

Electronically Filed
Jan 13 2023 08:55 AM
Elizabeth A. Brown
Clerk of Supreme Court

1 **NOASC**
2 ANTHONY P. SGRO
3 Nevada Bar No. 3811
4 COLLEEN N. SAVAGE
5 Nevada Bar No. 14947
6 **SGRO & ROGER**
7 720 South 7th Street, Third Floor
8 Las Vegas, Nevada 89101
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10 Facsimile: (702) 665-4120
11 tsgro@sgroandroger.com
12 csavage@sgroandroger.com
13 *Attorneys for Adrian Powell*

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 * * * * *

14 STATE OF NEVADA,
15
16 Plaintiff

17 vs.

CASE NO: A-21-839265-W

18 ADRIAN POWELL,
19
20 Defendant.

DEPT NO: 28

21
22 **NOTICE OF APPEAL**

23 TO: THE STATE OF NEVADA, PLAINTIFF

24 TO: DISTRICT ATTORNEY STEVEN B. WOLFSON, Attorney for Plaintiff:

25 TO: HONORABLE JUDGE RONALD ISRAEL

26 //

27 //

1 NOTICE is hereby given that the Defendant, ADRIAN POWELL, by and through his
2 attorneys, ANTHONY P. SGRO, ESQ. and COLLEEN N. SAVAGE, ESQ., of the law firm
3 SGRO & ROGER, hereby appeals to the Supreme Court of Nevada from the Order filed by the
4 Eighth Judicial District Court on December 16, 2022.
5

6 DATED this 11th day of January, 2021.
7

8 */s/ Colleen Savage*

9
10

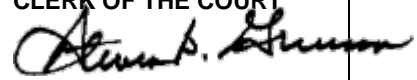
ANTHONY P. SGRO, ESQ
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12 720 S. 7th Street, Third Floor
13 Las Vegas, Nevada 89101
14 *Attorneys for Adrian Powell*
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DEFENDANT/APPELLANT
ADRIAN POWELL
#1217413
SDCC
P.O. Box 208
Indian Springs, NV, 89070
Via US Mail

PLAINTIFF/RESPONDENTS
STEVEN B. WOLFSON, ESQ.
 Clark County District Attorney
TALEEN PANDUKHT, ESQ.
 Chief Deputy District Attorney
 200 Lewis Avenue
 Las Vegas, NV 89155
Attorneys for Respondent

BY /s/ Lauren Hurst
An employee of SGRO & ROGER



CAS
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tsagro@sgroandroger.com
csavage@sgroandroger.com
Attorneys for Adrian Powell

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

STATE OF NEVADA,

Plaintiff

vs.

CASE NO: A-21-839265-W

ADRIAN POWELL,

DEPT NO: 28

Defendant.

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement: ADRIAN POWELL

2. Identify the judge issuing the decision, judgment, or order appealed from:

Ronald Israel

///

///

1 3. Identify each appellant and the name and address of counsel for each appellant:

2 Adrian Powell
3 Colleen N. Savage, Esq.
4 Nevada Bar No. 14947
5 Sgro & Roger
6 720 S. 7th St.
7 Las Vegas, NV, 89101
8 *Attorney for Petitioner*

9 4. Identify each respondent and the name and address of appellate counsel, if known,
10 for each respondent:

11 State of Nevada
12 Steven B. Wolfson, Esq.
13 Clark County District Attorney
14 Taleen Pandukht, Esq.
15 Chief Deputy District Attorney
16 200 Lewis Avenue
17 Las Vegas, NV 89155
18 *Attorneys for Respondent*

19 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
20 licensed to practice law in Nevada

21 N/A

22 6. Indicate whether the appellant was represented by appointment or retained
23 counsel in the district court:

24 Appointed

25 7. Indicate whether the appellant is represented by appointed or retained
26 counsel on appeal: Appointed

27 8. Indicate whether the appellant was granted leave to proceed in forma
28 pauperis, and the date of entry of the district court order granting such leave:

N/A

9. Indicate the date the proceedings commenced in the district court:

1 November 8, 2017

2 10. Provide a brief description of the nature of the action and result in the district court,
3 including the type of judgment or order being appealed and the relief granted by the district
4 court:
5

6 Denial of post-conviction writ of habeas corpus.

7 11. Indicate whether the case has previously been the subject of an appeal to or
8 original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court
9 docket number of the prior proceeding:
10

11 N/A

12 12. Indicate whether this appeal involves child custody or visitation:

13 N/A

14 13. If this is a civil case, indicate whether this appeal involves the possibility of
15 settlement:
16

17 N/A

18 DATED this 11th day of January, 2021.

19 */s/ Colleen Savage*

20 _____
21 COLLEEN N. SAVAGE, ESQ
22 Nevada Bar No. 14947
23 SGRO & ROGER
24 720 S. 7th Street, Third Floor
25 Las Vegas, Nevada 89101
26 (702) 384-9800
27 *Attorney for Adrian Powell*
28

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, hereby certify that a true and correct copy of the foregoing CASE
3 APPEAL STATEMENT was served by U.S. Mail on January 11, 2023, by electronic service
4 via the Clark County District Court electronic filing system to the following:
5

6 **DEFENDANT/APPELLANT**

7 ADRIAN POWELL
8 #1217413
9 SDCC
10 P.O. Box 208
11 Indian Springs, NV, 89070
12 Appellant
13 *Via US mail*

PLAINTIFF/RESPONDENTS

STEVEN B. WOLFSON, ESQ.
Clark County District Attorney
TALEEN PANDUKHT, ESQ.
Chief Deputy District Attorney
200 Lewis Avenue
Las Vegas, NV 89155
Attorneys for Respondent

14 BY /s/ Lauren Hurst
15 An employee of SGRO & ROGER
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CASE SUMMARY

CASE NO. A-21-839265-W

Adrian Powell, Plaintiff(s)
vs.
Nevada Department of Corrections, Defendant(s)

§
§
§
§
§

Location: **Department 28**
 Judicial Officer: **Israel, Ronald J.**
 Filed on: **08/10/2021**
 Cross-Reference Case Number: **A839265**

CASE INFORMATION

Related Cases

C-17-327767-2 (Writ Related Case)

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

12/16/2022 Summary Judgment






Case Status: **12/16/2022 Closed****DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number	A-21-839265-W
Court	Department 28
Date Assigned	08/10/2021
Judicial Officer	Israel, Ronald J.

PARTY INFORMATION

Plaintiff	Powell, Adrian	Savage, Colleen N <i>Retained</i> 702-384-9800(W)
Defendant	Nevada Department of Corrections	
Other	State of Nevada	Wolfson, Steven B <i>Retained</i> 702-671-2700(W)







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

08/10/2021	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Powell, Adrian <i>[1] Post Conviction</i>
08/12/2021	 Order for Petition for Writ of Habeas Corpus <i>[2] Order for Petition for Writ of Habeas Corpus</i>
09/14/2021	 Response Filed by: Other State of Nevada <i>[3] State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction)</i>
01/11/2022	 Motion for Withdrawal Filed By: Plaintiff Powell, Adrian <i>[4] Motion to Withdraw as Counsel of Record</i>
01/12/2022	 Clerk's Notice of Hearing <i>[5] Notice of Hearing</i>
03/18/2022	

CASE SUMMARY
CASE NO. A-21-839265-W

	 Stipulation and Order <i>[6] Stipulation And Order To Extend Deadlines And For An Order To Transport</i>
03/21/2022	 Notice of Entry <i>[7] Notice of Entry of Order to Extend Deadlines and for an Order to Transport</i>
04/25/2022	 Stipulation and Order Filed by: Plaintiff Powell, Adrian <i>[8] Stipulation And Order To Extend Deadlines</i>
05/27/2022	 Exhibits Filed By: Plaintiff Powell, Adrian <i>[9] Exhibits to Supplement to Petition for Writ of Habeas Corpus</i>
05/27/2022	 Temporary Seal Pending Court Approval Filed By: Plaintiff Powell, Adrian <i>[10] Exhibits "U" and "V" to Supplement to Petition for Writ of Habeas Corpus Filed Under Seal</i>
05/27/2022	 Exhibits Filed By: Plaintiff Powell, Adrian <i>[11] Petitioner's Second Set of Exhibits to Petition for Writ of Habeas Corpus</i>
05/27/2022	 Supplement Filed by: Plaintiff Powell, Adrian <i>[12] Supplement to Petition for Post Conviction Writ of Habeas Corpus</i>
08/02/2022	 Response <i>[13] State's Response to Petitioner's Supplement to Petition for Writ of Habeas Corpus (Post-Conviction)</i>
09/01/2022	 Petitioner's Reply Brief Filed by: Plaintiff Powell, Adrian <i>[14] Petitioners Reply in Support of Supplment to Petition For Write of Habeas Corpus</i>
09/02/2022	 Order for Production of Inmate <i>[15] Order For Production By Audiovisual Means Of Inmate Adrian Powell, BAC #1217413</i>
09/12/2022	 Stipulation and Order <i>[16] Stipulation And Order To Continue Hearing</i>
09/13/2022	 Order for Production of Inmate <i>[17] Order For Production By Audiovisual Means Of Inmate Adrian Powell, BAC #1217413</i>
10/07/2022	 Clerk's Notice of Hearing <i>[18] Clerk's Notice of Hearing</i>
10/07/2022	 Order for Production of Inmate <i>[19] Order for Production by Audiovisual Means of Inmate Adrian Powell, BAC #1217413</i>
12/16/2022	 Order <i>[20] Order</i>


CASE SUMMARY
CASE NO. A-21-839265-W

12/19/2022	 Notice of Entry of Order <i>[21] Notice of Entry of Order</i>
01/11/2023	 Notice of Appeal (Criminal) Party: Plaintiff Powell, Adrian <i>[22] Notice of Appeal</i>
01/11/2023	 Case Appeal Statement Filed By: Plaintiff Powell, Adrian <i>[23] Case Appeal Statement</i>
	HEARINGS
10/18/2021	Petition for Writ of Habeas Corpus (12:00 PM) (Judicial Officer: Israel, Ronald J.) 10/18/2021, 11/15/2021 Matter Continued; Hearing Set; Matter Continued; Hearing Set;
10/18/2021	Status Check (12:00 PM) (Judicial Officer: Israel, Ronald J.) <i>Status Check: Appointment of Counsel Through Office of Appointed - Julian Gregory</i> Counsel Confirmed; Status Check: Appointment of Counsel Through Office of Appointed - Julian Gregory
10/18/2021	 All Pending Motions (12:00 PM) (Judicial Officer: Israel, Ronald J.) <i>All Pending Motions (10/18/2021)</i> Matter Heard; Journal Entry Details: <i>STATUS CHECK: POSSIBLE APPOINTMENT OF COUNSEL THROUGH OFFICE OF APPOINTED COUNSEL (JULIAN GREGORY)...PETITION FOR WRIT OF HABEAS CORPUS</i> Def. POWELL not present, in custody in the Nevada Department of Corrections (NDC). Mr. Gregory confirmed as counsel. At the request of counsel, COURT ORDERED, Matter SET for a status check to set the briefing schedule. NDC 11-15-2021 12:00 PM <i>STATUS CHECK: SET BRIEFING SCHEDULE...PETITION FOR WRIT OF HABEAS CORPUS;</i>
11/15/2021	Status Check (12:00 PM) (Judicial Officer: Israel, Ronald J.) <i>Status Check: Set Briefing Schedule</i> Matter Heard;
11/15/2021	 All Pending Motions (12:00 PM) (Judicial Officer: Israel, Ronald J.) Matter Heard; Journal Entry Details: <i>PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK: SET BRIEFING SCHEDULE COURT ORDERED, matter SET for argument with a briefing schedule set as follows: Petitioner to file the opening brief by February 14, 2022; State's opposition is due by March 14, 2022; and the Petitioner to file a reply by April 15, 2022. Court directed the State to prepare a transport order for the Petition to be transported to court or the Petition can appear by video. 4/25/22 12:00 PM ARGUMENT: PETITION FOR WRIT OF HABEAS CORPUS;</i>
01/26/2022	 Motion to Withdraw as Counsel (11:00 AM) (Judicial Officer: Israel, Ronald J.) <i>Julian Gregory, Esq.'s, Motion to Withdraw as Counsel of Record for Petitioner</i> Granted; Journal Entry Details: <i>Court noted Def. not present. Ms. Savage advised she can confirm as counsel. COURT ORDERED, motion Granted and the Supplement is DUE by 3/30/22, the Response is DUE by 4/27/22, the Reply is DUE by 5/11/22, and Hearing SET for 5/25/22 11:00 AM. NDC;</i>

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-21-839265-W

10/05/2022	CANCELED Hearing (10:00 AM) (Judicial Officer: Israel, Ronald J.) <i>Vacated</i> <i>Hearing: Petition for Writ of Habeas Corpus</i>
11/02/2022	 Petition for Writ of Habeas Corpus (10:00 AM) (Judicial Officer: Israel, Ronald J.) Denied; Journal Entry Details: <i>Following extensive argument. COURT STATED ITS FINDINGS and ORDERED, Motion DENIED. Written decision WILL ISSUE WITHIN 30 DAYS. NDC;</i>

DISTRICT COURT CIVIL COVER SHEET

A-21-839265-W

Dept. 28

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): Adrian Powell	Defendant(s) (name/address/phone): Nevada Department of Corrections
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 <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 <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

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

August 10, 2021

Date

PREPARED BY CLERK

Signature of initiating party or representative

See other side for family-related case filings.

JUDGE RONALD J. ISRAEL
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT 28
Regional Justice Center
200 Lewis Avenue, 15th Floor
Las Vegas, Nevada 89155

DISTRICT COURT
CLARK COUNTY, NEVADA

Adrian Powell,
Petitioner,

Case No.: A-21-839265-W

Dept.: XXVIII

v.

ORDER

The State of Nevada,
Respondent.

This matter concerns Petitioner Adrian Powell's Petition for Writ of Habeas Corpus, which came on for hearing on the 2nd day of November, 2022, at 10:00 a.m. before Department XXVIII of the Eighth Judicial District Court, in and for Clark County. Colleen Savage appeared in person on behalf of the Petitioner, who appeared via BlueJeans. Joshua Judd appeared on behalf of the Respondent.

I. Procedural History

On July 30, 2018, the State filed an Amended Indictment charging Petitioner and his Co-Defendant with: Counts 1 and 8 – Conspiracy to Commit Robbery (Category B Felony – NRS 200.380, 199.480); Counts 2 and 9 – Burglary While in Possession of a Deadly Weapon (Category B Felony – NRS 205.060); Counts 3 and 13 – First Degree Kidnapping With Use of a Deadly Weapon (Category A Felony – NRS 200.310, 200.320, 193.165); and Counts 4-7, 10-11 and 14 – Robbery With Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.165). The case proceeded to jury trial on July 30, 2018. Voir Dire commenced

1 on July 30, 2018. The Court concluded for the day, and the parties returned the following day
2 to resume jury selection. On July 31, 2018, Petitioner agreed to plead guilty to all counts in
3 the Amended Indictment.

4 On October 31, 2018, the time set for sentencing, Petitioner expressed concerns about
5 his plea, counsel was withdrawn, and new counsel, Monique McNeill, Esq., was appointed.
6 On January 14, 2019, Petitioner filed a Motion to Withdraw Guilty Plea. The State filed its
7 Opposition on February 5, 2019. On February 27, 2019, the district court denied Petitioner's
8 motion without conducting an evidentiary hearing.

9 Petitioner was sentenced on May 22, 2019, and on June 14, 2019, Petitioner filed a
10 Notice of Appeal. On May 11, 2020, the Nevada Court of Appeals remanded the case for an
11 evidentiary hearing to be conducted. Remittitur issued on June 5, 2020. On August 13, 2020,
12 an evidentiary hearing was conducted. At the conclusion of the evidentiary hearing, the Court
13 found that Petitioner was not entitled to relief. The Court found there was no ineffective
14 assistance of counsel and no grounds or fair and just reason to withdraw Petitioner's plea.
15 The Findings of Fact, Conclusions of Law and Order was filed on March 4, 2021.

16 On August 10, 2021, Petitioner filed a Petition for Writ of Habeas Corpus (Post-
17 Conviction) (hereinafter "Petition"). On September 14, 2021, the State filed a Response.

18 On October 18, 2021, this Court appointed Julian Gregory (hereinafter "Gregory"),
19 Esq., as counsel for Petitioner. On January 11, 2022, Gregory filed a Motion to Withdraw as
20 Counsel of Record. On January 26, 2022, this Court granted the motion and appointed
21 Colleen Savage, Esq., as counsel for Petitioner.

22 On May 27, 2022, Petitioner filed a Supplement to Petition for Writ of Habeas
23 Corpus (Post-Conviction) (hereinafter "Supplement"). The State's Response was filed on
24 August 2, 2022. Subsequently, Petitioner filed a Reply on September 1, 2022.

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II. Legal Standard

A post-conviction habeas petition is designed for requests for “relief from a judgment of conviction or sentence in a criminal case; or (2) [c]hallenges to computation of time that the petitioner has served pursuant to a judgment of conviction.” NRS 34.720. Such petitions “must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the appellate court of competent jurisdiction ... issues its remittitur.” NRS 34.726(1).

However, “unlike the strict jurisdictional time limits for filing a notice of appeal, the one-year time limit for filing a post-conviction habeas petition may be excused by a showing of good cause and prejudice.” *Gonzalez v. State*, 118 Nev. 590, 595 (2002). “To show good cause for the delay, [a petitioner] must demonstrate that it was not his fault and that dismissal of the petition will unduly prejudice him.” *State v. Eight Jud. Dist. Ct.*, 121 Nev. 225, 231-32 (2005). “To establish good cause, appellants *must* show that an impediment external to the defense prevented their compliance with the applicable procedural rule.” *Clem v. State*, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added).

It is important, however, that a Court be mindful that “the statutory rules regarding procedural default [to post-conviction habeas petitions] are mandatory and cannot be ignored when properly raised by the State.” *Id.* at 233. Further, NRS 34.810 (1)(a) specifically states that if a conviction was based upon a plea of guilty, the Court shall dismiss a petition if the claim is one other than “that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.”

To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of *Strickland v. Washington*, 466 U.S. at 686-87, 104 S. Ct. at 2063–64. Under the Strickland test, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. *Id.* at 687–88. The

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

4 **III. Discussion**

5 For brevity, and to avoid redundancy, the Court adopts and incorporates, by
6 reference, the relevant facts and history as discussed above. The Court finds that the instant
7 petition was not filed within the one-year statutory limit and is therefore procedurally time-
8 barred pursuant to NRS 34.726. Further, the Court finds that Petitioner has not demonstrated
9 good cause and has failed to include any argument for good cause to overcome the
10 procedural bars.

11 The Court finds that Petitioner knowingly and voluntarily entered his plea. The Court
12 properly canvassed Petitioner and he testified to being aware of and understanding the
13 charges and the consequences of the guilty plea agreement. Counsel reviewed evidence with
14 Petitioner and it was his decision to accept the plea deal or not. Additionally, the Court finds
15 that Petitioner has failed to establish that he entered into the plea agreement due to counsel's
16 alleged misrepresentations.

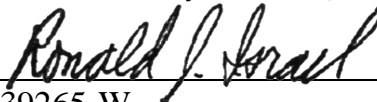
17 The Court also finds that Petitioner has failed to establish he received ineffective
18 counsel. Petitioner fails to make any argument to support his claim that counsel was
19 ineffective for failing to file a pre-trial motion to contest the robbery and kidnapping charges.
20 Additionally, no evidence was in the record to indicate that counsel failed to investigate
21 witnesses or communicate with Petitioner. Further, Petitioner did not mention what the
22 investigation would reveal regarding the alibi witness and what they would have testified
23 about. Accordingly, this Court finds Petitioner fails to satisfy the two-prong test in
24 *Strickland*.

25 However, the Court finds that Petitioner should be permitted to file a notice of appeal
26 on the narrow issue of challenging the Court's denial of his presentence Motion to Withdraw
27 Guilty Plea.
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IT IS HEREBY ORDERED Defendant's Petition for Writ of Habeas Corpus is **DENIED. IT IS FURTHER ORDERED** that the instant ruling is dispositive of the case, and the instant case is hereby **CLOSED**.

Dated this 16th day of December, 2022



A-21-839265-W

kd

CEA DF0 E527 F7EE
Ronald J. Israel
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Adrian Powell, Plaintiff(s)

CASE NO: A-21-839265-W

7 vs.

DEPT. NO. Department 28

8 Nevada Department of
9 Corrections, 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 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: 12/16/2022

15 E File

efile@sgroandroger.com

16 Colleen Savage

csavage@sgroandroger.com

17 Tanya Hayden

thayden@sgroandroger.com

18 Clark County District Attorney's Office

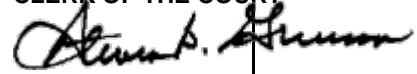
motions@clarkcountyyda.com

19 Kyle Allison

kallison@sgroandroger.com

20 dept 28 LC

dept28lc@clarkcountycourts.us



NEOJ

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ADRIAN POWELL,

Petitioner,

Case No: A-21-839265-W

Dept. No: XXVIII

vs.

NEVADA DEPARTMENT OF
CORRECTIONS,

Respondent,

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on December 16, 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 19, 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 19 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:

Adrian Powell # 1217413
P.O. Box 208
Indian Springs, NV 89070

Colleen N. Savage, Esq.
720 S. 7th St., 3rd Floor
Las Vegas, NV 89101

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

JUDGE RONALD J. ISRAEL
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT 28
Regional Justice Center
200 Lewis Avenue, 15th Floor
Las Vegas, Nevada 89155

DISTRICT COURT
CLARK COUNTY, NEVADA

Adrian Powell,
Petitioner,

Case No.: A-21-839265-W

Dept.: XXVIII

v.

ORDER

The State of Nevada,
Respondent.

This matter concerns Petitioner Adrian Powell's Petition for Writ of Habeas Corpus, which came on for hearing on the 2nd day of November, 2022, at 10:00 a.m. before Department XXVIII of the Eighth Judicial District Court, in and for Clark County. Colleen Savage appeared in person on behalf of the Petitioner, who appeared via BlueJeans. Joshua Judd appeared on behalf of the Respondent.

I. Procedural History

On July 30, 2018, the State filed an Amended Indictment charging Petitioner and his Co-Defendant with: Counts 1 and 8 – Conspiracy to Commit Robbery (Category B Felony – NRS 200.380, 199.480); Counts 2 and 9 – Burglary While in Possession of a Deadly Weapon (Category B Felony – NRS 205.060); Counts 3 and 13 – First Degree Kidnapping With Use of a Deadly Weapon (Category A Felony – NRS 200.310, 200.320, 193.165); and Counts 4-7, 10-11 and 14 – Robbery With Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.165). The case proceeded to jury trial on July 30, 2018. Voir Dire commenced

1 on July 30, 2018. The Court concluded for the day, and the parties returned the following day
2 to resume jury selection. On July 31, 2018, Petitioner agreed to plead guilty to all counts in
3 the Amended Indictment.

4 On October 31, 2018, the time set for sentencing, Petitioner expressed concerns about
5 his plea, counsel was withdrawn, and new counsel, Monique McNeill, Esq., was appointed.
6 On January 14, 2019, Petitioner filed a Motion to Withdraw Guilty Plea. The State filed its
7 Opposition on February 5, 2019. On February 27, 2019, the district court denied Petitioner's
8 motion without conducting an evidentiary hearing.

9 Petitioner was sentenced on May 22, 2019, and on June 14, 2019, Petitioner filed a
10 Notice of Appeal. On May 11, 2020, the Nevada Court of Appeals remanded the case for an
11 evidentiary hearing to be conducted. Remittitur issued on June 5, 2020. On August 13, 2020,
12 an evidentiary hearing was conducted. At the conclusion of the evidentiary hearing, the Court
13 found that Petitioner was not entitled to relief. The Court found there was no ineffective
14 assistance of counsel and no grounds or fair and just reason to withdraw Petitioner's plea.
15 The Findings of Fact, Conclusions of Law and Order was filed on March 4, 2021.

16 On August 10, 2021, Petitioner filed a Petition for Writ of Habeas Corpus (Post-
17 Conviction) (hereinafter "Petition"). On September 14, 2021, the State filed a Response.

18 On October 18, 2021, this Court appointed Julian Gregory (hereinafter "Gregory"),
19 Esq., as counsel for Petitioner. On January 11, 2022, Gregory filed a Motion to Withdraw as
20 Counsel of Record. On January 26, 2022, this Court granted the motion and appointed
21 Colleen Savage, Esq., as counsel for Petitioner.

22 On May 27, 2022, Petitioner filed a Supplement to Petition for Writ of Habeas
23 Corpus (Post-Conviction) (hereinafter "Supplement"). The State's Response was filed on
24 August 2, 2022. Subsequently, Petitioner filed a Reply on September 1, 2022.

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II. Legal Standard

A post-conviction habeas petition is designed for requests for “relief from a judgment of conviction or sentence in a criminal case; or (2) [c]hallenges to computation of time that the petitioner has served pursuant to a judgment of conviction.” NRS 34.720. Such petitions “must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the appellate court of competent jurisdiction ... issues its remittitur.” NRS 34.726(1).

However, “unlike the strict jurisdictional time limits for filing a notice of appeal, the one-year time limit for filing a post-conviction habeas petition may be excused by a showing of good cause and prejudice.” *Gonzalez v. State*, 118 Nev. 590, 595 (2002). “To show good cause for the delay, [a petitioner] must demonstrate that it was not his fault and that dismissal of the petition will unduly prejudice him.” *State v. Eight Jud. Dist. Ct.*, 121 Nev. 225, 231-32 (2005). “To establish good cause, appellants *must* show that an impediment external to the defense prevented their compliance with the applicable procedural rule.” *Clem v. State*, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added).

It is important, however, that a Court be mindful that “the statutory rules regarding procedural default [to post-conviction habeas petitions] are mandatory and cannot be ignored when properly raised by the State.” *Id.* at 233. Further, NRS 34.810 (1)(a) specifically states that if a conviction was based upon a plea of guilty, the Court shall dismiss a petition if the claim is one other than “that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.”

To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of *Strickland v. Washington*, 466 U.S. at 686-87, 104 S. Ct. at 2063–64. Under the Strickland test, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. *Id.* at 687–88. The

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

4 **III. Discussion**

5 For brevity, and to avoid redundancy, the Court adopts and incorporates, by
6 reference, the relevant facts and history as discussed above. The Court finds that the instant
7 petition was not filed within the one-year statutory limit and is therefore procedurally time-
8 barred pursuant to NRS 34.726. Further, the Court finds that Petitioner has not demonstrated
9 good cause and has failed to include any argument for good cause to overcome the
10 procedural bars.

11 The Court finds that Petitioner knowingly and voluntarily entered his plea. The Court
12 properly canvassed Petitioner and he testified to being aware of and understanding the
13 charges and the consequences of the guilty plea agreement. Counsel reviewed evidence with
14 Petitioner and it was his decision to accept the plea deal or not. Additionally, the Court finds
15 that Petitioner has failed to establish that he entered into the plea agreement due to counsel's
16 alleged misrepresentations.

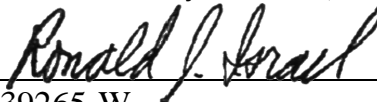
17 The Court also finds that Petitioner has failed to establish he received ineffective
18 counsel. Petitioner fails to make any argument to support his claim that counsel was
19 ineffective for failing to file a pre-trial motion to contest the robbery and kidnapping charges.
20 Additionally, no evidence was in the record to indicate that counsel failed to investigate
21 witnesses or communicate with Petitioner. Further, Petitioner did not mention what the
22 investigation would reveal regarding the alibi witness and what they would have testified
23 about. Accordingly, this Court finds Petitioner fails to satisfy the two-prong test in
24 *Strickland*.

25 However, the Court finds that Petitioner should be permitted to file a notice of appeal
26 on the narrow issue of challenging the Court's denial of his presentence Motion to Withdraw
27 Guilty Plea.
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IT IS HEREBY ORDERED Defendant's Petition for Writ of Habeas Corpus
is **DENIED. IT IS FURTHER ORDERED** that the instant ruling is dispositive of
the case, and the instant case is hereby **CLOSED**.

Dated this 16th day of December, 2022



A-21-839265-W

kd

CEA DF0 E527 F7EE
Ronald J. Israel
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA
4

5
6 Adrian Powell, Plaintiff(s)

CASE NO: A-21-839265-W

7 vs.

DEPT. NO. Department 28

8 Nevada Department of
9 Corrections, 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 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: 12/16/2022

15 E File

efile@sgroandroger.com

16 Colleen Savage

csavage@sgroandroger.com

17 Tanya Hayden

thayden@sgroandroger.com

18 Clark County District Attorney's Office

motions@clarkcountyyda.com

19 Kyle Allison

kallison@sgroandroger.com

20 dept 28 LC

dept28lc@clarkcountycourts.us

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

October 18, 2021

A-21-839265-W Adrian Powell, Plaintiff(s)
vs.
Nevada Department of Corrections, Defendant(s)

October 18, 2021 12:00 AM All Pending Motions

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

COURT CLERK: Kathy Thomas

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Gregory, Julian Attorney
Lacher, Ashley A. Attorney

JOURNAL ENTRIES

- STATUS CHECK: POSSIBLE APPOINTMENT OF COUNSEL THROUGH OFFICE OF APPOINTED COUNSEL (JULIAN GREGORY)...PETITION FOR WRIT OF HABEAS CORPUS

Deft. POWELL not present, in custody in the Nevada Department of Corrections (NDC). Mr. Gregory confirmed as counsel. At the request of counsel, COURT ORDERED, Matter SET for a status check to set the briefing schedule.

NDC

11-15-2021 12:00 PM STATUS CHECK: SET BRIEFING SCHEDULE...PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

November 15, 2021

A-21-839265-W Adrian Powell, Plaintiff(s)
vs.
Nevada Department of Corrections, Defendant(s)

November 15, 2021 12:00 AM All Pending Motions

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

COURT CLERK: Kristen Brown

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Gregory, Julian Attorney

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK: SET BRIEFING SCHEDULE

COURT ORDERED, matter SET for argument with a briefing schedule set as follows: Petitioner to file the opening brief by February 14, 2022; State's opposition is due by March 14, 2022; and the Petitioner to file a reply by April 15, 2022. Court directed the State to prepare a transport order for the Petition to be transported to court or the Petition can appear by video.

4/25/22 12:00 PM ARGUMENT: PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 26, 2022

A-21-839265-W Adrian Powell, Plaintiff(s)
vs.
Nevada Department of Corrections, Defendant(s)

**January 26, 2022 11:00 AM Motion to Withdraw as
Counsel**

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

COURT CLERK: Patia Cunningham

RECORDER: Francesca Haak

REPORTER:

PARTIES

PRESENT: Savage, Colleen N Attorney

JOURNAL ENTRIES

- Court noted Deft. not present. Ms. Savage advised she can confirm as counsel. COURT ORDERED, motion Granted and the Supplement is DUE by 3/30/22, the Response is DUE by 4/27/22, the Reply is DUE by 5/11/22, and Hearing SET for 5/25/22 11:00 AM.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

November 02, 2022

A-21-839265-W Adrian Powell, Plaintiff(s)
vs.
Nevada Department of Corrections, Defendant(s)

**November 02, 2022 10:00 AM Petition for Writ of Habeas
Corpus**

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

COURT CLERK: Patia Cunningham

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Judd, Joshua D Attorney
Savage, Colleen N Attorney
State of Nevada Other

JOURNAL ENTRIES

- Following extensive argument. COURT STATED ITS FINDINGS and ORDERED, Motion DENIED.
Written decision WILL ISSUE WITHIN 30 DAYS.

NDC

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; CIVIL COVER SHEET; ORDER; NOTICE OF ENTRY OF ORDER; DISTRICT
COURT MINUTES

ADRIAN POWELL,

Plaintiff(s),

vs.

NEVADA DEPT OF CORRECTIONS,

Defendant(s),

Case No: A-21-839265-W

Dept No: XXVIII

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 12 day of January 2023.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk