

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAYSHAWN D. BAILEY,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
Jan 17 2023 02:04 PM
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-22-857574-W

Docket No: 85808

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
JAYSHAWN BAILEY #1256551,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

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

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

I N D E X

VOLUME: **PAGE NUMBER:**

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I N D E X

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FILED

AUG 29 2022

[Signature]
CLERK OF COURT

A-22-857574-W

Dept. 12

Case No
Dept. No

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

Jayshawn Bailey

Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

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
2. Name and location of court which entered the judgment of conviction under attack: District court eight department twelve, 200 Lewis Avenue Las Vegas, Nevada
3. Date of judgment of conviction: 04-27-2022
4. Case number: C-20-341887-1
5. (a) Length of sentence: 8-20 years

CLERK OF THE COURT

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AUG 15 2022

(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: Voluntary Manslaughter

Of a vulnerable person

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: I entered a plea for voluntary manslaughter stipulated

4-10 years with an right to argue an vulnerable person enhancement 1-10 years

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: District court 8 dept 12

(b) Case number or citation: C-20-347887-1

(c) Result:

(d) Date of result:

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

1 14. If you did not appeal, explain briefly why you did not: I sent in my notice of appeal

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 1.....

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:

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:

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:

22 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No1

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: Corpus delicti and or criminal agency

(b) The proceedings in which these grounds were raised: Habeas corpus writ

(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.) The deceased had a medical episode a seizure and passed away the deceased was not killed

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: Kathleen Hamers and Anna Clark both from public
13 defender office.....

14 22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under
15 attack? Yes No X

16 If yes, specify where and when it is to be served, if you know:
17

18 23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the
19 facts supporting each ground. If necessary you may attach pages stating additional grounds and facts
20 supporting same.
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(a) Ground ONE: Self-Defense - In the state of Nevada
Self defense is not a crime depending on the
Circumstances and Facts of the incident.

Supporting FACTS (Tell your story briefly without citing cases or law.): In this particular
Case regarding the defendant Jayshawn Bailey (me)
this is actual self defense, I was in actual danger.
I was placed in a predicament where I was attacked
by a tazer in my house, in my room by an intoxicated
individual that was experiencing a mental breakdown.
A tazer is considered a deadly weapon that delivers
an incapacitating electric shock. All I tried to do in that
Moment was protect myself from receiving that incapacitating
electric shock. I am legally disabled and because of
my health conditions I could have truly suffered great
bodily harm or even worse. During the attack from my
assailant, I panicked and I was terrified I didn't
react with anger, I didn't react with a malignant
heart and I didn't react with an evil intention. I
reacted out of fear. I even warned the individual
three times to stop. My warnings was ignored and
therefore I went hands on and tried to prevent from
being attacked. At one point during the struggle
I attempted to disarm the individual and ultimately
that failed. So I grabbed the individual by the head
so the individual would not be in position to taze me.
Sadly that's when the individual went into shock and
had a seizure like episode. Sadly after the seizure the

1 (b) Ground TWO: (continued) Self-Defense

2
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5 Supporting FACTS (Tell your story briefly without citing cases or law.): Individual Stop
6 breathing. I did CPR and that was unsuccessful I am
7 very remorseful and very sorry. This incident is truly an accident.
8 It was very unexpected but also this case is a true and
9 correct definition of self-defense. I was in actual danger
10 I could have suffered great bodily harm or even worse. The
11 setting which the incident occurred was in my house, in my
12 room. The only place I feel safe and the least expected place
13 I would have imagined for someone to try and hurt me.
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(c) Ground THREE: Corpus Delicti

Supporting FACTS (Tell your story briefly without citing cases or law.): In this case there is a major problem here. I am being held unlawfully on an voluntary manslaughter charge. The deceased was not killed at all but experienced a medical episode known as a seizure and passed away. The coroner did an examination on the victim and ruled the cause of death and manner of death undetermined. When I was interrogated and I ended up making involuntary statements. Due to my statements the coroner came up with an opinion and or theory of a possibility of asphyxiation. She clearly stated she couldn't confirm that the victim died by asphyxiation. She is unsure. Therefore ruled the cause of death unspecified means. I should not be incarcerated, the seizure made the victim pass away not me. I did not take the life of the deceased therefore I am being held unlawfully.

1 (d) Ground FOUR: Inneffective assistance

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5 Supporting FACTS (Tell your story briefly without citing cases or law.): I had an attorney
6 from the public defenders office that was assigned to me
7 through the court. She represented me for approximately twenty
8 seven months. Throughout the twenty seven months she did
9 not represent me to the best of her ability. Her work ethic
10 and determination was not even close to a hundred percent
11 and because of that I was sadly sent to prison for 8-20 years.
12 That time frame is very excessive for my particular case.
13 I was truly manipulated and even coerced into taking a
14 plea bargain. My attorney took advantage of me mentally
15 because she knew that I was diagnosed with an intellectual
16 disability. I was told by my counsel that I would go to prison
17 for a very long time if I wouldn't take the plea bargain.
18 Which was a stipulated voluntary manslaughter 4 to 10 years
19 with an right to argue an vulnerable person enhancement that
20 carries 1-10 years. The deceased in my case vulnerable at
21 all. Mind you I was attacked with an tazer in my house
22 in my room and I am legally disabled. I am more vulnerable
23 than my assailant. I was told by my attorney and the district
24 attorney "Mr. Bailey just do time for the victim family". I have not
25 recieved good representation. I was lied to and set up with
26 Premeditated intent by my attorney at my sentencing dates and with
27 my plea. I tried to take my plea bargain back and when she
28 put in the motion. I was eventually appointed a temporary attorney

Grounds 4: Ineffective assistance (continued)

Supporting Facts: To represent me for my withdrawal of plea. She told him that Mr. Bailey does not have grounds to withdraw my plea. So the temporary assigned attorney goes in front of a different judge because my original judge was not there that day which is another issue. But the temporary attorney stated "Mr. Bailey does not have grounds to withdraw his plea so I don't have an argument. But I truly did have grounds, there was just no effort and an evil intention to keep me with the guilty plea hanging over my head so they can get a conviction out of me. Ultimately there are transcripts of my complaints against my attorney that I said in a couple court proceedings to prove my allegations

Grounds 5: Involuntary Confession

Supporting Facts: My statements I made to the detectives was involuntarily made. I was interrogated on January 21st 2020. The detectives took me to there headquarters and I was placed in a room with a man that specialized in polygraph testing. He was an unlicensed officer. I took the test which took over an hour and once it was completed the polygrapher aggressively approached me explaining to me that I failed the test. I explained to him that I did not fail and he verbally started accusing me saying I did the crime and that I am a liar. He even called me a serial killer and at one point he got so close to me I started to feel intimidated and scared. I explained to him I honestly feel threatened right now. The detectives came in and the polygrapher ended up leaving the room. The detectives continued to interrogate me still accusing me of being involved and or playing a part in the investigation. One of the detectives made threats toward me saying he will have my community against me and even approached me with his finger a few inches from my face yelling at me. The other detective told "If you tell me what happened no matter what it is I promise I will take you home" He also gave me a demonstration on a story he told me on which he wanted me to say and agree too.

Grounds 5: Involuntary Confession (continued)

Supporting Facts: Because of the threats and promises and the level of pressure I endured for the previous couple of days. I was truly under duress and was not in the right state of mind. The detectives are not allowed to make any promises and threats and they are not allowed to continue to accuse you numerous times.

Saying that you are the one who committed the crime.

At one point I told them the way you guys are yelling and threatening me and being so close in my personal space. "I am scared of you guys". Because of there illegal tactics and me scared and intimidated by them.

I ultimately gave them an involuntary confession.

Involuntary confessions are not admissible in court and trial and therefore the district attorney was able to use my involuntary confession to keep me detained. Therefore I am still incarcerated unlawfully.

1 WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this
2 proceeding.

3 EXECUTED at 07..... on the 17.. day of the month of 07.. of the year 2022

4 Jayshawn Bailey

5 Signature of petitioner

6 Indian Springs, NV 89710-0650

7 Address

8 Signature of attorney (if any)

9 Attorney for petitioner

10 Address

11 VERIFICATION

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

15 Jayshawn Bailey

16 Petitioner

17 N/A

18 Attorney for petitioner

19 CERTIFICATE OF SERVICE BY MAIL

20 I, Jayshawn Bailey..., hereby certify, pursuant to N.R.C.P. 5(b), that on this 17.. day of the month of 07.. of
21 the year 2022, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS
22 addressed to:

23 High Desert State Prison

24 Respondent prison or jail official

25 Indian Springs, Nevada 89710-0650

26 Address

27 Attorney General

28 Heroes' Memorial Building

Capitol Complex

Carson City, Nevada 89710

Sarah Overly

District Attorney of County of Conviction

200 Lewis Avenue Las Vegas, NV 89101

Address

Jayshawn Bailey

Signature of Petitioner

Jayshawm Bailey #1256551

H. D. S. P

Indian Springs, Nevada

89070-0650

RECEIVED

AUG 16 2022

CLERK OF THE COURT

Haly Pannullo

200 Lewis Avenue

Las Vegas, Nevada

89155-1160

3

Heather L. Smith
CLERK OF THE COURT

1 PPOW
2

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

5 Jayshawn Bailey,

6 Petitioner,

7 vs.

8 State of Nevada,

9 Respondent,
10

Case No: A-22-857574-W
Department 12

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

11 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on
12 August 29, 2022. The Court has reviewed the Petition and has determined that a response would assist
13 the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and
14 good 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 27th day of October, 2022, at the hour of
20

21 8:30 am clock for further proceedings.
22

23 Dated this 1st day of September, 2022

24 *Michelle Leavitt*
25

26 **District Court Judge**
27 **Michelle Leavitt**
28 **District Court Judge**

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 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case.

13
14 If indicated below, a copy of the above mentioned filings were also served by mail
15 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 9/2/2022

16 Jayshawn Bailey

#1256551

HDSP

P.O. Box 650

Indian Springs, NV, 89070



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

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

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

INMATE CORRESPONDENCE

October 10, 2022

Re: A-22-857574-W / Department 12

Jayshawn Bailey, Plaintiff(s)

vs.

State of Nevada, Defendant(s)

- ☐ A court order is required to complete the request.
- ☐ Documents are sealed. A court order is required to reproduce. (PSI)
- ☐ Documents requested are not in the court file at this time.
- ☐ Transcripts have not been filed. A court order is required.
- ☐ Copies are \$.50 per page or by court order.
- ☐ Consult your law library for this information.
- ☐ District Court does/does not show any outstanding District Court warrants under the above referenced defendant name.
- ☒ Other: 1. Missing motion for Transportation of Inmate. 2. Order can not be signed for the Judge and needs to be left blank. Please provide all needed and corrected documents.

Cordially yours,
DC Criminal Desk #27
Deputy Clerk of the Court

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

Jayshawn Bailey)
Petitioner,)

v.)

Case No. A-22-857574-W

The State of Nevada)
Respondent.)

Dept. No. 12

ORDER FOR TRANSPORTATION OF INMATE FOR COURT APPEARANCE
OR, IN THE ALTERNATIVE, FOR APPEARANCE BY TELEPHONE OR VIDEO
CONFERENCE

Based upon the above motion, I find that the presence of
Jayshawn Bailey is necessary for the hearing that is scheduled in this
case on the 27th day of October, 2022, at
8:30 am.

THEREFOR, IT IS HEREBY ORDERED that,

☒ Pursuant to NRS 209.274, Warden Calvin Johnson
of High Desert State Prison is hereby commanded to have
Jayshawn Bailey transported to appear before me at a hearing
scheduled for October 27th at 8:30 am at the
Clark County Courthouse. Upon completion of the hearing,

1 Jayshawn Bailey is to be transported back to the above
2 named institution.
3

4 ☐ Pursuant to NRS 209.274(2)(a), Petitioner shall be made available for telephonic
5 or video conference appearance by his or her institution. My clerk will contact
6 _____ at _____ to make
7 arrangements for the Court to initiate the telephone appearance for the hearing.
8

9 Dated this 21st day of September, 2008.
10
11

12 Michelle Leavitt

13 District Court Judge
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CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, certify pursuant to NRCP 5(b), that on this 21st day of September, 2008, I served the foregoing Motion and Order for Transportation of Inmate for Court Appearance or, in the Alternative, Motion for Appearance by Telephone or Video Conference, by mailing a true and correct copy thereof in a sealed envelope, upon which first class postage was fully prepaid, addressed to:

200 Lewis Avenue

Las Vegas

Nevada

89155

and that there is regular communication by mail between the place of mailing and the recipient address.

High desert state prison

indian springs, Nevada 89070

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding motion

for transport of inmate for court appearance
(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.

Jaysharn Bailey
Signature

09-21-2022
Date

Jaysharn Bailey
Print Name

Transport inmate for court appearance
Title

Tasham Bailey #1854551

H.O.S.P.

Indian Springs, Nevada

89070

LAS VEGAS NV 890

20 SEP 2022 PM 4 L

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SEP 22 2022

DISTRICT COURT ADMIN

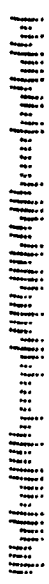
Haley Pannullo

300 Lewis Avenue

Las Vegas, Nevada

89155

89101-630000



HIGHWAY 395 STATE PRISON
SEP 19 2022
UNIT 8 C/D



RSPN
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,

Petitioner,

-vs-

STATE OF NEVADA,

Respondent.

CASE NO: A-22-857574-W
C-20-347887-1
DEPT NO: XII

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

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

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Petition For Writ Of Habeas Corpus (Post-Conviction).

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.

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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 **ARGUMENT**

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 SHOULD BE DENIED BECAUSE PETITIONER'S PLEA**
12 **WAS 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 hinges on whether Petitioner 1) challenges the voluntariness of
19 his plea or 2) alleges ineffective assistance of counsel regarding entry of the plea, the court
20 should first address these matters before considering Petitioner's other claims.

21 **1. The Petition Should Be Denied Because Petitioner's Plea was Voluntary.**

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

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

11 **2. The Petition Should Be Denied Because Petitioner's Claims Are Insufficient**
12 **and Counsel Was Effective.**

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

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

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

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

1 specific factual allegations that if true would entitle him to relief.” Colwell v. State, 118 Nev.
2 Adv. Op. 80, 59 P.3d 463, 467 (2002) (citing Evans v. State, 117 Nev. 609, 621, 28 P.3d 498,
3 507 (2001)). Claims of ineffective assistance of counsel asserted in a petition for post-
4 conviction relief must be supported with specific factual allegations, which if true, would
5 entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

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

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

20 Notwithstanding Petitioner’s failure to allege sufficient, factual allegations to warrant
21 relief, the conclusory claim that counsel was ineffective is belied by the record. The Sixth
22 Amendment to the United States Constitution provides that, “[i]n all criminal prosecutions,
23 the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.” The
24 United States Supreme Court has long recognized that “the right to counsel is the right to the
25 effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct.
26 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

27 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
28 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of

1 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
2 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
3 representation fell below an objective standard of reasonableness, and second, that but for
4 counsel's errors, there is a reasonable probability that the result of the proceedings would have
5 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State
6 Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-
7 part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach
8 the inquiry in the same order or even to address both components of the inquiry if the defendant
9 makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

10 The court begins with the presumption of effectiveness and then must determine
11 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
12 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel
13 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of
14 competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432,
15 537 P.2d 473, 474 (1975).

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

28 ///

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

10 After the Nevada Supreme Court declined to review the matter, counsel then filed
11 multiple pre-trial motions to exclude Petitioner's statements to police and preclude the medical
12 examiner's testimony. Defendant's Motion To Exclude Statements filed March 8, 2021;
13 Motion in Limine to Preclude Expert Opinion Testimony that the Manner of Death in this Case
14 is Homicide, filed August 30, 2021. Counsel arranged a Forensic Psychological Evaluation of
15 Petitioner and extensively discussed Petitioner's mental health in the Motion to Exclude
16 Statements and the Jackson v. Denno hearing that followed. Motion to Exclude Statements at
17 6-13, Exhibit A; See Generally Recorder's Transcript of Proceedings Jackson V. Denno
18 Hearing And Status Check: Trial Setting, filed October 5, 2022.

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

27 Further, Petitioner is unable to demonstrate that he suffered any prejudice as a result of
28 counsel's performance. As previously discussed, Petitioner was bound over on a Murder

1 charge, for which he could have received a life sentence. After multiple attempts to exclude
2 the most unfavorable evidence against Petitioner were denied, counsel was able to negotiate a
3 Voluntary Manslaughter charge. Thus, even if Petitioner was able to establish that counsel
4 committed some error, he is unable to demonstrate that he suffered any prejudice as a result of
5 any alleged error. Therefore, the court should find that counsel was effective and deny the
6 Petition. Pursuant to NRS 34.810(1)(a), Petitioner's failure to prove that either his plea was
7 given involuntarily or that his counsel was ineffective warrants dismissal of the Petition
8 without consideration of the other claims contained therein.

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

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

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

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

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

1 of habeas and waived. NRS 34.724(2)(a); Evans, 117 Nev. At 646–47.; Franklin, 110 Nev. at
2 752. Under NRS 34.810(3), a defendant may only escape these procedural bars if they meet
3 the burden of establishing good cause and prejudice. Where a defendant does not show good
4 cause for failure to raise claims of error upon direct appeal, the district court is not obliged to
5 consider them in post-conviction proceedings. Jones v. State, 91 Nev. 416, 536 P.2d 1025
6 (1975). Here, Petitioner’s self-defense claim is waived for failure to raise it on direct appeal.
7 Further, Petitioner does not allege neither good cause nor prejudice to overcome the procedural
8 bar. Thus, the court should find that Petitioner’s self-defense claim has been waived.

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

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

15 *a. The Doctrine of Corpus Delicti*

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

26 The Nevada Supreme Court has held that “[a]lthough medical evidence as to the cause
27 of death is often critical in establishing that a death occurred by criminal agency, there is no
28 requirement that there be evidence of a specific cause of death. The state is required only to

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

14 *b. The Doctrine of Res Judicata*

15 The Nevada Supreme Court has explained that res judicata precludes consideration of
16 arguments that have been previously raised and addressed on the merits or found to be
17 procedurally defaulted. *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975); see
18 also *Mason v. State*, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine’s applicability
19 in the criminal context). Such preclusion “cannot be avoided by a more detailed and precisely
20 focused argument subsequently made after reflection upon the previous proceedings.” *Id.* at
21 316, 535 P.2d at 799. Indeed, simply continuing to file motions with the same arguments
22 subjects those motions to summary denial under the doctrines of the law of the case and res
23 judicata. *Pellegrini v. State*, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing *McNelson v.*
24 *State*, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)); *Hall*, 91 Nev. at 316, 535 P.2d at
25 799.

26 Here, Petitioner states that “the deceased was not killed at all but experienced a medical
27 episode known as a seizure and passed away.” Petition at 8. To support this claim, Petitioner
28 states that the medical examiner ruled the manner of death undetermined and then reached the

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

9 More importantly, multiple courts have already decided this issue throughout this case.
10 Initially, the justice court found that corpus delicti was sufficiently proven when it bound the
11 case over to district court. Amended Criminal Bindover, filed April 3, 2020. Then, the district
12 court first ruled on the corpus delicti issue when it denied the Pre-Trial PWHC. See Pre-Trial
13 PWHC at 5-7. In the Pre-Trial PWHC, Petitioner claimed “inadmissible expert opinion
14 evidence was admitted at preliminary hearing and Defendant’s statements were presented in
15 violation of the corpus delicti rule.” *Id.* at 6. It is apparent that Petitioner has replicated the
16 same claim in the instant Petition. Petition at 8. Thus, both the justice court and the district
17 court have determined that the State sufficiently proved corpus delicti. Therefore, this court
18 should deny this claim pursuant to the doctrine of res judicata.

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

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

24 A defendant cannot enter a guilty plea then later raise independent claims alleging a
25 deprivation of his rights before entry of the plea. State v. Eighth Judicial District Court, 121
26 Nev. 225, 112 P.3d 1070, n.24 (2005) (quoting Tollett v. Henderson, 411 U.S. 258, 267
27 (1973). Generally, the entry of a guilty plea waives any right to appeal from events occurring
28 prior to the entry of the plea. See Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975). “ [A]
guilty plea represents a break in the chain of events which has preceded it in the criminal

1 process. . . . [A defendant] may not thereafter raise independent claims relating to the
2 deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” Id.
3 (quoting Tollett, 411 U.S. at 267).

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

9 Further, Petitioner has already raised this claim and it has been denied by the district
10 court. As previously discussed, Petitioner, through counsel, filed a Motion to Exclude
11 Statements that challenged the “voluntariness of [Petitioner’s] statements and Miranda
12 pursuant to Jackson v. Denno...”, which was denied after the court held a Jackson v. Denno
13 hearing. Motion to Exclude Statements, at 4; Recorder’s Transcript of Proceedings Jackson
14 V. Denno Hearing and Status Check: Trial Setting at 38. Again, it is apparent that Petitioner
15 has replicated the same claim in the instant Petition. Petition at 11-12. Thus, the district court
16 has already determined that Petitioner’s statements to police were voluntarily given. Therefore,
17 the court should deny this claim because Petitioner is not permitted to raise any constitutional
18 challenges that occurred prior to entry of plea, and it is barred by the doctrine of res judicata.

19 CONCLUSION

20 For the foregoing reasons, the State respectfully requests this Petition be DENIED.

21 DATED this 11th day of October, 2022.

22 Respectfully submitted,

23 STEVEN B. WOLFSON
24 Clark County District Attorney
Nevada Bar #01565

25 BY /s/ ALEXANDER CHEN
26 ALEXANDER CHEN
27 Chief Deputy District Attorney
28 Nevada Bar #10539

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 11th day of
October 2022, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

JAYSHAWN BAILEY, BAC #1256551
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BY /s/ Janet Hayes
Secretary for the District Attorney's Office

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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:

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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
cause [the] petition to be dismissed.

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

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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

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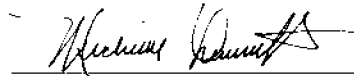
1 would have denied this claim because Petitioner is not permitted to raise any constitutional
2 challenges that occurred prior to entry of plea, and it is barred by the doctrine of res judicata.

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**
10 **Michelle Leavitt**
11 **District Court Judge**

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

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

17 **CERTIFICATE OF MAILING**

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

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

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

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 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 JAYSHAWN BAILEY,

6 Petitioner,

Case No: A-22-857574-W

Dept No: XII

7 vs.

8 STATE OF NEVADA,

9 Respondent,
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:

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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
cause [the] petition to be dismissed.

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

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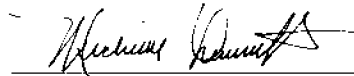
1 would have denied this claim because Petitioner is not permitted to raise any constitutional
2 challenges that occurred prior to entry of plea, and it is barred by the doctrine of res judicata.

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**
11 **Michelle Leavitt**
12 **District Court Judge**

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

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

17 **CERTIFICATE OF MAILING**

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

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

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

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

Heather L. Lavin

CLERK OF THE COURT

OSCC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAYSHAWN BAILEY, PLAINTIFF(S) | CASE NO.: A-22-857574-W
VS.
STATE OF NEVADA, DEFENDANT(S) | DEPARTMENT 12

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 8th day of December, 2022

Michelle Leavitt

**BFB 35D 58E2 77DC
Michelle Leavitt
District Court Judge**

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 Order to Statistically Close Case was served via the court's electronic
13 eFile system to all recipients registered for e-Service on the above entitled case as listed
below:

14 Service Date: 12/8/2022

15 Dept 12 Law Clerk	dept12lc@clarkcountycourts.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 12/9/2022

19 Jayshawn Bailey	#1256551
20	HDSP
21	P.O. Box 650
	Indian Springs, NV, 89070

22 Steven Wolfson	Clark County District Attorney
23	200 Lewis Avenue, 3rd Floor
24	Las Vegas, NV, 89155

Steven D. Grierson

1 Jayshawn Bailey

In Proper Person

2 P.O. Box 650 H.D.S.P.

3 Indian Springs, Nevada 89018

5 Eighth DISTRICT COURT

6 Clark COUNTY NEVADA

8 Jayshawn Bailey,

9 Petitioner,

10 -v-

11 State of Nevada,

12 Respondent,

Case No. A-22-857574-W

Dept.No. XII

Docket _____

14 NOTICE OF APPEAL

15 Notice is hereby given that the Petitioner, Jayshawn

16 Bailey, 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 Writ of Habeas Corpus (Post-conviction)

19 Finding of Fact, conclusions of law and order

21 Dated this date, December 7th 2022.

23 Respectfully Submitted,

25 Jayshawn Bailey

26 In Proper Person

26 RECEIVED

27 DEC 12 2022

28 CLERK OF THE COURT

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 (post-conviction) Finding of fact, conclusions, by and under
(Title of Document)

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

☒ 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 Bailey #1956551

H.P.S.P

Indian Springs, Nevada

8907600650

LAS VEGAS NV 890

8 DEC 2022 PM 4 L



Steven D. Eriksen

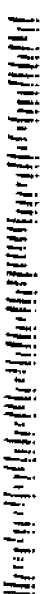
Clerk of the Court

900 Lewis Avenue

Las Vegas, Nevada

89155-1160

89101-630000





1 ASTA

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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
Date Application(s) filed: N/A

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

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

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

13 11. Previous Appeal: No

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

15 12. Child Custody or Visitation: N/A

16 13. Possibility of Settlement: Unknown

17 Dated This 13 day of December 2022.

18 Steven D. Grierson, Clerk of the Court

19
20
21 /s/ Heather Ungermann

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

25 cc: Jayshawn Bailey
26
27
28

Writ of Habeas Corpus

COURT MINUTES

October 27, 2022

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 and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated January 11, 2023, 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 82.

JAYSHAWN BAILEY,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

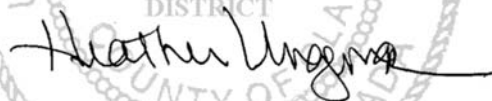
Case No: A-22-857574-W

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 17 day of January 2023.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

