0075



Clark of the Cent  
200 Lehigh Blvd  
Las Vegas NV 89155



HIGH DESERT STATE PRISON

JUN 23 2021

UNIT 6 C/D

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DOCUMENT,  
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166 - 181  
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NUMBERED PAGE(S)  
182 - 183  
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U.S. MAIL**

*Heather A. Hume*

CLERK OF THE COURT

**FCL**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
KAREN MISHLER  
Chief Deputy District Attorney  
Nevada Bar #013730  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

CEASAR SANCHAZ VALENCIA,  
#1588390

Defendant.

CASE NO: A-20-815616-W

DEPT NO: II

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

DATE OF HEARING: AUGUST 19, 2021  
TIME OF HEARING: 12:30 PM

THIS CAUSE having come on for hearing before the Honorable CARLI KIERNY, District Judge, on the 19th day of August, 2021, the Petitioner not being present, proceeding in proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through BERNARD ZADROWSKI, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT, CONCLUSIONS OF LAW**

**PROCEDURAL HISTORY**

On June 9, 2016, the State filed an Information charging Petitioner Ceasar Sanchaz Valencia (hereinafter "Petitioner") with one count of Assault on a Protected Person With Use

1 of a Deadly Weapon, one count of Ownership or Possession of Firearm by Prohibited Person,  
2 one count of Trafficking in Controlled Substance, and two counts of Possession of Controlled  
3 Substance. On June 10, 2016, Petitioner was arraigned on the Information, at which time he  
4 entered a plea of not guilty and invoked his right to a speedy trial.

5 On November 27, 2017, the matter proceeded to trial. On December 1, 2017, the jury  
6 rendered its verdict of guilty as to all counts. On January 25, 2018, Petitioner was sentenced  
7 to the Nevada Department of Corrections, pursuant to the small habitual criminal statute, as  
8 follows: Count 1 – a minimum of 84 months and a maximum of 240 months; Count 2 – a  
9 minimum of 24 months and a maximum of 72 months, concurrent to Count 1; Count 3 – a  
10 minimum of 12 months and a maximum of 48 months, concurrent with Count 2; Count 4 – a  
11 minimum of 12 months and a maximum of 48 months, concurrent with Count 3; Count 5 – a  
12 minimum of 24 months and a maximum of 72 months, concurrent to Count 4. Petitioner's total  
13 aggregate sentence was a minimum of 108 months and a maximum of 312 months. Petitioner  
14 received 615 days credit for time served. The Judgment of Conviction was filed on February  
15 6, 2018.

16 On March 1, 2018, Petitioner filed a Notice of Appeal. The Nevada Supreme Court  
17 affirmed Petitioner's Judgment of Conviction, and remittitur issued on May 7, 2019.

18 On May 28, 2020,<sup>1</sup> Petitioner filed the instant Petition for Writ of Habeas Corpus (Post-  
19 Conviction) (hereinafter "Petition"). On July 28, 2020, the Court denied the Petition. The  
20 Findings of Fact, Conclusions of Law were filed on August 7, 2020. On appeal, the Nevada  
21 Supreme Court reversed the denial of the Petition, finding that the Petition was timely filed.  
22 The Nevada Supreme Court remanded the matter back to this Court, with instructions to  
23 consider the Petition's claims on their merits. On August 19, 2021, this Court held a hearing  
24 on the merits of the Petition, and on September 9, 2021, this Court issued a minute order  
25 denying the Petition. Specifically, the Court finds as follows:

26 ///

27 ///

---

28 <sup>1</sup>The Petition reflects that though it was filed on May 28, 2020, it was received by the clerk of the court on May 4, 2020.



1 **FACTUAL SUMMARY**

2 On May 19, 2016, Las Vegas Metropolitan Police ("LVMPD") Officers Houston and  
3 Jacobitz attempted to conduct a traffic stop on Petitioner after they observed him operating a  
4 moped at a high rate of speed and failing to stop at a stop sign. Officer Jacobitz activated the  
5 patrol car's lights and sirens, and followed Petitioner until he appeared to stop and got off the  
6 moped. The officers exited their patrol car and were approximately five to eight feet away  
7 from Petitioner. Petitioner turned to face the officers, but then dropped the moped and ran  
8 away from the officers.

9 The officers pursued Petitioner on foot. Officer Jacobitz observed a firearm in  
10 Petitioner's right hand, and yelled "gun" to alert Officer Houston of the presence of a firearm.  
11 Petitioner raised the firearm and pointed it at Officer Jacobitz, however, Petitioner's elbow hit  
12 a pole which caused the gun to fall to the ground.

13 Officer Jacobitz remained with the firearm while Officer Houston continued chasing  
14 Petitioner. While waiting with the firearm, Officer Jacobitz saw two men (unrelated to this  
15 case) attempt to steal the moped that Petitioner had abandoned. Having to react quickly to this  
16 attempt theft, Officer Jacobitz retrieved the firearm without gloves so that the firearm would  
17 not be left unattended while he addressed the moped theft. Officer Jacobitz observed that the  
18 firearm was loaded and contained six rounds. Although Officer Houston continued the foot  
19 chase, ultimately Petitioner was able to flee the scene.

20 On May 21, 2016, officers arrested Petitioner during a felony vehicle stop after  
21 conducting surveillance on Petitioner. During a search of his person incident to arrest, officers  
22 located 11.60 grams of heroin, 3.1 grams of methamphetamine, 2.400 grams of cocaine, 2.67  
23 grams of methamphetamine, and \$946 in US Currency.

24 **ANALYSIS**

25 **I. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

26 All of the claims Petitioner raises are contradicted by the record, not cognizable on  
27 habeas review, barred from further consideration, or are bare and naked allegations. The  
28 majority of Petitioner's claims are ineffective-assistance-of-counsel claims. To demonstrate

1 ineffective assistance of trial counsel, a petitioner must show counsel's performance was  
2 deficient in that it fell below an objective standard of reasonableness, and prejudice resulted  
3 in that there was a reasonable probability of a different outcome in the absence of counsel's  
4 deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 2063  
5 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the  
6 Strickland test). Both components – deficient performance and prejudice – must be shown.  
7 Strickland, 466 U.S. at 687, 104 S.Ct. at 2065. “[T]here is no reason for a court deciding an  
8 ineffective assistance claim to approach the inquiry in the same order or even to address both  
9 components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697,  
10 104 S. Ct. at 2069.

11 Importantly, claims of ineffective assistance of counsel asserted in a petition for post-  
12 conviction relief must be supported with specific factual allegations, which if true, would  
13 entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225  
14 (1984). NRS 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts  
15 supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just  
16 conclusions may cause your petition to be dismissed.” (emphasis added). “Bare” and “naked”  
17 allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled  
18 by the record. Id. “A claim is ‘belied’ when it is contradicted or proven to be false by the record  
19 as it existed at the time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228,  
20 1230 (2002).

21 The court begins with the presumption of effectiveness and then must determine  
22 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
23 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
24 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
25 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
26 537 P.2d 473, 474 (1975).

27 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
28 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the

1 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
2 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
3 (2002).

4 Based on the above law, the role of a court in considering allegations of ineffective  
5 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
6 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
7 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
8 (1978). This analysis does not mean that the court should “second guess reasoned choices  
9 between trial tactics nor does it mean that defense counsel, to protect himself against  
10 allegations of inadequacy, must make every conceivable motion no matter how remote the  
11 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel  
12 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
13 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
14 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S.Ct. 2039, 2046 n.19 (1984).

15 “There are countless ways to provide effective assistance in any given case. Even the  
16 best criminal defense attorneys would not defend a particular client in the same way.”  
17 Strickland, 466 U.S. at 689, 104 S.Ct. at 689. “Strategic choices made by counsel after  
18 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
19 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
20 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s  
21 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s  
22 conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066.

23 **a. Ground One: Ineffective Assistance of Trial Counsel During the**  
24 **Preliminary Process**

25 Petitioner alleges that his initial counsel, Deputy Public Defender Steven Lisk, provided  
26 ineffective assistance during the “preliminary process and pretrial.” Petition at 6. Specifically,  
27 Petitioner alleges that Mr. Lisk did not visit him in jail, wanted him to accept a plea negotiation,  
28 and did not provide him with discovery. Id. at 6-10.

1        These allegations regarding Mr. Lisk, even if accepted as true, are insufficient to meet  
2 the Strickland standard because Petitioner cannot demonstrate that he was prejudiced as a  
3 result of Mr. Lisk's conduct. Mr. Lisk did not represent Petitioner at trial. He withdrew as  
4 counsel and Gregory E. Coyer was appointed to represent Petitioner. Thus, Petitioner cannot  
5 demonstrate a reasonable probability that the outcome of the trial would have been different  
6 in the absence of these alleged errors. Petitioner does not even allege this is the case, as he  
7 maintains he was prejudiced, not at trial, but at the preliminary hearing and calendar call.  
8 Accordingly, Petitioner is not entitled to relief on this claim.

9                    **b. Ground Two: Ineffective Assistance of Trial Counsel**

10  
11        Petitioner alleges his trial counsel was ineffective for failing to assist him with a civil  
12 forfeiture case. Petitioner has failed to state a claim for which he is entitled to relief. Based on  
13 Petitioner's own account of counsel's conduct, this does not amount to ineffective assistance.  
14 Counsel's statement to Petitioner that he was not appointed to represent him in a civil matter  
15 was correct; counsel was appointed to represent Petitioner only in the criminal case. Further,  
16 Petitioner does not explain how counsel's supposed failure to assist him in this forfeiture case  
17 prejudiced him in the criminal trial. Accordingly, this claim must be summarily denied.

18        Petitioner also alleges there was body camera footage in this case that counsel failed to  
19 provide to him. This allegation is contradicted by the record, and therefore must be dismissed.  
20 See Mann, 118 Nev. at 354, 46 P.3d at 1230; Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.  
21 At trial, Officer Houston testified that neither he nor Officer Jacobitz was wearing body-worn  
22 camera on the date of the incident, and that at the time body-worn camera was not standardly  
23 issued for department personnel. Trial Transcript, C315580, Day 2, pp. 133, 146-47.  
24 Furthermore, trial counsel obtained the radio traffic from the incident and admitted it at trial.  
25 Id. at 138. Counsel also repeatedly used the radio traffic during cross-examination of Officer  
26 Houston. Id. at 138-46. Thus, trial counsel did in fact ensure he obtained discovery from the  
27 State, and at trial presented the best documentation of the incident that was available to him.

28        ///

1           Petitioner also complains about counsel advising him as to the elements of Trafficking  
2 in Controlled Substance, and states that by doing so counsel was an “advocate for the state,  
3 not for the defense.” Petition at 12-13. Based on Petitioner’s own pleading, it appears counsel  
4 correctly informed Petitioner that the key element of the offense was the amount of the  
5 controlled substance, and that it did not require separate proof of intent to sell. See NRS  
6 453.3385. Providing Petitioner with accurate information as to the charges he was facing was  
7 clearly not deficient performance; in fact it was counsel’s duty to do so. Accordingly,  
8 Petitioner is not entitled to relief on this claim.

9                           **c. Ground Three Ineffective Assistance of Trial Counsel for Inadequate Pre-**  
10                           **Trial Contact**

11           Petitioner alleges his trial counsel was ineffective for failing to meet and communicate  
12 with him. Petition at 15. Petitioner fails to provide any specificity as to how this alleged lack  
13 of communication amounted to deficient performance or prejudiced him at trial. See  
14 Strickland, 466 U.S. at 697, 104 S.Ct. at 2069. See also NRS 34.735 (stating that failure to  
15 raise specific facts rather than conclusions may cause a petition to be dismissed); Hargrove,  
16 100 Nev. at 502-03, 686 P.2d at 225.

17           Here, rather than plead any specific facts relating to this alleged lack of communication,  
18 Petitioner simply asserts that he “was extremely prejudiced by the abandonment of counsel.”  
19 Petition at 15. He fails to state what additional communication was needed or demonstrate that  
20 additional communication with counsel would have changed the outcome of his trial. Nor does  
21 he explain how he was “abandoned” by counsel. The record reveals Petitioner’s counsel  
22 extensively cross-examined witnesses at trial, presented a strong closing argument alleging  
23 that the State had not met its burden, and represented Petitioner on appeal. Trial Transcript,  
24 C315580, Day 2, pp. 125-46, 149-52; Day 3, pp. 114-45, 149-50; Day 4, pp. 34-36, 53-59,  
25 115-25; Day 5, pp. 3-22, 32-34, 79-90. This is hardly evidence of abandonment. This  
26 conclusory claim is completely lacking in factual support. Accordingly, Petitioner is not  
27 entitled to relief on this claim.

28       ///

**d. Ground 4: Ineffective Assistance of Trial Counsel for Failure to Conduct DNA Testing and Present Expert Witnesses**

Petitioner alleges that counsel was ineffective for failing to conduct independent DNA testing of the evidence and for failing to present expert witnesses. Petition at 16-18. Not calling an expert witness or having independent testing performed is not *per se* deficient performance. If counsel and the client understand the evidence to be presented by the State and the possible outcomes of that evidence, “counsel is not required to unnecessarily exhaust all available public or private resources.” Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Further, “strategic choices”—such as choice of witnesses—“made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable.” Strickland, 466 U.S. at 691, 104 S. Ct. at 2064; Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). And simply because the State presented a DNA expert does not mean a defense expert was also required. See Harrington v. Richter, 562 U.S. 111, 131 S. Ct. 770, 791, 578 F.3d 944 (2011). (“Strickland does not enact Newton’s third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert for the defense.”).

Further, Petitioner fails to specify precisely how independent DNA testing or hiring an expert DNA witness would have rendered a different trial outcome probable. The DNA expert testimony presented by the State at trial did not inculcate Petitioner. In fact, Petitioner was excluded as a contributor to the major DNA profile on the firearm recovered from the scene. Trial Transcript, C315580, Day 4, pp. 29, 35. In closing, defense counsel argued to the jury that these results exculpated Petitioner. Trial Transcript, C315580, Day 5, pp. 80, 86. It is highly improbable that further DNA testing or testimony would have benefited Petitioner, when clearly DNA evidence was not the basis for his conviction. Accordingly, Petitioner is not entitled to relief on this claim.

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1                   **e. Ground Five: Ineffective Assistance of Trial Counsel Regarding the Denial**  
2                   **of Petitioner's Request for Self-Representation**

3                   Petitioner alleges trial counsel was ineffective for "failure to correct the record and to  
4                   preserve the denial of the conditional waiver of self representation..." Petition at 19. Petitioner  
5                   also cited a statement made by the district court at a hearing on November 1, 2016, in which  
6                   the court indicated Petitioner could request to have counsel removed if he felt he and counsel  
7                   had become "incompatible." Id. Petitioner's claim is facially unclear because he is claiming  
8                   that counsel failed to correct the record while simultaneously citing a statement directly from  
9                   the record in an attempt to support this claim. He appears to believe that counsel failed to  
10                  present this statement by the district court to the Nevada Supreme Court on direct appeal.

11                 This claim is both contradicted by the record and barred under the law of the case  
12                 doctrine. See Mann, 118 Nev. at 354, 46 P.3d at 1230; Hargrove, 100 Nev. at 502, 686 P.2d at  
13                 225; Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975). Trial counsel also represented  
14                 Petitioner on direct appeal, wherein he argued that the district court erred by denying  
15                 Petitioner's request to represent himself. Valencia v. State, Docket No. 75282 (Order of  
16                 Affirmance, Apr. 12, 2019). The Nevada Supreme Court concluded that this claim was  
17                 meritless, noting "the record as a whole demonstrates Petitioner did not make an unequivocal  
18                 request to represent himself." Valencia v. State, Docket No. 75282 (Order of Affirmance, Apr.  
19                 12, 2019), at 3. Accordingly, this claim is also barred by the law of the case doctrine.

20                 "The law of a first appeal is law of the case on all subsequent appeals in which the facts  
21                 are substantially the same." Hall, 91 Nev. At 315, 535 P.2d at 798 (quoting Walker v. State,  
22                 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). "The doctrine of the law of the case cannot be  
23                 avoided by a more detailed and precisely focused argument subsequently made after reflection  
24                 upon the previous proceedings." Id. at 316, 535 P.2d at 799. Under the law of the case doctrine,  
25                 issues previously decided on direct appeal may not be reargued in a habeas petition. Pellegrini  
26                 v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelson v. State, 115 Nev. 396,  
27                 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, the district court cannot overrule the  
28

1 Nevada Supreme Court. NEV. CONST. Art. VI § 6. Therefore, the district court is barred from  
2 granting Petitioner any relief on this claim.

3 **f. Ground Six: Ineffective Assistance of Trial Counsel for Failure to Remind**  
4 **the Court that His Waiver of Self-Representation Was Conditional**

5 This claim is substantially similar to Ground Five. Petitioner appears to believe trial  
6 counsel was under a duty to “remind the Court that the waiver to self representation was  
7 conditional.” Petition at 20. It is unclear why Petitioner interpreted what occurred at the  
8 November 1, 2016 hearing in the district court as amounting to a conditional waiver of his  
9 right to self-representation, or why he believes it was trial counsel’s duty to bring this to the  
10 court’s attention, particularly considering that trial counsel was not present at the November  
11 1, 2016 hearing. The court was merely informing Petitioner that should he wish in the future  
12 to move for the removal of trial counsel, he could do so. Petitioner was certainly aware that he  
13 had the right to do so, as he had moved for the dismissal of previous counsel and filed  
14 numerous pro per motions. Regardless, for the reasons stated above, any claim regarding the  
15 district court’s denial of Petitioner’s request for self-representation is barred under the law of  
16 the case doctrine. Accordingly, the district court was barred from granting Petitioner any relief  
17 on this claim.

18 **g. Ground Seven: Ineffective Assistance of Trial Counsel for Failure to**  
19 **Provide Legal Materials**

20 Petitioner alleges trial counsel failed to provide him with legal materials. Petition at 21.  
21 This is a bare and naked claim suitable only for summary denial. See Hargrove, 100 Nev. at  
22 502, 686 P.2d at 225. Petitioner fails to identify what specific materials he believes should  
23 have been provided to him, or how provision of these materials would have rendered a different  
24 result probable at trial. Accordingly, Petitioner is not entitled to relief on this claim.

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1                   **h. Ground Eight: Ineffective Assistance of Trial Counsel for Failure to Object**  
2                   **to Certified Judgment of Conviction; Imposition of Habitual Sentence**

3                   As a preliminary matter, to the extent Petitioner appears to contend that the district court  
4                   erred by sentencing him pursuant to the habitual criminal statute, this is a substantive claim  
5                   that has been waived for habeas review. NRS 34.810(1) reads:

6                   The court shall dismiss a petition if the court determines that:

7                   (a) The petitioner's conviction was upon a plea of guilty or guilty  
8                   but mentally ill and the petition is not based upon an allegation  
9                   that the plea was involuntarily or unknowingly or that the plea was  
10                  entered without effective assistance of counsel.

11                  (b) *The petitioner's conviction was the result of a trial and the*  
12                  *grounds for the petition could have been:*

13                  *1. . .*

14                  *(2) Raised in a direct appeal or a prior petition for a writ of habeas*  
15                  *corpus or postconviction relief.*

16                  The Nevada Supreme Court has held that while claims of ineffective assistance of trial  
17                  and appellate counsel are appropriately raised for the first time in post-conviction proceedings,  
18                  “all other claims that are appropriate for a direct appeal must be pursued on direct appeal, or  
19                  they will be *considered waived in subsequent proceedings.*” Franklin v. State, 110 Nev. 750,  
20                  752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other grounds by Thomas  
21                  v. State, 115 Nev. 148, 979 P.2d 222 (1999)). See also NRS 34.724(2)(a) (stating that a post-  
22                  conviction petition is not a substitute for a direct appeal); Evans v. State, 117 Nev. 609, 646–  
23                  47, 29 P.3d 498, 523 (2001). Accordingly, Petitioner is not entitled to relief on his claim that  
24                  the sentencing court erred by imposing a habitual criminal sentence.

25                  As to Petitioner's claim that counsel should have objected to the admission of one of  
26                  the certified judgments of conviction that the State admitted at sentencing, the only argument  
27                  Petitioner offers in support of this claim is his bare assertion that “Case No. C224558 is an  
28                  illegal sentence.” Petition at 22. For Count 1, Petitioner was sentenced pursuant to the small  
                 habitual criminal statute, and a prison sentence of 84 to 240 months was imposed. At the time  
                 of Petitioner's sentencing, a defendant was eligible for small habitual criminal treatment upon  
                 the proof of two prior felony convictions. NRS 207.010(1)(a). At sentencing, the State  
                 admitted four certified judgments of conviction. Certified judgments of conviction are prima

1 facie evidence of a defendant's previous convictions. NRS 207.016(5). Thus, counsel could  
2 not have raised a valid legal objection to the certified judgments of conviction. To do so would  
3 have been futile, and counsel cannot be found ineffective for failure to raise futile objections  
4 or motions. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Furthermore,  
5 Petitioner only claims one of his admitted convictions was invalid. Even if that conviction had  
6 not been presented, the State still presented three other certified judgments of conviction. This  
7 was more than enough to adjudicate Petitioner as a habitual criminal. Thus, Petitioner cannot  
8 demonstrate he was prejudiced. Accordingly, Petitioner is not entitled to relief on this claim.

9  
10 **i. Ground Nine: Ineffective Assistance of Trial Counsel for Failure to Request  
a Change of Venue**

11 Petitioner claims that counsel "failed to request change of venue for a jury who  
12 explained to the court that Ms. Plunkett had brought cell phones into the jail on that all that he  
13 seen on the news..." Petition at 23. To the best the State can ascertain, Petitioner appears to  
14 claim that trial counsel Gregory Coyer should have requested a change of venue due to there  
15 having been local media coverage regarding an incident involving Mr. Coyer's co-counsel Ms.  
16 Plunkett bringing a cell phone into the Clark County Detention Center. This claim is nearly  
17 incomprehensible, and is entirely lacking in support or explanation as to why Petitioner  
18 believes a change in venue was warranted, or how he was prejudiced. This is a bare and naked  
19 allegation suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

20 Further, a motion to change venue would have been futile, and counsel cannot be held  
21 ineffective for failing to file a futile motion. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. A  
22 request for a change in venue must comply with the requirements of NRS 174.455(1), which  
23 states that "[a] criminal action prosecuted by indictment, information or complaint may be  
24 removed from the court in which it is pending, on application of the defendant or state, *on the*  
25 *ground that a fair and impartial trial cannot be had* in the county where the indictment,  
26 information or complaint is pending." (emphasis added). Additionally, a motion to change  
27 venue cannot be granted by the district court until after voir dire examination of the  
28 jury. NRS 174.455(2). Such a motion requires a demonstration that members of the jury were

1 biased against the defendant, not defendant's counsel. See Rhyne, 118 Nev. at 11, 38 P.3d at  
2 169. There is nothing in the record of voir dire in this case indicating that any members of the  
3 jury were prejudiced against Petitioner. Thus, any request for a change in venue would have  
4 been futile. Accordingly, Petitioner is not entitled to relief on this claim.

5 To the extent Petitioner appears to claim that counsel failed to object to the "admittance  
6 of the bag with the gun", this claim was raised on direct appeal and rejected by the Nevada  
7 Supreme Court. See Valencia v. State, Docket No. 75282 (Order of Affirmance, Apr. 12,  
8 2019), at 03-05. The Nevada Supreme Court stated as follows:

9 Petitioner was not denied a fair trial as the evidence bag that the officer read  
10 from had already been admitted without objection from Petitioner and neither  
11 the State nor Petitioner realized it contained the ex-felon language...the district  
12 court properly found that the prejudicial effect was minimal as the ex-felon  
13 testimony was a passing comment that the district court did not permit to be  
14 expounded on.

15 Id. at 04-05.

16 This holding is the law of the case and this issue cannot be revisited in a habeas petition. See  
17 Pellegrini, 117 Nev. at 879, 34 P.3d at 532. Petitioner also ignores the fact that trial counsel  
18 requested a mistrial based on the witness inadvertently reading this information from the bag  
19 containing the firearm. Trial Transcript, C315580, Day 4, p. 86-93.

20 To the extent Petitioner claims trial counsel should have objected to "perjured  
21 testimony", Petitioner fails to support his claim that this testimony was perjured, beyond  
22 simply making this bare allegation. Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. It is highly  
23 improbable that counsel objecting to a witness's testimony and asserting the witness was  
24 committing perjury would have benefited Petitioner in any way, as such an objection would  
25 be at best improper, and at worst outright misconduct, as counsel is not permitted to testify,  
26 nor is counsel permitted to express a personal opinion as to whether or not a witness is being  
27 truthful. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990) ("It is improper  
28 argument for counsel to characterize a witness as a liar."). Further, whether or not to object is

1 a strategic decision, which is virtually unchallengeable. Dawson v. State, 108 Nev. 112, 117,  
2 825 P.2d 593, 596 (1992). Accordingly, Petitioner is not entitled to relief on this claim.

3  
4 **j. Ground Ten: Ineffective Assistance of Trial Counsel for Not Presenting a**  
5 **Defense, Subpoenaing Witnesses or Requesting Video Footage**

6 Petitioner alleged that trial counsel deprived him of a defense. Petition at 24. Petitioner  
7 appears to believe that trial counsel should have presented a defense that the police fabricated  
8 the incident and maintains that this fabrication can be shown by DNA, fingerprints, and  
9 witness Eric Gilbert. Id. To the extent Petitioner maintains his counsel did not present a  
10 defense, this claim is contradicted by the record and thus does not entitle Petitioner to relief.  
11 See, e.g., Mann, 118 Nev. at 354, 46 P.3d at 1230. As to his complaint that counsel did not  
12 present a defense of “police fabrication”, the decision not to raise such a defense was a strategic  
13 choice within the sole discretion of counsel. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
14 (2002) (stating that trial counsel has the “immediate and ultimate responsibility of deciding if  
15 and when to object, which witnesses, if any, to call, and what defenses to develop.”).

16 The record reveals that DNA and fingerprint analyses were performed on the recovered  
17 firearm, and those results were presented at trial. Trial Transcript, C315580, Day 4, pp. 19-30,  
18 42-59. Neither Petitioner’s DNA nor his fingerprints were found on the firearm, but despite  
19 Petitioner’s claims, this did not establish that the police “fabricated” this incident.  
20 Furthermore, trial counsel argued in closing that these results exonerated Petitioner. Trial  
21 Transcript, C315580, Day 5, pp. 80, 86. Contrary to Petitioner’s assertion, trial counsel did in  
22 fact present a defense. Though trial counsel did not allege that the testifying police officers  
23 had fabricated the entire incident, counsel presented the far more reasonable argument that the  
24 police were mistaken as to the identity of the perpetrator and had rushed to judgment in  
25 identifying Petitioner. Id. at 79-90. The decision to present this particular defense was within  
26 the discretion of trial counsel. Rhyne, 118 Nev. at 8, 38 P.3d at 167 (2002).

27 As to Petitioner’s contention that police fabrication could have been proven through the  
28 witness Eric Gilbert, Petitioner fails to provide a cogent explanation as to how this individual

1 would have done so. The record reveals that Eric Gilbert attempted to steal the moped that  
2 Petitioner was riding on the date of the initial police incident. Trial Transcript, C315580 Day  
3 3, pp. 57, 62. Petitioner refers to a voluntary statement presumably made by Eric Gilbert, but  
4 none of the purported statements point to police fabrication or another individual as the  
5 perpetrator. Thus, this is a bare allegation that must be summarily denied. Hargrove, 100 Nev.  
6 at 502-03, 686 P.2d at 225.

7 Petitioner is also not entitled to relief on his claims that trial counsel failed to subpoena  
8 witnesses. The decision not to call witnesses is within the discretion of trial counsel and will  
9 not be questioned unless it was a plainly unreasonable decision. See Rhyne, 118 Nev. at 8, 38  
10 P.3d at 168 (2002); Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992). “[T]he  
11 trial lawyer alone is entrusted with decisions regarding legal tactics such as deciding what  
12 witnesses to call.” Rhyne, 118 Nev. at 8, 38 P.3d at 167. When defense counsel does not have  
13 a solid case, the best strategy can be to say that there is too much doubt about the State’s theory  
14 for a jury to convict. See Harrington, 562 U.S. at 111, 131 S. Ct. at 791. Further, Petitioner  
15 fails to identify the supposed alibi witness he believes counsel should have called, or any  
16 helpful information that could have been presented through Eric Gilbert’s testimony. To satisfy  
17 the Strickland standard and establish ineffectiveness for failure to interview or obtain  
18 witnesses, a petitioner must allege *in the pleadings* the substance of the missing witness’  
19 testimony, and demonstrate how such testimony would have resulted in a more favorable  
20 outcome. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004); State v. Haberstroh,  
21 119 Nev. 173, 185, 69 P.3d 676, 684 (2003). Petitioner has clearly not met this burden.

22 As to Petitioner’s claim that counsel failed to subpoena “dashcam footage”, nothing in  
23 the record indicates that there was such footage in this case. Further, Petitioner fails to  
24 adequately explain how such footage, even if it existed, would have altered the outcome of his  
25 trial. The testimony at trial was that Petitioner pointed a firearm at Officer Jacobitz during a  
26 foot pursuit in an alleyway, and thus any sort of “dashcam” would not have captured the  
27 incident. Trial Transcript, C315580, Day 3, pp. 37-40. Thus, Petitioner’s allegation that  
28

1 counsel did not obtain dashcam footage, even if true, would not entitle him to relief. See  
2 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Accordingly, this claim is summarily denied.

3 As to Petitioner's claim that counsel failed to request the photograph used for  
4 identification, Petitioner fails to specify how this alleged failure amounted to deficient  
5 performance or how it prejudiced him at trial. Accordingly, this claim is summarily denied.

6 As to his claims that counsel failed to correct misinformation from the prosecutor and  
7 failed to object to inconsistencies, these bare allegations are entirely vague with no citation to  
8 the record. Petitioner also fails to specify the misinformation and the inconsistencies to which  
9 he refers. Petitioner has not met his burden to present specific factual allegations. See  
10 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Accordingly, these claims are summarily  
11 denied.

12 **k. Ground Eleven: Ineffective Assistance of Trial Counsel for Failure to**  
13 **Investigate and Prepare for Trial**

14 Petitioner raises several broad allegations that must be summarily denied pursuant to  
15 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. He alleges that counsel failed to investigate,  
16 but fails to specify what matters should have been investigated, or to show how a better  
17 investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at  
18 192, 87 P.3d at 538. He repeats his allegation that counsel failed to call witnesses, but does not  
19 specify what witnesses should have been called or the expected substance of such testimony.  
20 He complains that counsel did not make an opening statement, but fails to explain how this  
21 amounted to deficient performance or how it prejudiced him. He also raises a nearly  
22 incomprehensible allegation that counsel failed to raise a legally cognizable defense that could  
23 render a sentence of life in prison unreliable. It is entirely unclear what Petitioner even means  
24 by a life sentence being "unreliable" or what defense he believes counsel should have raised.  
25 This claim is so devoid of specificity that it must be summarily denied.

26 As to Petitioner's claim that counsel failed to instruct the jury as to the exculpatory  
27 value of the DNA evidence, this claim is belied by the record. Mann, 118 Nev. at 354, 46 P.3d  
28 at 1230. During closing argument, trial counsel explicitly stated to the jury that the DNA and

1 fingerprint results exonerated Petitioner. Trial Transcript, C315580 Day 5, p. 80. Accordingly,  
2 this claim must be denied.

3 To the extent that Petitioner appears to maintain counsel was ineffective on appeal,  
4 Petitioner has not met his burden of pleading specific facts to demonstrate ineffectiveness of  
5 appellate counsel. See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).  
6 Petitioner merely makes a conclusory assertion that counsel failed to prepare for appeal.  
7 Accordingly, this claim must be denied.

8 To the extent Petitioner appears to claim that counsel had a conflict of interest, he also  
9 fails to present specific factual allegations. A conflict of interest arises when counsel's loyalty  
10 to a client is threatened by his responsibilities to another client or person, or by his own  
11 interests. Jefferson v. State, 133 Nev. 874, 876, 410 P.3d 1000, 1002 (Nev. App. 2017).  
12 Petitioner fails to identify the alleged conflict; he merely presents a conclusory assertion that  
13 there was an irreconcilable conflict. Accordingly, he is not entitled to relief on this claim.

14  
15 **I. Ground Twelve: Ineffective Assistance of Trial Counsel for Suggestive**  
16 **Identification; Ineffectiveness of Appellate Counsel; Errors by District**  
17 **Court in Jury Selection, Jury Instruction, and Sentencing**

18 All of Petitioner's claims under this ground are bare and naked allegations that are plead  
19 in a conclusory manner, with no accompanying argument or factual explanation. Accordingly,  
20 all of these claims must be summarily denied pursuant to Hargrove, 100 Nev. at 502-03, 686  
21 P.2d at 225.

22 Further, as to Petitioner's allegations that the district court erred during jury selection  
23 and the setting of jury instructions, as well as by sentencing Petitioner pursuant to the habitual  
24 criminal statute, these are all claims that could have been raised on direct appeal. Accordingly,  
25 they cannot be considered on habeas review. See NRS 34.724(2)(a); Evans, 117 Nev. at 646-  
26 47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059.

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## II. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING

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

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

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann, 118 Nev. at 356, 46 P.3d at 1231. A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. at 503, 686 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to hold an evidentiary hearing simply to make a complete record. See State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

Further, the United States Supreme Court has held that an evidentiary hearing is not required simply because counsel’s actions are challenged as being unreasonable strategic decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge post hoc rationalization for counsel’s decision making that contradicts the available evidence of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis



1 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain  
2 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (citing  
3 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the  
4 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466  
5 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

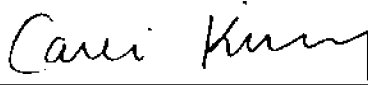
6 Petitioner’s claims do not require an evidentiary hearing. An expansion of the record is  
7 unnecessary because Petitioner has failed to assert any meritorious claims and the Petition can  
8 be disposed of with the existing record, as discussed *supra*. Marshall, 110 Nev. at 1331, 885  
9 P.2d at 605; Mann, 118 Nev. at 356, 46 P.3d at 1231. Therefore, Petitioner’s request for an  
10 evidentiary hearing is denied.

11 **ORDER**

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

14 DATED this \_\_\_\_\_ day of November, 2021.

Dated this 3rd day of November, 2021

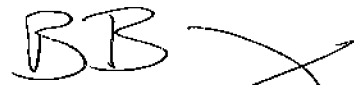


DISTRICT JUDGE

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

FE9 C94 108F 979C  
Carli Kierny  
District Court Judge

19 BY



For

20 KAREN MISHLER  
21 Chief Deputy District Attorney  
Nevada Bar #013730

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Ceasar Valencia, Plaintiff(s)

CASE NO: A-20-815616-W

7 vs.

DEPT. NO. Department 2

8 State of Nevada, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 11/3/2021

15 NOREEN DEMONTE

nykosn@co.clark.nv.us



NEFF

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CEASAR VALENCIA,

Petitioner,

Case No: A-20-815616-W

Dept No: II

vs.

STATE OF NEVADA,

Respondent,

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

**PLEASE TAKE NOTICE** that on November 3, 2021, 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 November 8, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Ingrid Ramos

Ingrid Ramos, Deputy Clerk

**CERTIFICATE OF E-SERVICE / MAILING**

I hereby certify that on this 8 day of November 2021, 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:

Cesar Valencia # 94307  
P.O. BOX 650  
Indian Springs, NV 89070

/s/ Ingrid Ramos

Ingrid Ramos, Deputy Clerk

WCLARKCOUNTYDA.NET:CRPGCASE7236631005391099C-FOUO-OTHER MANNER OF DISPOSITION (USUR OT)

1 of a Deadly Weapon, one count of Ownership or Possession of Firearm by Prohibited Person,  
2 one count of Trafficking in Controlled Substance, and two counts of Possession of Controlled  
3 Substance. On June 10, 2016, Petitioner was arraigned on the Information, at which time he  
4 entered a plea of not guilty and invoked his right to a speedy trial.

5 On November 27, 2017, the matter proceeded to trial. On December 1, 2017, the jury  
6 rendered its verdict of guilty as to all counts. On January 25, 2018, Petitioner was sentenced  
7 to the Nevada Department of Corrections, pursuant to the small habitual criminal statute, as  
8 follows: Count 1 – a minimum of 84 months and a maximum of 240 months; Count 2 – a  
9 minimum of 24 months and a maximum of 72 months, concurrent to Count 1; Count 3 – a  
10 minimum of 12 months and a maximum of 48 months, concurrent with Count 2; Count 4 – a  
11 minimum of 12 months and a maximum of 48 months, concurrent with Count 3; Count 5 – a  
12 minimum of 24 months and a maximum of 72 months, concurrent to Count 4. Petitioner's total  
13 aggregate sentence was a minimum of 108 months and a maximum of 312 months. Petitioner  
14 received 615 days credit for time served. The Judgment of Conviction was filed on February  
15 6, 2018.

16 On March 1, 2018, Petitioner filed a Notice of Appeal. The Nevada Supreme Court  
17 affirmed Petitioner's Judgment of Conviction, and remittitur issued on May 7, 2019.

18 On May 28, 2020,<sup>1</sup> Petitioner filed the instant Petition for Writ of Habeas Corpus (Post-  
19 Conviction) (hereinafter "Petition"). On July 28, 2020, the Court denied the Petition. The  
20 Findings of Fact, Conclusions of Law were filed on August 7, 2020. On appeal, the Nevada  
21 Supreme Court reversed the denial of the Petition, finding that the Petition was timely filed.  
22 The Nevada Supreme Court remanded the matter back to this Court, with instructions to  
23 consider the Petition's claims on their merits. On August 19, 2021, this Court held a hearing  
24 on the merits of the Petition, and on September 9, 2021, this Court issued a minute order  
25 denying the Petition. Specifically, the Court finds as follows:

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28 <sup>1</sup>The Petition reflects that though it was filed on May 28, 2020, it was received by the clerk of the court on May 4, 2020.

1 **FACTUAL SUMMARY**

2 On May 19, 2016, Las Vegas Metropolitan Police ("LVMPD") Officers Houston and  
3 Jacobitz attempted to conduct a traffic stop on Petitioner after they observed him operating a  
4 moped at a high rate of speed and failing to stop at a stop sign. Officer Jacobitz activated the  
5 patrol car's lights and sirens, and followed Petitioner until he appeared to stop and got off the  
6 moped. The officers exited their patrol car and were approximately five to eight feet away  
7 from Petitioner. Petitioner turned to face the officers, but then dropped the moped and ran  
8 away from the officers.

9 The officers pursued Petitioner on foot. Officer Jacobitz observed a firearm in  
10 Petitioner's right hand, and yelled "gun" to alert Officer Houston of the presence of a firearm.  
11 Petitioner raised the firearm and pointed it at Officer Jacobitz, however, Petitioner's elbow hit  
12 a pole which caused the gun to fall to the ground.

13 Officer Jacobitz remained with the firearm while Officer Houston continued chasing  
14 Petitioner. While waiting with the firearm, Officer Jacobitz saw two men (unrelated to this  
15 case) attempt to steal the moped that Petitioner had abandoned. Having to react quickly to this  
16 attempt theft, Officer Jacobitz retrieved the firearm without gloves so that the firearm would  
17 not be left unattended while he addressed the moped theft. Officer Jacobitz observed that the  
18 firearm was loaded and contained six rounds. Although Officer Houston continued the foot  
19 chase, ultimately Petitioner was able to flee the scene.

20 On May 21, 2016, officers arrested Petitioner during a felony vehicle stop after  
21 conducting surveillance on Petitioner. During a search of his person incident to arrest, officers  
22 located 11.60 grams of heroin, 3.1 grams of methamphetamine, 2.400 grams of cocaine, 2.67  
23 grams of methamphetamine, and \$946 in US Currency.

24 **ANALYSIS**

25 **I. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

26 All of the claims Petitioner raises are contradicted by the record, not cognizable on  
27 habeas review, barred from further consideration, or are bare and naked allegations. The  
28 majority of Petitioner's claims are ineffective-assistance-of-counsel claims. To demonstrate

1 ineffective assistance of trial counsel, a petitioner must show counsel's performance was  
2 deficient in that it fell below an objective standard of reasonableness, and prejudice resulted  
3 in that there was a reasonable probability of a different outcome in the absence of counsel's  
4 deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 2063  
5 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the  
6 Strickland test). Both components – deficient performance and prejudice – must be shown.  
7 Strickland, 466 U.S. at 687, 104 S.Ct. at 2065. “[T]here is no reason for a court deciding an  
8 ineffective assistance claim to approach the inquiry in the same order or even to address both  
9 components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697,  
10 104 S. Ct. at 2069.

11 Importantly, claims of ineffective assistance of counsel asserted in a petition for post-  
12 conviction relief must be supported with specific factual allegations, which if true, would  
13 entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225  
14 (1984). NRS 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts  
15 supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just  
16 conclusions may cause your petition to be dismissed.” (emphasis added). “Bare” and “naked”  
17 allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled  
18 by the record. Id. “A claim is ‘belied’ when it is contradicted or proven to be false by the record  
19 as it existed at the time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228,  
20 1230 (2002).

21 The court begins with the presumption of effectiveness and then must determine  
22 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
23 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
24 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
25 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
26 537 P.2d 473, 474 (1975).

27 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
28 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the

1 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
2 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
3 (2002).

4 Based on the above law, the role of a court in considering allegations of ineffective  
5 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
6 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
7 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
8 (1978). This analysis does not mean that the court should “second guess reasoned choices  
9 between trial tactics nor does it mean that defense counsel, to protect himself against  
10 allegations of inadequacy, must make every conceivable motion no matter how remote the  
11 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel  
12 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
13 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
14 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S.Ct. 2039, 2046 n.19 (1984).

15 “There are countless ways to provide effective assistance in any given case. Even the  
16 best criminal defense attorneys would not defend a particular client in the same way.”  
17 Strickland, 466 U.S. at 689, 104 S.Ct. at 689. “Strategic choices made by counsel after  
18 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
19 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
20 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s  
21 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s  
22 conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066.

23 **a. Ground One: Ineffective Assistance of Trial Counsel During the**  
24 **Preliminary Process**

25 Petitioner alleges that his initial counsel, Deputy Public Defender Steven Lisk, provided  
26 ineffective assistance during the “preliminary process and pretrial.” Petition at 6. Specifically,  
27 Petitioner alleges that Mr. Lisk did not visit him in jail, wanted him to accept a plea negotiation,  
28 and did not provide him with discovery. Id. at 6-10.



1        These allegations regarding Mr. Lisk, even if accepted as true, are insufficient to meet  
2 the Strickland standard because Petitioner cannot demonstrate that he was prejudiced as a  
3 result of Mr. Lisk's conduct. Mr. Lisk did not represent Petitioner at trial. He withdrew as  
4 counsel and Gregory E. Coyer was appointed to represent Petitioner. Thus, Petitioner cannot  
5 demonstrate a reasonable probability that the outcome of the trial would have been different  
6 in the absence of these alleged errors. Petitioner does not even allege this is the case, as he  
7 maintains he was prejudiced, not at trial, but at the preliminary hearing and calendar call.  
8 Accordingly, Petitioner is not entitled to relief on this claim.

9                    **b. Ground Two: Ineffective Assistance of Trial Counsel**

10  
11        Petitioner alleges his trial counsel was ineffective for failing to assist him with a civil  
12 forfeiture case. Petitioner has failed to state a claim for which he is entitled to relief. Based on  
13 Petitioner's own account of counsel's conduct, this does not amount to ineffective assistance.  
14 Counsel's statement to Petitioner that he was not appointed to represent him in a civil matter  
15 was correct; counsel was appointed to represent Petitioner only in the criminal case. Further,  
16 Petitioner does not explain how counsel's supposed failure to assist him in this forfeiture case  
17 prejudiced him in the criminal trial. Accordingly, this claim must be summarily denied.

18        Petitioner also alleges there was body camera footage in this case that counsel failed to  
19 provide to him. This allegation is contradicted by the record, and therefore must be dismissed.  
20 See Mann, 118 Nev. at 354, 46 P.3d at 1230; Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.  
21 At trial, Officer Houston testified that neither he nor Officer Jacobitz was wearing body-worn  
22 camera on the date of the incident, and that at the time body-worn camera was not standardly  
23 issued for department personnel. Trial Transcript, C315580, Day 2, pp. 133, 146-47.  
24 Furthermore, trial counsel obtained the radio traffic from the incident and admitted it at trial.  
25 Id. at 138. Counsel also repeatedly used the radio traffic during cross-examination of Officer  
26 Houston. Id. at 138-46. Thus, trial counsel did in fact ensure he obtained discovery from the  
27 State, and at trial presented the best documentation of the incident that was available to him.

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1           Petitioner also complains about counsel advising him as to the elements of Trafficking  
2 in Controlled Substance, and states that by doing so counsel was an “advocate for the state,  
3 not for the defense.” Petition at 12-13. Based on Petitioner’s own pleading, it appears counsel  
4 correctly informed Petitioner that the key element of the offense was the amount of the  
5 controlled substance, and that it did not require separate proof of intent to sell. See NRS  
6 453.3385. Providing Petitioner with accurate information as to the charges he was facing was  
7 clearly not deficient performance; in fact it was counsel’s duty to do so. Accordingly,  
8 Petitioner is not entitled to relief on this claim.

9                           **c. Ground Three Ineffective Assistance of Trial Counsel for Inadequate Pre-**  
10                           **Trial Contact**

11           Petitioner alleges his trial counsel was ineffective for failing to meet and communicate  
12 with him. Petition at 15. Petitioner fails to provide any specificity as to how this alleged lack  
13 of communication amounted to deficient performance or prejudiced him at trial. See  
14 Strickland, 466 U.S. at 697, 104 S.Ct. at 2069. See also NRS 34.735 (stating that failure to  
15 raise specific facts rather than conclusions may cause a petition to be dismissed); Hargrove,  
16 100 Nev. at 502-03, 686 P.2d at 225.

17           Here, rather than plead any specific facts relating to this alleged lack of communication,  
18 Petitioner simply asserts that he “was extremely prejudiced by the abandonment of counsel.”  
19 Petition at 15. He fails to state what additional communication was needed or demonstrate that  
20 additional communication with counsel would have changed the outcome of his trial. Nor does  
21 he explain how he was “abandoned” by counsel. The record reveals Petitioner’s counsel  
22 extensively cross-examined witnesses at trial, presented a strong closing argument alleging  
23 that the State had not met its burden, and represented Petitioner on appeal. Trial Transcript,  
24 C315580, Day 2, pp. 125-46, 149-52; Day 3, pp. 114-45, 149-50; Day 4, pp. 34-36, 53-59,  
25 115-25; Day 5, pp. 3-22, 32-34, 79-90. This is hardly evidence of abandonment. This  
26 conclusory claim is completely lacking in factual support. Accordingly, Petitioner is not  
27 entitled to relief on this claim.

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**d. Ground 4: Ineffective Assistance of Trial Counsel for Failure to Conduct DNA Testing and Present Expert Witnesses**

Petitioner alleges that counsel was ineffective for failing to conduct independent DNA testing of the evidence and for failing to present expert witnesses. Petition at 16-18. Not calling an expert witness or having independent testing performed is not *per se* deficient performance. If counsel and the client understand the evidence to be presented by the State and the possible outcomes of that evidence, “counsel is not required to unnecessarily exhaust all available public or private resources.” Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Further, “strategic choices”—such as choice of witnesses—“made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable.” Strickland, 466 U.S. at 691, 104 S. Ct. at 2064; Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). And simply because the State presented a DNA expert does not mean a defense expert was also required. See Harrington v. Richter, 562 U.S. 111, 131 S. Ct. 770, 791, 578 F.3d 944 (2011). (“Strickland does not enact Newton’s third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert for the defense.”).

Further, Petitioner fails to specify precisely how independent DNA testing or hiring an expert DNA witness would have rendered a different trial outcome probable. The DNA expert testimony presented by the State at trial did not inculcate Petitioner. In fact, Petitioner was excluded as a contributor to the major DNA profile on the firearm recovered from the scene. Trial Transcript, C315580, Day 4, pp. 29, 35. In closing, defense counsel argued to the jury that these results exculpated Petitioner. Trial Transcript, C315580, Day 5, pp. 80, 86. It is highly improbable that further DNA testing or testimony would have benefited Petitioner, when clearly DNA evidence was not the basis for his conviction. Accordingly, Petitioner is not entitled to relief on this claim.

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1                   **e. Ground Five: Ineffective Assistance of Trial Counsel Regarding the Denial**  
2                   **of Petitioner's Request for Self-Representation**

3                   Petitioner alleges trial counsel was ineffective for "failure to correct the record and to  
4                   preserve the denial of the conditional waiver of self representation..." Petition at 19. Petitioner  
5                   also cited a statement made by the district court at a hearing on November 1, 2016, in which  
6                   the court indicated Petitioner could request to have counsel removed if he felt he and counsel  
7                   had become "incompatible." Id. Petitioner's claim is facially unclear because he is claiming  
8                   that counsel failed to correct the record while simultaneously citing a statement directly from  
9                   the record in an attempt to support this claim. He appears to believe that counsel failed to  
10                  present this statement by the district court to the Nevada Supreme Court on direct appeal.

11                 This claim is both contradicted by the record and barred under the law of the case  
12                 doctrine. See Mann, 118 Nev. at 354, 46 P.3d at 1230; Hargrove, 100 Nev. at 502, 686 P.2d at  
13                 225; Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975). Trial counsel also represented  
14                 Petitioner on direct appeal, wherein he argued that the district court erred by denying  
15                 Petitioner's request to represent himself. Valencia v. State, Docket No. 75282 (Order of  
16                 Affirmance, Apr. 12, 2019). The Nevada Supreme Court concluded that this claim was  
17                 meritless, noting "the record as a whole demonstrates Petitioner did not make an unequivocal  
18                 request to represent himself." Valencia v. State, Docket No. 75282 (Order of Affirmance, Apr.  
19                 12, 2019), at 3. Accordingly, this claim is also barred by the law of the case doctrine.

20                 "The law of a first appeal is law of the case on all subsequent appeals in which the facts  
21                 are substantially the same." Hall, 91 Nev. At 315, 535 P.2d at 798 (quoting Walker v. State,  
22                 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). "The doctrine of the law of the case cannot be  
23                 avoided by a more detailed and precisely focused argument subsequently made after reflection  
24                 upon the previous proceedings." Id. at 316, 535 P.2d at 799. Under the law of the case doctrine,  
25                 issues previously decided on direct appeal may not be reargued in a habeas petition. Pellegrini  
26                 v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelson v. State, 115 Nev. 396,  
27                 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, the district court cannot overrule the  
28

1 Nevada Supreme Court. NEV. CONST. Art. VI § 6. Therefore, the district court is barred from  
2 granting Petitioner any relief on this claim.

3 **f. Ground Six: Ineffective Assistance of Trial Counsel for Failure to Remind**  
4 **the Court that His Waiver of Self-Representation Was Conditional**

5 This claim is substantially similar to Ground Five. Petitioner appears to believe trial  
6 counsel was under a duty to “remind the Court that the waiver to self representation was  
7 conditional.” Petition at 20. It is unclear why Petitioner interpreted what occurred at the  
8 November 1, 2016 hearing in the district court as amounting to a conditional waiver of his  
9 right to self-representation, or why he believes it was trial counsel’s duty to bring this to the  
10 court’s attention, particularly considering that trial counsel was not present at the November  
11 1, 2016 hearing. The court was merely informing Petitioner that should he wish in the future  
12 to move for the removal of trial counsel, he could do so. Petitioner was certainly aware that he  
13 had the right to do so, as he had moved for the dismissal of previous counsel and filed  
14 numerous pro per motions. Regardless, for the reasons stated above, any claim regarding the  
15 district court’s denial of Petitioner’s request for self-representation is barred under the law of  
16 the case doctrine. Accordingly, the district court was barred from granting Petitioner any relief  
17 on this claim.

18 **g. Ground Seven: Ineffective Assistance of Trial Counsel for Failure to**  
19 **Provide Legal Materials**

20 Petitioner alleges trial counsel failed to provide him with legal materials. Petition at 21.  
21 This is a bare and naked claim suitable only for summary denial. See Hargrove, 100 Nev. at  
22 502, 686 P.2d at 225. Petitioner fails to identify what specific materials he believes should  
23 have been provided to him, or how provision of these materials would have rendered a different  
24 result probable at trial. Accordingly, Petitioner is not entitled to relief on this claim.

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1                   **h. Ground Eight: Ineffective Assistance of Trial Counsel for Failure to Object**  
2                   **to Certified Judgment of Conviction; Imposition of Habitual Sentence**

3                   As a preliminary matter, to the extent Petitioner appears to contend that the district court  
4                   erred by sentencing him pursuant to the habitual criminal statute, this is a substantive claim  
5                   that has been waived for habeas review. NRS 34.810(1) reads:

6                   The court shall dismiss a petition if the court determines that:

7                   (a) The petitioner's conviction was upon a plea of guilty or guilty  
8                   but mentally ill and the petition is not based upon an allegation  
9                   that the plea was involuntarily or unknowingly or that the plea was  
10                  entered without effective assistance of counsel.

11                  (b) *The petitioner's conviction was the result of a trial and the*  
12                  *grounds for the petition could have been:*

13                  *1. . .*

14                  (2) *Raised in a direct appeal or a prior petition for a writ of habeas*  
15                  *corpus or postconviction relief.*

16                  The Nevada Supreme Court has held that while claims of ineffective assistance of trial  
17                  and appellate counsel are appropriately raised for the first time in post-conviction proceedings,  
18                  “all other claims that are appropriate for a direct appeal must be pursued on direct appeal, or  
19                  they will be *considered waived in subsequent proceedings.*” Franklin v. State, 110 Nev. 750,  
20                  752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other grounds by Thomas  
21                  v. State, 115 Nev. 148, 979 P.2d 222 (1999)). See also NRS 34.724(2)(a) (stating that a post-  
22                  conviction petition is not a substitute for a direct appeal); Evans v. State, 117 Nev. 609, 646–  
23                  47, 29 P.3d 498, 523 (2001). Accordingly, Petitioner is not entitled to relief on his claim that  
24                  the sentencing court erred by imposing a habitual criminal sentence.

25                  As to Petitioner's claim that counsel should have objected to the admission of one of  
26                  the certified judgments of conviction that the State admitted at sentencing, the only argument  
27                  Petitioner offers in support of this claim is his bare assertion that “Case No. C224558 is an  
28                  illegal sentence.” Petition at 22. For Count 1, Petitioner was sentenced pursuant to the small  
                 habitual criminal statute, and a prison sentence of 84 to 240 months was imposed. At the time  
                 of Petitioner's sentencing, a defendant was eligible for small habitual criminal treatment upon  
                 the proof of two prior felony convictions. NRS 207.010(1)(a). At sentencing, the State  
                 admitted four certified judgments of conviction. Certified judgments of conviction are prima

1 facie evidence of a defendant's previous convictions. NRS 207.016(5). Thus, counsel could  
2 not have raised a valid legal objection to the certified judgments of conviction. To do so would  
3 have been futile, and counsel cannot be found ineffective for failure to raise futile objections  
4 or motions. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Furthermore,  
5 Petitioner only claims one of his admitted convictions was invalid. Even if that conviction had  
6 not been presented, the State still presented three other certified judgments of conviction. This  
7 was more than enough to adjudicate Petitioner as a habitual criminal. Thus, Petitioner cannot  
8 demonstrate he was prejudiced. Accordingly, Petitioner is not entitled to relief on this claim.

9  
10 **i. Ground Nine: Ineffective Assistance of Trial Counsel for Failure to Request  
a Change of Venue**

11 Petitioner claims that counsel "failed to request change of venue for a jury who  
12 explained to the court that Ms. Plunkett had brought cell phones into the jail on that all that he  
13 seen on the news..." Petition at 23. To the best the State can ascertain, Petitioner appears to  
14 claim that trial counsel Gregory Coyer should have requested a change of venue due to there  
15 having been local media coverage regarding an incident involving Mr. Coyer's co-counsel Ms.  
16 Plunkett bringing a cell phone into the Clark County Detention Center. This claim is nearly  
17 incomprehensible, and is entirely lacking in support or explanation as to why Petitioner  
18 believes a change in venue was warranted, or how he was prejudiced. This is a bare and naked  
19 allegation suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

20 Further, a motion to change venue would have been futile, and counsel cannot be held  
21 ineffective for failing to file a futile motion. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. A  
22 request for a change in venue must comply with the requirements of NRS 174.455(1), which  
23 states that "[a] criminal action prosecuted by indictment, information or complaint may be  
24 removed from the court in which it is pending, on application of the defendant or state, *on the*  
25 *ground that a fair and impartial trial cannot be had* in the county where the indictment,  
26 information or complaint is pending." (emphasis added). Additionally, a motion to change  
27 venue cannot be granted by the district court until after voir dire examination of the  
28 jury. NRS 174.455(2). Such a motion requires a demonstration that members of the jury were

1 biased against the defendant, not defendant's counsel. See Rhyne, 118 Nev. at 11, 38 P.3d at  
2 169. There is nothing in the record of voir dire in this case indicating that any members of the  
3 jury were prejudiced against Petitioner. Thus, any request for a change in venue would have  
4 been futile. Accordingly, Petitioner is not entitled to relief on this claim.

5 To the extent Petitioner appears to claim that counsel failed to object to the "admittance  
6 of the bag with the gun", this claim was raised on direct appeal and rejected by the Nevada  
7 Supreme Court. See Valencia v. State, Docket No. 75282 (Order of Affirmance, Apr. 12,  
8 2019), at 03-05. The Nevada Supreme Court stated as follows:

9 Petitioner was not denied a fair trial as the evidence bag that the officer read  
10 from had already been admitted without objection from Petitioner and neither  
11 the State nor Petitioner realized it contained the ex-felon language...the district  
12 court properly found that the prejudicial effect was minimal as the ex-felon  
13 testimony was a passing comment that the district court did not permit to be  
14 expounded on.

15 Id. at 04-05.

16 This holding is the law of the case and this issue cannot be revisited in a habeas petition. See  
17 Pellegrini, 117 Nev. at 879, 34 P.3d at 532. Petitioner also ignores the fact that trial counsel  
18 requested a mistrial based on the witness inadvertently reading this information from the bag  
19 containing the firearm. Trial Transcript, C315580, Day 4, p. 86-93.

20 To the extent Petitioner claims trial counsel should have objected to "perjured  
21 testimony", Petitioner fails to support his claim that this testimony was perjured, beyond  
22 simply making this bare allegation. Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. It is highly  
23 improbable that counsel objecting to a witness's testimony and asserting the witness was  
24 committing perjury would have benefited Petitioner in any way, as such an objection would  
25 be at best improper, and at worst outright misconduct, as counsel is not permitted to testify,  
26 nor is counsel permitted to express a personal opinion as to whether or not a witness is being  
27 truthful. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990) ("It is improper  
28 argument for counsel to characterize a witness as a liar."). Further, whether or not to object is



1 a strategic decision, which is virtually unchallengeable. Dawson v. State, 108 Nev. 112, 117,  
2 825 P.2d 593, 596 (1992). Accordingly, Petitioner is not entitled to relief on this claim.

3  
4 **j. Ground Ten: Ineffective Assistance of Trial Counsel for Not Presenting a**  
5 **Defense, Subpoenaing Witnesses or Requesting Video Footage**

6 Petitioner alleged that trial counsel deprived him of a defense. Petition at 24. Petitioner  
7 appears to believe that trial counsel should have presented a defense that the police fabricated  
8 the incident and maintains that this fabrication can be shown by DNA, fingerprints, and  
9 witness Eric Gilbert. Id. To the extent Petitioner maintains his counsel did not present a  
10 defense, this claim is contradicted by the record and thus does not entitle Petitioner to relief.  
11 See, e.g., Mann, 118 Nev. at 354, 46 P.3d at 1230. As to his complaint that counsel did not  
12 present a defense of “police fabrication”, the decision not to raise such a defense was a strategic  
13 choice within the sole discretion of counsel. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
14 (2002) (stating that trial counsel has the “immediate and ultimate responsibility of deciding if  
15 and when to object, which witnesses, if any, to call, and what defenses to develop.”).

16 The record reveals that DNA and fingerprint analyses were performed on the recovered  
17 firearm, and those results were presented at trial. Trial Transcript, C315580, Day 4, pp. 19-30,  
18 42-59. Neither Petitioner’s DNA nor his fingerprints were found on the firearm, but despite  
19 Petitioner’s claims, this did not establish that the police “fabricated” this incident.  
20 Furthermore, trial counsel argued in closing that these results exonerated Petitioner. Trial  
21 Transcript, C315580, Day 5, pp. 80, 86. Contrary to Petitioner’s assertion, trial counsel did in  
22 fact present a defense. Though trial counsel did not allege that the testifying police officers  
23 had fabricated the entire incident, counsel presented the far more reasonable argument that the  
24 police were mistaken as to the identity of the perpetrator and had rushed to judgment in  
25 identifying Petitioner. Id. at 79-90. The decision to present this particular defense was within  
26 the discretion of trial counsel. Rhyne, 118 Nev. at 8, 38 P.3d at 167 (2002).

27 As to Petitioner’s contention that police fabrication could have been proven through the  
28 witness Eric Gilbert, Petitioner fails to provide a cogent explanation as to how this individual

1 would have done so. The record reveals that Eric Gilbert attempted to steal the moped that  
2 Petitioner was riding on the date of the initial police incident. Trial Transcript, C315580 Day  
3 3, pp. 57, 62. Petitioner refers to a voluntary statement presumably made by Eric Gilbert, but  
4 none of the purported statements point to police fabrication or another individual as the  
5 perpetrator. Thus, this is a bare allegation that must be summarily denied. Hargrove, 100 Nev.  
6 at 502-03, 686 P.2d at 225.

7 Petitioner is also not entitled to relief on his claims that trial counsel failed to subpoena  
8 witnesses. The decision not to call witnesses is within the discretion of trial counsel and will  
9 not be questioned unless it was a plainly unreasonable decision. See Rhyne, 118 Nev. at 8, 38  
10 P.3d at 168 (2002); Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992). “[T]he  
11 trial lawyer alone is entrusted with decisions regarding legal tactics such as deciding what  
12 witnesses to call.” Rhyne, 118 Nev. at 8, 38 P.3d at 167. When defense counsel does not have  
13 a solid case, the best strategy can be to say that there is too much doubt about the State’s theory  
14 for a jury to convict. See Harrington, 562 U.S. at 111, 131 S. Ct. at 791. Further, Petitioner  
15 fails to identify the supposed alibi witness he believes counsel should have called, or any  
16 helpful information that could have been presented through Eric Gilbert’s testimony. To satisfy  
17 the Strickland standard and establish ineffectiveness for failure to interview or obtain  
18 witnesses, a petitioner must allege *in the pleadings* the substance of the missing witness’  
19 testimony, and demonstrate how such testimony would have resulted in a more favorable  
20 outcome. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004); State v. Haberstroh,  
21 119 Nev. 173, 185, 69 P.3d 676, 684 (2003). Petitioner has clearly not met this burden.

22 As to Petitioner’s claim that counsel failed to subpoena “dashcam footage”, nothing in  
23 the record indicates that there was such footage in this case. Further, Petitioner fails to  
24 adequately explain how such footage, even if it existed, would have altered the outcome of his  
25 trial. The testimony at trial was that Petitioner pointed a firearm at Officer Jacobitz during a  
26 foot pursuit in an alleyway, and thus any sort of “dashcam” would not have captured the  
27 incident. Trial Transcript, C315580, Day 3, pp. 37-40. Thus, Petitioner’s allegation that  
28

1 counsel did not obtain dashcam footage, even if true, would not entitle him to relief. See  
2 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Accordingly, this claim is summarily denied.

3 As to Petitioner's claim that counsel failed to request the photograph used for  
4 identification, Petitioner fails to specify how this alleged failure amounted to deficient  
5 performance or how it prejudiced him at trial. Accordingly, this claim is summarily denied.

6 As to his claims that counsel failed to correct misinformation from the prosecutor and  
7 failed to object to inconsistencies, these bare allegations are entirely vague with no citation to  
8 the record. Petitioner also fails to specify the misinformation and the inconsistencies to which  
9 he refers. Petitioner has not met his burden to present specific factual allegations. See  
10 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Accordingly, these claims are summarily  
11 denied.

12 **k. Ground Eleven: Ineffective Assistance of Trial Counsel for Failure to**  
13 **Investigate and Prepare for Trial**

14 Petitioner raises several broad allegations that must be summarily denied pursuant to  
15 Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. He alleges that counsel failed to investigate,  
16 but fails to specify what matters should have been investigated, or to show how a better  
17 investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at  
18 192, 87 P.3d at 538. He repeats his allegation that counsel failed to call witnesses, but does not  
19 specify what witnesses should have been called or the expected substance of such testimony.  
20 He complains that counsel did not make an opening statement, but fails to explain how this  
21 amounted to deficient performance or how it prejudiced him. He also raises a nearly  
22 incomprehensible allegation that counsel failed to raise a legally cognizable defense that could  
23 render a sentence of life in prison unreliable. It is entirely unclear what Petitioner even means  
24 by a life sentence being "unreliable" or what defense he believes counsel should have raised.  
25 This claim is so devoid of specificity that it must be summarily denied.

26 As to Petitioner's claim that counsel failed to instruct the jury as to the exculpatory  
27 value of the DNA evidence, this claim is belied by the record. Mann, 118 Nev. at 354, 46 P.3d  
28 at 1230. During closing argument, trial counsel explicitly stated to the jury that the DNA and

1 fingerprint results exonerated Petitioner. Trial Transcript, C315580 Day 5, p. 80. Accordingly,  
2 this claim must be denied.

3 To the extent that Petitioner appears to maintain counsel was ineffective on appeal,  
4 Petitioner has not met his burden of pleading specific facts to demonstrate ineffectiveness of  
5 appellate counsel. See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).  
6 Petitioner merely makes a conclusory assertion that counsel failed to prepare for appeal.  
7 Accordingly, this claim must be denied.

8 To the extent Petitioner appears to claim that counsel had a conflict of interest, he also  
9 fails to present specific factual allegations. A conflict of interest arises when counsel's loyalty  
10 to a client is threatened by his responsibilities to another client or person, or by his own  
11 interests. Jefferson v. State, 133 Nev. 874, 876, 410 P.3d 1000, 1002 (Nev. App. 2017).  
12 Petitioner fails to identify the alleged conflict; he merely presents a conclusory assertion that  
13 there was an irreconcilable conflict. Accordingly, he is not entitled to relief on this claim.

14  
15 **I. Ground Twelve: Ineffective Assistance of Trial Counsel for Suggestive**  
16 **Identification; Ineffectiveness of Appellate Counsel; Errors by District**  
17 **Court in Jury Selection, Jury Instruction, and Sentencing**

18 All of Petitioner's claims under this ground are bare and naked allegations that are plead  
19 in a conclusory manner, with no accompanying argument or factual explanation. Accordingly,  
20 all of these claims must be summarily denied pursuant to Hargrove, 100 Nev. at 502-03, 686  
21 P.2d at 225.

22 Further, as to Petitioner's allegations that the district court erred during jury selection  
23 and the setting of jury instructions, as well as by sentencing Petitioner pursuant to the habitual  
24 criminal statute, these are all claims that could have been raised on direct appeal. Accordingly,  
25 they cannot be considered on habeas review. See NRS 34.724(2)(a); Evans, 117 Nev. at 646-  
26 47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059.

27 ///

28 ///

///

## II. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING

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

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

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann, 118 Nev. at 356, 46 P.3d at 1231. A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. at 503, 686 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to hold an evidentiary hearing simply to make a complete record. See State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

Further, the United States Supreme Court has held that an evidentiary hearing is not required simply because counsel’s actions are challenged as being unreasonable strategic decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge post hoc rationalization for counsel’s decision making that contradicts the available evidence of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis

1 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain  
2 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (citing  
3 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the  
4 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466  
5 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

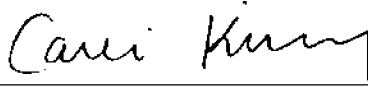
6 Petitioner’s claims do not require an evidentiary hearing. An expansion of the record is  
7 unnecessary because Petitioner has failed to assert any meritorious claims and the Petition can  
8 be disposed of with the existing record, as discussed *supra*. Marshall, 110 Nev. at 1331, 885  
9 P.2d at 605; Mann, 118 Nev. at 356, 46 P.3d at 1231. Therefore, Petitioner’s request for an  
10 evidentiary hearing is denied.

11 **ORDER**

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

14 DATED this \_\_\_\_\_ day of November, 2021.

Dated this 3rd day of November, 2021

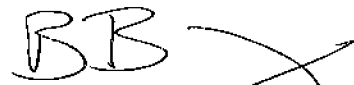


DISTRICT JUDGE

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

FE9 C94 108F 979C  
Carli Kierny  
District Court Judge

19 BY



For

20 KAREN MISHLER  
21 Chief Deputy District Attorney  
Nevada Bar #013730

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Ceasar Valencia, Plaintiff(s)

CASE NO: A-20-815616-W

7 vs.

DEPT. NO. Department 2

8 State of Nevada, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 11/3/2021

15 NOREEN DEMONTE

nykosn@co.clark.nv.us

*Alvin S. Smith*  
CLERK OF THE COURT

1 Cesar Sanchez Valenzuela #94307

2 In Proper Person  
3 P.O. Box 650 H.D.S.P.  
4 Indian Springs, Nevada 89018

5 Eleventh DISTRICT COURT  
6 Clark COUNTY NEVADA

7  
8 Cesar Sanchez Valenzuela  
9 #94307

Case No. A-20-815616-4

Dept. No. \_\_\_\_\_

Docket \_\_\_\_\_

10 -v-  
11 THE STATE OF NEVADA

12  
13  
14 NOTICE OF APPEAL

15 Notice is hereby given that the Petitioner Cesar Sanchez  
16 Valenzuela #94307, by and through himself in proper person, does now appeal  
17 to the Supreme Court of the State of Nevada, the decision of the District  
18 Court Denied Petition for Writ Habeas Corpus

19  
20  
21 Dated this date, 11/26/2021.

22  
23 Respectfully Submitted,

24 *[Signature]*

25 In Proper Person

26 Cesar Valenzuela #94307

27 RECEIVED

28 NOV - 8 2021

CLERK OF THE COURT



**CERTIFICATE OF SERVICE BY MAILING**

I, Cesar Valender #94309, hereby certify, pursuant to NRCP 5(b), that on this 26th day of Oct, 2021, I mailed a true and correct copy of the foregoing, "Notice of Appeal to Supreme Court of Nevada" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

District Attorney  
300 Lewis Ave  
Las Vegas NV 89155

District Court Clerk  
300 Lewis Ave  
Las Vegas NV 89155

DATED: this 26th day of Oct, 2021.

Cesar Sanchez Valender  
Clerk # 94309  
/In Propria Persona  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding

notice

of Appeal

(Title of Document)

filed in District Court Case number

A-20-815616-W



Does not contain the social security number of any person.

-OR-



Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

[Signature]  
Signature

10-26-21  
Date

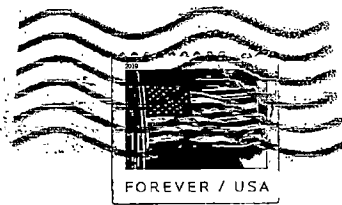
Cesar Sanchez Valverde  
Print Name

[Signature]  
Title

Caesar Sanchez Valenzuela #41367  
PO BOX 650  
Indian Springs NV 89000

LAS VEGAS NV 890

3 NOV 2021 PM 4 L



Legal  
Mail  
Confidential

8915539999

clerk of the court  
District Court  
200 Lewis Ave 3rd Fl  
Las Vegas NV 89101-1160

HIGH DESERT STATE PRISON

OCT 31 2021

UNIT 5 A/B



1 ASTA

2  
3  
4  
5  
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**  
7 **STATE OF NEVADA IN AND FOR**  
8 **THE COUNTY OF CLARK**  
9

10 CEASAR SANCHEZ VALENCIA,

11 Plaintiff(s),

12 vs.

13 JOHNSON WARDEN HIGH DESERT STATE  
14 PRISON; STATE OF NEVADA,

15 Defendant(s),  
16

Case No: A-20-815616-W

Dept No: II

17 **CASE APPEAL STATEMENT**  
18

19 1. Appellant(s): Ceasar Valencia

20 2. Judge: Carli Kierny

21 3. Appellant(s): Ceasar Valencia

22 Counsel:

23 Ceasar Valencia #94307  
24 P.O. Box 650  
25 Indian Springs, NV 89070

26 4. Respondent (s): Johnson Warden High Desert State Prison; State of Nevada

27 Counsel:

28 Steven B. Wolfson, District Attorney  
200 Lewis Ave.

Las Vegas, NV 89155-2212

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

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

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

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

8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: N/A  
*\*\*Expires 1 year from date filed*

Appellant Filed Application to Proceed in Forma Pauperis: Yes,  
Date Application(s) filed: July 1, 2021

9. Date Commenced in District Court: May 28, 2020

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

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

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 75282, 81745

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 10 day of November 2021.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk  
200 Lewis Ave  
PO Box 551601  
Las Vegas, Nevada 89155-1601  
(702) 671-0512

cc: Ceasar Valencia

IN THE SUPREME COURT OF THE STATE OF NEVADA

CEASAR SANCHAZ VALENCIA, A/K/A  
CEASAR SANCHEZ VALENCIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 83778  
District Court Case No. A815616; ~~C345590~~

**FILED**

OCT - 5 2022

*Elizabeth A. Brown*  
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 9th day of September, 2022.

IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
October 04, 2022.

Elizabeth A. Brown, Supreme Court Clerk

By: Rory Wunsch  
Deputy Clerk

A-20-815616-W  
CCJA  
NV Supreme Court Clerks Certificate/Judgm  
5008315



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CEASAR SANCHAZ VALENCIA, A/K/A  
CEASAR SANCHEZ VALENCIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 83778-COA

**FILED**

SEP 09 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Cesar Sanchaz Valencia appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 28, 2020. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Valencia argues the district court erred by denying his claims that counsel was ineffective without first conducting an evidentiary hearing. To demonstrate ineffective assistance of trial counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 687. We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual

allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Valencia claimed counsel was ineffective for failing to interview his alibi witness. Valencia failed to support his claim with specific facts because he did not identify the witness or specify what she would have testified to. Thus, he failed to demonstrate counsel was deficient or a reasonable probability of a different outcome at trial had counsel interviewed this witness. See *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.<sup>1</sup>

Second, Valencia claimed counsel was ineffective for failing to interview a witness regarding whether that witness identified him as being the rider of the moped. This witness attempted to steal the moped, but that was after Valencia attempted to shoot at police officers and then fled the scene. Valencia did not indicate that the witness actually viewed the crimes for which Valencia was convicted or whether this witness did or could have identified Valencia as the perpetrator, especially where Valencia did not allege this person knew him prior to the crime. Thus, Valencia failed to support this claim with specific facts that, if true, would entitle him to relief. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Third, Valencia claimed that counsel was ineffective for failing to make an opening statement. Valencia failed to support this claim with

---

<sup>1</sup>On appeal, Valencia names the witness and what she would have testified to. Because Valencia did not include this information in his petition below, we decline to consider it on appeal in the first instance. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).



specific facts that, if true, would entitle him to relief because he failed to allege or demonstrate a reasonable probability of a different outcome at trial had counsel made an opening statement. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Fourth, Valencia claimed that counsel was ineffective for failing to object to the use of a prior judgment of conviction to adjudicate him a habitual criminal. Valencia asserted the prior conviction was invalid because he was not present when that judgment of conviction was amended. Valencia failed to demonstrate the prior conviction was invalid as the judgment of conviction was amended to fix a clerical error and Valencia did not demonstrate he was required to be present for the correction of the error. See NRS 176.565 (providing that clerical errors in judgments may be corrected "after such notice, *if any*, as the court orders" (emphasis added)); see also *United States v. Saenz*, 429 F. Supp. 2d 1109, 1114 (N.D. Iowa 2006) (indicating that a defendant's presence is not required under the Due Process Clause or the applicable federal rule of criminal procedure for correction of a clerical error in a sentence); *Jones v. State*, 672 A.2d 554, 555 (Del. 1996) (explaining that the right to be present at the imposition of a sentence does not apply when a sentence is corrected to fix a clerical error). Further, Valencia failed to demonstrate a reasonable probability of a different outcome at sentencing had counsel objected and been successful because the State presented more judgments of conviction than necessary to support the imposition of the small habitual criminal statute. Therefore,

we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.<sup>2</sup>

Next, Valencia argues the district court erred by denying his claims that his first counsel's conflict should have been imputed to his second counsel because they used to work together, the trial court should have appointed him substitute counsel, habitual criminal adjudication requires a hearing separate from sentencing, counsel was ineffective for failing to object to the State's argument that he had been dealing drugs, counsel was ineffective for arguing that it would be impossible to prove he is innocent, and co-counsel was biased against him and caused him harm because she was under investigation at the time of trial. These claims were not raised in Valencia's petition below<sup>3</sup>; therefore, we decline to consider them in the first instance on appeal. *See McNelton*, 115 Nev. at 416, 990 P.2d at 1276.

Finally, Valencia argues the district court erred by not appointing counsel to represent him in this matter. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391

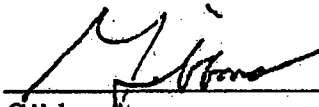
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<sup>2</sup>For the same reasons, we conclude Valencia failed to demonstrate appellate counsel was ineffective for failing to raise this claim on appeal. *See Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).

<sup>3</sup>In his petition below, Valencia claimed that counsel was ineffective for failing to seek a change of venue because co-counsel was under investigation. On appeal, Valencia changes the claim regarding the investigation of co-counsel to one of bias, which constitutes a new claim.

P.3d 760, 761 (2017). Because the district court granted Valencia leave to proceed in forma pauperis and his petition was a first petition not subject to summary dismissal, *see* NRS 34.745(1), (4), Valencia met the threshold requirements for the appointment of counsel. *See* NRS 34.750(1); *Renteria-Novoa*, 133 Nev. at 76, 391 P.3d at 761. However, the record reveals that the issues in this matter were not difficult, Valencia was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. Therefore, we conclude the district court did not err by failing to appoint counsel.<sup>4</sup>

Having concluded that Valencia was not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Carli Lynn Kierny, District Judge  
Ceasar Sanchaz Valencia  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

---

<sup>4</sup>We conclude Valencia is not entitled to counsel on appeal.

IN THE SUPREME COURT OF THE STATE OF NEVADA

CEASAR SANCHAZ VALENCIA, A/K/A  
CEASAR SANCHEZ VALENCIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 83778  
District Court Case No. A815616; ~~0345580~~

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: October 04, 2022

Elizabeth A. Brown, Clerk of Court

By: Rory Wunsch  
Deputy Clerk

cc (without enclosures):  
Hon. Carli Lynn Kierny, District Judge  
Ceasar Sanchaz Valencia  
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on OCT - 5 2022.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED  
APPEALS

OCT - 5 2022

CLERK OF THE COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**July 28, 2020**

---

A-20-815616-W      Ceasar Valencia, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

---

**July 28, 2020      10:15 AM      Petition for Writ of Habeas  
Corpus**

**HEARD BY:** Jones, David M      **COURTROOM:** RJC Courtroom 15A

**COURT CLERK:** Michaela Tapia

**RECORDER:** De'Awna Takas

**REPORTER:**

**PARTIES**

**PRESENT:** Demonte, Noreen C.      Attorney  
State of Nevada      Defendant

**JOURNAL ENTRIES**

- Deft. not present.

The petition being improper as the aggregate total Sentence is correct, COURT ORDERED, petition DENIED. State to prepare the order.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**June 09, 2021**

---

A-20-815616-W      Ceasar Valencia, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

---

**June 09, 2021      9:30 AM      Status Check**

**HEARD BY:** Kierny, Carli      **COURTROOM:** RJC Courtroom 16B

**COURT CLERK:** Alan Castle

**RECORDER:** Jessica Kirkpatrick

**REPORTER:**

**PARTIES**

**PRESENT:**      Mishler, Karen      Attorney  
State of Nevada      Defendant

**JOURNAL ENTRIES**

- Colloquy regarding the Nevada Supreme Court Reversal & Remand from Judge Jones' decision. Court directed State to respond and ORDERED, Briefing Schedule set as follows: State's Response/Opposition DUE - 7/15/21; Petitioner's Reply DUE - 8/12/21 and matter set for decision.

8/19/21 12:30 p.m. Decision - Petition for Writ of Habeas Corpus

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**August 19, 2021**

---

A-20-815616-W      Ceasar Valencia, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

---

**August 19, 2021      12:30 AM      Decision**

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

**COURT CLERK:** Andrea Natali

**RECORDER:** Kaihla Berndt

**REPORTER:**

**PARTIES**

**PRESENT:**      Zadrowski, Bernard B.      Attorney

**JOURNAL ENTRIES**

- Petitioner not present. COURT ORDERED, matter CONTINUED for Judge Kierny to issue her ruling.

CONTINUED TO: 9/9/21 - 12:30 PM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus****COURT MINUTES****September 09, 2021**

A-20-815616-W      Ceasar Valencia, Plaintiff(s)  
    vs.  
    State of Nevada, Defendant(s)

**September 09, 2021      8:00 AM      Decision**

**HEARD BY:** Kierny, Carli**COURTROOM:** RJC Courtroom 16B**COURT CLERK:** Alan Castle**RECORDER:****REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- This matter is before the Court on Defendant's Petition for Writ of Habeas Corpus (Post-Conviction). The matter was previously denied by Judge David Jones as untimely; however, the Supreme Court remanded the matter back to this Court with instructions to consider the Petitioner's writ on its merits. The Court finds as follows: The Petition for Writ of Habeas Corpus is DENIED. Valencia's sole contention is that he received ineffective assistance of counsel; he gives twelve different grounds under this assertion. To demonstrate ineffective assistance of trial counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice resulted in that there was a reasonable probability of a different outcome in the absence of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 2063 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the *Strickland* test). Both components—deficient performance and prejudice—must be shown. *Strickland*, 466 U.S. at 687, 104 S.Ct. at 2065. Importantly, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). NRS 34.735(6) states in relevant part, "[Petitioner] must allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed." (emphasis added). "Bare" and "naked" allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled by the record. *Id.* "A

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claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." *Mann v. State*, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002). The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. *Means v. State*, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). Taking each allegation in turn, the Court finds as follows:

1. Valencia alleges that his Public Defender, Steven Lisk, was ineffective for not visiting him in jail, wanting him to take a plea, and not providing discovery to Valencia. Lisk was not Valencia's attorney at trial; that attorney was Gregory Coyer. Petitioner does not show how Lisk's performance in these preliminary matters affected Coyer's trial performance, or that the outcome of the trial would have been different but for Lisk's performance. Valencia has not satisfied the second prong of Strickland on this claim.
2. Valencia alleges Coyer failed to assist him with his civil forfeiture case, did not provide body camera footage to him, and acting as an "advocate for the State, not the defense." The civil forfeiture portion of the case is entirely separate from Valencia's criminal case and is irrelevant to this writ. Regarding the body cam allegation, Valencia fails to make any showing that not providing Valencia himself with body camera footage fell below an objective standard of reasonableness; it is unclear to the Court what Valencia would have done with this footage, or even how he would have viewed it on his own at the detention center. Valencia also fails to show how him having body cam footage could have resulted in a different trial outcome. Therefore, Valencia fails to meet both prongs of Strickland as to this allegation. Finally, Valencia's allegation regarding Coyer acting as an advocate for the State and not the defense is a conclusory statement with no specific facts supporting it; it is the exact type of "bare and naked allegation" that is insufficient to warrant post-conviction relief as explained in *Hargrove*.
3. Valencia alleges his counsel did not maintain adequate pretrial contact. Petitioner failed to provide any specificity as to how this alleged lack of communication amounted to deficient performance or prejudiced him at trial. Petitioner simply states he was "extremely prejudiced by the abandonment of counsel." No specific facts were presented. At trial, the record reveals Petitioner's counsel extensively cross-examined witnesses, presented a strong closing arguing the State did not meet its burden, and represented Petitioner on appeal. Petitioner's claim is conclusory and is lacking factual support, and is therefore denied.
4. Valencia alleges his counsel was ineffective for not conducting his own DNA testing and DNA expert. Not calling an expert witness or having independent testing performed is not per se deficient performance. State presenting a DNA expert does not necessarily require an expert to rebut. Defense counsel argued at closing that these results exculpated Petitioner. It is not likely that further testing/testimony would have benefited Petitioner, as DNA was not the basis for conviction. Valencia has failed to meet both prongs of Strickland on this issue.
5. Valencia re-raises his contention that he was denied the right of self-representation. This claim is belied by the record, and is barred as it was already addressed by the Supreme Court in Valencia's direct appeal. On direct appeal, the Supreme Court affirmed the lower court's decision regarding self-representation. Valencia has presented no additional information on this claim in his writ; this issue is hereby denied.
6. Valencia alleges counsel was ineffective for failing to remind the Court his waiver of self-representation was conditional. However, there is nothing in the record that shows the waiver of self-

representation was actually conditional; Valencia was always free to raise a request to represent himself at any point in the proceedings, so there was nothing special about the "conditional" nature of his waiver that needed to be brought to the judge's attention. He also fails to make a showing of how the trial outcome would be different if this record was made, and therefore fails the Strickland test.

7. Valencia alleges his counsel failed to provide him with legal materials. Petitioner did not identify what specific materials he believed should have been provided and how they would have rendered a different result. Therefore, he did not make an adequate showing under Strickland and this allegation is denied.

8. Valencia alleges his attorney didn't object to a certified judgment of conviction, and the habitual criminal enhancement was imposed. This is an issue that should have been raised on direct appeal and was not. It is therefore considered waived in all subsequent proceedings, including this one, under the Nevada Supreme Court's ruling in *Franklin v. State*, 110 Nev. 750, 752, 29 P.3d 498, 523 (2001).

9. Valencia alleges trial counsel was ineffective for failing to request a change of venue. This allegation has no substance or support that would justify a change in venue. A motion to change venue would have been futile. The venire was asked about pre-trial publicity by the judge in voir dire and no one mentioned having heard anything about the case, belying Valencia's contention that pre-trial publicity surrounding his case prevented him from having a fair trial. Further, counsel's "failure" to object to the admittance of the gun was raised and denied on direct appeal to Nevada Supreme Court. Additionally, Petitioner's allegation regarding counsel's "failure" to object to perjured testimony is not supported by any evidence beyond a bare allegation. Valencia's allegation here is insufficient to show ineffective assistance of counsel. Finally, Valencia's contention that his attorney failed to object to "perjured testimony" is not supported by facts to show that the testimony was actually perjured; it is simply another bare and naked allegation. The Court notes that Counsel's decision to object or not object is a strategic decision, and under these facts, cannot be shown to have been objectively unreasonable.

10. Valencia claims his attorney was ineffective for not presenting a defense, subpoenaing witnesses, or requesting video footage. Petitioner's assertion that his attorney presented no defense is belied by the record. Coyer vigorously cross-examined witnesses and argued that the police were mistaken in their identification of the perpetrator. While this may not have been Valencia's preferred defense, this was clearly a tactical decision and not objectively unreasonable. Valencia's contention that Eric Gilbert should have been subpoenaed does not allege specific facts to show exactly what Gilbert's testimony might have been, or how that testimony would have entitled Valencia to relief.

Additionally, the Court notes that the decision to call witnesses is solely up to Counsel's discretion. Regarding counsel's alleged failure to subpoena dashcam footage, Valencia neither establishes that this footage actually existed, nor elaborates on how it would have changed the outcome of the trial. Nothing Valencia raises in this section rises to the level necessary to make a showing of ineffective assistance of counsel.

11. Valencia claims his counsel was ineffective for failing to investigate and prepare for trial. This is a broad claim, devoid of any specificity or facts to support it, and is denied for this reason.

12. Valencia states his counsel was ineffective for suggestive identification; ineffectiveness of appellate counsel; errors in jury selection, jury instruction, and sentencing. All of Petitioner's claims under this ground are bare and naked allegations that are plead in a conclusory manner, with no

accompanying argument or factual explanation. Accordingly, all of these claims are summarily denied pursuant to Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.

Here, Petitioner's claims do not require an evidentiary hearing as Petitioner failed to assert any meritorious claims in the Writ. There is nothing that requires an expansion of the record for this Court to make its decision, so this request is also DENIED.

State to prepare the Order.

CLERK'S NOTE: The above minute order has been electronically distributed.

# Certification of Copy and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Supreme Court order dated December 6, 2022, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 244.

CEASAR SANCHEZ VALENCIA,

Plaintiff(s),

vs.

JOHNSON WARDEN, HIGH DESERT STATE  
PRISON; THE STATE OF NEVADA,

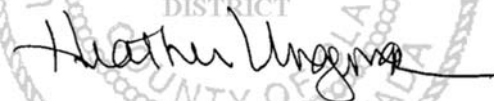
Defendant(s),

Case No: A-20-815616-W  
Related Case C-16-315580-1  
Dept. No: I

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 7 day of December 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk