

Steven D. Grierson

Jayshawn Bailey
In Proper Person
P.O. Box 650 H.D.S.P.
Indian Springs, Nevada 89018

Electronically Filed
Dec 14 2022 02:58 PM
Elizabeth A. Brown
Clerk of Supreme Court

Eighth DISTRICT COURT
Clark COUNTY NEVADA

Jayshawn Bailey,

Petitioner,

Case No. A-22-857574-W

-v-

Dept.No. XII

State of Nevada,

Docket _____

Respondent,

NOTICE OF APPEAL

Notice is hereby given that the Petitioner, Jayshawn
Bailey, by and through himself in proper person, does now appeal
to the Supreme Court of the State of Nevada, the decision of the District
Court Writ of Habeas Corpus (post-conviction)
Finding of Fact, conclusions of law and order

Dated this date, December 7th 2022.

Respectfully Submitted,

RECEIVED

DEC 12 2022

CLERK OF THE COURT

Jayshawn Bailey

In Proper Person

CERTIFICATE OF SERVICE BY MAILING

I, Jayshawn Bailey, hereby certify, pursuant to NRCP 5(b), that on this 7
day of December, 2022, I mailed a true and correct copy of the foregoing, "notice of appeal
Petition for writ of Habeas corpus (Post-conviction), Finding of Fact, conclusions of law and order
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Steven D. Grierson
clerk of the court
200 Lewis Avenue
Las Vegas, Nevada
89155-1160

DATED: this 7 day of December, 2022.

Jayshawn Bailey
#1256551
/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

petition for writ of Habeas corpus (past conviction) Finding of fact, conclusion, by and order
(Title of Document)

filed in District Court Case number A-22-857574-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.

Jayshawn Bailey
Signature

Date

Jayshawn Bailey
Print Name

Notice of Appeal
Title

Jayshawn Baile #1956551

H.P.S.P

Indian Springs, Nevada

890760650

LAS VEGAS NV 890

8 DEC 2022 PM 4 L



Steven D. Enriessen

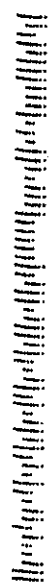
Clerk of the Court

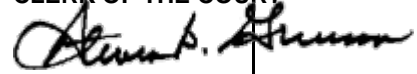
900 Lewis Avenue

Las Vegas, Nevada

89155-1160

89101-630000





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 JAYSHAWN BAILEY,

11 Plaintiff(s),

12 vs.

13 STATE OF NEVADA,

14 Defendant(s),
15

Case No: A-22-857574-W

Dept No: XII

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Jayshawn Bailey

20 2. Judge: Michelle Leavitt

21 3. Appellant(s): Jayshawn Bailey

22 Counsel:

23 Jayshawn Bailey #1256551
24 P.O. Box 650
Indian Springs, NV 89070

25 4. Respondent (s): State of Nevada

26 Counsel:

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

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

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

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

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

7 8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
8 **Expires 1 year from date filed
9 Appellant Filed Application to Proceed in Forma Pauperis: No
10 Date Application(s) filed: N/A

11 9. Date Commenced in District Court: August 29, 2022

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

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

14 11. Previous Appeal: No

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

16 12. Child Custody or Visitation: N/A

17 13. Possibility of Settlement: Unknown

18 Dated This 13 day of December 2022.

19 Steven D. Grierson, Clerk of the Court

20
21 /s/ Heather Ungermann

22 Heather Ungermann, Deputy Clerk
23 200 Lewis Ave
24 PO Box 551601
25 Las Vegas, Nevada 89155-1601
26 (702) 671-0512

27 cc: Jayshawn Bailey
28

CASE SUMMARY

CASE NO. A-22-857574-W

Jayshawn Bailey, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

§
§
§
§
§

Location: **Department 12**
 Judicial Officer: **Leavitt, Michelle**
 Filed on: **08/29/2022**
 Cross-Reference Case Number: **A857574**

CASE INFORMATION

Related Cases

C-20-347887-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus****Statistical Closures**

12/08/2022 Other Manner of Disposition








Case Status: **12/08/2022 Closed****DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number	A-22-857574-W
Court	Department 12
Date Assigned	08/29/2022
Judicial Officer	Leavitt, Michelle

PARTY INFORMATION

Plaintiff	Bailey, Jayshawn	<i>Lead Attorneys</i>
		Pro Se
Defendant	State of Nevada	Wolfson, Steven B
		<i>Retained</i>
		702-671-2700(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

08/29/2022	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Bailey, Jayshawn <i>[1] Post Conviction</i>
09/01/2022	 Order for Petition for Writ of Habeas Corpus <i>[2] A-22-857574-W Jayshawn Bailey- OPWH</i>
10/11/2022	 Response <i>[3] State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction)</i>
11/29/2022	 Findings of Fact, Conclusions of Law and Order <i>[4] Findings of Fact, Conclusions of Law and Order Denying Defendant's Motion</i>
11/30/2022	 Notice of Entry of Findings of Fact, Conclusions of Law <i>[5] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
12/08/2022	 Order to Statistically Close Case <i>[6] Civil Order To Statistically Close Case</i>
12/12/2022	 Notice of Appeal

CASE SUMMARY

CASE NO. A-22-857574-W

[7] Notice of Appeal

12/13/2022



Case Appeal Statement

Case Appeal Statement

HEARINGS

10/27/2022



Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Leavitt, Michelle)

Denied;

Journal Entry Details:

Defendant not present. State submitted. COURT ORDERED, Petition for Writ of Habeas Corpus is DENIED; State to prepare the Finding of Facts and Conclusions of Law.;

DISTRICT COURT CIVIL COVER SHEET

A-22-857574-W

County, Nevada

Dept. 12

Case No.

(Assigned by Clerk's Office)

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

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

Jayshawn Bailey

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

State of Nevada

Attorney (name/address/phone):

Attorney (name/address/phone):

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

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

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

August 29, 2022

Date

PREPARED BY CLERK

Signature of initiating party or representative

See other side for family-related case filings.

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #10539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

JAYSHAWN BAILEY,
5216003

Petitioner,

-vs-

STATE OF NEVADA,

Respondent.

CASE NO: A-22-857574-W
(C-20-347887-1)

DEPT NO: XII

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING
DEFENDANT'S MOTION**

DATE OF HEARING: October 27, 2022
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable MICHELLE LEAVITT, District Judge, on the 27th day of October 2022, the Petitioner not being present and proceeding in proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JOSHUA JUDD, Deputy District Attorney, and the Court having considered the matter, including petitions, responses, transcripts, testimony of witnesses, arguments of counsel, and/or documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

///

///

///

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On January 22, 2020, Jayshawn D. Bailey (herein after "Petitioner") was charged by
4 way of Criminal Complaint with the crime of MURDER (Category A Felony - NRS 200.010,
5 200.030 - NOC 50000). The Preliminary Hearing was held on April 1, 2020, and the case was
6 bound over to district court as charged and the Information was filed on April 2, 2020.
7 Petitioner was arraigned in district court on April 16, 2020, where he invoked his right to a
8 speedy trial.

9 On May 18, 2020, Petitioner filed a Petition for Writ of Habeas Corpus (Pre-Trial)
10 (hereinafter "Pre-Trial PWHC"). The State filed its Return on June 2, 2020. After a hearing
11 on June 11, 2020, the court denied the Pre-Trial PWHC and filed its order on June 17, 2020.

12 On July 6, 2020, Petitioner filed a Motion to Compel Production of Discovery and
13 Brady Material. Due to Petitioner's invoked status, the case was sent to Central Trial Readiness
14 Conference on July 15, 2020. During the conference, Petitioner, through counsel, requested a
15 continuance without waiving his speedy trial right because there was outstanding discovery.
16 With no opposition from the State, the trial was continued until September 28, 2020. The trial
17 was continued five (5) more times but, Petitioner remained invoked. Also on July 15, 2020,
18 the State filed its Response to Petitioner's Motion to Compel. Petitioner's Motion to Compel
19 was granted in part and denied in part, and the court issued its order on August 12, 2020.

20 Also on August 12, 2020, the court issued an Ex Parte Order for the Department of
21 Family Services (hereinafter "DFS") to turn over any and all records relating to the victim,
22 Tamyah Trotter (hereinafter "Trotter"). After conducting an in-camera review, the court
23 informed the parties that the DFS records were available for pick up on October 13, 2020.

24 On January 11, 2021, Petitioner, through counsel, filed a Motion to Stay District Court
25 Proceedings because Petitioner had filed a Petition for a Writ of Prohibition/Mandamus with
26 the Nevada Supreme Court. On January 19, 2021, the State filed its Opposition to Petitioner's
27 Motion to Stay District Court proceedings and the district court, noting that Petitioner
28 remained invoked, denied the Motion on January 26, 2021.

1 Meanwhile, the Petition for Writ of Prohibition/Mandamus was filed with the Nevada
2 Supreme Court on January 12, 2021, requesting the Supreme Court to grant Petitioner's Pre-
3 Trial PWHC. (See NSC Case No. 82310). The Nevada Supreme Court denied the Petition for
4 Writ of Prohibition/Mandamus on March 9, 2021, and a Notice in Lieu of Remittitur issued
5 on April 5, 2021.

6 While the Nevada Supreme Court was considering the Petition for Writ
7 Prohibition/Mandamus, the district court proceedings continued. On March 3, 2021, the case
8 was sent to Central Trial Readiness Conference for the fourth time, where defense counsel
9 announced ready for the April 5, 2021, trial date, but informed the court of defense's intent to
10 file a motion to suppress on March 5, 2021. As a result, the case was sent back to the
11 department for further proceedings.

12 On March 8, 2021, Petitioner, through counsel, filed a Motion to Exclude Statements
13 and Request For Evidentiary Hearing Pursuant To Jackson v. Denno that included
14 approximately two-hundred and ninety-four (294) pages of exhibits (herein after "Motion to
15 Exclude Statements"). On March 23, 2021, the State filed both its Opposition to the Motion to
16 Exclude Statements and an Amended Opposition. On March 25, 2021, Petitioner filed a Reply
17 to the State's Opposition. The court held a Jackson v. Denno hearing on May 12 and June 16,
18 2021, after which it denied the Motion to Exclude Statements.

19 The parties participated in a Settlement Conference on August 20, 2021, during which
20 they failed to come to an agreement. On August 30, 2021, Petitioner filed a: 1) Motion in
21 Limine to Preclude Expert Opinion Testimony that the Manner of Death in this Case is
22 Homicide, 2) Motion For Specific Disclosure and Identification of Electronic Evidence, 3)
23 Motion in Limine to Preclude Admission of Irrelevant and Prejudicial Internet Search, and 4)
24 Motion for Supplemental Discovery Related to Expert Witness Dr. Christina Di Loreto. On
25 August 31, 2021, the State filed its Opposition to the first three (3) motions, respectively, and
26 filed its Opposition to the fourth motion on September 1, 2021.

27 Then, on September 8, 2021, the State filed an Amended Information and the Guilty
28 Plea Agreement (hereinafter "GPA"). Pursuant to the GPA, Petitioner agreed to plead guilty

1 to one (1) count of VOLUNTARY MANSLAUGHTER OF A VULNERABLE PERSON
2 (Category B Felony - NRS 200.040, 200.050, 200.080, 193.1675 - NOC 50020), the parties
3 stipulated to a sentence of four (4) to ten (10) years in the Nevada Department of Corrections
4 (hereinafter "NDOC") on the Voluntary Manslaughter charge, and the State retained the right
5 to argue the Vulnerable Person enhancement.

6 On December 8, 2021, Petitioner, through counsel, filed a Motion to Appoint Alternate
7 Counsel for Motion to Withdraw Plea. On January 6, 2022, the court granted Petitioner's
8 Motion for Alternative Counsel and alternative counsel was confirmed on January 13, 2022.
9 After hearing representations by alternative counsel, the court denied Petitioner's Motion to
10 Withdraw Plea. A Sentencing Memorandum was filed on April 5, 2022, by original counsel.
11 The Sentencing Hearing began on April 8, 2022, and was continued to April 21, 2022 where
12 Petitioner was adjudged guilty of Voluntary Manslaughter of a Vulnerable Person and was
13 sentenced to four (4) to ten (10) years in NDOC for Voluntary Manslaughter and a consecutive
14 four (4) to ten (10) years for the Vulnerable Person Enhancement for an aggregate total of
15 eight (8) to twenty (20) years. The Judgment of Conviction (hereinafter "JOC") was filed on
16 April 27, 2022.

17 On July 14, 2022, Petitioner filed a Pro Per Notice of Appeal in the district court, which
18 was filed in the Nevada Supreme Court on July 19, 2022, and initiated NSC Case No. 85030.
19 On August 8, 2022, the Nevada Supreme Court dismissed Petitioner's Direct Appeal for lack
20 of jurisdiction because Petitioner failed to file his notice of appeal within the 30-day appeal
21 period proscribed by NRAP 4(b). Remittitur issued on September 6, 2022.

22 On August 29, 2022, Petitioner filed the instant, Pro Per Petition for Writ of Habeas
23 Corpus (post-conviction) (hereinafter "the Petition"). The State's response to Petitioner's
24 claims contained therein is discussed below.

25 **STATEMENT OF THE FACTS**

26 The Presentence Investigation Report ("PSI"), prepared and filed under seal on
27 November 24, 2021, summarized the offense as follows:

28 ///

1 On January 19, 2020, a male, identified as the defendant, Jayshawn
2 Bailey, called police to report he found a body inside a sewer drain near his
3 house. He further explained a month prior, he was standing outside his residence
4 smoking and watched two people place something in the nearby sewer.
5 Approximately two weeks later, out of curiosity, he lifted the manhole cover and
6 entered the sewer to see what the people put down there Mr. Bailey stated he
7 observed the body of the juvenile victim (DOB: 06-06-02). Claiming to be
8 scared of the repercussions from the neighborhood, Mr. Bailey did not want to
9 call the police. Two weeks later, haunted by what he saw in the sewer, the
10 defendant called police to report what he found.

11 Upon arrival, officers made contact with Mr. Bailey who directed them
12 to a manhole cover located in the street near his home. An officer removed the
13 manhole cover and observed the body of the victim laying in the sewer. An
14 immediate examination of the body determined no apparent injuries to the victim
15 and the body was in the advanced stages of decomposition. Homicide detectives
16 were informed of a 17-year-old female who lived in the area and who was
17 reported missing on December 14, 2019. The missing teenager matched the
18 unknown deceased female.

19 On January 21, 2020, detectives contacted the defendant and asked if he
20 was available to come in for a polygraph which he agreed. After the test was
21 completed, the polygraph technician confronted Mr. Bailey with the results and
22 the defendant continued to deny his involvement. Detectives advised the
23 defendant based on what they knew so far, they believed he assisted someone in
24 "dumping" the body in the sewer; however, did not believe he was responsible
25 for the death. At this point, Mr. Bailey began to cry and stated he would be
26 honest about what occurred. When the defendant asked detectives if he would
27 go to jail, they advised Mr. Bailey it depended on what he was going to say. Mr.
28 Bailey stated to detectives, on the night of December 12, 2019, he ran into the
victim at McDonalds. The victim told Mr. Bailey her family kicked her out of
the house. After attempting to give her advice, the defendant told the victim she
could stay at his house; however, when he left the McDonalds to go home; she
did not come with him. Mr. Bailey admitted to detectives he was high on Xanax
and drinking wine when the victim contacted him about staying at his house.
The defendant stated the victim came over to his home and he made a bed for
her on the floor. The victim began to drink wine and the defendant was unsure
if she was also using drugs since at some point, she became aggressive toward
him and began to activate her taser while facing him. Feeling concerned the
victim was going to tase him, Mr. Bailey grabbed the victim and placed her in a
headlock for approximately ten seconds before she became limp and fell to the
floor. When the defendant realized she was not breathing, he gave her CPR for
what seemed to be two hours with no success. Mr. Bailey was afraid of going to
jail for murder and did not call the police. The defendant hid the victim's body
inside his bedroom until the next night or early morning of December 14. The
defendant transported the victim's body inside a wheeled trashcan to the sewer
drain and dumped her body into the drain. The guilt of knowing her body was
inside the drain finally caused Mr. Bailey to call police and confess. The
defendant admitted to throwing the victim's shoes, backpack, cellular phone,
and taser away.

Mr. Bailey was arrested, transported to the Clark County Detention
Center, and booked accordingly.

PSI at 4.

1 **ANALYSIS**

2 Petitioner alleges the following four (4)¹ grounds for habeas relief in the Petition:

3 1/2) Trotter died as a result of self-defense;

4 3) Corpus Delicti, in that Petitioner alleges Trotter's death was
5 considered undetermined and the medical examiner improperly
6 relied on his confession to police in determine the manner of death
7 as homicide;

8 4) ineffective assistance of counsel and;

9 5) his confession to police was involuntary.

10 Petition at 6-12.

11 **I. THE PETITION IS DENIED BECAUSE PETITIONER'S PLEA WAS**
12 **VOLUNTARILY ENTERED AND COUNSEL PROVIDED EFFECTIVE**
13 **ASSISTANCE.**

14 NRS 34.810(1)(a) states that "[t]he court shall dismiss a petition if the court determines
15 that [t]he petitioner's conviction was upon a plea of guilty or guilty but mentally ill and the
16 petition is not based upon an allegation that the plea was involuntarily or unknowingly entered
17 or that the plea was entered without effective assistance of counsel." Because the court's
18 consideration of the Petition is dependent on whether Petitioner 1) challenges the voluntariness
19 of his plea or 2) alleges ineffective assistance of counsel regarding entry of the plea, the court
20 first addresses these matters before considering Petitioner's other claims.

21 **1. Petitioner's Plea was Voluntary.**

22 The Court finds that Petitioner makes no overt claim that his plea was involuntary or
23 unknowingly entered. To the extent that Petitioner's ineffective assistance claim and/or his
24 claim regarding the voluntariness of his confession suggest that his plea was entered
25 involuntarily, such a suggestion is belied by the record. "A claim is 'belied' when it is
26 contradicted or proven to be false by the record as it existed at the time the claim was made."
27 Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002). First, Petitioner attested to the

28 ¹ Petitioner utilized the "Ground TWO" page of the petition form to continue his claim from Ground ONE. See Petition at 7. Consequently, his second ground is labeled "Ground THREE", his third is labeled "Ground FOUR", and his fourth ground is labeled "Ground FIVE".

1 voluntariness of his plea when he signed his GPA. GPA filed September 9, 2021 at 5. Second,
2 the court confirmed the voluntariness of Petitioner's plea when it accepted it. See Court
3 Minutes – All Pending Motions, filed September 9, 2021, at 2. Additionally, Petitioner already
4 attempted to withdraw his guilty plea and, after appointing alternative counsel, the court
5 determined that Petitioner had no grounds to withdraw his plea and denied the motion. Court
6 Minutes – Motion, filed January 6, 2022; Court Minutes – Status Check, March 17, 2022.
7 Thus, the court hereby finds that any claim or suggestion that Petitioner's claim was entered
8 involuntarily is belied by the record and, therefore, is not grounds for the court to consider the
9 Petition. Absent a finding of ineffective assistance of counsel, the court shall dismiss the
10 Petition pursuant to NRS 34.810(1)(a).

11 **2. Petitioner's Claims Are Insufficient and Counsel Was Effective.**

12 In his Ground Four, Petitioner alleges ineffective assistance of counsel. Petition at 9.
13 Essentially, Petitioner claims that counsel lacked effort and manipulated him into taking the
14 plea. Id. at 9-10. The court finds that counsel was effective and hereby dismisses the Petition
15 because these claims are a) conclusory and b) belied by the record.

16 **a. Petitioner's Ineffective Assistance Claims Are Conclusory and, Thus,**
17 **Insufficient to Warrant Relief.**

18 "Bare" and "naked" allegations are not sufficient to warrant post-conviction relief, nor
19 are those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d
20 222, 225 (1984). A proper petition for post-conviction relief must set forth specific factual
21 allegations. N.R.S. 34.735(6) states, in pertinent part:

22 [Petitioner] must allege specific facts supporting the claims in the
23 petition [he] file[s] seeking relief from any conviction or sentence.
24 Failure to raise specific facts rather than just conclusions may
25 cause [the] petition to be dismissed.

26 See also Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding that bare
27 or naked allegations are insufficient to entitle a defendant to post-conviction relief). "A
28 petitioner for post-conviction relief cannot rely on conclusory claims for relief but must make
specific factual allegations that if true would entitle him to relief." Colwell v. State, 118 Nev.

1 Adv. Op. 80, 59 P.3d 463, 467 (2002) (citing Evans v. State, 117 Nev. 609, 621, 28 P.3d 498,
2 507 (2001)). Claims of ineffective assistance of counsel asserted in a petition for post-
3 conviction relief must be supported with specific factual allegations, which if true, would
4 entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

5 Petitioner claims that counsel “did not represent [him] to the best of her ability [and]...
6 [h]er work ethic and determination was not even close to a hundred percent”. Petition at 9. The
7 court finds that Petitioner fails to support these claims with any specific facts regarding what
8 counsel did and did not do or what he believes she should have done. Further, Petitioner claims
9 that counsel “lied”, “manipulated” and “coerced” him into entering into the GPA, and “took
10 advantage of [him] mentally because she knew [he] was diagnosed with an intellectual
11 disability.” Id. Yet, again, Petitioner does not provide any specific facts to support these
12 claims. The only proof that Petitioner offers to support these claims is that “there are transcripts
13 of [his] complaints against [his] attorney that [he] said in a couple of court proceedings...”. Id.
14 at 10. However, Petitioner fails to cite to any specific complaints raised or the proceedings
15 where these complaints were allegedly lodged. Thus, Petitioner has only raised conclusions
16 without providing sufficient, specific facts to warrant post-conviction relief. Therefore, the
17 court hereby dismisses these claims and denies the Petition.

18 **b. Petitioner’s Ineffective Assistance Claims Are Belied By the Record.**

19 Notwithstanding Petitioner’s failure to allege sufficient, factual allegations to warrant
20 relief, the conclusory claim that counsel was ineffective is belied by the record. The Sixth
21 Amendment to the United States Constitution provides that, “[i]n all criminal prosecutions,
22 the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.” The
23 United States Supreme Court has long recognized that “the right to counsel is the right to the
24 effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct.
25 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

26 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
27 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of
28 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865

1 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
2 representation fell below an objective standard of reasonableness, and second, that but for
3 counsel's errors, there is a reasonable probability that the result of the proceedings would have
4 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State
5 Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-
6 part test). “[T]here is no reason for a court deciding an ineffective assistance claim to approach
7 the inquiry in the same order or even to address both components of the inquiry if the defendant
8 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

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

15 It is true that defendant is entitled to effective assistance of counsel in the plea-
16 bargaining process and in determining whether to accept or reject a plea offer. Lafler v.
17 Cooper, 566 U.S. 156, 163, 132 S. Ct. 1376, 1384 (2012); see also McMann v. Richardson,
18 397 U.S. 759, 771, 90 S. Ct. 1441 (1970) (the Constitution guarantees effective counsel when
19 accepting guilty plea). To establish a claim of ineffective assistance of counsel for advice
20 regarding a guilty plea, a defendant must show “gross error on the part of counsel.” Turner v.
21 Calderon, 281 F.3d 851, 880 (9th Cir. 2002). A reasonable plea recommendation that hindsight
22 reveals to be unwise is not ineffective assistance. Lafler, at 880. In considering the defendant’s
23 “right to make a reasonably informed decision whether to accept a plea offer,” the question is
24 not whether, “counsel’s advice [was] right or wrong, but . . . whether that advice was within
25 the range of competence demanded of attorneys in criminal cases.” Id. (quoting United States
26 v. Day, 969 F.2d 39, 43 (3rd Cir. 1992), and McMann, 397 U.S. 771, 90 S. Ct. at 1449.

27 The court finds that Petitioner fails to establish that counsel’s assistance fell below the
28 objective standard of reasonableness or demonstrate any prejudice suffered. Petitioner was

1 bound over on a Murder charge. Information filed April 2, 2020. The record demonstrates that
2 counsel vehemently contested the claim that a murder even occurred. First, counsel filed the
3 Pre-Trial PWHC to argue that the medical examiner's determination of "homicide" based on
4 Petitioner's statements to police, and the admission of those statements in the Preliminary
5 Hearing, was improper. Pre-Trial PWHC, filed May 18, 2020, at 6-7. After the district court
6 denied that petition, counsel took the extraordinary step of challenging the denial by filing a
7 Writ of Mandamus/Prohibition with the Nevada Supreme Court. See NSC Case No. 82310.

8 After the Nevada Supreme Court declined to review the matter, counsel then filed
9 multiple pre-trial motions to exclude Petitioner's statements to police and preclude the medical
10 examiner's testimony. Defendant's Motion To Exclude Statements filed March 8, 2021;
11 Motion in Limine to Preclude Expert Opinion Testimony that the Manner of Death in this Case
12 is Homicide, filed August 30, 2021. Counsel arranged a Forensic Psychological Evaluation of
13 Petitioner and extensively discussed Petitioner's mental health in the Motion to Exclude
14 Statements and the Jackson v. Denno hearing that followed. Motion to Exclude Statements at
15 6-13, Exhibit A; See Generally Recorder's Transcript of Proceedings Jackson V. Denno
16 Hearing And Status Check: Trial Setting, filed October 5, 2022.

17 In fact, two (2) of the four (4) claims Petitioner raises in the instant Petition are the
18 same as the ones counsel raised at multiple points prior to negotiating the case. It was only
19 after all of these attempts were exhausted that a plea agreement was negotiated. Additionally,
20 in preparation for sentencing, counsel filed a detailed Sentencing Memorandum and requested
21 the minimum sentence on the Vulnerable Person Enhancement. See Generally Memorandum,
22 filed April 5, 2022. These actions by counsel demonstrate that counsel's assistance was well
23 within, if not at the higher end of, the range of competence demanded of attorneys in criminal
24 cases.

25 Further, Petitioner is unable to demonstrate that he suffered any prejudice as a result of
26 counsel's performance. As previously discussed, Petitioner was bound over on a Murder
27 charge, for which he could have received a life sentence. After multiple attempts to exclude
28 the most unfavorable evidence against Petitioner were denied, counsel was able to negotiate a

1 Voluntary Manslaughter charge. Thus, even if Petitioner was able to establish that counsel
2 committed some error, he is unable to demonstrate that he suffered any prejudice as a result of
3 any alleged error. Therefore, the court finds that counsel was effective and denies Petitioner's
4 ineffective assistance of counsel claim. The court hereby finds that, Pursuant to NRS
5 34.810(1)(a), Petitioner's failure to prove that either his plea was given involuntarily or that
6 his counsel was ineffective requires dismissal of the Petition without consideration of the other
7 claims contained therein.

8 **II. PETITIONER'S REMAINING CLAIMS ARE PROCEDURALLY BARRED.**

9
10 Notwithstanding the fact that the Petition is dismissed for the reasons discussed
11 in Section I. above, Petitioner's remaining claims are procedurally barred.

12 **1. Petitioner's Self-Defense Claim Has Been Waived.**

13 Petitioner's Grounds One/Two alleged that Trotter's death was the result of self-
14 defense, in which Trotter was the aggressor and Petitioner was defending himself. Petition at
15 6. However, Petitioner fails to cite a legal basis for which relief should be granted.
16 Nevertheless, self-defense claims are beyond the scope of habeas review and, consequently,
17 have been waived.

18 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and
19 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-
20 conviction proceedings.... *[A]ll other claims that are appropriate for a direct appeal must be*
21 *pursued on direct appeal, or they will be considered waived in subsequent proceedings."*
22 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)
23 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A
24 court must dismiss a habeas petition if it presents claims that either were or could have been
25 presented in an earlier proceeding, unless the court finds both cause for failing to present the
26 claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State,
27 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001). Thus, substantive claims are beyond the scope
28 of habeas and waived. NRS 34.724(2)(a); Evans, 117 Nev. At 646-47.; Franklin, 110 Nev. at

1 752. Under NRS 34.810(3), a defendant may only escape these procedural bars if they meet
2 the burden of establishing good cause and prejudice. Where a defendant does not show good
3 cause for failure to raise claims of error upon direct appeal, the district court is not obliged to
4 consider them in post-conviction proceedings. Jones v. State, 91 Nev. 416, 536 P.2d 1025
5 (1975). Therefore, had the Petition not been dismissed, this court would have denied
6 Petitioner’s self-defense claim because it is is waived for failure to raise it on direct appeal and
7 that Petitioner fails to allege good cause or prejudice to overcome the procedural bar.

8 **2. Petitioner’s Corpus Delicti Claims is Barred by the Doctrine of Res**
9 **Judicata.**

10 In Ground Three, Petitioner raises a corpus delicti claim. Petition at 8. Essentially,
11 Petitioner alleges that the State failed to prove that Trotter’s death was the result of a criminal
12 act because the medical examiner allegedly based her cause of death determination on
13 Petitioner’s confession to police. *Id.* These claims are barred by the doctrine of res judicata.

14 *a. The Doctrine of Corpus Delicti*

15 In any criminal case, the State has the burden of proving “that (1) a crime has been
16 committed and (2) there is probable cause to believe the defendant committed it. To meet the
17 first prong of this test [in cases involving death], known as the corpus delicti, the state must
18 demonstrate (1) the fact of death, and (2) that death occurred by a criminal agency.” Sheriff,
19 Washoe Cnty. v. Middleton, 112 Nev. 956, 963, 921 P.2d 282, 287 (1996) (citing NRS
20 172.155, Frutiger v. State, 111 Nev. 1385, 907 P.2d 158 (1995)). Corpus delicti is a “threshold”
21 burden that the State prove by a specific standard of proof at different points in a criminal case.
22 Middleton, 112 Nev. at 963. Thus, the term “corpus delicti” is defined as the State’s burden to
23 prove that a crime has been committed by establishing “(1) the fact that a death occurred and
24 (2) that that death occurred by a criminal agency. *Id.*

25 The Nevada Supreme Court has held that “[a]lthough medical evidence as to the cause
26 of death is often critical in establishing that a death occurred by criminal agency, there is no
27 requirement that there be evidence of a specific cause of death. The state is required only to
28 show a hypothesis that death occurred by criminal agency; it is not required to show a

1 hypothesis of a specific cause of death.” *Id.*, at 969 (citing Azbill v. State, 84 Nev. 345, 352,
2 440 P.2d 1014, 1019 (1968)). Additionally, evidence of both corpus delicti and probable cause
3 that the defendant committed the crime “often, if not always, [come in] intermingled and
4 without specific control as to which of the points it is offered to prove.” *Id.* Although
5 “[c]onfessions and admissions of the defendant may not be used to establish corpus delicti
6 absent sufficient independent evidence” (Middleton, 112 Nev. at 962 (citing Hooker v. Sheriff,
7 89 Nev. 89, 506 P.2d 1262 (1973))), the Nevada Supreme Court has found that “the courts
8 look at the entire record and without regard to the order in which it came in or that certain
9 types of evidence may not be considered in proving corpus delicti (confessions for example)
10 and hold that there was sufficient evidence to establish the corpus delicti independent of
11 confessions and possibly admissions, but that the latter may then be used to corroborate or
12 strengthen the proof of the corpus delicti.” *Id.*

13 *b. The Doctrine of Res Judicata*

14 The Nevada Supreme Court has explained that res judicata precludes consideration of
15 arguments that have been previously raised and addressed on the merits or found to be
16 procedurally defaulted. Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975); see
17 also Mason v. State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine’s applicability
18 in the criminal context). Such preclusion “cannot be avoided by a more detailed and precisely
19 focused argument subsequently made after reflection upon the previous proceedings.” *Id.* at
20 316, 535 P.2d at 799. Indeed, simply continuing to file motions with the same arguments
21 subjects those motions to summary denial under the doctrines of the law of the case and res
22 judicata. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelson v.
23 State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)); Hall, 91 Nev. at 316, 535 P.2d at
24 799.

25 Petitioner states that “the deceased was not killed at all but experienced a medical
26 episode known as a seizure and passed away.” Petition at 8. To support this claim, Petitioner
27 states that the medical examiner ruled the manner of death undetermined and then reached the
28 conclusion of homicide after being made aware of his confession. *Id.* First, the court finds that

1 the State is not required to provide evidence of a specific cause of death or show a hypothesis
2 of a specific cause of death. Middleton, *supra*. It only has to show a hypothesis that death
3 occurred by criminal agency. Id. Second, the court finds that the justice court determined that
4 the State sufficiently established corpus delicti when it bound the case over to district court.
5 Amended Criminal Bindover, filed April 3, 2020. Further, the court finds that the State was
6 not provided the opportunity, nor was it required, to prove corpus delicti beyond a reasonable
7 doubt because Petitioner pled guilty. See GPA, at 1; See also Amended Information, filed
8 September 8, 2021.

9 The court hereby finds that multiple courts have already decided this issue throughout
10 this case. Initially, the justice court found that corpus delicti was sufficiently proven when it
11 bound the case over to district court. Amended Criminal Bindover, filed April 3, 2020. Then,
12 the this court first ruled on the corpus delicti issue when it denied the Pre-Trial PWHC. See
13 Pre-Trial PWHC at 5-7. In the Pre-Trial PWHC, Petitioner claimed “inadmissible expert
14 opinion evidence was admitted at preliminary hearing and Defendant’s statements were
15 presented in violation of the corpus delicti rule.” Id. at 6. It is apparent that Petitioner has
16 replicated the same claim in the instant Petition. Petition at 8. Thus, both the justice court and
17 this court have determined that the State sufficiently proved corpus delicti. Therefore, had the
18 Petition not been dismissed, this court would have denied this claim pursuant to the doctrine
19 of res judicata.

20 **3. Petitioner’s Claim That His Confession Was Involuntary Has Been Waived**
21 **and is Barred By the Doctrine of Res Judicata.**

22 Finally, Petitioner’s Ground Five claims that his confession to police was involuntary.
23 Petition at 11-12. This claim is barred because Petitioner cannot raise constitutional claims
24 that occurred prior to his guilty plea and by the doctrine of res judicata.

25 A defendant cannot enter a guilty plea then later raise independent claims alleging a
26 deprivation of his rights before entry of the plea. State v. Eighth Judicial District Court, 121

27 ///

28 ///

///

1 Nev. 225, 112 P.3d 1070, n.24 (2005) (quoting Tollett v. Henderson, 411 U.S. 258,
2 267 (1973)). Generally, the entry of a guilty plea waives any right to appeal from events
3 occurring prior to the entry of the plea. See Webb v. State, 91 Nev. 469, 538 P.2d 164
4 (1975). “[A] guilty plea represents a break in the chain of events which has preceded it in
5 the criminal process. . . . [A defendant] may not thereafter raise independent claims relating
6 to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.”
7 Id. (quoting Tollett, 411 U.S. at 267).

8 Petitioner alleges that his confession to police was given involuntarily and in violation
9 of his 5th Amendment right against self-incrimination. See Petition at 11-12. Pursuant to Webb,
10 Petitioner’s guilty plea constitutes “a break in the chain of events which has preceded it in the
11 criminal process” and, therefore, Petitioner is not permitted to raise any constitutional
12 challenges that occurred prior to entry of plea. Webb, supra.

13 Further, this claim has already been denied by this court. As previously discussed,
14 Petitioner, through counsel, filed a Motion to Exclude Statements that challenged the
15 “voluntariness of [Petitioner’s] statements and Miranda pursuant to Jackson v. Denno...”,
16 which was denied after a Jackson v. Denno hearing. Motion to Exclude Statements, at 4;
17 Recorder’s Transcript of Proceedings Jackson V. Denno Hearing and Status Check: Trial
18 Setting at 38. Again, it is apparent that Petitioner has replicated the same claim in the instant
19 Petition. Petition at 11-12. Thus, this court has already determined that Petitioner’s statements
20 to police were voluntarily given. Therefore, had the Petition not been dismissed, this court

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 would have denied this claim because Petitioner is not permitted to raise any constitutional
2 challenges that occurred prior to entry of plea, and it is barred by the doctrine of res judicata.

3 **CONCLUSION**

4 **ORDER**

5 It is HEREBY ORDERED that this Petition is DENIED.

7 Dated this 29th day of November, 2022

8 

9
10 FDA F8F 8E4E 8EFA
Michelle Leavitt
District Court Judge

10 STEVEN B. WOLFSON
11 DISTRICT ATTORNEY
Nevada Bar #001565

12 BY /s/ ALEXANDER CHEN
13 ALEXANDER CHEN
14 Chief Deputy District Attorney
Nevada Bar #10539

16 **CERTIFICATE OF MAILING**

17 I hereby certify that service of the above and foregoing was made this 23rd day of
18 November 2022, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

19 JAYSHAWN BAILEY, BAC #1256551
20 HIGH DESERT STATE PRISON
21 P. O. BOX 650
22 INDIAN SPRINGS, NEVADA 89070

23 BY /s/ Janet Hayes
24 Secretary for the District Attorney's Office

25
26
27 20F01585X/AC/kf/jh/MVU
28

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Jayshawn Bailey, Plaintiff(s)

CASE NO: A-22-857574-W

7 vs.

DEPT. NO. Department 12

8 State of Nevada, Defendant(s)

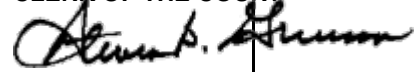
9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment 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: 11/29/2022

15 Dept 12 Law Clerk

dept12lc@clarkcountycourts.us



1 NEFF

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 JAYSHAWN BAILEY,

6 Petitioner,

7 vs.

8 STATE OF NEVADA,

9 Respondent,

Case No: A-22-857574-W

Dept No: XII

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

11 PLEASE TAKE NOTICE that on November 29, 2022, the court entered a decision or order in this matter,
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed
to you. This notice was mailed on November 30, 2022.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

17 Amanda Hampton, Deputy Clerk

18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 30 day of November 2022, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:

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

24 ☒ The United States mail addressed as follows:

25 Jayshawn Bailey # 1256551
26 P.O. Box 650
Indian Springs, NV 89070

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #10539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

JAYSHAWN BAILEY,
5216003

Petitioner,

-vs-

STATE OF NEVADA,

Respondent.

CASE NO: A-22-857574-W
(C-20-347887-1)

DEPT NO: XII

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING
DEFENDANT'S MOTION**

DATE OF HEARING: October 27, 2022
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable MICHELLE LEAVITT, District Judge, on the 27th day of October 2022, the Petitioner not being present and proceeding in proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JOSHUA JUDD, Deputy District Attorney, and the Court having considered the matter, including petitions, responses, transcripts, testimony of witnesses, arguments of counsel, and/or documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

///

///

///

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On January 22, 2020, Jayshawn D. Bailey (herein after "Petitioner") was charged by
4 way of Criminal Complaint with the crime of MURDER (Category A Felony - NRS 200.010,
5 200.030 - NOC 50000). The Preliminary Hearing was held on April 1, 2020, and the case was
6 bound over to district court as charged and the Information was filed on April 2, 2020.
7 Petitioner was arraigned in district court on April 16, 2020, where he invoked his right to a
8 speedy trial.

9 On May 18, 2020, Petitioner filed a Petition for Writ of Habeas Corpus (Pre-Trial)
10 (hereinafter "Pre-Trial PWHC"). The State filed its Return on June 2, 2020. After a hearing
11 on June 11, 2020, the court denied the Pre-Trial PWHC and filed its order on June 17, 2020.

12 On July 6, 2020, Petitioner filed a Motion to Compel Production of Discovery and
13 Brady Material. Due to Petitioner's invoked status, the case was sent to Central Trial Readiness
14 Conference on July 15, 2020. During the conference, Petitioner, through counsel, requested a
15 continuance without waiving his speedy trial right because there was outstanding discovery.
16 With no opposition from the State, the trial was continued until September 28, 2020. The trial
17 was continued five (5) more times but, Petitioner remained invoked. Also on July 15, 2020,
18 the State filed its Response to Petitioner's Motion to Compel. Petitioner's Motion to Compel
19 was granted in part and denied in part, and the court issued its order on August 12, 2020.

20 Also on August 12, 2020, the court issued an Ex Parte Order for the Department of
21 Family Services (hereinafter "DFS") to turn over any and all records relating to the victim,
22 Tamyah Trotter (hereinafter "Trotter"). After conducting an in-camera review, the court
23 informed the parties that the DFS records were available for pick up on October 13, 2020.

24 On January 11, 2021, Petitioner, through counsel, filed a Motion to Stay District Court
25 Proceedings because Petitioner had filed a Petition for a Writ of Prohibition/Mandamus with
26 the Nevada Supreme Court. On January 19, 2021, the State filed its Opposition to Petitioner's
27 Motion to Stay District Court proceedings and the district court, noting that Petitioner
28 remained invoked, denied the Motion on January 26, 2021.

1 Meanwhile, the Petition for Writ of Prohibition/Mandamus was filed with the Nevada
2 Supreme Court on January 12, 2021, requesting the Supreme Court to grant Petitioner's Pre-
3 Trial PWHC. (See NSC Case No. 82310). The Nevada Supreme Court denied the Petition for
4 Writ of Prohibition/Mandamus on March 9, 2021, and a Notice in Lieu of Remittitur issued
5 on April 5, 2021.

6 While the Nevada Supreme Court was considering the Petition for Writ
7 Prohibition/Mandamus, the district court proceedings continued. On March 3, 2021, the case
8 was sent to Central Trial Readiness Conference for the fourth time, where defense counsel
9 announced ready for the April 5, 2021, trial date, but informed the court of defense's intent to
10 file a motion to suppress on March 5, 2021. As a result, the case was sent back to the
11 department for further proceedings.

12 On March 8, 2021, Petitioner, through counsel, filed a Motion to Exclude Statements
13 and Request For Evidentiary Hearing Pursuant To Jackson v. Denno that included
14 approximately two-hundred and ninety-four (294) pages of exhibits (herein after "Motion to
15 Exclude Statements"). On March 23, 2021, the State filed both its Opposition to the Motion to
16 Exclude Statements and an Amended Opposition. On March 25, 2021, Petitioner filed a Reply
17 to the State's Opposition. The court held a Jackson v. Denno hearing on May 12 and June 16,
18 2021, after which it denied the Motion to Exclude Statements.

19 The parties participated in a Settlement Conference on August 20, 2021, during which
20 they failed to come to an agreement. On August 30, 2021, Petitioner filed a: 1) Motion in
21 Limine to Preclude Expert Opinion Testimony that the Manner of Death in this Case is
22 Homicide, 2) Motion For Specific Disclosure and Identification of Electronic Evidence, 3)
23 Motion in Limine to Preclude Admission of Irrelevant and Prejudicial Internet Search, and 4)
24 Motion for Supplemental Discovery Related to Expert Witness Dr. Christina Di Loreto. On
25 August 31, 2021, the State filed its Opposition to the first three (3) motions, respectively, and
26 filed its Opposition to the fourth motion on September 1, 2021.

27 Then, on September 8, 2021, the State filed an Amended Information and the Guilty
28 Plea Agreement (hereinafter "GPA"). Pursuant to the GPA, Petitioner agreed to plead guilty

1 to one (1) count of VOLUNTARY MANSLAUGHTER OF A VULNERABLE PERSON
2 (Category B Felony - NRS 200.040, 200.050, 200.080, 193.1675 - NOC 50020), the parties
3 stipulated to a sentence of four (4) to ten (10) years in the Nevada Department of Corrections
4 (hereinafter "NDOC") on the Voluntary Manslaughter charge, and the State retained the right
5 to argue the Vulnerable Person enhancement.

6 On December 8, 2021, Petitioner, through counsel, filed a Motion to Appoint Alternate
7 Counsel for Motion to Withdraw Plea. On January 6, 2022, the court granted Petitioner's
8 Motion for Alternative Counsel and alternative counsel was confirmed on January 13, 2022.
9 After hearing representations by alternative counsel, the court denied Petitioner's Motion to
10 Withdraw Plea. A Sentencing Memorandum was filed on April 5, 2022, by original counsel.
11 The Sentencing Hearing began on April 8, 2022, and was continued to April 21, 2022 where
12 Petitioner was adjudged guilty of Voluntary Manslaughter of a Vulnerable Person and was
13 sentenced to four (4) to ten (10) years in NDOC for Voluntary Manslaughter and a consecutive
14 four (4) to ten (10) years for the Vulnerable Person Enhancement for an aggregate total of
15 eight (8) to twenty (20) years. The Judgment of Conviction (hereinafter "JOC") was filed on
16 April 27, 2022.

17 On July 14, 2022, Petitioner filed a Pro Per Notice of Appeal in the district court, which
18 was filed in the Nevada Supreme Court on July 19, 2022, and initiated NSC Case No. 85030.
19 On August 8, 2022, the Nevada Supreme Court dismissed Petitioner's Direct Appeal for lack
20 of jurisdiction because Petitioner failed to file his notice of appeal within the 30-day appeal
21 period proscribed by NRAP 4(b). Remittitur issued on September 6, 2022.

22 On August 29, 2022, Petitioner filed the instant, Pro Per Petition for Writ of Habeas
23 Corpus (post-conviction) (hereinafter "the Petition"). The State's response to Petitioner's
24 claims contained therein is discussed below.

25 **STATEMENT OF THE FACTS**

26 The Presentence Investigation Report ("PSI"), prepared and filed under seal on
27 November 24, 2021, summarized the offense as follows:

28 ///

1 On January 19, 2020, a male, identified as the defendant, Jayshawn
2 Bailey, called police to report he found a body inside a sewer drain near his
3 house. He further explained a month prior, he was standing outside his residence
4 smoking and watched two people place something in the nearby sewer.
5 Approximately two weeks later, out of curiosity, he lifted the manhole cover and
6 entered the sewer to see what the people put down there Mr. Bailey stated he
7 observed the body of the juvenile victim (DOB: 06-06-02). Claiming to be
8 scared of the repercussions from the neighborhood, Mr. Bailey did not want to
9 call the police. Two weeks later, haunted by what he saw in the sewer, the
10 defendant called police to report what he found.

11 Upon arrival, officers made contact with Mr. Bailey who directed them
12 to a manhole cover located in the street near his home. An officer removed the
13 manhole cover and observed the body of the victim laying in the sewer. An
14 immediate examination of the body determined no apparent injuries to the victim
15 and the body was in the advanced stages of decomposition. Homicide detectives
16 were informed of a 17-year-old female who lived in the area and who was
17 reported missing on December 14, 2019. The missing teenager matched the
18 unknown deceased female.

19 On January 21, 2020, detectives contacted the defendant and asked if he
20 was available to come in for a polygraph which he agreed. After the test was
21 completed, the polygraph technician confronted Mr. Bailey with the results and
22 the defendant continued to deny his involvement. Detectives advised the
23 defendant based on what they knew so far, they believed he assisted someone in
24 "dumping" the body in the sewer; however, did not believe he was responsible
25 for the death. At this point, Mr. Bailey began to cry and stated he would be
26 honest about what occurred. When the defendant asked detectives if he would
27 go to jail, they advised Mr. Bailey it depended on what he was going to say. Mr.
28 Bailey stated to detectives, on the night of December 12, 2019, he ran into the
victim at McDonalds. The victim told Mr. Bailey her family kicked her out of
the house. After attempting to give her advice, the defendant told the victim she
could stay at his house; however, when he left the McDonalds to go home; she
did not come with him. Mr. Bailey admitted to detectives he was high on Xanax
and drinking wine when the victim contacted him about staying at his house.
The defendant stated the victim came over to his home and he made a bed for
her on the floor. The victim began to drink wine and the defendant was unsure
if she was also using drugs since at some point, she became aggressive toward
him and began to activate her taser while facing him. Feeling concerned the
victim was going to tase him, Mr. Bailey grabbed the victim and placed her in a
headlock for approximately ten seconds before she became limp and fell to the
floor. When the defendant realized she was not breathing, he gave her CPR for
what seemed to be two hours with no success. Mr. Bailey was afraid of going to
jail for murder and did not call the police. The defendant hid the victim's body
inside his bedroom until the next night or early morning of December 14. The
defendant transported the victim's body inside a wheeled trashcan to the sewer
drain and dumped her body into the drain. The guilt of knowing her body was
inside the drain finally caused Mr. Bailey to call police and confess. The
defendant admitted to throwing the victim's shoes, backpack, cellular phone,
and taser away.

Mr. Bailey was arrested, transported to the Clark County Detention
Center, and booked accordingly.

PSI at 4.

1 **ANALYSIS**

2 Petitioner alleges the following four (4)¹ grounds for habeas relief in the Petition:

3 1/2) Trotter died as a result of self-defense;

4 3) Corpus Delicti, in that Petitioner alleges Trotter's death was
5 considered undetermined and the medical examiner improperly
6 relied on his confession to police in determine the manner of death
7 as homicide;

8 4) ineffective assistance of counsel and;

9 5) his confession to police was involuntary.

10 Petition at 6-12.

11 **I. THE PETITION IS DENIED BECAUSE PETITIONER'S PLEA WAS**
12 **VOLUNTARILY ENTERED AND COUNSEL PROVIDED EFFECTIVE**
13 **ASSISTANCE.**

14 NRS 34.810(1)(a) states that "[t]he court shall dismiss a petition if the court determines
15 that [t]he petitioner's conviction was upon a plea of guilty or guilty but mentally ill and the
16 petition is not based upon an allegation that the plea was involuntarily or unknowingly entered
17 or that the plea was entered without effective assistance of counsel." Because the court's
18 consideration of the Petition is dependent on whether Petitioner 1) challenges the voluntariness
19 of his plea or 2) alleges ineffective assistance of counsel regarding entry of the plea, the court
20 first addresses these matters before considering Petitioner's other claims.

21 **1. Petitioner's Plea was Voluntary.**

22 The Court finds that Petitioner makes no overt claim that his plea was involuntary or
23 unknowingly entered. To the extent that Petitioner's ineffective assistance claim and/or his
24 claim regarding the voluntariness of his confession suggest that his plea was entered
25 involuntarily, such a suggestion is belied by the record. "A claim is 'belied' when it is
26 contradicted or proven to be false by the record as it existed at the time the claim was made."
27 Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002). First, Petitioner attested to the

28 ¹ Petitioner utilized the "Ground TWO" page of the petition form to continue his claim from Ground ONE. See Petition at 7. Consequently, his second ground is labeled "Ground THREE", his third is labeled "Ground FOUR", and his fourth ground is labeled "Ground FIVE".

1 voluntariness of his plea when he signed his GPA. GPA filed September 9, 2021 at 5. Second,
2 the court confirmed the voluntariness of Petitioner's plea when it accepted it. See Court
3 Minutes – All Pending Motions, filed September 9, 2021, at 2. Additionally, Petitioner already
4 attempted to withdraw his guilty plea and, after appointing alternative counsel, the court
5 determined that Petitioner had no grounds to withdraw his plea and denied the motion. Court
6 Minutes – Motion, filed January 6, 2022; Court Minutes – Status Check, March 17, 2022.
7 Thus, the court hereby finds that any claim or suggestion that Petitioner's claim was entered
8 involuntarily is belied by the record and, therefore, is not grounds for the court to consider the
9 Petition. Absent a finding of ineffective assistance of counsel, the court shall dismiss the
10 Petition pursuant to NRS 34.810(1)(a).

11 **2. Petitioner's Claims Are Insufficient and Counsel Was Effective.**

12 In his Ground Four, Petitioner alleges ineffective assistance of counsel. Petition at 9.
13 Essentially, Petitioner claims that counsel lacked effort and manipulated him into taking the
14 plea. Id. at 9-10. The court finds that counsel was effective and hereby dismisses the Petition
15 because these claims are a) conclusory and b) belied by the record.

16 **a. Petitioner's Ineffective Assistance Claims Are Conclusory and, Thus,**
17 **Insufficient to Warrant Relief.**

18 “Bare” and “naked” allegations are not sufficient to warrant post-conviction relief, nor
19 are those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d
20 222, 225 (1984). A proper petition for post-conviction relief must set forth specific factual
21 allegations. N.R.S. 34.735(6) states, in pertinent part:

22 [Petitioner] must allege specific facts supporting the claims in the
23 petition [he] file[s] seeking relief from any conviction or sentence.
24 Failure to raise specific facts rather than just conclusions may
25 cause [the] petition to be dismissed.

26 See also Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding that bare
27 or naked allegations are insufficient to entitle a defendant to post-conviction relief). “A
28 petitioner for post-conviction relief cannot rely on conclusory claims for relief but must make
specific factual allegations that if true would entitle him to relief.” Colwell v. State, 118 Nev.

1 Adv. Op. 80, 59 P.3d 463, 467 (2002) (citing Evans v. State, 117 Nev. 609, 621, 28 P.3d 498,
2 507 (2001)). Claims of ineffective assistance of counsel asserted in a petition for post-
3 conviction relief must be supported with specific factual allegations, which if true, would
4 entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

5 Petitioner claims that counsel “did not represent [him] to the best of her ability [and]...
6 [h]er work ethic and determination was not even close to a hundred percent”. Petition at 9. The
7 court finds that Petitioner fails to support these claims with any specific facts regarding what
8 counsel did and did not do or what he believes she should have done. Further, Petitioner claims
9 that counsel “lied”, “manipulated” and “coerced” him into entering into the GPA, and “took
10 advantage of [him] mentally because she knew [he] was diagnosed with an intellectual
11 disability.” Id. Yet, again, Petitioner does not provide any specific facts to support these
12 claims. The only proof that Petitioner offers to support these claims is that “there are transcripts
13 of [his] complaints against [his] attorney that [he] said in a couple of court proceedings...”. Id.
14 at 10. However, Petitioner fails to cite to any specific complaints raised or the proceedings
15 where these complaints were allegedly lodged. Thus, Petitioner has only raised conclusions
16 without providing sufficient, specific facts to warrant post-conviction relief. Therefore, the
17 court hereby dismisses these claims and denies the Petition.

18 **b. Petitioner’s Ineffective Assistance Claims Are Belied By the Record.**

19 Notwithstanding Petitioner’s failure to allege sufficient, factual allegations to warrant
20 relief, the conclusory claim that counsel was ineffective is belied by the record. The Sixth
21 Amendment to the United States Constitution provides that, “[i]n all criminal prosecutions,
22 the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.” The
23 United States Supreme Court has long recognized that “the right to counsel is the right to the
24 effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct.
25 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

26 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
27 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of
28 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865

1 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
2 representation fell below an objective standard of reasonableness, and second, that but for
3 counsel's errors, there is a reasonable probability that the result of the proceedings would have
4 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State
5 Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-
6 part test). “[T]here is no reason for a court deciding an ineffective assistance claim to approach
7 the inquiry in the same order or even to address both components of the inquiry if the defendant
8 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

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

15 It is true that defendant is entitled to effective assistance of counsel in the plea-
16 bargaining process and in determining whether to accept or reject a plea offer. Lafler v.
17 Cooper, 566 U.S. 156, 163, 132 S. Ct. 1376, 1384 (2012); see also McMann v. Richardson,
18 397 U.S. 759, 771, 90 S. Ct. 1441 (1970) (the Constitution guarantees effective counsel when
19 accepting guilty plea). To establish a claim of ineffective assistance of counsel for advice
20 regarding a guilty plea, a defendant must show “gross error on the part of counsel.” Turner v.
21 Calderon, 281 F.3d 851, 880 (9th Cir. 2002). A reasonable plea recommendation that hindsight
22 reveals to be unwise is not ineffective assistance. Lafler, at 880. In considering the defendant’s
23 “right to make a reasonably informed decision whether to accept a plea offer,” the question is
24 not whether, “counsel’s advice [was] right or wrong, but . . . whether that advice was within
25 the range of competence demanded of attorneys in criminal cases.” Id. (quoting United States
26 v. Day, 969 F.2d 39, 43 (3rd Cir. 1992), and McMann, 397 U.S. 771, 90 S. Ct. at 1449.

27 The court finds that Petitioner fails to establish that counsel’s assistance fell below the
28 objective standard of reasonableness or demonstrate any prejudice suffered. Petitioner was

1 bound over on a Murder charge. Information filed April 2, 2020. The record demonstrates that
2 counsel vehemently contested the claim that a murder even occurred. First, counsel filed the
3 Pre-Trial PWHC to argue that the medical examiner's determination of "homicide" based on
4 Petitioner's statements to police, and the admission of those statements in the Preliminary
5 Hearing, was improper. Pre-Trial PWHC, filed May 18, 2020, at 6-7. After the district court
6 denied that petition, counsel took the extraordinary step of challenging the denial by filing a
7 Writ of Mandamus/Prohibition with the Nevada Supreme Court. See NSC Case No. 82310.

8 After the Nevada Supreme Court declined to review the matter, counsel then filed
9 multiple pre-trial motions to exclude Petitioner's statements to police and preclude the medical
10 examiner's testimony. Defendant's Motion To Exclude Statements filed March 8, 2021;
11 Motion in Limine to Preclude Expert Opinion Testimony that the Manner of Death in this Case
12 is Homicide, filed August 30, 2021. Counsel arranged a Forensic Psychological Evaluation of
13 Petitioner and extensively discussed Petitioner's mental health in the Motion to Exclude
14 Statements and the Jackson v. Denno hearing that followed. Motion to Exclude Statements at
15 6-13, Exhibit A; See Generally Recorder's Transcript of Proceedings Jackson V. Denno
16 Hearing And Status Check: Trial Setting, filed October 5, 2022.

17 In fact, two (2) of the four (4) claims Petitioner raises in the instant Petition are the
18 same as the ones counsel raised at multiple points prior to negotiating the case. It was only
19 after all of these attempts were exhausted that a plea agreement was negotiated. Additionally,
20 in preparation for sentencing, counsel filed a detailed Sentencing Memorandum and requested
21 the minimum sentence on the Vulnerable Person Enhancement. See Generally Memorandum,
22 filed April 5, 2022. These actions by counsel demonstrate that counsel's assistance was well
23 within, if not at the higher end of, the range of competence demanded of attorneys in criminal
24 cases.

25 Further, Petitioner is unable to demonstrate that he suffered any prejudice as a result of
26 counsel's performance. As previously discussed, Petitioner was bound over on a Murder
27 charge, for which he could have received a life sentence. After multiple attempts to exclude
28 the most unfavorable evidence against Petitioner were denied, counsel was able to negotiate a

1 Voluntary Manslaughter charge. Thus, even if Petitioner was able to establish that counsel
2 committed some error, he is unable to demonstrate that he suffered any prejudice as a result of
3 any alleged error. Therefore, the court finds that counsel was effective and denies Petitioner's
4 ineffective assistance of counsel claim. The court hereby finds that, Pursuant to NRS
5 34.810(1)(a), Petitioner's failure to prove that either his plea was given involuntarily or that
6 his counsel was ineffective requires dismissal of the Petition without consideration of the other
7 claims contained therein.

8 **II. PETITIONER'S REMAINING CLAIMS ARE PROCEDURALLY BARRED.**

9
10 Notwithstanding the fact that the Petition is dismissed for the reasons discussed
11 in Section I. above, Petitioner's remaining claims are procedurally barred.

12 **1. Petitioner's Self-Defense Claim Has Been Waived.**

13 Petitioner's Grounds One/Two alleged that Trotter's death was the result of self-
14 defense, in which Trotter was the aggressor and Petitioner was defending himself. Petition at
15 6. However, Petitioner fails to cite a legal basis for which relief should be granted.
16 Nevertheless, self-defense claims are beyond the scope of habeas review and, consequently,
17 have been waived.

18 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and
19 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-
20 conviction proceedings.... *[A]ll other claims that are appropriate for a direct appeal must be*
21 *pursued on direct appeal, or they will be considered waived in subsequent proceedings."*
22 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)
23 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A
24 court must dismiss a habeas petition if it presents claims that either were or could have been
25 presented in an earlier proceeding, unless the court finds both cause for failing to present the
26 claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State,
27 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001). Thus, substantive claims are beyond the scope
28 of habeas and waived. NRS 34.724(2)(a); Evans, 117 Nev. At 646-47.; Franklin, 110 Nev. at

1 752. Under NRS 34.810(3), a defendant may only escape these procedural bars if they meet
2 the burden of establishing good cause and prejudice. Where a defendant does not show good
3 cause for failure to raise claims of error upon direct appeal, the district court is not obliged to
4 consider them in post-conviction proceedings. Jones v. State, 91 Nev. 416, 536 P.2d 1025
5 (1975). Therefore, had the Petition not been dismissed, this court would have denied
6 Petitioner’s self-defense claim because it is is waived for failure to raise it on direct appeal and
7 that Petitioner fails to allege good cause or prejudice to overcome the procedural bar.

8 **2. Petitioner’s Corpus Delicti Claims is Barred by the Doctrine of Res**
9 **Judicata.**

10 In Ground Three, Petitioner raises a corpus delicti claim. Petition at 8. Essentially,
11 Petitioner alleges that the State failed to prove that Trotter’s death was the result of a criminal
12 act because the medical examiner allegedly based her cause of death determination on
13 Petitioner’s confession to police. *Id.* These claims are barred by the doctrine of res judicata.

14 *a. The Doctrine of Corpus Delicti*

15 In any criminal case, the State has the burden of proving “that (1) a crime has been
16 committed and (2) there is probable cause to believe the defendant committed it. To meet the
17 first prong of this test [in cases involving death], known as the corpus delicti, the state must
18 demonstrate (1) the fact of death, and (2) that death occurred by a criminal agency.” Sheriff,
19 Washoe Cnty. v. Middleton, 112 Nev. 956, 963, 921 P.2d 282, 287 (1996) (citing NRS
20 172.155, Frutiger v. State, 111 Nev. 1385, 907 P.2d 158 (1995)). Corpus delicti is a “threshold”
21 burden that the State prove by a specific standard of proof at different points in a criminal case.
22 Middleton, 112 Nev. at 963. Thus, the term “corpus delicti” is defined as the State’s burden to
23 prove that a crime has been committed by establishing “(1) the fact that a death occurred and
24 (2) that that death occurred by a criminal agency. *Id.*

25 The Nevada Supreme Court has held that “[a]lthough medical evidence as to the cause
26 of death is often critical in establishing that a death occurred by criminal agency, there is no
27 requirement that there be evidence of a specific cause of death. The state is required only to
28 show a hypothesis that death occurred by criminal agency; it is not required to show a

1 hypothesis of a specific cause of death.” *Id.*, at 969 (citing Azbill v. State, 84 Nev. 345, 352,
2 440 P.2d 1014, 1019 (1968)). Additionally, evidence of both corpus delicti and probable cause
3 that the defendant committed the crime “often, if not always, [come in] intermingled and
4 without specific control as to which of the points it is offered to prove.” *Id.* Although
5 “[c]onfessions and admissions of the defendant may not be used to establish corpus delicti
6 absent sufficient independent evidence” (Middleton, 112 Nev. at 962 (citing Hooker v. Sheriff,
7 89 Nev. 89, 506 P.2d 1262 (1973))), the Nevada Supreme Court has found that “the courts
8 look at the entire record and without regard to the order in which it came in or that certain
9 types of evidence may not be considered in proving corpus delicti (confessions for example)
10 and hold that there was sufficient evidence to establish the corpus delicti independent of
11 confessions and possibly admissions, but that the latter may then be used to corroborate or
12 strengthen the proof of the corpus delicti.” *Id.*

13 *b. The Doctrine of Res Judicata*

14 The Nevada Supreme Court has explained that res judicata precludes consideration of
15 arguments that have been previously raised and addressed on the merits or found to be
16 procedurally defaulted. Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975); see
17 also Mason v. State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine’s applicability
18 in the criminal context). Such preclusion “cannot be avoided by a more detailed and precisely
19 focused argument subsequently made after reflection upon the previous proceedings.” *Id.* at
20 316, 535 P.2d at 799. Indeed, simply continuing to file motions with the same arguments
21 subjects those motions to summary denial under the doctrines of the law of the case and res
22 judicata. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelson v.
23 State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)); Hall, 91 Nev. at 316, 535 P.2d at
24 799.

25 Petitioner states that “the deceased was not killed at all but experienced a medical
26 episode known as a seizure and passed away.” Petition at 8. To support this claim, Petitioner
27 states that the medical examiner ruled the manner of death undetermined and then reached the
28 conclusion of homicide after being made aware of his confession. *Id.* First, the court finds that

1 the State is not required to provide evidence of a specific cause of death or show a hypothesis
2 of a specific cause of death. Middleton, *supra*. It only has to show a hypothesis that death
3 occurred by criminal agency. Id. Second, the court finds that the justice court determined that
4 the State sufficiently established corpus delicti when it bound the case over to district court.
5 Amended Criminal Bindover, filed April 3, 2020. Further, the court finds that the State was
6 not provided the opportunity, nor was it required, to prove corpus delicti beyond a reasonable
7 doubt because Petitioner pled guilty. See GPA, at 1; See also Amended Information, filed
8 September 8, 2021.

9 The court hereby finds that multiple courts have already decided this issue throughout
10 this case. Initially, the justice court found that corpus delicti was sufficiently proven when it
11 bound the case over to district court. Amended Criminal Bindover, filed April 3, 2020. Then,
12 the this court first ruled on the corpus delicti issue when it denied the Pre-Trial PWHC. See
13 Pre-Trial PWHC at 5-7. In the Pre-Trial PWHC, Petitioner claimed “inadmissible expert
14 opinion evidence was admitted at preliminary hearing and Defendant’s statements were
15 presented in violation of the corpus delicti rule.” Id. at 6. It is apparent that Petitioner has
16 replicated the same claim in the instant Petition. Petition at 8. Thus, both the justice court and
17 this court have determined that the State sufficiently proved corpus delicti. Therefore, had the
18 Petition not been dismissed, this court would have denied this claim pursuant to the doctrine
19 of res judicata.

20 **3. Petitioner’s Claim That His Confession Was Involuntary Has Been Waived**
21 **and is Barred By the Doctrine of Res Judicata.**

22 Finally, Petitioner’s Ground Five claims that his confession to police was involuntary.
23 Petition at 11-12. This claim is barred because Petitioner cannot raise constitutional claims
24 that occurred prior to his guilty plea and by the doctrine of res judicata.

25 A defendant cannot enter a guilty plea then later raise independent claims alleging a
26 deprivation of his rights before entry of the plea. State v. Eighth Judicial District Court, 121

27 ///

28 ///

///

1 Nev. 225, 112 P.3d 1070, n.24 (2005) (quoting Tollett v. Henderson, 411 U.S. 258,
2 267 (1973)). Generally, the entry of a guilty plea waives any right to appeal from events
3 occurring prior to the entry of the plea. See Webb v. State, 91 Nev. 469, 538 P.2d 164
4 (1975). “[A] guilty plea represents a break in the chain of events which has preceded it in
5 the criminal process. . . . [A defendant] may not thereafter raise independent claims relating
6 to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.”
7 Id. (quoting Tollett, 411 U.S. at 267).

8 Petitioner alleges that his confession to police was given involuntarily and in violation
9 of his 5th Amendment right against self-incrimination. See Petition at 11-12. Pursuant to Webb,
10 Petitioner’s guilty plea constitutes “a break in the chain of events which has preceded it in the
11 criminal process” and, therefore, Petitioner is not permitted to raise any constitutional
12 challenges that occurred prior to entry of plea. Webb, *supra*.

13 Further, this claim has already been denied by this court. As previously discussed,
14 Petitioner, through counsel, filed a Motion to Exclude Statements that challenged the
15 “voluntariness of [Petitioner’s] statements and Miranda pursuant to Jackson v. Denno...”,
16 which was denied after a Jackson v. Denno hearing. Motion to Exclude Statements, at 4;
17 Recorder’s Transcript of Proceedings Jackson V. Denno Hearing and Status Check: Trial
18 Setting at 38. Again, it is apparent that Petitioner has replicated the same claim in the instant
19 Petition. Petition at 11-12. Thus, this court has already determined that Petitioner’s statements
20 to police were voluntarily given. Therefore, had the Petition not been dismissed, this court

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 would have denied this claim because Petitioner is not permitted to raise any constitutional
2 challenges that occurred prior to entry of plea, and it is barred by the doctrine of res judicata.

3 **CONCLUSION**

4 **ORDER**

5 It is HEREBY ORDERED that this Petition is DENIED.

7 Dated this 29th day of November, 2022

8 

9 FDA F8F 8E4E 8EFA
Michelle Leavitt
District Court Judge

10 STEVEN B. WOLFSON
11 DISTRICT ATTORNEY
Nevada Bar #001565

12 BY /s/ ALEXANDER CHEN
13 ALEXANDER CHEN
14 Chief Deputy District Attorney
Nevada Bar #10539

16 **CERTIFICATE OF MAILING**

17 I hereby certify that service of the above and foregoing was made this 23rd day of
18 November 2022, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

19 JAYSHAWN BAILEY, BAC #1256551
20 HIGH DESERT STATE PRISON
21 P. O. BOX 650
22 INDIAN SPRINGS, NEVADA 89070

23 BY /s/ Janet Hayes
24 Secretary for the District Attorney's Office

25
26
27 20F01585X/AC/kf/jh/MVU
28

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Jayshawn Bailey, Plaintiff(s)

CASE NO: A-22-857574-W

7 vs.

DEPT. NO. Department 12

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 Judgment 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: 11/29/2022

15 Dept 12 Law Clerk

dept12lc@clarkcountycourts.us

A-22-857574-W Jayshawn Bailey, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

October 27, 2022 08:30 AM Petition for Writ of Habeas Corpus

HEARD BY: Leavitt, Michelle COURTROOM: RJC Courtroom 14D

COURT CLERK: Pannullo, Haly; Ramey, Cristle

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Joshua D Judd Attorney for Defendant

JOURNAL ENTRIES

Defendant not present. State submitted. COURT ORDERED, Petition for Writ of Habeas Corpus is DENIED; State to prepare the Finding of Facts and Conclusions of Law.

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING DEFENDANT'S MOTION; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES

JAYSHAWN BAILEY,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

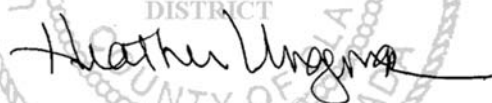
Case No: A-22-857574-W

Dept No: XII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 13 day of December 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk