

1 **NOAS**
2 **LOWE LAW, L.L.C.**
3 DIANE C. LOWE, ESQ. Nevada Bar No. 14573
4 7350 West Centennial Pkwy #3085
5 Las Vegas, Nevada 89131
6 (725)212-2451 – F: (702)442-0321
7 Email: DianeLowe@LoweLawLLC.com
8 Attorney for Petitioner DAINE CRAWLEY

Electronically Filed
Dec 27 2022 02:56 PM
Elizabeth A. Brown
Clerk of Supreme Court

8 EIGHTH JUDICIAL DISTRICT COURT

9 CLARK COUNTY NEVADA

10
11 DAINE CRAWLEY DOC #1167447

12 Petitioner,

Case No.: A-20-816041-W

13
14 vs.

[Companion case: C-19-341735-1 and
Appeal Remand Sup Ct No 83136]

15
16 WARDEN FERNANDIES FRAZIER,
17 NORTHERN NEVADA
18 CORRECTIONAL CENTER

DEPT NO: XVII

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21 **NOTICE OF APPEAL**

22 NOTICE is hereby given that DAINE CRAWLEY, Petitioner above named, hereby
23
24 appeals to the Supreme Court of Nevada from the Amended Findings of Fact,
25
26 Conclusions of Law and Order entered December 21, 2022 by the Honorable David
27
28

1 Barker. The writ of habeas corpus hearing was held on the briefings on November
2 28, 2022. An evidentiary hearing was denied.
3
4

5 DATED this 21st day of December, 2022.
6

7 Respectfully Submitted,
8

9 /s/ Diane C. Lowe, Esq.

DIANE C. LOWE, ESQ. Nevada Bar #014573

Lowe Law, L.L.C.

7350 West Centennial Pkwy #3085

Las Vegas, NV 89131

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

Attorney for Petitioner Daine Crawley
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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED, by the undersigned that on this 21st day of December, 2022, I served a true and correct copy of the foregoing **Notice of Appeal on the parties listed on the attached service list:**

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

By: /s/Diane C Lowe, Esq.

DIANE C. LOWE

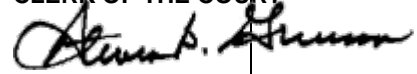
LOWE LAW, L.L.C.

SERVICE LIST

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

I further certify that I served a copy of this document by mailing a true and correct copy thereof, post pre-paid, addressed to Petitioner Daine Crawley. NDOC
1167447 Northern Nevada Correctional Center PO Box 7000 Carson City, NV
89702.

/s/ Diane C. Lowe, Esq.
Attorney for Daine Crawley



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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

DAINE CRAWLEY DOC #1167447

Petitioner,

vs.

WARDEN FERNANDIES FRAZIER,
NORTHERN NEVADA
CORRECTIONAL CENTER,

Respondent.

Case No.: A-20-816041-W

[Companion case: C-19-341735-1 and
Appeal Remand Sup Ct No 83136]

DEPT NO: XVII

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement: Daine Crawley.
2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable David Barker, Department 17 Nevada Eighth Judicial

District Court.

3. Identify each appellant and the name and address of counsel for each appellant: Appellant: Daine Crawley; Counsel for Appellant Diane C. Lowe 7350 W Centennial Parkway #3085 Las Vegas, NV. 89131. Nevada Bar # 14573.
4. Identify each respondent and the name and address of appellate counsel if know for each respondent. Respondent: State of Nevada. Counsel for Respondent: Steve Wolfson Esq. Nevada Bar # 1565; Clark County District Attorney 200 Lewis Avenue Las Vegas, Nevada 89155; Aaron D. Ford, Nevada Bar # 7704; Attorney General, 100 North Carson Street Carson City, Nevada 89701.
5. Indicate whether any attorney identified above in response to questions 3 or 4 is not licensed to practice law in Nevada. All attorneys listed above are licensed to practice law in Nevada.
6. Indicate whether appellant was represented by appointed or retained counsel in the district court: Appointed.
7. Indicate whether appellant is represented by appointed or retained counsel on appeal: Appointed.
8. 8. Indicate whether appellant was granted leave to proceed in forma pauperis: Yes.

1 9. Indicate the date the proceedings in the district court (e.g., date complaint,
2 indictment information, or petition was filed: Criminal complaint filed in
3 Las Vegas Justice Court June 17, 2019; Preliminary Hearing held July 11,
4 2019 with criminal bindover to District court the same day. Information
5 issued in District Court July 12 2019. Plea Agreement committed to July 15
6 2019. State's Notice of Intent to Seek Punishment as a Habitual Offender
7 November 19, 2019; Motion to withdraw Guilty Plea January 31 2020;
8 Hearing on Argument on Motion to withdraw guilty plea and denial
9 February 19 2020; Hearing with Argument on Small Habitual Criminal
10 Treatment March 4, 2020; Sentencing Hearing April 1, 2020; Judgment of
11 Conviction April 7, 2020.

12 10. Nature of action: Mr. Crawley was charged with Assault with a Deadly
13 Weapon a category B felony and Count 2 Carrying a concealed firearm or
14 other deadly weapon a category C Felony after being picked up on the Strip
15 in a Casino parking lot because one or more patrons complained he had
16 approached them in their vehicle threatening them with a small knife on
17 June 12 2019. He committed to a plea agreement on July 15, 2019 whereby
18 the first count would be dismissed and count 2 plead guilty to with possible
19 consequences of 1 to 5 years imprisonment unless he failed to abide by the
20 terms prior to sentencing, in which case the State reserved the right to seek
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1 habitual treatment. After the plea hearing he was released pending
2 sentencing. In that intervening time he was picked up on a Felony C Grand
3 Larceny charge at Neiman Marcus by attempting to carry away one or more
4 pairs of designer jeans on or around August 9, 2019. C-19-342881-1. He
5 was arrested and placed in custody. The State added the habitual. He moved
6 to withdraw his plea and lost. He was sentenced on April 1, 2020 to 7 to 20
7 years imprisonment. The Judgment of Conviction issued April 7, 2020.
8 On May 11, 2020 Attorney Arnold's appointment as Appellate Counsel for
9 direct appeal was confirmed. The Nevada Supreme Court Clerk's
10 Certificate of Judgment Affirmed dated March 19, 2021 for Supreme Court
11 Case #81011 - was eFiled. [23]. On June 4, 2020 Mr. Crawley filed a
12 timely postconviction Petition for Writ of Habeas Corpus. A-20-816041-W
13 [A1]. The Court ordered a Petition for Writ of Habeas Corpus June 9, 2020.
14 [A3]. The State responded July 21, 2020. [A5]. With respect to the
15 appointment of a postconviction writ of habeas corpus attorney there is
16 confusion in that the minutes on August 26, 2020 are contradictory. [18].
17 "Mr. Bailey will accept the appointment today," but they conclude with
18 Court Ordered, Carl Arnold Appointed as counsel." It is believed they were
19 both with the CEGA Law Group at the time. On March 18, 2021 Mr.
20 Crawley filed a pro se supplement because he could not reach attorney
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1 Bailey or attorney Arnold or get a straight answer from the court as to why
2 his action was at a standstill. [A6]. Inmate Petition for Writ of Habeas
3 Corpus [A7]. Order for Petition. [A8]. The State Responded May 6, 2021.
4 [A9]. A Minute Order was filed May 25, 2021 denying Mr. Crawley's
5 petition as procedurally barred. First there were claims that were direct
6 appeal issues which is not allowed. And next, Mr. Crawley had stepped in
7 and filed the supplement himself even though attorney Carl Arnold and or
8 Roger Bailey had been appointed on April 26, 2020. [A6]. Mr. Crawley
9 filed a Notice of Appeal on June 24, 2021. [A11]. And a Case Appeal
10 Statement was filed June 28 2021. [A12]. A Motion to Withdraw Counsel
11 was submitted July 8 2021. [A13]. Findings of Fact, Conclusions of Law
12 and Order issued July 22, 2021. [A15]. The appeal courts remanded the
13 case – No. 83136-COA - on March 1, 2022. [A18]. They found that the
14 District Court's opinion that no ineffectiveness of trial counsel issues were
15 raised in the petition or subsequent arguments was belied by the record.
16 [A18: page 2]. Further because the record was unclear on who the
17 appointed counsel was and there was not supporting documentation
18 provided, they could not align with the District Court's finding that Mr.
19 Crawley's pro se supplement filing in light of his attorney's inattention was
20 fugitive. [A18: 3]. And because the District Court had deemed the
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1 postconviction action as meriting counsel – and that at least one of the issues
2 raised was a sentencing issue creating a conflict of interest with the
3 appointment of either attorney because both Bailey and Arnold had
4 represented Crawley during the criminal case proper. [A18: 3]. On March
5 28, 2022 this counsel Diane Lowe was appointed to represent Mr. Bailey for
6 his postconviction writ of habeas corpus action. A-20-816041-W Daine
7 Crawley, Plaintiff(s) vs. Warden Williams, HDSP, Defendant. A briefing
8 schedule was set May 25, 2022: Supplemental Brief due August 26, 2022;
9 State’s Response due October 27, 2022. Hearing on Oral Arguments
10 November 28, 2022 at 8:30 am. The final Amended Findings of Fact,
11 Conclusions of Law & Order was issued December 21, 2022.
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18 DATED this 21st day of December, 2022.

19 Respectfully Submitted,
20

21 /s/ Diane C. Lowe, Esq.

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

23 Lowe Law, L.L.C.

24 7350 West Centennial Pkwy #3085

25 Las Vegas, NV 89131

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

27 Attorney for Petitioner Daine Crawley
28

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED, by the undersigned that on this 21st day of December, 2022, I served a true and correct copy of the foregoing **Case appeal statement on the parties listed on the attached service list:**

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

By: /s/Diane C Lowe, Esq.

DIANE C. LOWE

LOWE LAW, L.L.C.

SERVICE LIST

ATTORNEYS OF RECORD	PARTIES REPRESENTED	METHOD OF SERVICE
CLARK COUNTY DISTRICT ATTORNEY'S OFFICE 200 E. Lewis Ave Las Vegas, NV 89101 motions@clarkcountyda.com <u>Nevada Attorney General's Office</u> Wiznetfilings@ag.nv.gov	STATE OF NEVADA	<input checked="" type="checkbox"/> Email Service via eService

I further certify that I served a copy of this document by mailing a true and correct copy thereof, post pre-paid, addressed to Petitioner Daine Crawley. NDOC
1167447 Northern Nevada Correctional Center PO Box 7000 Carson City, NV
89702.

1
2 /s/ Diane C. Lowe, Esq.
3 Attorney for Daine Crawley
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EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-20-816041-W

Daine Crawley, Plaintiff(s)
vs.
Warden Williams, HDSP, Defendant(s)

§
§
§
§
§
§

Location: **Department 17**
 Judicial Officer: **Vacant, DC 17**
 Filed on: **06/04/2020**
 Case Number History:
 Cross-Reference Case Number: **A816041**
 Supreme Court No.: **83136**

CASE INFORMATION

Related Cases
 C-19-341735-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Statistical Closures
 10/06/2021 Summary Judgment

Case Status: **03/01/2022 Reopened**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-20-816041-W
 Court Department 17
 Date Assigned 07/18/2022
 Judicial Officer Vacant, DC 17

PARTY INFORMATION

Plaintiff **Crawley, Daine**

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

Defendant **Warden Williams, HDSP**


Wolfson, Steven B
Retained
 702-455-5320(W)


DATE


EVENTS & ORDERS OF THE COURT


INDEX


EVENTS

06/04/2020  Inmate Filed - Petition for Writ of Habeas Corpus
 Party: Plaintiff Crawley, Daine
[1] Petition for Writ of Habeas Corpus (Post-Conviction) (NRS 34.720 et seq.)














06/04/2020  Application to Proceed in Forma Pauperis
 Filed By: Plaintiff Crawley, Daine
[2] Motion to Proceed in Forma Pauperis (Confidential)

06/09/2020  Order for Petition for Writ of Habeas Corpus
[3] Order for Petition for Writ of Habeas Corpus
















06/12/2020  Petition for Writ of Habeas Corpus
 Filed by: Plaintiff Crawley, Daine
[4] Petition for Writ of Habeas Corpus (Postconviction)

07/21/2020  Response
 Filed by: Plaintiff Crawley, Daine
[5] State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)



CASE SUMMARY
CASE NO. A-20-816041-W

03/18/2021	 Supplement Filed by: Plaintiff Crawley, Daine <i>[6] Supplement: Petition for Writ of Habeas Corpus (Post Conviction) This Petition Shall Supersede any Previous Petition, as contact with Court Appointed Counsel Remains Futile.</i>
03/18/2021	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Crawley, Daine <i>[7] Petition for Writ of Habeas Corpus (Post-Conviction)</i>
03/18/2021	 Order for Petition for Writ of Habeas Corpus <i>[8] Order for Petition for Writ of Habeas Corpus</i>
05/06/2021	 Response Filed by: Defendant Warden Williams, HDSP <i>[9] State's Response to Defendant's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)</i>
06/03/2021	 Motion Filed By: Plaintiff Crawley, Daine <i>[10] Motion for Production of Response to Writ of Habeas Corpus A-20-816041-W (due 45 days from March 18th, 2021)</i>
06/24/2021	 Notice of Appeal <i>[11] Notice of Appeal</i>
06/28/2021	 Case Appeal Statement Filed By: Plaintiff Crawley, Daine <i>[12] Case Appeal Statement</i>
07/08/2021	 Motion to Withdraw As Counsel Filed By: Plaintiff Crawley, Daine <i>[13] Motion to Withdraw of Counsel</i>
07/08/2021	 Motion Filed By: Plaintiff Crawley, Daine <i>[14] Motion for Production of Documents, Papers, Pleadings and Tangible Property of Defendant</i>
07/22/2021	 Finding of Fact and Conclusions of Law <i>[15] Findings of Fact, Conclusions of Law, and Order</i>
07/26/2021	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Defendant Warden Williams, HDSP <i>[16] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
09/07/2021	Case Reassigned to Department 17 <i>From Judge Jacqueline Bluth to Judge Michael Villani</i>
10/06/2021	 Order to Statistically Close Case <i>[17] Civil Order to Statistically Close Case</i>
03/01/2022	 NV Supreme Court Clerks Certificate/Judgment -Remanded <i>[18] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Reversed and Remand</i>

CASE SUMMARY
CASE NO. A-20-816041-W

03/22/2022	 Notice of Hearing <i>[19] NOTICE OF HEARING</i>
03/29/2022	 Ex Parte Motion <i>[20] Ex parte Motion for Hearing Transcripts</i>
03/29/2022	 Order Filed By: Plaintiff Crawley, Daine <i>[21] Order Appointing Appeal Counsel</i>
03/29/2022	 Order Filed By: Plaintiff Crawley, Daine <i>[22] Order Appointing Counsel</i>
03/29/2022	 Order Filed By: Plaintiff Crawley, Daine <i>[23] Order for Transcript</i>
04/01/2022	 Recorders Transcript of Hearing <i>[24] Recorder's Transcript of Proceedings Re: Status Check: State's Response; Monday, January 10, 2022</i>
04/04/2022	 Clerk's Notice of Hearing <i>[25] Notice of Hearing</i>
04/18/2022	 Order Filed By: Plaintiff Crawley, Daine <i>[26] Order to Deliver Case File</i>
05/05/2022	 Recorders Transcript of Hearing <i>[27] Recorder's Transcript of Hearing Re: Petition for Writ of Habeas Corpus 08/19/2020</i>
05/05/2022	 Recorders Transcript of Hearing <i>[28] Recorders Transcript of Proceedings: Status Check: Appointment of Counsel 08/26/2020</i>
07/14/2022	 Order <i>[29] ORDER FOR TRANSCRIPT</i>
07/18/2022	Administrative Reassignment - Judicial Officer Change <i>Cases Reassigned from Judge Michael Villani to Vacant, DC 17</i>
07/28/2022	 Recorders Transcript of Hearing <i>[30] Recorder's Transcript of Proceeding Initial Arraignment July 15, 2019</i>
08/26/2022	 Supplement Filed by: Plaintiff Crawley, Daine <i>[31] Supplemental Brief with Attachments</i>
09/07/2022	 Declaration <i>[32] Crawley Duplicate Declaration Identical to one Submitted August 26, 2022 at his phone authorization but this on has his original signature</i>
09/07/2022	 Declaration

CASE SUMMARY
CASE NO. A-20-816041-W

	<i>[33] Declaration of Crawley Waiving Personal Appearance at November 28, 2022 Argument Hearing</i>
10/20/2022	 Response <i>[34] State's Response to Defendant's Supplemental Brief in Support of Petition for Writ of Habeas Corpus (Post Conviction)</i>
11/23/2022	 Motion for Leave to File <i>[35] Motion for Leave to File Motion for Additional Sentence Credit</i>
11/23/2022	 Motion for Leave to File <i>[36] Motion for Leave to File Motion for Additional Sentence Credit</i>
11/26/2022	 Motion for Leave to File <i>[37] Motion for Leave to File Motion for Additional Sentence Credit - Identical to one filed November 23, 2022 at 3:18 pm but adds 'Hearing Requested' verbiage inadvertently omitted from first one</i>
11/30/2022	 Clerk's Notice of Hearing <i>[38] Notice of Hearing</i>
12/14/2022	 Recorders Transcript of Hearing <i>[40] Recorder's Transcript of Proceeding re: Writ of Habeas Corpus November 28, 2022</i>
12/19/2022	 Exhibits Filed By: Plaintiff Crawley, Daine <i>[41] Petitioner's Hearing Exhibit 1 for January 9 2023 Hearing at 8:30 am A-20-816041-2 MLEV to argue Sentence Credit eFiled November 26, 2022</i>
12/19/2022	 Notice of Entry of Findings of Fact, Conclusions of Law <i>[42] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
12/21/2022	 Amended Order Filed By: Defendant Warden Williams, HDSP <i>[43] Amended Findings of Fact, Conclusions of Law and Order</i>
12/21/2022	 Notice of Appeal (Criminal) Party: Plaintiff Crawley, Daine <i>[44] Notice of Appeal - Civil Writ of Habeas Corpus Post conviction stemming from Criminal Case</i>
12/21/2022	 Case Appeal Statement Filed By: Plaintiff Crawley, Daine <i>[45] Case Appeal Statement regarding Amended Findings of Fact Conclusions of Law & Order</i>
12/22/2022	 Notice of Entry of Findings of Fact, Conclusions of Law <i>[46] Notice of Entry of Amended Findings of Fact, Conclusions of Law and Order</i>
	<u>DISPOSITIONS</u>
03/01/2022	Clerk's Certificate (Judicial Officer: Villani, Michael) Debtors: Warden Williams, HDSP (Defendant) Creditors: Daine Crawley (Plaintiff) Judgment: 03/01/2022, Docketed: 03/01/2022

CASE SUMMARY

CASE NO. A-20-816041-W

Comment: Supreme Court No. 83136 Appeal Reversed

HEARINGS

08/19/2020



Petition for Writ of Habeas Corpus (10:15 AM) (Judicial Officer: Bluth, Jacqueline M.)

Granted;

Journal Entry Details:

PETITION FOR WRIT OF HABEAS CORPUS COURT stated findings and ORDERED, Petition GRANTED, status check SET for appointment of counsel. 8/26/2020 10:15 AM STATUS CHECK: APPOINTMENT OF COUNSEL CLERK'S NOTE: District Attorney Drew Christensen emailed [christdr@ClarkCountyNV.gov] regarding appointment of counsel on 8/19/2020 . /rl 8/21/2020;

08/26/2020



Status Check (10:15 AM) (Judicial Officer: Bluth, Jacqueline M.)

Status Check: Appointment of Counsel

Matter Heard;

Journal Entry Details:

Present on behalf of the State, Brad Turner. Court stated Drew Christensen has represented Carl Arnold is appointed on another case and Mr. Bailey will accept the appointment today. Mr. Bailey stated that's his understanding. COURT ORDERED, Carl Arnold APPOINTED as counsel.;

05/25/2021



Minute Order (3:00 AM) (Judicial Officer: Bluth, Jacqueline M.)

Minute Order re: Petition for Writ of Habeas Corpus

Minute Order - No Hearing Held;

Journal Entry Details:

Petitioner s Petition for habeas corpus is hereby DENIED. The Court s ruling is as follows. I. Defendant s claims are procedurally barred NRS 34.810 states: NRS 34.810 Additional reasons for dismissal of petition. [Effective January 1, 2020.] 1. The court shall dismiss a petition if the court determines that: (a) The petitioner s conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel. (b) The petitioner s conviction was the result of a trial and the grounds for the petition could have been: (1) Presented to the trial court; (2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or postconviction relief; or (3) Raised in any other proceeding that the petitioner has taken to secure relief from the petitioner s conviction and sentence, unless the court finds both cause for the failure to present the grounds and actual prejudice to the petitioner. The Nevada Supreme Court has held that challenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction proceedings . . . [A]ll other claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings. Franklin v. State, 110 Nev. 750 (1994). A court must dismiss a habeas petition is if presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner. Evans v. State, 117 Nev. 609 (2001). Here, the grounds defendant raises in his supplemental petition should have been brought on direct appeal, and are therefore waived. Defendant argues: (1) equal protection/due process violation; (2) there were errors in defendants PSI; (3) violation of the Court s Administrative Order; and (4) error in adjudication as a habitual criminal. Defendant does not challenge the validity of a guilty plea and/or raise claims of ineffective assistance of counsel. Further, defendant does not attempt to demonstrate good cause or prejudice for raising these claims for the first time in the instant proceedings. II. Defendant s supplemental petition is a fugitive document Defendant s instant pro per supplemental petition should be dismissed as a fugitive document pursuant to EDCR 7.40(a). Carl Arnold, Esq. was confirmed as counsel on August 26, 2020. The instant supplemental petition was filed seven months later on 3/18/21. Because petitioner cannot appear on his own behalf after he had already appeared by counsel, the current supplemental petition should be dismissed as a fugitive document. For the reasons discussed above, Petitioner s Petition is Denied. State to file an order consistent with these findings. CLERK'S NOTE: A copy of this minute order was distributed to: Karen Mishler, Deputy District Attorney and Petitioner, Daine Crawley at P.O. Box 208, Indian Springs, NV, 89070./kb;

05/26/2021

CANCELED Petition for Writ of Habeas Corpus (11:00 AM) (Judicial Officer: Bluth,

CASE SUMMARY
CASE NO. A-20-816041-W

Jacqueline M.)

Vacated - Previously Decided

01/10/2022



Status Check: Status of Case (8:30 AM) (Judicial Officer: Villani, Michael)

Status Check: State's Response

Matter Heard;

Journal Entry Details:

Plaintiff not present. Court noted on January 4, 2022 there was an Order from the Supreme Court to the District Attorney to respond to Defendant's matter pending before the Supreme Court. Ms. Overly believed it was being litigated in the Appellate Court, therefore did not feel they needed to respond. Court read the Order in open court. Ms. Overly advised their Appeals Division would file a response with the Court of Appeals pursuant to the Order. NDC;

03/28/2022



Status Check: Status of Case (9:30 AM) (Judicial Officer: Villani, Michael)

Status Check: Remand

Set Status Check;

Journal Entry Details:

Plaintiff not present. Diane Lowe ACCEPTED her appointment. Colloquy regarding remand. State believed a Supplemental Petition needed to be filed and they would file a response to that. COURT ORDERED, status check SET for the file and to set a briefing schedule. NDC 4/27/2022 8:30 AM STATUS CHECK: FILE/SET BRIEFING SCHEDULE;

04/11/2022



Motion for Production of Transcript (8:30 AM) (Judicial Officer: Israel, Ronald J.)

Petitioner's Ex Parte Motin for Transcript

Clerical Error

Granted;

Journal Entry Details:

COURT ORDERED, request for transcript GRANTED.;

04/27/2022



Status Check: Status of Case (8:30 AM) (Judicial Officer: Villani, Michael)

04/27/2022, 05/25/2022

Status Check: File/Set Briefing Schedule

Matter Continued; Status Check: File/Set Briefing Schedule

Briefing Schedule Set;

Journal Entry Details:

Upon Court's inquiry, Ms. Lowe advised she had received the file and requested 60 to 90 to file a supplemental brief. COURT ORDERED, briefing schedule SET as follows: Supplemental Brief due by 8/26/2022, State's Response due by 10/27/2022, and matter SET for hearing. NDC 11/28/22 8:30 AM WRIT OF HABEAS CORPUS;

Matter Continued; Status Check: File/Set Briefing Schedule

Briefing Schedule Set;

Journal Entry Details:

Defendant not present and in custody in the Nevada Department of Corrections. Ms. Lowe requested to supplement the Petition as she is still trying to get the case file and is waiting on transcripts, adding she spoke with the Defendant. COURT ORDERED, matter CONTINUED. NDC CONTINUED TO: 5/25/2022 8:30 A.M.;

11/28/2022



Hearing (8:30 AM) (Judicial Officer: Barker, David)

Writ of Habeas Corpus

Denied; Petition for Writ of Habeas Corpus

Journal Entry Details:

COURT NOTED having reviewed the Petition for Writ of Habeas Corpus and State's Response. Argument made by Ms. Lowe is support of the Petition for Writ of Habeas Corpus. COURT STATED its FINDINGS and ORDERED, Petition for Writ of Habeas Corpus DENIED; and State to prepare a Findings of Facts and Conclusions of Law and Order. NDC;

12/21/2022



Minute Order (3:00 AM) (Judicial Officer: Barker, David)

Minute Order - No Hearing Held;

Journal Entry Details:

COURT ORDERED, The Findings of Fact, Conclusions of Law and Order, filed on December

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-20-816041-W

6, 2022, at 12:37 p.m. is hereby *STRICKEN* from the record, as said document was not signed by a District Court Judge. *CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 12/21/2022;*

01/09/2023

Motion for Leave (8:30 AM) (Judicial Officer: Vacant, DC 17)

Events: 11/23/2022 Motion for Leave to File

Petitioner's Motion for Leave to File Motion for Additional Sentence Credit

01/09/2023

Motion for Leave (8:30 AM) (Judicial Officer: Vacant, DC 17)

Events: 11/23/2022 Motion for Leave to File

Petitioner's Motion for Leave to Add Verified Nevada Behavior Health Records to Record

DISTRICT COURT CIVIL COVER SHEET

A-20-816041-W
Dept. VI

County, Nevada

Case No.

(Assigned by Clerk's Office)

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

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

Diane Crowley

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

Warden Williams

Attorney (name/address/phone):

Attorney (name/address/phone):

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

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

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

June 4, 2020

Date

PREPARED BY CLERK

Signature of initiating party or representative

See other side for family-related case filings.

Heather S. Lumin
CLERK OF THE COURT

FCL
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Attorney for Respondent .

DISTRICT COURT
CLARK COUNTY, NEVADA

DAINE ANTON CRAWLEY,
#1167447

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-20-816041-W

C-19-341735-1

DEPT NO: XVII

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: NOVEMBER 28, 2022
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable DAVID BARKER, District Judge, on the 28th day of November, 2022, the Petitioner present, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through AGNES BOTELHO, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On July 12, 2019, DAINE ANTON CRAWLEY (hereinafter "Petitioner"), was charged by way of Information with Count 1 – Carrying Concealed Firearm or Other Deadly Weapon (Category C Felony – NRS 202.350(1)(d)(3) – NOC 51459). On July 15, 2019, Petitioner

1 entered into a Guilty Plea Agreement (“GPA”) and was released on his own recognizance.
2 Petitioner was then arrested on August 9, 2019, and charged by way of Information on August
3 28, 2019 with Count 1 – Grand Larceny (Category C Felony – NRS 205.220(1), NRS
4 205.222(2) – NOC 56004) in C-19-342881-1. Then Petitioner filed a Motion to Dismiss
5 Counsel, Erika Ballou, on October 28, 2019, in the instant case. On November 13, 2019,
6 defense counsel moved for the withdrawal of the GPA and advised there was incorrect
7 information in the Presentence Investigation Report (“PSI”) and that another evaluation has to
8 be done. The Court ordered Carl Arnold to be appointed as counsel for the limited basis of the
9 Motion to Withdraw Plea. On November 19, 2019, the State filed a Notice of Intent to Seek
10 Punishment as a Habitual Criminal.

11 On January 31, 2020, Petitioner filed a Motion to Withdraw Plea. The State filed its
12 Opposition on February 14, 2020. On February 19, 2020, the district court heard oral
13 arguments on the motion. The Court concluded that there was an insufficient basis to withdraw
14 the plea and denied the motion.

15 On March 4, 2020, Petitioner’s sentencing hearing took place. At the hearing, the State
16 argued in support of Habitual Treatment since he violated his agreement. Defense counsel
17 provided that there were errors within Petitioner’s PSI. The Court ordered that the sentencing
18 proceedings be continued to correct the PSI.

19 A Supplemental Presentence Investigation Report (“SPSI”) was filed March 24, 2020,
20 indicating that the Division found no errors in the original PSI. Petitioner was sentenced on
21 April 1, 2020, under the small habitual criminal statute to the Nevada Department of
22 Corrections for a maximum of two hundred forty (240) months with a minimum parole
23 eligibility of eighty-four (84) months. Petitioner then filed a pro per Notice of Appeal on April
24 6, 2020, prior to the Judgement of Conviction being entered into on April 7, 2020.

25 On May 11, 2020, Carl Arnold was appointed as appellate counsel. Appellant’s
26 Opening Brief was filed in case 81011 on October 12, 2020. The Respondent’s Answering
27 Brief was filed on November 12, 2020. Petitioner then filed a Motion to Dismiss Counsel on
28 December 28, 2020. The motion was denied on January 8, 2021, by the Nevada Supreme

1 Court. On April 14, 2021, the Court of Appeals of the State of Nevada affirmed the judgement
2 of conviction and issued remittitur.

3 Midst the pending direct appeal, Petitioner filed his first pro per Petition for Writ of
4 Habeas Corpus ("First Petition") on June 4, 2020, commencing case A-20-816041-W.
5 Petitioner then filed his second pro per Petition for Writ of Habeas Corpus ("Second Petition")
6 on June 12, 2020. The State responded to the two petitions on July 21, 2020. The Petitioner's
7 petitions were granted on August 19, 2020, and he was appointed counsel August 26, 2020.

8 Petitioner then filed a pro per Supplemental Petition for Writ of Habeas Corpus ("Third
9 Petition") on March 18, 2021. The State filed its response on May 6, 2021. The district court
10 denied this petition due to it being procedurally barred and a fugitive document on May 25,
11 2021, and the Findings of Fact, Conclusions of Law, and Order was filed July 22, 2021.

12 Petitioner then filed his second pro per Notice of Appeal on June 24, 2021, commencing
13 case 83136. On July 8, 2021, Petitioner filed a pro per Motion to Withdraw of Counsel. On
14 August 12, 2021, Petitioner filed his Proper Person Informal Brief, and the Nevada Supreme
15 Court transferred the case to the Court of Appeals. The State filed its Respondent's Answering
16 Brief in 83136-COA on January 13, 2022. The Court of Appeals issued an Order of Reversal
17 and Remand on February 3, 2022. The Court of Appeals found that the district court erred in
18 denying relief on the grounds that Petitioner did not challenge the validity of his guilty plea or
19 raise claims of ineffective assistance of counsel because Petitioner did have allegations that
20 trial-level counsel was ineffective and complaints about counsel's performance. In addition,
21 the district court erred in denying relief on the grounds that the final pleading was a fugitive
22 document because the record conflicts in appointing Roger Bailey or Carl Arnold. The Court
23 of Appeals ordered that Petitioner be appointed replacement postconviction counsel.

24 On March 29, 2022, Diane Lowe was appointed appeal counsel. Petitioner through his
25 counsel filed the instant Defendant's Supplemental Brief in Support of Petition for Writ Of
26 Habeas Corpus ("Supplemental Petition") on August 26, 2022.¹ In addition, Petitioner filed
27 the Declaration of Daine Crawley on September 7, 2022, with his original signature. The State

28 ¹ It is assumed this instant supplemental brief is supplementing Petitioner's First Petition because the second and third
are procedurally barred.

1 filed its response on October 10, 2022. Petitioner then filed a Motion for Leave to File Motion
2 for Additional Sentence Credit on November 23, 2022.

3 On November 28, 2022, this Court held a hearing and denied Petitioner's First, Second,
4 Third, and Supplemental Petitions for Writ of Habeas Corpus, for the reasons stated below

5 STATEMENT OF THE FACTS

6 The statement of facts is relied upon from the Supplemental Presentence Investigation
7 Report filed March 24, 2020:

8 On June 12, 2019, officers were dispatched to a location
9 between the Excalibur and the Luxor in reference to a person
10 threatening pedestrians with a knife. Upon arrival, contact was
11 made with a witness who stated he was walking with his friend
12 through the hotel parking lot when they were approached by a
13 male, later identified as defendant Daine Anton Crawley, who got
14 in his face and made unintelligible comments while retrieving a
15 knife from his backpack. The witness felt threatened by the
16 defendant who held the knife in his hand with the blade exposed.
17 He stepped away from the defendant who then approached a
18 vehicle with three occupants and attempted to open the door before
19 the car drove away. As the defendant walked to another vehicle
20 and hit the window, the witness notified police and security.

21 Officers also spoke to the witness' friend who relayed the
22 same events as described by the witness. While the defendant was
23 being detained, he stated that he did not have a knife; however,
24 officers located a knife in his pocket.

25 Based on the above facts, Mr. Crawley was arrested,
26 transported to the Clark County Detention Center, and booked
27 accordingly.

28 ARGUMENT

29 **I. PETITIONER'S FIRST PETITION IS PROCEDURALLY BARRED**

30 Petitioner filed his first pro per Petition for Writ of Habeas Corpus ("First Petition") on
31 June 4, 2020.

32 NRS 34.810(1) reads:

33 The court shall dismiss a petition if the court determines that:
34 (a) The petitioner's conviction was upon a plea of guilty or guilty
35 but mentally ill and the petition is not based upon an allegation
36 that the plea was involuntarily or unknowingly or that the plea was
37 entered without effective assistance of counsel.

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

3 ...
4 (2) Raised in a direct appeal or a prior petition for a writ of habeas
5 corpus or postconviction relief.

6 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and claims
7 of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction
8 proceedings.... [A]ll other claims that are appropriate for a direct appeal must be pursued on
9 direct appeal, or they will be *considered waived in subsequent proceedings*." Franklin v. State,
10 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other
11 grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A court must dismiss a
12 habeas petition if it presents claims that either were or could have been presented in an earlier
13 proceeding, unless the court finds both cause for failing to present the claims earlier or for
14 raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-
15 47, 29 P.3d 498, 523 (2001).

16 Further, substantive claims are beyond the scope of habeas and waived. NRS
17 34.724(2)(a); Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001); Franklin v.
18 State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), disapproved on other grounds, Thomas
19 v. State, 115 Nev. 148, 979 P.2d 222 (1999).

20 A defendant may only escape these procedural bars if they meet the burden of
21 establishing good cause and prejudice:

22 3. Pursuant to subsections 1 and 2, the petitioner has the burden of
23 pleading and proving specific facts that demonstrate:

24 (a) Good cause for the petitioner's failure to present the claim or
25 for presenting the claim again; and

26 (b) Actual prejudice to the petitioner.

27 NRS 34.810(3). Where a defendant does not show good cause for failure to raise claims of
28 error upon direct appeal, the district court is not obliged to consider them in post-conviction
proceedings. Jones v. State, 91 Nev. 416, 536 P.2d 1025 (1975).

Here, the grounds Petitioner raises in his First Petition are proper only for a direct
appeal, and thereby, waived. Specifically, Petitioner presents four (4) grounds to this Court:

1 (1) violation of his due process rights including unlawful detainment and not being seen by a
2 judge within seventy-two (72) hours of arrest;² (2) claims of prosecutorial misconduct in
3 seeking habitual treatment after Petitioner violated his GPA; (3) violation of a COVID-19
4 court administrative order not allowing Petitioner to go over his SPSI with counsel again; and
5 (4) allegations of cruel and unusual punishment by District Attorney David Stanton (ret.). First
6 Petition, at 8–11. Petitioner does not challenge the validity of a guilty plea and/or raise claims
7 of ineffective assistance of counsel. See generally, Id. Thus, the issues Petitioner does raise in
8 this First Petition are improperly brought before this Court. As such, these substantive claims
9 are proper only on direct appeal and are barred in this Petition.

10 Even still, Petitioner does not attempt to demonstrate good cause or prejudice for raising
11 these claims. See First Petition. Thus, such claims are denied.

12 II. INSTANT SUPPLEMENTAL PETITION

13 A. Petitioner knowingly and voluntarily entered into the guilty plea agreement.

14 Petitioner argues that “Had he known about his proposed sentence structure and been
15 advised fully about the plea, there is a reasonable probability he would have rejected the plea
16 offer and requested a trial instead.” Supplemental Petition at 18.

17 A defendant is entitled to effective assistance of counsel in the plea-bargaining process,
18 and in determining whether to accept or reject a plea offer. Lafler v. Cooper, 566 U.S. 156,
19 162, 132 S. Ct. 1376, 1384 (2012); see also McMann v. Richardson, 397 U.S. 759, 771, 90 S.
20 Ct. 1441, 1449 (1970) (Constitution guarantees effective counsel when accepting guilty plea).
21 Similarly, a “defendant has the right to make a reasonably informed decision whether to accept
22 a plea offer.” Turner v. Calderon, 281 F.3d 851, 880 (9th Cir. 2002) (quoting United States v.
23 Day, 969 F.2d 39, 43 (3rd Cir. 1992)). Importantly, the question is not whether “counsel’s
24 advice [was] right or wrong, but . . . whether that advice was within the range of competence
25 demanded of attorneys in criminal cases.” Id., quoting McMann, 397 U.S. at 771, 90 S. Ct. at
26 1449.

27 ² Petitioner’s bail was argued at Initial Appearance Court within twenty-four (24) hours of his arrest. He was released on
28 low level electronic monitoring June 17, 2019. The court issued a bench warrant for Petitioner’s return because he was
not charging his monitor. Petitioner was arrested on the warrant June 28, 2019 and then refused to be transported to
court.

1 Further, the Nevada Supreme Court has held that a reasonable plea recommendation
2 which hindsight reveals to be unwise is not ineffective assistance. Larson v. State, 104 Nev.
3 691, 694, 766 P.2d 261, 263 (1988). Similarly, the fact that a defense tactic is ultimately
4 unsuccessful does not make it unreasonable. Id. Lastly, while it is counsel's duty to candidly
5 advise a defendant regarding whether or not they believe it would be beneficial for a defendant
6 to accept a plea offer, the ultimate decision of whether or not to accept a plea offer is the
7 defendant's. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163 (2002).

8 When a conviction is the result of a guilty plea, a defendant must show that there is a
9 "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and
10 would have *insisted* on going to trial." Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370
11 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107
12 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

13 Petitioner was fully advised of his guilty plea agreement. Petitioner never states what
14 he did not know about the sentence structure. Supplemental Petition at 18-21. In addition, he
15 also does not elaborate on what was not explained or what would have caused him to reject
16 the agreement. Id. Petitioner's GPA states, "I understand as a consequence of my plea of guilty
17 The Court must sentence me to imprisonment in the Nevada Department of Corrections for a
18 minimum term of not less than ONE (1) year and a maximum term of not more than FIVE (5)
19 years." GPA at 2. In which Petitioner signed on July 15, 2019. GPA at 5.

20 In addition, the Petitioner was fully canvassed on his GPA and was asked if he
21 understood his potential sentence. Transcript of Initial Arraignment at 3-4. Moreover, this
22 Court asked the Petitioner if he was satisfied with the services of his attorney, to which he
23 answered "Yes, ma'am." Id. at 4. Therefore, the Petitioner knowingly and voluntarily entered
24 into his GPA.

25 i. Habitual treatment

26 Petitioner argues that "Though a habitual potential is stated in the plea agreement [4:1-
27 2] he thought it was to be read in combination with the agreement that the State would not
28

1 seek the habitual if he made good faith efforts to get treatment. Further he did not know out of
2 state convictions would count.” Supplemental Petition at 20.

3 The small habitual statute states:

4 1. Unless the person is prosecuted pursuant to NRS 207.012 or
5 207.014, a person convicted in this State of:

6 (a) Any felony, who has previously been two times convicted,
7 whether in this State or elsewhere, of any crime which under the
8 laws of the situs of the crime or of this State would amount to a
9 felony is a habitual criminal and shall be punished for a category
10 B felony by imprisonment in the state prison for a minimum term
11 of not less than 5 years and a maximum term of not more than 20
12 years.

13 NRS 207.010(1)(a) [Effective through June 30, 2020]. Therefore, Petitioner was eligible for
14 such treatment because he had been convicted of seven (7) prior felonies. See State’s Notice
15 to Seek Punishment as a Habitual Criminal.

16 To the extent that Petitioner believes the habitual clause was related to “good faith
17 efforts,” the claim is belied by the record, as nothing in his GPA relates to good faith efforts.
18 Supplemental Petition at 20; see GPA. Petitioner’s GPA states, “The State retains the right to
19 argue at sentencing” and “I understand and agree that, if I fail to interview with the Department
20 of Parole and Probation, fail to appear at any subsequent hearings in this case, or an
21 independent magistrate, by affidavit review, confirms probable cause against me for new
22 criminal charges including reckless driving or DUI, but excluding minor traffic violations, the
23 State will have the unqualified right to argue for any legal sentence and term of confinement
24 allowable for the crime(s) to which I am pleading guilty, including the use of any prior
25 convictions I may have to increase my sentence as an habitual criminal to five (5) to twenty
26 (2) years, . . .” GPA at 1–2. Petitioner violated this provision. Petitioner was arrested on August
27 9, 2019, and charged by way of Information on August 28, 2019 with Count 1 – Grand Larceny
28 (Category C Felony – NRS 205.220(1), NRS 205.222(2) – NOC 56004) in C-19-342881-1,
less than a month after being released. Court Minutes on November 20, 2019. Petitioner’s
subsequent arrest gave the State the unqualified right to argue and seek habitual punishment
pursuant to the plea agreement.

1 Moreover, Petitioner argues he did not know out of state convictions would count
2 towards habitual treatment as well as gross misdemeanors qualifying as felonies. Supplemental
3 Petition at 20. This doubt would have not made any difference to his willingness to enter the
4 plea unless he entered the plea intending to violate the plea agreement. Had Petitioner abided
5 by the plea agreement and not been arrested, he would not have been eligible to be sentenced
6 as a habitual criminal. If he did enter the agreement with that understanding, it is certainly not
7 a manifest injustice, or even a fair and just reason, to allow Petitioner to withdraw his plea
8 now, as indicated in the denial of the Motion to Withdraw Plea.

9 **ii. Guilty but mentally ill**

10 Petitioner argues, "Mr. Crawley states he was not advised of the option to NRS
11 175.035³ taking a plea agreement guilty but mentally ill and he would have opted for this if
12 informed of it." Supplemental Petition at 21. First, this argument is outside the scope of habeas
13 and therefore procedurally barred. NRS 34.810(1); infra legal argument at Section I. It does
14 not argue counsel's advice to enter the plea or the knowingness and voluntariness of the plea
15 itself.

16 Second, the State must offer a plea of guilty but mentally ill for the defendant to accept
17 it. NRS 174.035(2, 3). In this case, the State did not extend an offer of guilty but mentally ill
18 to the Petitioner, and there is no evidence that such an offer would have been extended,
19 including but not limited to a recommendation for competency court. In addition, Petitioner
20 has repeatedly said through his petitions being released on his own recognizance was the "main
21 point" of the negotiation and this provision would certainly not be offered in a guilty but
22 mentally ill plea.

23 Last, if Petitioner was given the option to plead guilty but mentally ill, it would have
24 been to the original charges, including Count 1 – Assault with a Deadly Weapon and Count 2
25 – Carrying Concealed Firearm or Other Deadly Weapon. See Criminal Complaint. That would
26 have exposed Petitioner to a one (1) to six (6) year sentence and the one (1) to five (5) year
27 sentence for the knife, and he would still have been eligible for habitual treatment. Instead, by
28

³ It is assumed that counsel meant NRS 174.035, the proper types of pleas; procedure for entering plea statute.

1 entering his GPA, he was only eligible for the one (1) to five (5) year sentence for the knife
2 and given leniency on habitual eligibility until he violated the plea agreement by being arrested
3 again.

4 **iii. Motion to Withdraw Plea**

5 Petitioner argues, "And the reason is because Attorney Arnold's Motion to withdraw
6 the Guilty plea February 19, 2020, insufficiently written and it failed effectively demonstrate
7 to the judge why plea withdrawal was mandated." Supplemental Petition at 19. This argument
8 is also outside the scope of habeas and therefore procedurally barred. NRS 34.810(1); infra
9 legal argument at Section I. It does not argue counsel's advice to enter the plea or the
10 knowingness and voluntariness of the plea itself because it was filed after the GPA was entered
11 into.

12 The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the
13 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
14 the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
15 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
16 be supported with specific factual allegations which, if true, would entitle the petitioner to
17 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked"
18 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
19 34.735(6) states in relevant part, "[Petitioner] *must* allege specific facts supporting the claims
20 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
21 petition to be dismissed." (emphasis added).

22 Petitioner states, "His attorney advised him if he participated in programming the State
23 would not seek habitual." Supplemental Petition at 20. There is no evidence of this assertion.
24 This Court never ordered a treatment program, it was never discussed in the waiver of his
25 preliminary hearing, it was not in the GPA, and it was not discussed at the entry of the plea.
26 See Transcript of Unconditional Waiver of Preliminary Hearing; see also GPA; see also
27 Transcript of Initial Arraignment. Petitioner is alleging that counsel told him something that
28

1 never existed. The benefit of the plea was given, for Petitioner to be released on his own
2 recognizance. Petitioner's allegations are untrue.

3 **B. Petitioner received effective assistance of counsel at sentencing.**

4 Petitioner argues that Attorney Bailey provided ineffective assistance of counsel at
5 sentencing by failing to outline Petitioner's mitigating circumstances. Supplemental Petition
6 at 21–29.

7 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
8 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
9 defense.” The United States Supreme Court has long recognized that “the right to counsel is
10 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
11 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
12 (1993).

13 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
14 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of
15 Strickland, 466 U.S. at 686–87, 104 S. Ct. at 2063–64. See also Love, 109 Nev. at 1138, 865
16 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
17 representation fell below an objective standard of reasonableness, and second, that but for
18 counsel's errors, there is a reasonable probability that the result of the proceedings would have
19 been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison
20 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).
21 “[T]here is no reason for a court deciding an ineffective assistance claim to approach the
22 inquiry in the same order or even to address both components of the inquiry if the defendant
23 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

24 The court begins with the presumption of effectiveness and then must determine
25 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
26 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
27 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
28

1 competence demanded of attorneys in criminal cases.” Jackson v. Warden, 91 Nev. 430, 432,
2 537 P.2d 473, 474 (1975).

3 “There are countless ways to provide effective assistance in any given case. Even the
4 best criminal defense attorneys would not defend a particular client in the same way.”
5 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
6 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
7 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
8 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
9 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
10 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

11 Even if a defendant can demonstrate that his counsel's representation fell below an
12 objective standard of reasonableness, he must still demonstrate prejudice and show a
13 reasonable probability that, but for counsel's errors, the result of the trial would have been
14 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
15 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
16 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
17 694, 104 S. Ct. at 2064-65, 2068).

18 Petitioner has not demonstrated by a preponderance of the evidence that sentencing
19 counsel was ineffective. First, Petitioner claims that, “. . . Mr. Bailey's 17-line presentation at
20 the sentencing hearing was grossly inadequate to fully address his significant mitigation
21 circumstances . . .” Supplemental Petition at 23. Certificates of completion for all of
22 Petitioner's substance abuse programs and self-help packages were submitted to the district
23 court judge prior to sentencing. Transcript of Sentencing at 13. In addition, Petitioner spoke
24 and read a letter to the judge at length about his situation and circumstances. Id. at 13-17. The
25 State rebutted by emphasizing the seven (7) previous times Petitioner has received counseling.
26 Id. at 17-18. Sentencing counsel then argued that habitual treatment was unnecessary and
27 suggested Drug Court. Id. at 19-20. Petitioner also argues he was recently granted disability
28 benefits and needs surgery on his wrist. Id. at 13; Supplemental Petition at 23. However,

1 Petitioner was granted disability in 2016, not recently, and has been convicted of grand
2 larceny, this current offense, and another grand larceny since. SPSI at 3, 6. His wrist was
3 broken during an altercation while in custody in 2018 and instead of getting it fixed, he
4 committed the instant offense, leading to his arrest, and then committed a subsequent crime
5 between entering his plea in this case and sentencing. Id. Therefore, sentencing counsel did
6 provide the court with all mitigating circumstances and they were rebutted.

7 In addition, Petitioner argues sentencing counsel did not correct the State's Sentencing
8 Memorandum, when it stated, "His felony criminal resume spans three (3) states and almost
9 twenty (20) years." Supplemental Petition at 23-24; State's Sentencing Memorandum at 1. It
10 can be perceived that sentencing counsel did not correct this statement because Petitioner's
11 adult criminal history does begin in 2004. SPSI at 4. While his arrest on September 18, 2004
12 was for a misdemeanor DUI, his suspended sentence was revoked December 5, 2004, showing
13 his inability to be on probation early on. Id. At the time of sentencing, Petitioner's first arrest
14 was sixteen (16) years ago, *almost* twenty (20) years.

15 Petitioner compares his sentencing to that in Gonzalez v. State, 492 P.3d 556 (Nev.
16 2021); Supplemental Petition at 23-24. These cases and circumstances are not similar. In
17 Gonzalez, the defendant's counsel did not rebut the State's agreement to the suggested
18 sentence in the PSI, when there was a prior recommendation agreed upon by counsel,
19 constituting him ineffective. 492 P.3d at 563. In this case, Petitioner was given another chance,
20 he was released on his own recognizance and the State would have suggested the statutory
21 sentence for the count he pled guilty to. See GPA. However, Petitioner chose to commit
22 another felony less than a month after being released. Court Minutes on November 20, 2019.
23 Additionally, Petitioner does have a lengthy criminal history, from multiple states, and has
24 proven his inability to be probational, paroled, and counseled. See SPSI. Therefore, even if
25 sentencing counsel has provided a more detailed history of the Petitioner, the circumstances
26 of his plea violation, criminal history, and chances given far outweighs any probability that
27 the sentencing would have been different.

28 **C. Petitioner is not entitled to an evidentiary hearing.**

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

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

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

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

12 The Nevada Supreme Court has held that if a petition can be resolved without
13 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
14 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
15 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
16 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
17 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
18 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction
19 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the
20 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it
21 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

22 It is improper to hold an evidentiary hearing simply to make a complete record. See
23 State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The
24 district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted
25 ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary
26 hearing.”). Further, the United States Supreme Court has held that an evidentiary hearing is
27 not required simply because counsel’s actions are challenged as being unreasonable strategic
28 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge
post hoc rationalization for counsel’s decision making that contradicts the available evidence
of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis
for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain
issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (*citing*

1 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the
2 *objective* reasonableness of counsel's performance, not counsel's *subjective* state of mind. 466
3 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

4 In this case, Petitioner is not entitled to an evidentiary hearing on this Supplemental
5 Petition. Petitioner's counsel advised him of the potential sentences he could receive as
6 contained in the GPA. Petitioner was fully aware of the consequences of his plea and chose to
7 commit a new crime. There is nothing an evidentiary hearing would bring to light that would
8 change that Petitioner was given an opportunity to improve his actions by being released on
9 his own recognizance and he chose to commit another crime. Moreover, Petitioner's previous
10 request to withdraw his plea was denied. Accordingly, there is no need to expand the record
11 and no basis for an evidentiary hearing.

12 **III. PETITIONER'S SECOND AND THIRD PETITIONS ARE PROCEDURALLY** 13 **BARRED**

14 Petitioner filed his first pro per Petition for Writ of Habeas Corpus ("First Petition") on
15 June 4, 2020. Petitioner then filed his second pro per Petition for Writ of Habeas Corpus
16 ("Second Petition") on June 12, 2020. In addition, he then filed a pro per Supplemental
17 Petition for Writ of Habeas Corpus ("Third Petition") on March 18, 2021.⁴

18 **A. The petitions are beyond the scope of habeas.**

19 The grounds Petitioner raises in his Second and Third Petition are proper only for a
20 direct appeal, and thereby, waived. Specifically, Petitioner presents three (3) grounds to this
21 Court in his Second Petition: (1) violation of his due process rights; (2) errors in his SPSI; and
22 (3) violation of a court administrative order. Second Petition, at 6–15. In addition, Petitioner
23 presents four (4) grounds to this Court in his Third Petition: (1) violation of his due process
24 rights; (2) errors in his SPSI; (3) violation of a court administrative order; and (4) error in
25 adjudication as a habitual criminal. Third Petition, at 6–20. Petitioner does not challenge the
26 validity of a guilty plea and/or raise claims of ineffective assistance of counsel. See generally,
27 Id.; See generally, Second Petition. Thus, the issues Petitioner does raise in his Second and

28 ⁴ The District Court denied this petition due to it being procedurally barred and a fugitive document on May 25, 2021 and the Findings of Fact, Conclusions of Law, and Order was filed July 22, 2021.

1 Third Petitions are improperly brought before this Court. As such, these substantive claims are
2 proper only on direct appeal and are barred in these Petitions. Infra legal argument at Section
3 I.

4 **B. The petitions are successive and abuses of the writ.**

5 Second or successive petitions include those that allege new or different grounds, but a
6 judge or justice finds that the petitioner's failure to assert those grounds in a prior petition
7 would constitute an abuse of the writ. The Second and Third Petitions are abuses of the writ.

8 NRS 34.810(2) reads:

9 A second or successive petition must be dismissed if the judge or
10 justice determines that it fails to allege new or different grounds
11 for relief and that the prior determination was on the merits or, if
12 new and different grounds are alleged, the judge or justice finds
13 that the failure of the petitioner to assert those grounds in a prior
petition constituted an abuse of the writ.

14 Second or successive petitions will only be decided on the merits if the petitioner can
15 show good cause and prejudice. NRS 34.810(3). The burden of proving specific facts that
16 show good cause for his failure to raise his claim earlier falls on the petitioner. NRS 34.810(3).
17 He must also show actual prejudice. NRS 34.810(3).

18 The Nevada Supreme Court has stated, "Without such limitations on the availability of
19 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
20 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
21 system and undermine the finality of convictions." Lozada v. State, 110 Nev. 349, 358, 871
22 P.2d 944, 950 (1994).

23 The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly
24 require a careful review of the record, successive petitions may be dismissed based solely on
25 the face of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In
26 other words, if the claim or allegation was previously available with reasonable diligence, it is
27 an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,
28

1 497-98 (1991). Application of NRS 34.810(2) is mandatory. State v. Eighth Judicial Dist.
2 Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005).

3 Here, Petitioner has filed two (2) successive petitions. Thus, Petitioner could have
4 raised his claims in his prior petition and his failure to do so is an abuse of the writ. NRS
5 34.810(2). Absent a showing of good cause to excuse this delay, the Second and Third
6 Petitions are denied.

7 **C. Application of the procedural bars is mandatory.**

8 The Nevada Supreme Court has held that courts have a *duty* to consider whether a
9 defendant's post-conviction petition claims are procedurally barred. Id. The Riker Court found
10 that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions
11 is mandatory," noting:

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

16 Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
17 when properly raised by the State." Id. at 233, 112 P.3d at 1075. Ignoring these procedural
18 bars is an arbitrary and unreasonable exercise of discretion. Id. at 234, 112 P.3d at 1076. The
19 Nevada Supreme Court has granted no discretion to the district courts regarding whether to
20 apply the statutory procedural bars; the rules *must* be applied.

21 This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013).
22 There, the Court ruled that the defendant's petition was "untimely, successive, and an abuse
23 of the writ" and that the defendant failed to show good cause and actual prejudice. Id. at 324,
24 307 P.3d at 326. Accordingly, the Court reversed the district court and ordered the defendant's
25 petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322-23. The
26 procedural bars are so fundamental to the post-conviction process that they must be applied
27 by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at 1074.
28 Parties cannot stipulate to waive the procedural default rules. State v. Haberstroh, 119 Nev.

1 173, 180-81, 69 P.3d 676, 681-82 (2003). Thus, the Second and Third Petitions are denied
2 because it is mandatory for the district court to apply procedural bars and the Second and Third
3 Petitions are successive and abuses of the writ.

4 **D. Petitioner fails to demonstrate both good cause and prejudice to overcome the**
5 **procedural bars.**

6 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading
7 and proving specific facts that demonstrate good cause for his failure to present his claim in
8 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be
9 unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a) (emphasis added); see Hogan
10 v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep’t of
11 Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a habeas
12 petition if it presents claims that either were or could have been presented in an earlier
13 proceeding, unless the court finds both cause for failing to present the claims earlier or for
14 raising them again and actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646-
15 47, 29 P.3d 498, 523 (2001) (emphasis added).

16 To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate the
17 following: (1) “[t]hat the delay is not the fault of the petitioner” and (2) that the petitioner will
18 be “unduly prejudice[d]” if the petition is dismissed as untimely. NRS 34.726. To meet the
19 first requirement, “a petitioner *must* show that an impediment external to the defense prevented
20 him or her from complying with the state procedural default rules.” Hathaway v. State, 119
21 Nev. 248, 252, 71 P.3d 503, 506 (2003) (emphasis added). “A qualifying impediment might
22 be shown where the factual or legal basis for a claim was not reasonably available *at the time*
23 *of default*.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The
24 Court continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d
25 at 526. To find good cause there must be a “substantial reason; one that affords a legal excuse.”
26 Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105
27 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Examples of good cause include interference by
28 State officials and the previous unavailability of a legal or factual basis. See State v. Huebler,

1 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition
2 must not be the fault of the petitioner. NRS 34.726(1)(a).

3 Further, a petitioner raising good cause to excuse procedural bars must do so within a
4 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
5 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
6 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
7 available to the petitioner during the statutory time period did not constitute good cause to
8 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
9 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
10 453 120 S. Ct. 1587, 1592 (2000).

11 In order to establish prejudice, the defendant must show “not merely that the errors of
12 [the proceedings] created possibility of prejudice, but that they worked to his actual and
13 substantial disadvantage, in affecting the state proceedings with error of constitutional
14 dimensions.” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United
15 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). Petitioner cannot
16 demonstrate prejudice sufficient to ignore his default, because his underlying claims are
17 meritless.

18 **E. Petitioner cannot supplement his own petition unless ordered by the court.**

19 Petitioner filed a pro per Supplemental Petition for Writ of Habeas Corpus (“Third
20 Petition”) on March 18, 2021. At that point the Petitioner had been appointed counsel whether
21 it was Roger Bailey or Carl Arnold. NRS 34.750(5) states that no further pleadings may be
22 filed except as ordered by the court. Thus, the Petitioner cannot supplement his own petition
23 and is denied.

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DATED this _____ day of December, 2022.



/pw

BCA F9B F29F FD3E
David Barker
District Court Judge

JOHN A. ESHAR

I hereby certify that service of the above and foregoing was made this 21st day of December 2022, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

19F11843X/JA/clh/L3

all

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Daine Crawley, Plaintiff(s)

CASE NO: A-20-816041-W

7 vs.

DEPT. NO. Department 17

8 Warden Williams, HDSP,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 12/21/2022

15 Steven Wolfson

motions@clarkcountyda.com

16 Diane Lowe

dianelowe@lowelawllc.com

17 Jennifer Garcia

Jennifer.Garcia@clarkcountyda.com

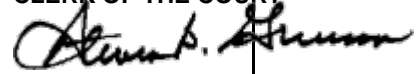
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NEFF

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DAINE CRAWLEY,

Petitioner,

vs.

WARDEN WILLIAMS, HDSP,

Respondent,

Case No: A-20-816041-W

Dept No: XVII

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

PLEASE TAKE NOTICE that on Deceber 21, 2022, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on December 22, 2022.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 22 day of December 2022, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

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

☒ The United States mail addressed as follows:

Daine Crawley # 1167447
P.O. Box 7000
Carson City, NV 89702

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

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

Heather S. Lumin
CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN AFSHAR
Chief Deputy District Attorney
Nevada Bar #14408
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent .

DISTRICT COURT
CLARK COUNTY, NEVADA

DAINE ANTON CRAWLEY,
#1167447

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-20-816041-W

C-19-341735-1

DEPT NO: XVII

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: NOVEMBER 28, 2022
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable DAVID BARKER, District Judge, on the 28th day of November, 2022, the Petitioner present, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through AGNES BOTELHO, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On July 12, 2019, DAINE ANTON CRAWLEY (hereinafter "Petitioner"), was charged by way of Information with Count 1 – Carrying Concealed Firearm or Other Deadly Weapon (Category C Felony – NRS 202.350(1)(d)(3) – NOC 51459). On July 15, 2019, Petitioner

1 entered into a Guilty Plea Agreement (“GPA”) and was released on his own recognizance.
2 Petitioner was then arrested on August 9, 2019, and charged by way of Information on August
3 28, 2019 with Count 1 – Grand Larceny (Category C Felony – NRS 205.220(1), NRS
4 205.222(2) – NOC 56004) in C-19-342881-1. Then Petitioner filed a Motion to Dismiss
5 Counsel, Erika Ballou, on October 28, 2019, in the instant case. On November 13, 2019,
6 defense counsel moved for the withdrawal of the GPA and advised there was incorrect
7 information in the Presentence Investigation Report (“PSI”) and that another evaluation has to
8 be done. The Court ordered Carl Arnold to be appointed as counsel for the limited basis of the
9 Motion to Withdraw Plea. On November 19, 2019, the State filed a Notice of Intent to Seek
10 Punishment as a Habitual Criminal.

11 On January 31, 2020, Petitioner filed a Motion to Withdraw Plea. The State filed its
12 Opposition on February 14, 2020. On February 19, 2020, the district court heard oral
13 arguments on the motion. The Court concluded that there was an insufficient basis to withdraw
14 the plea and denied the motion.

15 On March 4, 2020, Petitioner’s sentencing hearing took place. At the hearing, the State
16 argued in support of Habitual Treatment since he violated his agreement. Defense counsel
17 provided that there were errors within Petitioner’s PSI. The Court ordered that the sentencing
18 proceedings be continued to correct the PSI.

19 A Supplemental Presentence Investigation Report (“SPSI”) was filed March 24, 2020,
20 indicating that the Division found no errors in the original PSI. Petitioner was sentenced on
21 April 1, 2020, under the small habitual criminal statute to the Nevada Department of
22 Corrections for a maximum of two hundred forty (240) months with a minimum parole
23 eligibility of eighty-four (84) months. Petitioner then filed a pro per Notice of Appeal on April
24 6, 2020, prior to the Judgement of Conviction being entered into on April 7, 2020.

25 On May 11, 2020, Carl Arnold was appointed as appellate counsel. Appellant’s
26 Opening Brief was filed in case 81011 on October 12, 2020. The Respondent’s Answering
27 Brief was filed on November 12, 2020. Petitioner then filed a Motion to Dismiss Counsel on
28 December 28, 2020. The motion was denied on January 8, 2021, by the Nevada Supreme

1 Court. On April 14, 2021, the Court of Appeals of the State of Nevada affirmed the judgement
2 of conviction and issued remittitur.

3 Midst the pending direct appeal, Petitioner filed his first pro per Petition for Writ of
4 Habeas Corpus ("First Petition") on June 4, 2020, commencing case A-20-816041-W.
5 Petitioner then filed his second pro per Petition for Writ of Habeas Corpus ("Second Petition")
6 on June 12, 2020. The State responded to the two petitions on July 21, 2020. The Petitioner's
7 petitions were granted on August 19, 2020, and he was appointed counsel August 26, 2020.

8 Petitioner then filed a pro per Supplemental Petition for Writ of Habeas Corpus ("Third
9 Petition") on March 18, 2021. The State filed its response on May 6, 2021. The district court
10 denied this petition due to it being procedurally barred and a fugitive document on May 25,
11 2021, and the Findings of Fact, Conclusions of Law, and Order was filed July 22, 2021.

12 Petitioner then filed his second pro per Notice of Appeal on June 24, 2021, commencing
13 case 83136. On July 8, 2021, Petitioner filed a pro per Motion to Withdraw of Counsel. On
14 August 12, 2021, Petitioner filed his Proper Person Informal Brief, and the Nevada Supreme
15 Court transferred the case to the Court of Appeals. The State filed its Respondent's Answering
16 Brief in 83136-COA on January 13, 2022. The Court of Appeals issued an Order of Reversal
17 and Remand on February 3, 2022. The Court of Appeals found that the district court erred in
18 denying relief on the grounds that Petitioner did not challenge the validity of his guilty plea or
19 raise claims of ineffective assistance of counsel because Petitioner did have allegations that
20 trial-level counsel was ineffective and complaints about counsel's performance. In addition,
21 the district court erred in denying relief on the grounds that the final pleading was a fugitive
22 document because the record conflicts in appointing Roger Bailey or Carl Arnold. The Court
23 of Appeals ordered that Petitioner be appointed replacement postconviction counsel.

24 On March 29, 2022, Diane Lowe was appointed appeal counsel. Petitioner through his
25 counsel filed the instant Defendant's Supplemental Brief in Support of Petition for Writ Of
26 Habeas Corpus ("Supplemental Petition") on August 26, 2022.¹ In addition, Petitioner filed
27 the Declaration of Daine Crawley on September 7, 2022, with his original signature. The State

28 ¹ It is assumed this instant supplemental brief is supplementing Petitioner's First Petition because the second and third
are procedurally barred.

1 filed its response on October 10, 2022. Petitioner then filed a Motion for Leave to File Motion
2 for Additional Sentence Credit on November 23, 2022.

3 On November 28, 2022, this Court held a hearing and denied Petitioner's First, Second,
4 Third, and Supplemental Petitions for Writ of Habeas Corpus, for the reasons stated below

5 STATEMENT OF THE FACTS

6 The statement of facts is relied upon from the Supplemental Presentence Investigation
7 Report filed March 24, 2020:

8 On June 12, 2019, officers were dispatched to a location
9 between the Excalibur and the Luxor in reference to a person
10 threatening pedestrians with a knife. Upon arrival, contact was
11 made with a witness who stated he was walking with his friend
12 through the hotel parking lot when they were approached by a
13 male, later identified as defendant Daine Anton Crawley, who got
14 in his face and made unintelligible comments while retrieving a
15 knife from his backpack. The witness felt threatened by the
16 defendant who held the knife in his hand with the blade exposed.
17 He stepped away from the defendant who then approached a
18 vehicle with three occupants and attempted to open the door before
19 the car drove away. As the defendant walked to another vehicle
20 and hit the window, the witness notified police and security.

21 Officers also spoke to the witness' friend who relayed the
22 same events as described by the witness. While the defendant was
23 being detained, he stated that he did not have a knife; however,
24 officers located a knife in his pocket.

25 Based on the above facts, Mr. Crawley was arrested,
26 transported to the Clark County Detention Center, and booked
27 accordingly.

28 ARGUMENT

29 **I. PETITIONER'S FIRST PETITION IS PROCEDURALLY BARRED**

30 Petitioner filed his first pro per Petition for Writ of Habeas Corpus ("First Petition") on
31 June 4, 2020.

32 NRS 34.810(1) reads:

33 The court shall dismiss a petition if the court determines that:
34 (a) The petitioner's conviction was upon a plea of guilty or guilty
35 but mentally ill and the petition is not based upon an allegation
36 that the plea was involuntarily or unknowingly or that the plea was
37 entered without effective assistance of counsel.

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

3 ...
4 (2) Raised in a direct appeal or a prior petition for a writ of habeas
5 corpus or postconviction relief.

6 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and claims
7 of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction
8 proceedings.... [A]ll other claims that are appropriate for a direct appeal must be pursued on
9 direct appeal, or they will be *considered waived in subsequent proceedings*." Franklin v. State,
10 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other
11 grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A court must dismiss a
12 habeas petition if it presents claims that either were or could have been presented in an earlier
13 proceeding, unless the court finds both cause for failing to present the claims earlier or for
14 raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-
15 47, 29 P.3d 498, 523 (2001).

16 Further, substantive claims are beyond the scope of habeas and waived. NRS
17 34.724(2)(a); Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001); Franklin v.
18 State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), disapproved on other grounds, Thomas
19 v. State, 115 Nev. 148, 979 P.2d 222 (1999).

20 A defendant may only escape these procedural bars if they meet the burden of
21 establishing good cause and prejudice:

22 3. Pursuant to subsections 1 and 2, the petitioner has the burden of
23 pleading and proving specific facts that demonstrate:

24 (a) Good cause for the petitioner's failure to present the claim or
25 for presenting the claim again; and

26 (b) Actual prejudice to the petitioner.

27 NRS 34.810(3). Where a defendant does not show good cause for failure to raise claims of
28 error upon direct appeal, the district court is not obliged to consider them in post-conviction
proceedings. Jones v. State, 91 Nev. 416, 536 P.2d 1025 (1975).

Here, the grounds Petitioner raises in his First Petition are proper only for a direct
appeal, and thereby, waived. Specifically, Petitioner presents four (4) grounds to this Court:

1 (1) violation of his due process rights including unlawful detainment and not being seen by a
2 judge within seventy-two (72) hours of arrest;² (2) claims of prosecutorial misconduct in
3 seeking habitual treatment after Petitioner violated his GPA; (3) violation of a COVID-19
4 court administrative order not allowing Petitioner to go over his SPSI with counsel again; and
5 (4) allegations of cruel and unusual punishment by District Attorney David Stanton (ret.). First
6 Petition, at 8–11. Petitioner does not challenge the validity of a guilty plea and/or raise claims
7 of ineffective assistance of counsel. See generally, Id. Thus, the issues Petitioner does raise in
8 this First Petition are improperly brought before this Court. As such, these substantive claims
9 are proper only on direct appeal and are barred in this Petition.

10 Even still, Petitioner does not attempt to demonstrate good cause or prejudice for raising
11 these claims. See First Petition. Thus, such claims are denied.

12 II. INSTANT SUPPLEMENTAL PETITION

13 A. Petitioner knowingly and voluntarily entered into the guilty plea agreement.

14 Petitioner argues that “Had he known about his proposed sentence structure and been
15 advised fully about the plea, there is a reasonable probability he would have rejected the plea
16 offer and requested a trial instead.” Supplemental Petition at 18.

17 A defendant is entitled to effective assistance of counsel in the plea-bargaining process,
18 and in determining whether to accept or reject a plea offer. Lafler v. Cooper, 566 U.S. 156,
19 162, 132 S. Ct. 1376, 1384 (2012); see also McMann v. Richardson, 397 U.S. 759, 771, 90 S.
20 Ct. 1441, 1449 (1970) (Constitution guarantees effective counsel when accepting guilty plea).
21 Similarly, a “defendant has the right to make a reasonably informed decision whether to accept
22 a plea offer.” Turner v. Calderon, 281 F.3d 851, 880 (9th Cir. 2002) (quoting United States v.
23 Day, 969 F.2d 39, 43 (3rd Cir. 1992)). Importantly, the question is not whether “counsel’s
24 advice [was] right or wrong, but . . . whether that advice was within the range of competence
25 demanded of attorneys in criminal cases.” Id., quoting McMann, 397 U.S. at 771, 90 S. Ct. at
26 1449.

27 ² Petitioner’s bail was argued at Initial Appearance Court within twenty-four (24) hours of his arrest. He was released on
28 low level electronic monitoring June 17, 2019. The court issued a bench warrant for Petitioner’s return because he was
not charging his monitor. Petitioner was arrested on the warrant June 28, 2019 and then refused to be transported to
court.

1 Further, the Nevada Supreme Court has held that a reasonable plea recommendation
2 which hindsight reveals to be unwise is not ineffective assistance. Larson v. State, 104 Nev.
3 691, 694, 766 P.2d 261, 263 (1988). Similarly, the fact that a defense tactic is ultimately
4 unsuccessful does not make it unreasonable. Id. Lastly, while it is counsel's duty to candidly
5 advise a defendant regarding whether or not they believe it would be beneficial for a defendant
6 to accept a plea offer, the ultimate decision of whether or not to accept a plea offer is the
7 defendant's. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163 (2002).

8 When a conviction is the result of a guilty plea, a defendant must show that there is a
9 "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and
10 would have *insisted* on going to trial." Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370
11 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107
12 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

13 Petitioner was fully advised of his guilty plea agreement. Petitioner never states what
14 he did not know about the sentence structure. Supplemental Petition at 18-21. In addition, he
15 also does not elaborate on what was not explained or what would have caused him to reject
16 the agreement. Id. Petitioner's GPA states, "I understand as a consequence of my plea of guilty
17 The Court must sentence me to imprisonment in the Nevada Department of Corrections for a
18 minimum term of not less than ONE (1) year and a maximum term of not more than FIVE (5)
19 years." GPA at 2. In which Petitioner signed on July 15, 2019. GPA at 5.

20 In addition, the Petitioner was fully canvassed on his GPA and was asked if he
21 understood his potential sentence. Transcript of Initial Arraignment at 3-4. Moreover, this
22 Court asked the Petitioner if he was satisfied with the services of his attorney, to which he
23 answered "Yes, ma'am." Id. at 4. Therefore, the Petitioner knowingly and voluntarily entered
24 into his GPA.

25 i. Habitual treatment

26 Petitioner argues that "Though a habitual potential is stated in the plea agreement [4:1-
27 2] he thought it was to be read in combination with the agreement that the State would not
28

1 seek the habitual if he made good faith efforts to get treatment. Further he did not know out of
2 state convictions would count.” Supplemental Petition at 20.

3 The small habitual statute states:

4 1. Unless the person is prosecuted pursuant to NRS 207.012 or
207.014, a person convicted in this State of:

5 (a) Any felony, who has previously been two times convicted,
6 whether in this State or elsewhere, of any crime which under the
7 laws of the situs of the crime or of this State would amount to a
8 felony is a habitual criminal and shall be punished for a category
9 B felony by imprisonment in the state prison for a minimum term
of not less than 5 years and a maximum term of not more than 20
years.

10 NRS 207.010(1)(a) [Effective through June 30, 2020]. Therefore, Petitioner was eligible for
11 such treatment because he had been convicted of seven (7) prior felonies. See State’s Notice
12 to Seek Punishment as a Habitual Criminal.

13 To the extent that Petitioner believes the habitual clause was related to “good faith
14 efforts,” the claim is belied by the record, as nothing in his GPA relates to good faith efforts.
15 Supplemental Petition at 20; see GPA. Petitioner’s GPA states, “The State retains the right to
16 argue at sentencing” and “I understand and agree that, if I fail to interview with the Department
17 of Parole and Probation, fail to appear at any subsequent hearings in this case, or an
18 independent magistrate, by affidavit review, confirms probable cause against me for new
19 criminal charges including reckless driving or DUI, but excluding minor traffic violations, the
20 State will have the unqualified right to argue for any legal sentence and term of confinement
21 allowable for the crime(s) to which I am pleading guilty, including the use of any prior
22 convictions I may have to increase my sentence as an habitual criminal to five (5) to twenty
23 (2) years, . . .” GPA at 1–2. Petitioner violated this provision. Petitioner was arrested on August
24 9, 2019, and charged by way of Information on August 28, 2019 with Count 1 – Grand Larceny
25 (Category C Felony – NRS 205.220(1), NRS 205.222(2) – NOC 56004) in C-19-342881-1,
26 less than a month after being released. Court Minutes on November 20, 2019. Petitioner’s
27 subsequent arrest gave the State the unqualified right to argue and seek habitual punishment
28 pursuant to the plea agreement.

1 Moreover, Petitioner argues he did not know out of state convictions would count
2 towards habitual treatment as well as gross misdemeanors qualifying as felonies. Supplemental
3 Petition at 20. This doubt would have not made any difference to his willingness to enter the
4 plea unless he entered the plea intending to violate the plea agreement. Had Petitioner abided
5 by the plea agreement and not been arrested, he would not have been eligible to be sentenced
6 as a habitual criminal. If he did enter the agreement with that understanding, it is certainly not
7 a manifest injustice, or even a fair and just reason, to allow Petitioner to withdraw his plea
8 now, as indicated in the denial of the Motion to Withdraw Plea.

9 **ii. Guilty but mentally ill**

10 Petitioner argues, "Mr. Crawley states he was not advised of the option to NRS
11 175.035³ taking a plea agreement guilty but mentally ill and he would have opted for this if
12 informed of it." Supplemental Petition at 21. First, this argument is outside the scope of habeas
13 and therefore procedurally barred. NRS 34.810(1); infra legal argument at Section I. It does
14 not argue counsel's advice to enter the plea or the knowingness and voluntariness of the plea
15 itself.

16 Second, the State must offer a plea of guilty but mentally ill for the defendant to accept
17 it. NRS 174.035(2, 3). In this case, the State did not extend an offer of guilty but mentally ill
18 to the Petitioner, and there is no evidence that such an offer would have been extended,
19 including but not limited to a recommendation for competency court. In addition, Petitioner
20 has repeatedly said through his petitions being released on his own recognizance was the "main
21 point" of the negotiation and this provision would certainly not be offered in a guilty but
22 mentally ill plea.

23 Last, if Petitioner was given the option to plead guilty but mentally ill, it would have
24 been to the original charges, including Count 1 – Assault with a Deadly Weapon and Count 2
25 – Carrying Concealed Firearm or Other Deadly Weapon. See Criminal Complaint. That would
26 have exposed Petitioner to a one (1) to six (6) year sentence and the one (1) to five (5) year
27 sentence for the knife, and he would still have been eligible for habitual treatment. Instead, by
28

³ It is assumed that counsel meant NRS 174.035, the proper types of pleas; procedure for entering plea statute.

1 entering his GPA, he was only eligible for the one (1) to five (5) year sentence for the knife
2 and given leniency on habitual eligibility until he violated the plea agreement by being arrested
3 again.

4 **iii. Motion to Withdraw Plea**

5 Petitioner argues, "And the reason is because Attorney Arnold's Motion to withdraw
6 the Guilty plea February 19, 2020, insufficiently written and it failed effectively demonstrate
7 to the judge why plea withdrawal was mandated." Supplemental Petition at 19. This argument
8 is also outside the scope of habeas and therefore procedurally barred. NRS 34.810(1); infra
9 legal argument at Section I. It does not argue counsel's advice to enter the plea or the
10 knowingness and voluntariness of the plea itself because it was filed after the GPA was entered
11 into.

12 The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the
13 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
14 the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
15 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
16 be supported with specific factual allegations which, if true, would entitle the petitioner to
17 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked"
18 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
19 34.735(6) states in relevant part, "[Petitioner] *must* allege specific facts supporting the claims
20 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
21 petition to be dismissed." (emphasis added).

22 Petitioner states, "His attorney advised him if he participated in programming the State
23 would not seek habitual." Supplemental Petition at 20. There is no evidence of this assertion.
24 This Court never ordered a treatment program, it was never discussed in the waiver of his
25 preliminary hearing, it was not in the GPA, and it was not discussed at the entry of the plea.
26 See Transcript of Unconditional Waiver of Preliminary Hearing; see also GPA; see also
27 Transcript of Initial Arraignment. Petitioner is alleging that counsel told him something that
28

1 never existed. The benefit of the plea was given, for Petitioner to be released on his own
2 recognizance. Petitioner's allegations are untrue.

3 **B. Petitioner received effective assistance of counsel at sentencing.**

4 Petitioner argues that Attorney Bailey provided ineffective assistance of counsel at
5 sentencing by failing to outline Petitioner's mitigating circumstances. Supplemental Petition
6 at 21–29.

7 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
8 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
9 defense.” The United States Supreme Court has long recognized that “the right to counsel is
10 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
11 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
12 (1993).

13 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
14 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of
15 Strickland, 466 U.S. at 686–87, 104 S. Ct. at 2063–64. See also Love, 109 Nev. at 1138, 865
16 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
17 representation fell below an objective standard of reasonableness, and second, that but for
18 counsel's errors, there is a reasonable probability that the result of the proceedings would have
19 been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison
20 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).
21 “[T]here is no reason for a court deciding an ineffective assistance claim to approach the
22 inquiry in the same order or even to address both components of the inquiry if the defendant
23 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

24 The court begins with the presumption of effectiveness and then must determine
25 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
26 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
27 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
28

1 competence demanded of attorneys in criminal cases.” Jackson v. Warden, 91 Nev. 430, 432,
2 537 P.2d 473, 474 (1975).

3 “There are countless ways to provide effective assistance in any given case. Even the
4 best criminal defense attorneys would not defend a particular client in the same way.”
5 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
6 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
7 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
8 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
9 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
10 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

11 Even if a defendant can demonstrate that his counsel's representation fell below an
12 objective standard of reasonableness, he must still demonstrate prejudice and show a
13 reasonable probability that, but for counsel's errors, the result of the trial would have been
14 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
15 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
16 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
17 694, 104 S. Ct. at 2064-65, 2068).

18 Petitioner has not demonstrated by a preponderance of the evidence that sentencing
19 counsel was ineffective. First, Petitioner claims that, “. . . Mr. Bailey's 17-line presentation at
20 the sentencing hearing was grossly inadequate to fully address his significant mitigation
21 circumstances . . .” Supplemental Petition at 23. Certificates of completion for all of
22 Petitioner's substance abuse programs and self-help packages were submitted to the district
23 court judge prior to sentencing. Transcript of Sentencing at 13. In addition, Petitioner spoke
24 and read a letter to the judge at length about his situation and circumstances. Id. at 13-17. The
25 State rebutted by emphasizing the seven (7) previous times Petitioner has received counseling.
26 Id. at 17-18. Sentencing counsel then argued that habitual treatment was unnecessary and
27 suggested Drug Court. Id. at 19-20. Petitioner also argues he was recently granted disability
28 benefits and needs surgery on his wrist. Id. at 13; Supplemental Petition at 23. However,

1 Petitioner was granted disability in 2016, not recently, and has been convicted of grand
2 larceny, this current offense, and another grand larceny since. SPSI at 3, 6. His wrist was
3 broken during an altercation while in custody in 2018 and instead of getting it fixed, he
4 committed the instant offense, leading to his arrest, and then committed a subsequent crime
5 between entering his plea in this case and sentencing. Id. Therefore, sentencing counsel did
6 provide the court with all mitigating circumstances and they were rebutted.

7 In addition, Petitioner argues sentencing counsel did not correct the State's Sentencing
8 Memorandum, when it stated, "His felony criminal resume spans three (3) states and almost
9 twenty (20) years." Supplemental Petition at 23-24; State's Sentencing Memorandum at 1. It
10 can be perceived that sentencing counsel did not correct this statement because Petitioner's
11 adult criminal history does begin in 2004. SPSI at 4. While his arrest on September 18, 2004
12 was for a misdemeanor DUI, his suspended sentence was revoked December 5, 2004, showing
13 his inability to be on probation early on. Id. At the time of sentencing, Petitioner's first arrest
14 was sixteen (16) years ago, *almost* twenty (20) years.

15 Petitioner compares his sentencing to that in Gonzalez v. State, 492 P.3d 556 (Nev.
16 2021); Supplemental Petition at 23-24. These cases and circumstances are not similar. In
17 Gonzalez, the defendant's counsel did not rebut the State's agreement to the suggested
18 sentence in the PSI, when there was a prior recommendation agreed upon by counsel,
19 constituting him ineffective. 492 P.3d at 563. In this case, Petitioner was given another chance,
20 he was released on his own recognizance and the State would have suggested the statutory
21 sentence for the count he pled guilty to. See GPA. However, Petitioner chose to commit
22 another felony less than a month after being released. Court Minutes on November 20, 2019.
23 Additionally, Petitioner does have a lengthy criminal history, from multiple states, and has
24 proven his inability to be probational, paroled, and counseled. See SPSI. Therefore, even if
25 sentencing counsel has provided a more detailed history of the Petitioner, the circumstances
26 of his plea violation, criminal history, and chances given far outweighs any probability that
27 the sentencing would have been different.

28 **C. Petitioner is not entitled to an evidentiary hearing.**

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

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

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

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

12 The Nevada Supreme Court has held that if a petition can be resolved without
13 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
14 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
15 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
16 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
17 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
18 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction
19 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the
20 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it
21 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

22 It is improper to hold an evidentiary hearing simply to make a complete record. See
23 State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The
24 district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted
25 ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary
26 hearing.”). Further, the United States Supreme Court has held that an evidentiary hearing is
27 not required simply because counsel’s actions are challenged as being unreasonable strategic
28 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge
post hoc rationalization for counsel’s decision making that contradicts the available evidence
of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis
for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain
issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (*citing*

1 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the
2 *objective* reasonableness of counsel's performance, not counsel's *subjective* state of mind. 466
3 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

4 In this case, Petitioner is not entitled to an evidentiary hearing on this Supplemental
5 Petition. Petitioner's counsel advised him of the potential sentences he could receive as
6 contained in the GPA. Petitioner was fully aware of the consequences of his plea and chose to
7 commit a new crime. There is nothing an evidentiary hearing would bring to light that would
8 change that Petitioner was given an opportunity to improve his actions by being released on
9 his own recognizance and he chose to commit another crime. Moreover, Petitioner's previous
10 request to withdraw his plea was denied. Accordingly, there is no need to expand the record
11 and no basis for an evidentiary hearing.

12 **III. PETITIONER'S SECOND AND THIRD PETITIONS ARE PROCEDURALLY** 13 **BARRED**

14 Petitioner filed his first pro per Petition for Writ of Habeas Corpus ("First Petition") on
15 June 4, 2020. Petitioner then filed his second pro per Petition for Writ of Habeas Corpus
16 ("Second Petition") on June 12, 2020. In addition, he then filed a pro per Supplemental
17 Petition for Writ of Habeas Corpus ("Third Petition") on March 18, 2021.⁴

18 **A. The petitions are beyond the scope of habeas.**

19 The grounds Petitioner raises in his Second and Third Petition are proper only for a
20 direct appeal, and thereby, waived. Specifically, Petitioner presents three (3) grounds to this
21 Court in his Second Petition: (1) violation of his due process rights; (2) errors in his SPSI; and
22 (3) violation of a court administrative order. Second Petition, at 6–15. In addition, Petitioner
23 presents four (4) grounds to this Court in his Third Petition: (1) violation of his due process
24 rights; (2) errors in his SPSI; (3) violation of a court administrative order; and (4) error in
25 adjudication as a habitual criminal. Third Petition, at 6–20. Petitioner does not challenge the
26 validity of a guilty plea and/or raise claims of ineffective assistance of counsel. See generally,
27 Id.; See generally, Second Petition. Thus, the issues Petitioner does raise in his Second and

28 ⁴ The District Court denied this petition due to it being procedurally barred and a fugitive document on May 25, 2021
and the Findings of Fact, Conclusions of Law, and Order was filed July 22, 2021.

1 Third Petitions are improperly brought before this Court. As such, these substantive claims are
2 proper only on direct appeal and are barred in these Petitions. Infra legal argument at Section
3 I.

4 **B. The petitions are successive and abuses of the writ.**

5 Second or successive petitions include those that allege new or different grounds, but a
6 judge or justice finds that the petitioner's failure to assert those grounds in a prior petition
7 would constitute an abuse of the writ. The Second and Third Petitions are abuses of the writ.

8 NRS 34.810(2) reads:

9 A second or successive petition must be dismissed if the judge or
10 justice determines that it fails to allege new or different grounds
11 for relief and that the prior determination was on the merits or, if
12 new and different grounds are alleged, the judge or justice finds
13 that the failure of the petitioner to assert those grounds in a prior
petition constituted an abuse of the writ.

14 Second or successive petitions will only be decided on the merits if the petitioner can
15 show good cause and prejudice. NRS 34.810(3). The burden of proving specific facts that
16 show good cause for his failure to raise his claim earlier falls on the petitioner. NRS 34.810(3).
17 He must also show actual prejudice. NRS 34.810(3).

18 The Nevada Supreme Court has stated, "Without such limitations on the availability of
19 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
20 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
21 system and undermine the finality of convictions." Lozada v. State, 110 Nev. 349, 358, 871
22 P.2d 944, 950 (1994).

23 The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly
24 require a careful review of the record, successive petitions may be dismissed based solely on
25 the face of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In
26 other words, if the claim or allegation was previously available with reasonable diligence, it is
27 an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,
28

1 497-98 (1991). Application of NRS 34.810(2) is mandatory. State v. Eighth Judicial Dist.
2 Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005).

3 Here, Petitioner has filed two (2) successive petitions. Thus, Petitioner could have
4 raised his claims in his prior petition and his failure to do so is an abuse of the writ. NRS
5 34.810(2). Absent a showing of good cause to excuse this delay, the Second and Third
6 Petitions are denied.

7 **C. Application of the procedural bars is mandatory.**

8 The Nevada Supreme Court has held that courts have a *duty* to consider whether a
9 defendant's post-conviction petition claims are procedurally barred. Id. The Riker Court found
10 that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions
11 is mandatory," noting:

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

16 Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
17 when properly raised by the State." Id. at 233, 112 P.3d at 1075. Ignoring these procedural
18 bars is an arbitrary and unreasonable exercise of discretion. Id. at 234, 112 P.3d at 1076. The
19 Nevada Supreme Court has granted no discretion to the district courts regarding whether to
20 apply the statutory procedural bars; the rules *must* be applied.

21 This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013).
22 There, the Court ruled that the defendant's petition was "untimely, successive, and an abuse
23 of the writ" and that the defendant failed to show good cause and actual prejudice. Id. at 324,
24 307 P.3d at 326. Accordingly, the Court reversed the district court and ordered the defendant's
25 petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322-23. The
26 procedural bars are so fundamental to the post-conviction process that they must be applied
27 by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at 1074.
28 Parties cannot stipulate to waive the procedural default rules. State v. Haberstroh, 119 Nev.

1 173, 180-81, 69 P.3d 676, 681-82 (2003). Thus, the Second and Third Petitions are denied
2 because it is mandatory for the district court to apply procedural bars and the Second and Third
3 Petitions are successive and abuses of the writ.

4 **D. Petitioner fails to demonstrate both good cause and prejudice to overcome the**
5 **procedural bars.**

6 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading
7 and proving specific facts that demonstrate good cause for his failure to present his claim in
8 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be
9 unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a) (emphasis added); see Hogan
10 v. Warden, 109 Nev. 952, 959-60, 860 P.2d 710, 715-16 (1993); Phelps v. Nevada Dep't of
11 Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). "A court *must* dismiss a habeas
12 petition if it presents claims that either were or could have been presented in an earlier
13 proceeding, unless the court finds both cause for failing to present the claims earlier or for
14 raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-
15 47, 29 P.3d 498, 523 (2001) (emphasis added).

16 To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate the
17 following: (1) "[t]hat the delay is not the fault of the petitioner" and (2) that the petitioner will
18 be "unduly prejudice[d]" if the petition is dismissed as untimely. NRS 34.726. To meet the
19 first requirement, "a petitioner *must* show that an impediment external to the defense prevented
20 him or her from complying with the state procedural default rules." Hathaway v. State, 119
21 Nev. 248, 252, 71 P.3d 503, 506 (2003) (emphasis added). "A qualifying impediment might
22 be shown where the factual or legal basis for a claim was not reasonably available *at the time*
23 *of default*." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The
24 Court continued, "appellants cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d
25 at 526. To find good cause there must be a "substantial reason; one that affords a legal excuse."
26 Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105
27 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Examples of good cause include interference by
28 State officials and the previous unavailability of a legal or factual basis. See State v. Huebler,

1 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition
2 must not be the fault of the petitioner. NRS 34.726(1)(a).

3 Further, a petitioner raising good cause to excuse procedural bars must do so within a
4 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
5 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
6 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
7 available to the petitioner during the statutory time period did not constitute good cause to
8 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
9 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
10 453 120 S. Ct. 1587, 1592 (2000).

11 In order to establish prejudice, the defendant must show “not merely that the errors of
12 [the proceedings] created possibility of prejudice, but that they worked to his actual and
13 substantial disadvantage, in affecting the state proceedings with error of constitutional
14 dimensions.” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United
15 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). Petitioner cannot
16 demonstrate prejudice sufficient to ignore his default, because his underlying claims are
17 meritless.

18 **E. Petitioner cannot supplement his own petition unless ordered by the court.**

19 Petitioner filed a pro per Supplemental Petition for Writ of Habeas Corpus (“Third
20 Petition”) on March 18, 2021. At that point the Petitioner had been appointed counsel whether
21 it was Roger Bailey or Carl Arnold. NRS 34.750(5) states that no further pleadings may be
22 filed except as ordered by the court. Thus, the Petitioner cannot supplement his own petition
23 and is denied.

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DATED this _____ day of December, 2022.



/pw

BCA F9B F29F FD3E
David Barker
District Court Judge

JOHN A. ESHAR

I hereby certify that service of the above and foregoing was made this 21st day of December 2022, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

19F11843X/JA/clh/L3

all

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Daine Crawley, Plaintiff(s)

CASE NO: A-20-816041-W

7 vs.

DEPT. NO. Department 17

8 Warden Williams, HDSP,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 12/21/2022

15 Steven Wolfson

motions@clarkcountyda.com

16 Diane Lowe

dianelowe@lowelawllc.com

17 Jennifer Garcia

Jennifer.Garcia@clarkcountyda.com

18 De'Awana Takas

takasd@clarkcountycourts.us

19 John Afshar

john.afshar@clarkcountyda.com

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

August 19, 2020

A-20-816041-W Daine Crawley, Plaintiff(s)
vs.
Warden Williams, HDSP, Defendant(s)

**August 19, 2020 10:15 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Bluth, Jacqueline M.

COURTROOM: RJC Courtroom 10C

COURT CLERK: Rem Lord

RECORDER: De'Awna Takas

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS

COURT stated findings and ORDERED, Petition GRANTED, status check SET for appointment of counsel.

8/26/2020 10:15 AM STATUS CHECK: APPOINTMENT OF COUNSEL

CLERK'S NOTE: District Attorney Drew Christensen emailed [christdr@ClarkCountyNV.gov] regarding appointment of counsel on 8/19/2020 . /rl 8/21/2020

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

August 26, 2020

A-20-816041-W Daine Crawley, Plaintiff(s)
vs.
Warden Williams, HDSP, Defendant(s)

August 26, 2020 10:15 AM Status Check

HEARD BY: Bluth, Jacqueline M. **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT: Bailey, Roger Attorney

JOURNAL ENTRIES

- Present on behalf of the State, Brad Turner. Court stated Drew Christensen has represented Carl Arnold is appointed on another case and Mr. Bailey will accept the appointment today. Mr. Bailey stated that's his understanding. COURT ORDERED, Carl Arnold APPOINTED as counsel.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

May 25, 2021

A-20-816041-W	Daine Crawley, Plaintiff(s)
	vs.
	Warden Williams, HDSP, Defendant(s)

May 25, 2021 3:00 AM Minute Order

HEARD BY: Bluth, Jacqueline M. **COURTROOM:** Chambers

COURT CLERK: Kristen Brown

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Petitioner s Petition for habeas corpus is hereby DENIED. The Court s ruling is as follows.

I. Defendant s claims are procedurally barred

NRS 34.810 states:

NRS 34.810 Additional reasons for dismissal of petition. [Effective January 1, 2020.]

1. The court shall dismiss a petition if the court determines that:

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

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

(1) Presented to the trial court;

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

(3) Raised in any other proceeding that the petitioner has taken to secure relief from the petitioner s conviction and sentence, unless the court finds both cause for the failure to present the grounds and actual prejudice to the petitioner.

The Nevada Supreme Court has held that challenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction proceedings . . . [A]ll other claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings. *Franklin v. State*, 110 Nev. 750 (1994). A court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609 (2001).

Here, the grounds defendant raises in his supplemental petition should have been brought on direct appeal, and are therefore waived. Defendant argues: (1) equal protection/ due process violation; (2) there were errors in defendant's PSI; (3) violation of the Court's Administrative Order; and (4) error in adjudication as a habitual criminal. Defendant does not challenge the validity of a guilty plea and/or raise claims of ineffective assistance of counsel. Further, defendant does not attempt to demonstrate good cause or prejudice for raising these claims for the first time in the instant proceedings.

II. Defendant's supplemental petition is a fugitive document

Defendant's instant pro per supplemental petition should be dismissed as a fugitive document pursuant to EDCR 7.40(a). Carl Arnold, Esq. was confirmed as counsel on August 26, 2020. The instant supplemental petition was filed seven months later on 3/18/21. Because petitioner cannot appear on his own behalf after he had already appeared by counsel, the current supplemental petition should be dismissed as a fugitive document.

For the reasons discussed above, Petitioner's Petition is Denied. State to file an order consistent with these findings.

CLERK'S NOTE: A copy of this minute order was distributed to: Karen Mishler, Deputy District Attorney and Petitioner, Daine Crawley at P.O. Box 208, Indian Springs, NV, 89070./kb

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 10, 2022

A-20-816041-W Daine Crawley, Plaintiff(s)
vs.
Warden Williams, HDSP, Defendant(s)

**January 10, 2022 8:30 AM Status Check: Status of
Case**

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Samantha Albrecht

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT: Overly, Sarah Attorney

JOURNAL ENTRIES

- Plaintiff not present.

Court noted on January 4, 2022 there was an Order from the Supreme Court to the District Attorney to respond to Defendant's matter pending before the Supreme Court. Ms. Overly believed it was being litigated in the Appellate Court, therefore did not feel they needed to respond. Court read the Order in open court. Ms. Overly advised their Appeals Division would file a response with the Court of Appeals pursuant to the Order.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

March 28, 2022

A-20-816041-W Daine Crawley, Plaintiff(s)
vs.
Warden Williams, HDSP, Defendant(s)

**March 28, 2022 9:30 AM Status Check: Status of
Case**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Samantha Albrecht

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT: Lowe, Diane Carol Attorney
Overly, Sarah Attorney

JOURNAL ENTRIES

- Plaintiff not present.

Diane Lowe ACCEPTED her appointment. Colloquy regarding remand. State believed a Supplemental Petition needed to be filed and they would file a response to that. COURT ORDERED, status check SET for the file and to set a briefing schedule.

NDC

4/27/2022 8:30 AM STATUS CHECK: FILE/SET BRIEFING SCHEDULE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

April 11, 2022

A-20-816041-W Daine Crawley, Plaintiff(s)
vs.
Warden Williams, HDSP, Defendant(s)

**April 11, 2022 8:30 AM Motion for Production of
Transcript**

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK:

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Lowe, Diane Carol Attorney
Overly, Sarah Attorney

JOURNAL ENTRIES

- COURT ORDERED, request for transcript GRANTED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

April 27, 2022

A-20-816041-W	Daine Crawley, Plaintiff(s) vs. Warden Williams, HDSP, Defendant(s)
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April 27, 2022	8:30 AM	Status Check: Status of Case	Status Check: File/Set Briefing Schedule
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HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK:
Kory Schlitz

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT:	Lowe, Diane Carol Stutz, Brianna Vega	Attorney Attorney
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JOURNAL ENTRIES

- Defendant not present and in custody in the Nevada Department of Corrections.

Ms. Lowe requested to supplement the Petition as she is still trying to get the case file and is waiting on transcripts, adding she spoke with the Defendant. COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 5/25/2022 8:30 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

May 25, 2022

A-20-816041-W Daine Crawley, Plaintiff(s)
vs.
Warden Williams, HDSP, Defendant(s)

**May 25, 2022 8:30 AM Status Check: Status of
Case**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Samantha Albrecht
Odalys Garcia

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT: Lowe, Diane Carol Attorney
Stutz, Brianna Vega Attorney

JOURNAL ENTRIES

- Upon Court's inquiry, Ms. Lowe advised she had received the file and requested 60 to 90 to file a supplemental brief. COURT ORDERED, briefing schedule SET as follows: Supplemental Brief due by 8/26/2022, State's Response due by 10/27/2022, and matter SET for hearing.

NDC

11/28/22 8:30 AM WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

November 28, 2022

A-20-816041-W Daine Crawley, Plaintiff(s)
vs.
Warden Williams, HDSP, Defendant(s)

November 28, 2022 8:30 AM Hearing Petition for Writ of Habeas Corpus

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Pharan Burchfield

RECORDER: Charisse Ward

REPORTER:

PARTIES

PRESENT: Botelho, Agnes M Attorney
 Lowe, Diane Carol Attorney

JOURNAL ENTRIES

- COURT NOTED having reviewed the Petition for Writ of Habeas Corpus and State's Response. Argument made by Ms. Lowe is support of the Petition for Writ of Habeas Corpus. COURT STATED its FINDINGS and ORDERED, Petition for Writ of Habeas Corpus DENIED; and State to prepare a Findings of Facts and Conclusions of Law and Order.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

December 21, 2022

A-20-816041-W Daine Crawley, Plaintiff(s)
vs.
Warden Williams, HDSP, Defendant(s)

December 21, 2022 3:00 AM Minute Order

HEARD BY: Barker, David

COURTROOM: Chambers

COURT CLERK:

Samantha Albrecht

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- COURT ORDERED, The Findings of Fact, Conclusions of Law and Order, filed on December 6, 2022, at 12:37 p.m. is hereby STRICKEN from the record, as said document was not signed by a District Court Judge.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 12/21/2022

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; CIVIL COVER SHEET; AMENDED FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER; NOTICE OF ENTRY OF AMENDED FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER; DISTRICT COURT MINUTES

DAINE ANTON CRAWLEY,

Plaintiff(s),

vs.

WARDEN WILLIAMS, HIGH DESERT
STATE PRISON,

Defendant(s),

Case No: A-20-816041-W

Dept No: XVII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 23 day of December 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk