

No. 85955

IN THE NEVADA SUPREME COURT

Electronically Filed
May 30 2023 06:19 PM
Elizabeth A. Brown
Clerk of Supreme Court

Adrian Powell,

Appellant,

v.

State of Nevada

Respondents.

On Appeal from the Order Denying Petition
for Writ of Habeas Corpus
Eighth Judicial District, Clark County (A-21-839265-W)
Honorable Ronald J. Israel, District Court Judge

Joint Appendix
Volume 4 of 4

Anthony P. Sgro, Esq.
Nevada Bar No. 3811
Sgro & Roger
*Colleen Savage, Esq.
Nevada Bar No. 14947
720 S. 7th Street, 3rd Floor
Las Vegas, Nevada 89101
(702) 384-9800
tsgro@sgroandroger.com
csavage@sgroandroger.com

*Counsel for Adrian Powell

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

COUNTY OF CLARK)

I, COLLEEN SAVAGE, ESQ., declare that I have personal knowledge of the facts set forth below, except for those statements expressly made upon information and belief, and as to those facts, I believe them to be true and I am competent to testify:

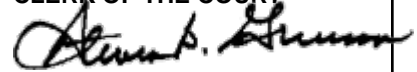
1. That I am an attorney duly licensed to practice law in the State of Nevada and I am employed as an attorney at the law firm of Sgro & Roger.

2. That Sgro & Roger is current counsel of record for Defendant Anthony Martinez in Case No. C-16-316286-1; State of Nevada vs. Anthony Martinez.

3. Prior to Sgro & Roger substituting in as counsel of record in September 2019, Defendant Martinez was represented by Attorney Roy Nelson, III.

4. Upon information and belief, the law firm of Sgro & Roger was appointed as counsel of record to replace attorney Roy Nelson after he was referred to the Nevada State Bar due to professional misconduct detailed within the Findings of Fact, Conclusions of Law and Recommendation After Formal Hearing, attached hereto as Exhibit "W".

COLLEEN SAVAGE, ESQ.



RSPN
STEVEN WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #005734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ADRIAN POWELL,)
Petitioner,)
-vs-)
THE STATE OF NEVADA,)
Respondent.)

CASE NO: **A-21-839265-W**
C-17-327767-2
DEPT NO: XXVIII

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

DATE OF HEARING: September 14, 2022
TIME OF HEARING: 10:00 a.m.

COMES NOW, the State of Nevada, by STEVEN WOLFSON, District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and hereby submits the State's Response to Petitioner's Supplement to Petition for Writ of Habeas Corpus (Post-Conviction).

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

///

///

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On November 8, 2017, Adrian Powell (hereinafter “Petitioner”) and his Co-Defendant
4 Lorenzo Pinkey aka, Lorenzo Pinkney (hereinafter “Pinkney”) were charged by way of
5 Indictment with: Counts 1 and 8 – Conspiracy to Commit Robbery (Category B Felony – NRS
6 200.380, 199.480); Counts 2 and 9 – Burglary While in Possession of a Deadly Weapon
7 (Category B Felony – NRS 205.060); Counts 3, 10 and 14 – First Degree Kidnapping With
8 Use of a Deadly Weapon (Category A Felony – NRS 200.310, 200.320, 193.165); Counts 4-
9 7, 11-12 and 15 – Robbery With Use of a Deadly Weapon (Category B Felony – NRS 200.380,
10 193.165); and Count 13 – Unlawful Taking of Motor Vehicle (Gross Misdemeanor – NRS
11 205.2715).

12 On July 30, 2018, the State filed an Amended Indictment charging Petitioner and his
13 Co-Defendant with: Counts 1 and 8 – Conspiracy to Commit Robbery (Category B Felony –
14 NRS 200.380, 199.480); Counts 2 and 9 – Burglary While in Possession of a Deadly Weapon
15 (Category B Felony – NRS 205.060); Counts 3 and 13 – First Degree Kidnapping With Use
16 of a Deadly Weapon (Category A Felony – NRS 200.310, 200.320, 193.165); and Counts 4-
17 7, 10-11 and 14 – Robbery With Use of a Deadly Weapon (Category B Felony – NRS 200.380,
18 193.165). The case proceeded to jury trial on July 30, 2018. Voir Dire commenced on July 30,
19 2018. The Court concluded for the day, and the parties returned the following day to resume
20 jury selection. On July 31, 2018, the parties negotiated for hours, and the State ultimately
21 agreed to allow both Petitioner and his Co-Defendant to plead guilty.

22 On July 31, 2018, Petitioner pled guilty to Counts 1 and 8 - Conspiracy to Commit
23 Robbery, Counts 2 and 9 - Burglary While in Possession of a Deadly Weapon, Counts 3 and
24 13 - First Degree Kidnapping With Use of a Deadly Weapon, and Counts 4, 5, 6, 7, 10, 11 and
25 14 - Robbery With Use of a Deadly Weapon. The terms of the Guilty Plea Agreement
26 (hereinafter “GPA”) were as follows:

27 //

28 //

1 The Defendants agree to plead guilty to all counts in the Amended
2 Indictment. The State will maintain the full right to argue,
3 including for consecutive time between the counts, however, the
4 State agrees to not seek a Life sentence on any count. The State
retains the full right to argue the facts and circumstances, but
agrees to not file charges, for the following events:

5 1. LVMPD Event No. 170605-0220: Armed robbery at 7-
6 Eleven located at 4800 West Washington, Las Vegas, Clark
County, Nevada, on June 5, 2017.

7 2. LVMPD Event No. 170614-0524: Armed robbery at
8 Roberto's/Mangos located at 6650 Vegas Drive, Las Vegas, Clark
County, Nevada, on June 14, 2017.

9 3. LVMPD Event No. 170618-0989: Armed robbery at Pepe's
10 Tacos located at 1401 North Decatur, Las Vegas, Clark County,
Nevada, on June 18, 2017.

11 4. LVMPD Event No. 170701-0545: Armed robbery at
12 Roberto's located at 2685 South Eastern Avenue, Las Vegas, Clark
County, Nevada, on July 1, 2017.

13 5. LVMPD Event No. 170812-3809: Armed robbery at Pizza
14 Bakery located at 6475 West Charleston Boulevard, Las Vegas,
Clark County, Nevada, on August 12, 2017.

15 6. LVMPD Event No. 170817-0241: Armed robbery at
16 Terrible Herbst located at 6380 West Charleston Boulevard, Las
Vegas, Clark County, Nevada, on August 17, 2017.

17 7. LVMPD Event No. 170817-0470: Armed robbery at Rebel
18 located at 6400 West Lake Mead Boulevard, Las Vegas, Clark
County, Nevada, on August 17, 2017.

19 8. LVMPD Event No. 170824-0521: Armed robbery at
20 Roberto's located at 6820 West Flamingo Road, Las Vegas, Clark
County, Nevada, on August 24, 2017.

21 9. LVMPD Event No. 170824-0645: Armed robbery at
22 Roberto's located at 907 North Rainbow Boulevard, Las Vegas,
Clark County, Nevada, on August 24, 2017.

23 10. LVMPD Event No. 170825-0589: Armed robbery at Pepe's
Tacos located at 1401 North Decatur, Las Vegas, Clark County,
Nevada, on August 25, 2017.

24 The Defendants agree to take no position at sentencing
regarding the aforementioned ten (10) armed-robbery events.

25 This Agreement is contingent upon the co-defendant's
26 acceptance and adjudication on his respective Agreement.

27 //

28 //

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

6 On May 22, 2019, Petitioner was sentenced to the Nevada Department of Corrections
7 as follows: as to Count 1 – twelve (12) to forty-eight (48) months; as to Count 2 – thirty-six
8 (36) to one hundred twenty (120) months concurrent with Count 1; as to Count 3 – five (5) to
9 fifteen (15) years with a consecutive term of thirty-six (36) to ninety-six (96) months for use
10 of a deadly weapon concurrent with Count 2; as to Count 4 – thirty-six (36) to one hundred
11 twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for
12 use of a deadly weapon concurrent with Count 3; as to Count 5 - thirty-six (36) to one hundred
13 twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for
14 use of a deadly weapon concurrent with Count 4; as to Count 6 - thirty-six (36) to one hundred
15 twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for
16 use of a deadly weapon concurrent with Count 5; as to Count 7 - thirty-six (36) to one hundred
17 twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for
18 use of a deadly weapon concurrent with Count 6; as to Count 8 – twelve (12) to forty-eight
19 (48) months concurrent with Count 7; as to Count 9 – thirty-six (36) to one hundred twenty
20 (120) months concurrent with Count 8; as to Count 10 - thirty-six (36) to one hundred twenty
21 (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a
22 deadly weapon concurrent with Count 7; as to Count 11 - thirty-six (36) to one hundred twenty
23 (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a
24 deadly weapon concurrent with Count 10; as to Count 13 - five (5) to fifteen (15) years with a
25 consecutive term of thirty-six (36) to ninety-six (96) months for use of a deadly weapon
26 consecutive to Count 3; and as to Count 14 - thirty-six (36) to one hundred twenty (120)
27 months with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a deadly
28 weapon concurrent with Count 11, with six hundred two (602) days credit for time served.

1 The aggregate total sentence was five hundred fifty-two (552) months maximum with a
2 minimum parole eligibility of one hundred ninety-two (192) months.

3 The Judgment of Conviction was filed on May 24, 2019.

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

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

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

18 On May 27, 2022, Petitioner filed a Supplement to Petition for Writ of Habeas Corpus
19 (Post-Conviction) (hereinafter "Supplement"). The State's response follows.

20 **STATEMENT OF FACTS**

21 The evidence in this case was overwhelming. The following is a summary of the
22 victims' testimony from the Grand Jury presentation, as well as a summary of the forensic
23 evidence and the circumstantial evidence that would have been presented at trial.

24 **Testimony of Jose Chavarria**

25 Jose Alfredo Chavarria Valenzuela ("Chavarria") was working as a cook at Pepe's
26 Tacos located at 2490 Fremont Street, Las Vegas, Nevada on September 28, 2017. At
27 approximately 2:40 AM, Chavarria was in kitchen area when two gunmen entered the
28 restaurant. Chavarria ran toward the back refrigerator where his co-worker was located, when

1 one of the gunmen jumped the counter, followed Chavarria and pointed a gun at him. The
2 gunman told Chavarria to get on the ground and that he “wanted the money.” The gunman
3 then forced Chavarria at gunpoint from the back of the store to the front cash registers. At the
4 cash registers, the gunman began jabbing Chavarria in his side, but Chavarria was unable to
5 open the till because he did not have the correct passcode. The second gunman then retrieved
6 Chavarria’s coworker from the back of the store and forced her to open the cash registers at
7 the front of the store. One of the gunmen then took Chavarria to the second cash register, threw
8 him on the ground, and pointed a gun to Chavarria’s head. The gunmen took the money from
9 the cash registers but did not take any property from Chavarria.

10 **Testimony of Yenir Hessing**

11 Yenir Hessing (“Hessing”) works as the shift lead at the Walgreens located at 4470
12 East Bonanza, Las Vegas, Nevada. On September 28, 2017, Hessing was working the
13 graveyard shift with four other Walgreens employees when, at approximately 4:05 AM, two
14 masked gunmen entered the store. Hessing was stocking the shelves in the food aisle when
15 one of the gunmen pointed a gun to her stomach, demanded she move to the front of the store.
16 The food aisle is located near the store’s photo section, away from the registers and store
17 entrance. While pushing her to the front of the store, the gunman told Hessing to go to the cash
18 registers in the front of the store, passing the cash register in the photo section. As gunman
19 pushed Hessing, he told her this is “not a game and I'm going to kill you.”

20 At the front of the store, the gunman told her to open the three cash registers, which
21 Hessing did. At that moment, another Walgreens employee, Tifnie Bobbitt (“Bobbitt”) was
22 returning from lunch and, upon seeing Bobbitt, the gunman ordered her the front of the store
23 too. Hessing testified that the gunman was “swearing and saying like really bad things ...
24 grabbed both of us and he asked me where is the big money, where is the safe, and I tell him
25 it was in the office.” The gunman then used the gun to again push Hessing, this time toward
26 the office located at the back of the store.

27 While the gunman pushed Hessing toward the back of the store, Hessing saw down an
28 aisle that the Walgreen’s pharmacist, Darlene Orat, was being held up by another gunman in

1 the pharmacy. As the gunman pushed Hessing toward the back office at gunpoint, he told
2 Hessing "I'm going to kill you." Hessing responded to the gunman, telling him "please don't
3 hurt me, I'm nine weeks pregnant, don't do anything to me." To which the gunman responded,
4 "I don't give a [fuck] I'm going to kill you if you do the wrong code or ... try to call [police]."

5 Upon reaching the back office, which is behind two doors that each have a different pin
6 code, Hessing entered the code and the gunman forced Hessing and Bobbitt into the office.
7 The door to the office closed behind them, leaving Hessing, Bobbitt and the gunman isolated
8 from the rest of the store. In the office, the gunman began hitting Hessing in the ribs with the
9 gun and demanding that she open the safe. Hessing opened the first of two safes and the
10 gunman grabbed everything. The gunman then demanded Hessing open the second safe, which
11 she did. The gunman grabbed the contents from the second safe and fled from the office.

12 **Testimony of Tifnie Bobbitt**

13 Bobbitt was working as a cashier at the Walgreens located at 4470 East Bonanza, Las
14 Vegas, Nevada, on September 28, 2017. Around 4:00 AM, Bobbitt was headed to breakroom
15 to take her lunch break when she heard a man "say the F word." Bobbitt looked over to see
16 the man crouching and walking behind Hessing. Bobbitt entered the code to the breakroom,
17 entered the room and approached the seconded code-locked door to the office, which she
18 knocked on to alert the Walgreen's manager. Bobbitt's manager left and did not return, so
19 Bobbitt, thinking the situation was taken care of, walked out of the breakroom into the store.
20 At that moment, the gunman saw her and yelled at her "Where the fuck do you think you're
21 going, bitch?" The gunman then ordered Bobbitt to the front of the store where Hessing was
22 opening the cash registers for the gunman. From there, the gunman forced Bobbitt and Hessing
23 from the front of the store to the back office, pushing Bobbitt while telling the women they
24 were walking too slowly. At the breakroom door, they enter the code and enter the breakroom.
25 From there, Hessing entered the code to the office door and the gunman forced the women
26 into the office. In the office, the gunman "kept jabbing the gun" into Hessing's side as he was
27 forcing her to open the safes. Once the safes were open, the gunman took the money from the
28 safes and fled.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

9

0
1

2
3
4

6
7
8
9
0

- 1
-
- 2

4
5
6

7

1 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
2 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

3 The one-year time limit for preparing petitions for post-conviction relief under NRS
4 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
5 the Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite
6 evidence presented by the defendant that he purchased postage through the prison and mailed
7 the petition within the one-year time limit.

8 This is not a case wherein the Judgment of Conviction was, for example, not final. See,
9 e.g., Johnson v. State, 133 Nev. 571, 402 P.3d 1266 (2017) (holding that the defendant’s
10 judgment of conviction was not final until the district court entered a new judgment of
11 conviction on counts that the district court had vacated); Whitehead v. State, 128 Nev. 259,
12 285 P.3d 1053 (2012) (holding that a judgment of conviction that imposes restitution in an
13 unspecified amount is not final and therefore does not trigger the one-year period for filing a
14 habeas petition).

15 Given that Petitioner’s Judgment of Conviction was never vacated¹, there is no legal
16 basis for running the one-year time-limit from anything but the date of Remittitur. Remittitur
17 issued on June 5, 2020. Thus, Petitioner had one year from June 5, 2020, to file this Petition.
18 Petitioner did not file his Petition until August 10, 2021, over two (2) months late. Absent a
19 showing of good cause and prejudice to excuse this delay, this Petition must be denied.

20 **A. The Application of the Procedural Bars is Mandatory**

21 The Nevada Supreme Court held that the district court has a *duty* to consider whether a
22 defendant’s post-conviction petition claims are procedurally barred. State v. Eighth Judicial
23 Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found
24 that “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions
25 is mandatory,” noting:
26

27 ¹ This Court should clarify the Judgment of Conviction was reinstated when it denied
28 Petitioner’s Motion to Withdraw Guilty Plea.

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

5 Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
6 when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
7 has granted no discretion to the district courts regarding whether to apply the statutory
8 procedural bars; the rules *must* be applied.

9 This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013).
10 There the Court ruled that the defendant’s petition was “untimely, successive, and an abuse of
11 the writ” and that the defendant failed to show good cause and actual prejudice. Id. at 324, 307
12 P.3d at 326. Accordingly, the Court reversed the district court and ordered the defendant’s
13 petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322–23. The
14 procedural bars are so fundamental to the post-conviction process that they must be applied
15 by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

16 **B. Petitioner Waived Any Substantive Claims by Not Addressing Them on**
17 **Direct Appeal**

18 As to any substantive claim regarding the constitutionality of his convictions for both
19 robbery and kidnapping, it is waived. NRS 34.810(1) reads:

20
21 The court shall dismiss a petition if the court determines that:

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

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

27 . . .

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

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

11 NRS 34.810 (1)(a) specifically states that if a conviction was based upon a plea of
12 guilty, the Court shall dismiss a petition if the claim is one other than “that the plea was
13 involuntarily or unknowingly entered or that the plea was entered without effective assistance
14 of counsel.” As such, the only claims Appellant could raise in a Petition for Writ of Habeas
15 Corpus must be those related to whether his plea was involuntarily or unknowingly entered,
16 or whether he received ineffective assistance of counsel.

17 This Court should ignore Petitioner’s substantive claims. In Ground Two, Petitioner
18 alleges he cannot be convicted for both kidnapping and robbery. This is a substantive claim
19 that should have been raised on direct appeal. Therefore, it is waived unless Petitioner can
20 demonstrate good cause and prejudice to overcome the procedural bars.

21 **C. Res Judicata Bars Petitioner’s Claims, as this Court Previously Addressed**
22 **Them**

23 Res Judicata bars Petitioner’s claims regarding the voluntariness of the plea and
24 whether counsel misled him about his sentence. The decisions of the District Court are final
25 decisions absent a showing of changed circumstances, and relitigation of claims is barred by
26 the doctrine of res judicata. See Mason v. State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing
27 the doctrine’s applicability in the criminal context); see also York v. State, 342 S.W. 528, 553
28

(Tex. Crim. Appl. 2011). Accordingly, by simply continuing to file motions with the same arguments, his motion is barred by the doctrines of the law of the case and res judicata. Id.; Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

This is not Petitioner's first attempt to claim that the entry of his plea was unknowingly and involuntarily. This Court previously ruled on a similar claim:

Therefore, any claim from Petitioner that he was coerced into entering his plea is belied by the record and suitable for only summary denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225. Any claim that Petitioner was coerced lacks merit. **Accordingly, this Court finds that Petitioner knowingly and voluntarily entered his guilty plea.** Thus, the Court finds no "the fair and just" reason to have withdrawn Petitioner's guilty plea

Findings of Fact, Conclusions of Law and Order filed on March 4, 2021, at 10 (emphasis added). Petitioner then claims counsel misled him about possible sentencing ranges. This Court also denied this claim:

Petitioner's counsel never promised him 6 to 15 years. Rather, Mr. Kane went over the Guilty Plea Agreement several times with the Petitioner. At the Evidentiary Hearing on August 13, 2020, Mr. Kane testified that he never told the Defendant he would receive 6 to 15 years. The Court found Mr. Kane's testimony to be credible. As such, Defendant's claim that he was "misled" or "convinced" to plead guilty is belied by the record and suitable only for summary of denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

Id. at 14. Petitioner also reraises a claim regarding counsel's investigation of new charges which this Court also denied:

The Defendant has not yet established that the State could not have proved the new charges with the evidence it presented to Defendant. Thus, Defendant has not established that counsel was

1 objectively unreasonable for not further investigating the police
2 reports and witness statements or that he was at all prejudiced by
3 this alleged failure. Because Defendant cannot establish either
4 Strickland prong, this claim is denied.

5 Petitioner has already litigated these issues resulting in the denial of his claims by this Court.
6 Further litigation violates the principles of Res Judicata. Therefore, this Court should deny
7 these claims.

8 **D. Petitioner Fails to Demonstrate, or Even Address, Good Cause**

9 To avoid procedural default under NRS 34.726 and NRS 34.810, a defendant has the
10 burden of pleading and proving specific facts that demonstrate good cause for his failure to
11 present his claim in earlier proceedings or comply with the statutory requirements. Hogan v.
12 Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Dir. Nev. Dep’t of
13 Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988).

14 “To establish good cause, appellants *must* show that an impediment external to the
15 defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119
16 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.
17 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Such an
18 external impediment could be “that the factual or legal basis for a claim was not reasonably
19 available to counsel, or that ‘some interference by officials’ made compliance impracticable.”
20 Hathaway, 119 Nev. at 251, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488,
21 106 S. Ct. 2639, 2645 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing
22 Harris v. Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)). Any delay in filing of
23 the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

24 The Nevada Supreme Court clarified that a defendant cannot attempt to manufacture
25 good cause. See Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there must be a
26 “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71 P.3d at
27 506; (quoting Colley v. State, 105 Nev. at 236, 773 P.2d at 1230). Excuses such as the lack of
28

1 assistance of counsel when preparing a petition, as well as the failure of trial counsel to forward
2 a copy of the file to a petitioner have been found not to constitute good cause. See Phelps, 104
3 Nev. at 660, 764 P.2d at 1306, superseded by statute on other grounds as recognized in Nika
4 v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145 (2004); Hood v. State, 111 Nev. 335, 890
5 P.2d 797 (1995).

6 Further, a petitioner raising good cause to excuse procedural bars must do so within a
7 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
8 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
9 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
10 available to the petitioner during the statutory time period did not constitute good cause to
11 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
12 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
13 453 120 S. Ct. 1587, 1592 (2000).

14 Petitioner fails to include any argument for good cause. Failure to address good cause
15 amounts to an admission that he is unable to do so. DCR 13(2); EDCR 3.20(b); Polk v. State,
16 126 Nev. 180, 186, 233 P.3d 357, 360-61 (2010). Nowhere in his Petition does Petitioner
17 address the issue of good cause. He fails to allege any impediments that necessitated bringing
18 a claim outside of the one-year deadline. Thus, Petitioner’s silence should be read as an
19 admission that no good cause exists.

20 Even if Petitioner did address the issue, good cause cannot be demonstrated.
21 Petitioner’s claims rely upon facts that he had at his disposal. Petitioner knew about the
22 Indictment, his communications with counsel, and the ten (10) aforementioned armed
23 robberies. Petitioner had all of the facts and law available to file his Petition earlier but failed
24 to do so. Based on this failure to properly allege good cause, this Court should decline to
25 consider these claims.

26 **E. Petitioner Cannot Demonstrate Sufficient Prejudice to Ignore the**
27 **Procedural Defaults**
28

1 In order to establish prejudice, the defendant must show “not merely that the errors of
2 [the proceedings] created possibility of prejudice, but that they worked to his actual and
3 substantial disadvantage, in affecting the state proceedings with error of constitutional
4 dimensions.” Hogan v. Warden, 109 Nev. at 960, 860 P.2d at 716 (1993) (quoting United
5 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). Defendant’s procedural
6 defaults cannot be excused because his underlying claim is meritless.

7 In this case, Petitioner cannot establish prejudice to ignore the procedural defaults
8 because his claims are without merit and belied by the record, as will be further discussed in
9 more detail below. “Bare” and “naked” allegations are not sufficient to warrant post-
10 conviction relief, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev.
11 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it is contradicted or proven to
12 be false by the record as it existed at the time the claim was made.” Mann v. State, 118 Nev.
13 351, 354, 46 P.3d 1228, 1230 (2002). As Petitioner cannot satisfy both prongs of Strickland
14 or the basis of his other claims, he cannot demonstrate sufficient prejudice to ignore the
15 procedural defaults.

16 **II. PETITIONER FAILS TO ESTABLISH HE RECEIVED INEFFECTIVE** 17 **ASSISTANCE OF COUNSEL**

18 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
19 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
20 defense.” The United States Supreme Court has long recognized that “the right to counsel is
21 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
22 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
23 (1993).

24 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
25 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of
26 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063–64. See also Love, 109 Nev. at 1138, 865
27 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
28

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

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

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

25 “There are countless ways to provide effective assistance in any given case. Even the
26 best criminal defense attorneys would not defend a particular client in the same way.”
27 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
28 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,

1 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
2 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
3 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
4 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

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

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

17 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
18 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
19 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
20 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
21 be supported with specific factual allegations, which if true, would entitle the petitioner to
22 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”
23 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
24 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims
25 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
26 petition to be dismissed.” (emphasis added).

27 //

28 //

1 **A. Counsel Was Not Ineffective for Failing to File a Futile Pre-trial Motion**

2 Petitioner argues counsel was ineffective for failing to file a pretrial petition for writ of
3 habeas corpus challenging the kidnapping and robbery charges.² Supplemental Petition, at 14-
4 16. This Court has clarified that:

5
6 [W]here the movement or restraint serves to substantially increase
7 the risk of harm to the victim over and above that necessarily
8 present in an associated offense, *i.e.*, robbery, extortion, battery
9 resulting in substantial bodily harm or sexual assault, or where the
10 seizure, restraint or movement of the victim substantially exceeds
11 that required to complete the associated crime charged, dual
12 convictions under the kidnapping and [associated offense] statutes
13 are proper.

14 Mendoza v. State, 122 Nev. 267, 274-75, 130 P.3d 176, 180 (2006). However, “whether the
15 movement of a victim is incidental to the associated offense and whether the risk of harm is
16 substantially increased thereby are questions of fact to be determined by the trier of fact in all
17 but the clearest cases.” Curtis D. v. State, 98 Nev. 272, 274, 646 P.2d 547, 548 (1982). As
18 such, “the district court should deny a motion to dismiss the kidnapping charge in all but the
19 clearest cases.” Binh Minh Chung v. State, No. 73657, 2019 WL 2743766, at *3 (Nev. June
20 26, 2019).

21 The Indictment charged Petitioner with the kidnappings of Chavarria, Hessing, and
22 Bobbitt. The evidence presented at the Grand Jury proceedings established the trier of fact
23 should determine Petitioner’s guilt regarding the kidnappings. Hessing and Bobbitt were
24 forced at gunpoint to move to the register area and then to the office. Reporter’s Transcript of
25 Proceedings Volume I, at 15-16; Reporter’s Transcript of Proceedings Volume II, at 13-16.

26
27 ² NRS 34.810(1)(A) limits Petitioner’s ineffective assistance of counsel claims to those
28 regarding his plea being “entered without effective assistance of counsel.” The failure to file
a pretrial petition for writ of habeas corpus is waived as it relates to an event arising before he
entered the guilty plea. See Gonzalez v. State, 137 Nev. Adv. Op. 40, 492 P.3d 556, 561
(2021).

1 Chavarria was forced at gunpoint from the kitchen area to the register area. Reporter's
2 Transcript of Proceedings Volume 1, at 34-36. A jury could have found the movement
3 "substantially exceeds that required to complete the associated crime charged." Mendoza v.
4 State, 122 Nev. at 274-75, 130 P.3d at 180. As such, the facts of this case do not constitute the
5 clearest of cases where the district court can dismiss the kidnapping charges. Accordingly, any
6 motion would have been futile. Counsel cannot be ineffective for failing to make futile
7 objections or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).
8 Thus, this Court should deny Appellant's claim.³

9 **B. Petitioner Fails to Establish Any Conflict of Interest Between Himself and**
10 **Counsel**

11 Petitioner argues Roy Nelson (hereinafter "Nelson"), Esq., and Michael Kane
12 (hereinafter "Kane"), Esq., were ineffective due to a conflict of interest. A conflict of interest
13 exists when "an attorney is placed in a situation conducive to divided loyalties." Clark v. State,
14 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992) (internal quotation omitted). "Conflict of
15 interest and divided loyalty situations can take many forms, and whether an actual conflict
16 exists must be evaluated on the specific facts of each case." Id., 831 P.2d at 1376.

17 Petitioner first argues there was a conflict of interest between himself and Nelson due
18 to Nelson's removal from other cases and participation in a diversion program.⁴ Supplemental
19 Petition, at 16. Exhibit "X" shows that Nelson consented to a diversion program that would
20 "remain in effect for two (2) years, from December 1, 2019, through November 1, 2021."
21 Exhibit X, at 6. If Nelson breached the agreement, then his license to practice law would be
22 suspended. Exhibit X, at 8.

23 Petitioner's argument regarding Nelson's conflict fails for multiple reasons. First,
24

25 ³ At the end of Petitioner's argument, he claims counsel was also ineffective for failing to file
26 other pretrial motions. Supplemental Petition, at 15-16. Petitioner fails to make any argument
27 to support this claim. As such, this claim fails as it is nothing more than a naked assertion.
28 Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly, this claim should be denied.

⁴ In his argument, Petitioner references Exhibit "U." Petitioner filed this Exhibit under seal
which prevents the State from responding to the Exhibit.

1 Petitioner entered his plea on July 31, 2018. This is a year and four months prior to the
2 diversion program. Secondly, pursuant to the agreement, Nelson's license to practice law was
3 only suspended if he failed to meet certain conditions. As such, Nelson's conduct did not
4 warrant an automatic suspension or terminate his ability to practice law. Finally, Petitioner
5 fails to show how Nelson's personal struggles represented a conflict in this case. His removal
6 from other cases and participation in a diversion program has no impact on his conduct in this
7 case. As such, this Court should deny Petitioner's claim that there was a conflict of interest
8 with Nelson.

9 Petitioner then argues there was a conflict of interest between himself and Kane due to
10 Kane experiencing a family tragedy. Supplemental Brief, at 16-18. Petitioner attempts to
11 fashion a rule that an attorney facing a family tragedy necessarily constitutes a conflict of
12 interest. This is in direct opposition to the Court's statement that the "specific facts" of a
13 potential conflict must be evaluated. Clark 108 Nev. at 316, 831 P.2d 1376. Here, the record
14 belies any claim that Kane had divided loyalties between his personal life and his
15 representation of Petitioner. At an evidentiary hearing, Kane testified to the following: (1) he
16 met with Petitioner twice in person about the case; (2) he had fifteen (15) or more telephonic
17 conversations with Petitioner about the case; (3) he discussed the discovery with Petitioner (4)
18 he prepared and was ready for trial, and (5) he explained the plea to Petitioner. Recorders
19 Transcript of Hearing Filed on 2/11/2021, at 6-13, 15-16. The record clearly shows that Kane's
20 family tragedy did not impact his ability to represent Petitioner. As such, this Court should
21 deny Petitioner's claim.

22 **C. Petitioner Fails to Establish Counsel Did Not Conduct A Thorough**
23 **Investigation**

24 Petitioner argues counsel did not investigate possible alibi witnesses. Supplemental
25 Brief, at 18-20. A defendant who contends his attorney was ineffective because he did not
26 adequately investigate must show how a better investigation would have changed the outcome
27 of trial. Strickland, 466 U.S. at 687, 104 S. Ct. at 2064. Such a defendant must allege with
28

1 specificity what the investigation would have revealed and how it would have altered the
2 outcome of the trial. See Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

3 “[D]efense counsel has a duty ‘to make reasonable investigations or to make a
4 reasonable decision that makes particular investigations unnecessary.’ Love, 109 Nev. 1136,
5 1138, 865 P.2d 322, 323 (1993) (quoting Strickland, 466 U.S. at 691, 104 S. Ct. at 2066). A
6 decision “not to investigate must be directly assessed for reasonableness in all the
7 circumstances, applying a heavy measure of deference to counsel’s judgment.” Id.

8 Indeed, to establish a claim of ineffective assistance of counsel for advice regarding a
9 guilty plea, a defendant must show “gross error on the part of counsel.” Turner v. Calderon,
10 281 F.3d 851, 880 (9th Cir. 2002). A plea of guilty is presumptively valid, particularly where
11 it is entered into on the advice of counsel, and the burden is on a defendant to show that the
12 plea was not voluntarily entered. Bryant, 102 Nev. at 272, 721 P.2d at 368 (citing Wingfield
13 v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)); Jezierski v. State, 107 Nev. 395, 397,
14 812 P.2d 355, 356 (1991). Ultimately, while it is counsel’s duty to candidly advise a defendant
15 regarding a plea offer, the decision of whether or not to accept a plea offer is the defendants.
16 Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163 (2002).

17 The record belies any claim that counsel did not thoroughly investigate possible
18 witnesses. Counsel testified that he did follow up on possible alibi witnesses:

19
20 A [Mr. Kane]: [H]e would have – he wanted to talk to us about
21 alibi witnesses, you know, that we checked out.

22
23 Recorders Transcript of Hearing Filed on 2/11/2021, at 16. No evidence in the record indicates
24 that counsel failed to investigate witnesses. Thus, Petitioner’s claim should be summarily
25 denied as it is belied by the record.

26 Even if Petitioner could show deficiency, which he cannot, he makes no claims about
27 what further investigation would have revealed. The Petition contains no mention of what an
28 //

1 alibi witness would have testified about. As such, Petitioner's failure to show what further
2 investigation would reveal necessitates the denial of this claim.

3 **D. Petitioner Fails to Establish Counsel Was Ineffective for Not Acquiring the**
4 **Discovery for the Dismissed Cases**

5 Petitioner argues counsel was ineffective for failing to acquire discovery related to the
6 cases dismissed by the plea agreement.⁵ Supplemental Brief, at 21-23. Petitioner cites no law
7 entitling him to pre-indictment discovery. The State is unaware of any Nevada case law
8 directly addressing this issue. However, the Supreme Court of Nevada has previously stated
9 that a defendant maintains no constitutional right to discovery in the grand jury setting. See
10 Mayo v. Eighth Judicial Dist. Court of State in & for Cnty. of Clark, 132 Nev. 801, 806, 384
11 P.3d 486, 490 (2016) ("Brady's constitutional disclosure obligation, and by extension, the
12 presumption stated in Agurs, thus do not apply in the grand jury setting"). Certainly, a person
13 who has no right to discovery in a grand jury setting, also has no right to discovery prior to the
14 grand jury proceeding. As such, counsel's representation could not be deficient for failing to
15 acquire discovery which Petitioner is not entitled to.

16 Furthermore, counsel did review some of the evidence related to the ten (10) uncharged
17 armed robberies:

18
19 Q [Mr. Giordani]: Right. And you were shown some discovery on
20 those other uncharged acts like photographs -- still shots of
21 photographs from surveillance videos in the uncharged cases,
22 correct?

23 A [Mr. Kane]: Correct.

24 Q: And we kind of pointed out, look, you can see the shoes are the
25 exact same in some of the events and the way they all jumped, the
26 MO is the same. Do you recall those conversations?

27 A: I don't recall specifics. I recall that -- that you guys, the DA's
28 office, you know, thought they had evidence to file.

Q: Okay. And you recall going through some of it or at least
having some understanding of there are ten other events that are

⁵ As discussed above, section I.C., this Court already ruled on this claim. As such, relitigation of this claim is barred by the doctrine of res judicata.

1 potentially related and potentially could be charged after this trial
occurs, correct?

2 A: Yeah, that's correct. And then, in fact, after that discussion, we
3 – Mr. Powell and I, I don't know Pinkney or Pikney, they wanted
4 to have a conversation with all the attorneys together. And so we
went back for an extended period of time.

5
6 Recorders Transcript of Hearing Filed on 2/11/2021, at 21-22. Not only did counsel review
7 the evidence, but he also discussed it with Petitioner. Ultimately, the decision of whether to
8 accept the plea offer rested with Petitioner. Rhyne, 118 Nev. at 8, 38 P.3d at 163. As such, this
9 Court should deny Petitioner's claim.

10 **E. Petitioner Fails to Establish Trial Counsel was Ineffective for Not Raising**
11 **Other Issues on Appeal**

12 Petitioner argues counsel was ineffective for failing to raise other issues in his direct
13 appeal. Supplemental Brief, at 26. By entering a plea, Petitioner “unconditionally waive[ed]
14 [his] right to a direct appeal” of his conviction. GPA, at 6. He does not assert what other claims
15 could have been raised in his direct appeal. As such, this claim fails as a naked assertion
16 suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d.

17 **F. Petitioner Fails to Establish Trial Counsel was Ineffective for Not Calling**
18 **Nelson to Testify**

19 Petitioner argues counsel was ineffective for failing to call Nelson to testify at the
20 evidentiary hearing. Supplemental Petition, at 25-27. On appeal, the Court of Appeals
21 remanded this case to the district court to conduct an evidentiary hearing regarding the
22 following issues: (1) whether counsel advised Petitioner to enter into a guilty plea without
23 understanding the new charges and (2) whether counsel advised Petitioner he would receive a
24 sentence of approximately six (6) to fifteen (15) years. Powell v. State, No. 79037-COA, 2020
25 WL 2449207, at *1 (Nev. App. 2020). Petitioner's claim fails as Nelson's purported testimony
26 related to “suspected substance abuse and overall ineffective assistance” is irrelevant to the
27 purpose of the evidentiary hearing. Supplemental Brief, at 26. Counsel's advice regarding the
28

1 plea was the only relevant matter at the evidentiary hearing. Kane testified about the statements
2 made in relation to these matters. As such, Nelson's testimony was not necessary. Thus, this
3 Court should deny Petitioner's claim.

4 **G. Petitioner Fails to Establish Counsel Was Ineffective for Not Advising Him**
5 **of His Right to File a Habeas Corpus Petition**

6 Petitioner argues counsel did not advise him of his post-conviction rights. Supplemental
7 Petition, at 25-27. Petitioner fails to demonstrate that counsel had any duty to advise him of
8 his right to file a post-conviction petition for writ of habeas corpus or file one on his behalf.
9 This failure is fatal. Edwards v. Emperor's Garden Restaurant, 122 Nev. 317, 330 n.38, 130
10 P.3d 1280, 1288 n.38 (2006) (A party seeking review bears the responsibility "to cogently
11 argue, and present relevant authority" to support his assertions; Dept. of Motor Vehicles and
12 Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83 (1991) (defendant's failure to
13 present legal authority resulted in no reason for the court to consider defendant's claim);
14 Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (an arguing party must support his
15 arguments with relevant authority and cogent argument; "issues not so presented need not be
16 addressed"); Randall v. Salvation Army, 100 Nev. 466, 470-71, 686 P.2d 241, 244 (1984)
17 (court may decline consideration of issues lacking citation to relevant legal authority); Holland
18 Livestock v. B & C Enterprises, 92 Nev. 473, 533 P.2d 950 (1976) (issues lacking citation to
19 relevant legal authority do not warrant review on the merits).

20 Regardless, counsel had no duty to advise Petitioner or file a habeas corpus petition
21 since Petitioner did not have the right to the effective assistance of counsel for habeas matters.
22 Halbert v. Michigan, 545 U.S. 605, 610, 125 S.Ct. 2582, 2587 (2005) (The right of assistance
23 of counsel extends only to "first appeals as of right ... however, ... a state need not appoint
24 counsel ... in discretionary appeals"); McKague v. Whitley, 112 Nev. 159, 164, 912 P.2d 255,
25 258 (1996) ("no right to effective assistance of counsel, let alone any constitutional or statutory
26 right to counsel at all, [exists in] post-conviction proceedings").

27 //
28

1 Additionally, cannot establish prejudice as the GPA informed Petitioner of his right to
2 file a habeas corpus petition. GPA, at 6. Accordingly, this Court should deny Petitioner's
3 claim, as he cannot establish ineffective assistance of counsel.

4 **III. PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL**
5 **REGARDING THE FAILURE TO FILE A SECOND NOTICE OF APPEAL**

6 Petitioner argues counsel was ineffective for failing to file a direct appeal after the
7 second denial of his Motion to Withdraw Guilty Plea. Supplemental Brief, at 25-27. Counsel
8 is only obligated to file a notice of appeal or to consult with a defendant regarding filing a
9 notice of appeal in certain circumstances. Toston v. State, 127 Nev. 971, 267 P.3d 795 (2011).
10 “[T]rial counsel has a constitutional duty to file a direct appeal in two circumstances: when
11 requested to do so and when the defendant expresses dissatisfaction with his conviction, and
12 that the failure to do so in those circumstances is deficient for purposes of proving ineffective
13 assistance of counsel.” Id. at 977, 267 P.3d at 800. Moreover, trial counsel has no
14 constitutional obligation to always inform or consult with a defendant regarding his right to a
15 direct appeal when the defendant is convicted pursuant to a guilty plea. Id. Rather,

16
17 [t]hat duty arises in the guilty-plea context only when the
18 defendant inquires about the right to appeal or in circumstances
19 where the defendant may benefit from receiving advice about the
20 right to a direct appeal, ‘such as the existence of a direct appeal
claim that has reasonable likelihood of success.’

21
22 Id. (quoting Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999)).

23 Based upon McNeill's declaration and procedural history of this case, the State agrees
24 she was ineffective for failing to file a notice of appeal. As such, Petitioner should be permitted
25 to file a notice of appeal only challenging the Court's denial of his presentence Motion to
26 Withdraw Guilty Plea. The appeal should be limited to the two (2) issues denied by this Court
27 in its Findings of Fact, Conclusions of Law, and Order filed on March 4, 2021.

28 //

1 **IV. PETITIONER KNOWINGLY AND VOLUNTARILY ENTERED HIS PLEA**

2 Petitioner argues he did not knowingly and voluntarily enter his plea. Supplemental
3 Brief, at 21-25. Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only
4 be withdrawn to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787
5 P.2d 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively
6 valid, and the burden is on a defendant to show that the plea was not voluntarily entered.
7 Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91
8 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant
9 entered his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

10 In determining whether a guilty plea is knowingly and voluntarily entered, the court
11 will review the totality of the circumstances surrounding the defendant's plea. Bryant, 102
12 Nev. at 271, 721 P.2d at 367. The proper standard set forth in Bryant requires the trial court
13 to personally address a defendant at the time he enters his plea in order to determine whether
14 he understands the nature of the charges to which he is pleading. Id. at 271; State v. Freese,
15 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). The guidelines for voluntariness of guilty
16 pleas "do not require the articulation of talismanic phrases." Heffley v. Warden, 89 Nev. 573,
17 575, 516 P.2d 1403, 1404 (1973). It requires only "that the record affirmatively disclose that
18 a defendant who pleaded guilty entered his plea understandingly and voluntarily." Brady v.
19 United States, 397 U.S. 742, 747-748, 90 S.Ct. 1463, 1470 (1970); United States v. Sherman,
20 474 F.2d 303 (9th Cir. 1973).

21 Specifically, the record must affirmatively show the following: 1) the defendant
22 knowingly waived his privilege against self-incrimination, the right to trial by jury, and the
23 right to confront his accusers; 2) the plea was voluntary, was not coerced, and was not the
24 result of a promise of leniency; 3) the defendant understood the consequences of his plea and
25 the range of punishment; and 4) the defendant understood the nature of the charge, i.e., the
26 elements of the crime. Higby v. Sheriff, 86 Nev. 774, 781, 476 P.2d 950, 963 (1970).
27 Consequently, in applying the "totality of circumstances" test, the most significant factors for
28 //

1 review include the plea canvass and the written guilty plea agreement. See Hudson v. Warden,
2 117 Nev. 387, 399, 22 P.3d 1154, 1162 (2001).

3 The Nevada Supreme Court decided Stevenson v. State, 131 Nev. 598, 354 P.3d 1277,
4 (2015), holding that the statement in Crawford v. State, 117 Nev. 718, 30 P.3d 1123 (2001),
5 which focuses the “fair and just” analysis solely upon whether the plea was knowing,
6 voluntary, and intelligent is more narrow than contemplated by NRS 176.165. The Nevada
7 Supreme Court therefore disavowed Crawford’s exclusive focus on the validity of the plea and
8 affirmed that the district court must consider the totality of the circumstances to determine
9 whether permitting withdrawal of a guilty plea before sentencing would be fair and just.
10 However, the Court also held that appellant had failed to present a fair and just reason favoring
11 withdrawal of his plea and therefore affirmed his judgment of conviction. Stevenson v. State,
12 131 Nev. 598, 605, 354 P.3d 1277, 1281-282 (2015).

13 In Stevenson, the Nevada Supreme Court found that none of the reasons presented
14 warranted the withdrawal of Stevenson’s guilty plea, including allegations that the members
15 of his defense team lied about the existence of the video to induce him to plead guilty. Id. The
16 Court found similarly unconvincing Stevenson’s contention that he was coerced into pleading
17 guilty based on the compounded pressures of the district court’s evidentiary ruling, standby
18 counsel’s pressure to negotiate a plea, and time constraints. Id. As the Court noted, undue
19 coercion occurs when a defendant is induced by promises or threats which deprive the plea of
20 the nature of a voluntary act. Id., quoting Doe v. Woodford, 508 F.3d 563, 570 (9th Cir. 2007).

21 The Nevada Supreme Court also rejected Stevenson’s implied contention that
22 withdrawal was warranted because he made an impulsive decision to plead guilty without
23 knowing definitively whether the video could be viewed. Id. Stevenson did not move to
24 withdraw his plea for several months. Id. The Court made clear that one of the goals of the fair
25 and just analysis is to allow a hastily entered plea made with unsure heart and confused mind
26 to be undone, not to allow a defendant to make a tactical decision to enter a plea, wait several
27 weeks, and then obtain a withdrawal if he believes that he made a bad choice in pleading
28 guilty. Id. at 1281-82, quoting United States v. Alexander, 948 F.2d 1002, 1004 (6th Cir.

1 1991). The Court found that considering the totality of the circumstances, there was no
2 difficulty in concluding that Stevenson failed to present a sufficient reason to permit
3 withdrawal of his plea. Id. at 1282. Permitting him to withdraw his plea under the
4 circumstances would allow the solemn entry of a guilty plea to become a mere gesture, a
5 temporary and meaningless formality reversible at the defendant's whim, which the Court
6 cannot allow. Id., 354 P.3d at 1282, quoting United States v. Barker, 514 F. 2d 208, 222 (D.C.
7 Cir. 1975).

8 **A. Petitioner Voluntarily and Knowingly Entered His Plea**

9 Petitioner alleges that he involuntarily entered his plea. Supplemental Petition, at 22.
10 The overwhelming evidence in the record indicates this claim is meritless. First, the signed
11 GPA established that Petitioner understood he waived certain rights by pleading guilty:
12

13 WAIVER OF RIGHTS

14 By entering my plea of guilty, I understand that I am waiving and
15 forever giving up the following rights and privileges:

- 16 1. The Constitutional privilege against self-incrimination,
17 including the right to refuse to testify at trial, in which
18 event the prosecution would not be allowed to comment
19 to the jury about my refusal to testify.
- 20 2. The Constitutional right to a speedy and public trial by
21 an impartial jury, free of excessive pretrial publicity
22 prejudicial to the defense, at which trial I would be
23 entitled to the assistance of an attorney, either appointed
24 or retained. At trial the State would bear the burden of
25 proving beyond a reasonable doubt each element of the
26 offense(s) charged.
- 27 3. The constitutional right to confront and cross-examine
28 any witness who would testify against me
4. The constitutional right to subpoena witnesses to testify
on my behalf.
5. The constitutional right to testify in my own defense
6. The right to appeal the conviction with the assistance of
an attorney, either appointed or retained, unless
specifically reserved in writing and agreed upon as
provided in NRS 174.035(3). I understand this means I

1 am unconditionally waiving my right to a direct appeal
2 of this conviction, including any challenge based upon
3 reasonable constitutional, jurisdictional, or other
4 grounds that challenge the legality of the proceedings as
5 stated in NRS 177.015(4). However, I remain free to
6 challenge my conviction through other post-conviction
remedies including a habeas corpus petition pursuant to
NRS Chapter 34

7 GPA, at 6. Not only did Petitioner acknowledge the Waiver of Rights, but he also
8 acknowledged that his plea was voluntary and that he understood his charges:

9
10 I have discussed the element of all the original charge(s) against
11 me with my attorney and I understand the nature of the charge(s)
12 against me

13 . . .
14 I am signing this agreement voluntarily, after consultation with my
15 attorney, and I am not acting under duress or coercion or by virtue
16 of any promises of leniency, except for those set forth in this
agreement

17 Id. at 6-7. Petitioner's counsel also executed a "Certificate of Counsel" as an officer of the
18 Court affirming the following:

19 Certificate of Counsel

- 20 1. I have fully explained to the Defendant the allegations
21 contained in the charge(s) to which guilty pleas are being
22 entered.
23 2. I have advised the Defendant of the penalties for each
charge and the restitution that the Defendant may be
24 ordered to pay.
25 3. I have inquired of Defendant facts concerning Defendant's
26 immigration status and explained to Defendant that if
27 Defendant is not a United States citizen any criminal
conviction will most likely result in serious negative
28 immigration consequences including but not limited to:
a. The removal from the United States
through deportation;

- b. An inability to reenter the United States;
- c. The inability to gain United States citizenship or legal residency;
- d. An inability to renew and/or retain any legal residency status; and/or
- e. An indeterminate term of confinement, by with United States Federal Government based on the conviction and immigration status.

Moreover, I have explained that regardless of what Defendant may have been told by any attorney, no one can promise Defendant that this conviction will not result in negative immigration consequences and/or impact Defendant's ability to become a United States citizen and/or legal resident.

4. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent with the facts known to me and are made with my advice to the Defendant.

5. To the best of my knowledge and belief, the Defendant:

- a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,
- b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily, and
- c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with the Defendant as certified in paragraphs 1 and 2 above.

Id. at 8.

In addition to the GPA, the Court thoroughly canvassed Petitioner during his entry of plea. During the canvassing, Petitioner illustrated that he entered the plea both knowingly and voluntarily:

THE COURT: Okay. Fine. Mr. Powell, will you state and spell your name for the record.

DEFENDANT POWELL: Adrian Powell, A-D-R-I-A-N, P-O-W-

1 E-L-L.

THE COURT: And --

2 MR. KANE: I'll come over here. [Court and Court Recorder
3 confer]

THE COURT: Sure. Okay. Mr. Powell, how hold are you?

4 DEFENDANT POWELL: I'm 23 years old. I'll be 24 on Thursday.

THE COURT: How far did you go in school?

5 DEFENDANT POWELL: I graduated high school.

THE COURT: And do you have any learning disability?

6 DEFENDANT POWELL: No, Your Honor.

7 THE COURT: Do you read, write and understand the English
8 language?

DEFENDANT POWELL: Yes, Your Honor.

9 THE COURT: And is English your primary language?

10 DEFENDANT POWELL: Yes, Your Honor.

THE COURT: Have you been treated recently for any mental
11 illness or addiction of any kind?

12 DEFENDANT POWELL: No, Your Honor.

THE COURT: Has anyone ever suggested you should be treated
13 for mental health?

DEFENDANT POWELL: No, Your Honor.

14 THE COURT: Are you currently under the influence of any drug,
15 medication or alcohol?

DEFENDANT POWELL: No, Your Honor.

16 THE COURT: Have you been on any medication during your stay
17 in jail?

DEFENDANT POWELL: Yes, Your Honor.

18 THE COURT: What medication?

DEFENDANT POWELL: Remeron.

19 THE COURT: What is -- what type of medication is that?

20 DEFENDANT POWELL: It treats depression.

THE COURT: How do you feel today?

21 DEFENDANT POWELL: I feel excellent, Your Honor.

22 THE COURT: Do you understand what's happening?

DEFENDANT POWELL: Yes, Your Honor.

23 THE COURT: Does the medication affect your ability to
24 understand what's going on today?

DEFENDANT POWELL: No, Your Honor.

25 THE COURT: Are you under any other effects of the medication?

26 DEFENDANT POWELL: No, Your Honor.

27 THE COURT: Have you received a copy of the guilty plea
agreement?

28 DEFENDANT POWELL: Yes, Your Honor.

THE COURT: Did you read the guilty plea agreement?

DEFENDANT POWELL: Yes, Your Honor.

THE COURT: Did you understand everything in the guilty plea agreement?

DEFENDANT POWELL: Yes, Your Honor.

THE COURT: Have you discussed this case with your attorney?

DEFENDANT POWELL: Yes, Your Honor.

THE COURT: Are you satisfied with the representation and advice given to you by your attorney?

DEFENDANT POWELL: Yes, Your Honor.

THE COURT: As to the charges in the guilty plea agreement, how do you plead?

DEFENDANT POWELL: I plead guilty, Your Honor

THE COURT: I'm making this plea freely and voluntarily?

DEFENDANT POWELL: Yes, Your Honor.

THE COURT: Has anyone forced or threatened you or anyone close to you to get you to enter this plea?

DEFENDANT POWELL: No, Your Honor.

THE COURT: Has anyone made any promises other than what's in the guilty plea agreement to get you to enter the plea?

DEFENDANT POWELL: No, Your Honor.

THE COURT: I have before me the guilty plea agreement, and I'm going to hold this up, on page 7, is this your signature?

DEFENDANT POWELL: Yes, Your Honor.

THE COURT: Did you understand everything contained in the guilty plea agreement?

DEFENDANT POWELL: Yes, Your Honor.

THE COURT: And do you understand that as part of the guilty plea agreement, although you are not pleading guilty to these alleged offenses, the State will be allowed to argue then at the time of sentencing?

DEFENDANT POWELL: Yes, Your Honor.

...

THE COURT: So I don't know if I asked you, before you sign this plea agreement, did you read it and discuss it with your attorney?

DEFENDANT POWELL: Yes, Your Honor.

THE COURT: Do you understand everything contained in this agreement?

DEFENDANT POWELL: Yes, Your Honor.

THE COURT: You understand that there are certain constitutional rights that you're giving up by entering the guilty plea agreement?

DEFENDANT POWELL: Yes, Your Honor.

THE COURT: You understand that you have a right to appeal on

1 reasonable constitutional, jurisdictional or other grounds that
2 challenge the legality of the proceedings?

3 DEFENDANT POWELL: Yes, Your Honor.

4 THE COURT: And, again, do you understand the range of
5 punishment? And counsel –

6 DEFENDANT POWELL: Yes, Your Honor.

7 THE COURT: Well, we're going to go through and put these on
8 the record, so it's clear.

9 MR. KANE: That's Counts 1 and 8, Your Honor. They carry with
10 it a 1 to 6 range; Counts 2 and 9, 2 to 15. Counts 3 and 13, 5 to life
11 or 5 to 15, plus a consecutive term of 1 to 15 for deadly weapon
12 enhancement. Counts 4, 5, 6, 7, 10, 11 and 14, they're 2 to 15; a
13 term of 1 to 15 for use of deadly weapon enhancement.

14 **THE COURT: Do you understand the range for each of those
15 counts?**

16 **DEFENDANT POWELL: Yes, Your Honor.**

17 THE COURT: Do you understand that sentencing is entirely up to
18 me?

19 DEFENDANT POWELL: Yes, Your Honor.

20 THE COURT: And do you understand that, again, it's up to me as
21 to whether any or whether all of those counts run consecutively or
22 concurrently?

23 DEFENDANT POWELL: Yes, Your Honor.

24 **THE COURT: And no one is in a position to promise you
25 leniency or special treatment of any kind?**

26 **DEFENDANT POWELL: Yes, Your Honor.**

27 THE COURT: In the information in the indictment, it says -- or
28 what is it that you did on the 28th of September to cause you to
plead guilty?

DEFENDANT POWELL: I went into two establishments, Your
Honor, and I committed the armed robbery.

THE COURT: And those establishments a -- is this Roberto's --

MR. KANE: Pepe's -- Pepe's and Walgreen's.

THE COURT: Pepe's and Walgreen's. Thank you. Pepe's and
Walgreen's?

DEFENDANT POWELL: Yes, Your Honor.

THE COURT: You went in those establishments and committed
the armed robberies?

DEFENDANT POWELL: Yes, Your Honor.

THE COURT: And do you have any questions you'd like to ask
me or your attorney before I accept this plea?

DEFENDANT POWELL: No, Your Honor.

THE COURT: Anything that I left out?

MR. GIORDANI: No.

1 THE COURT: Okay. And also for the record, you had
2 approximately two hours to discuss all of this -- maybe longer than
3 that now -- with your attorney before accepting this?
DEFENDANT POWELL: Yes, Your Honor.

4 THE COURT: And without telling me what they were, your
5 attorney answered all your questions regarding the guilty plea
6 agreement?

7 DEFENDANT POWELL: Yes, Your Honor.

8 THE COURT: Okay. The Court finds the Defendant's plea of
9 guilty is freely and voluntarily made and the Defendant
10 understands the nature of the offenses and the consequences of his
11 plea and, therefore, accepts the plea of guilty. The matter is
12 referred to Department of Parole & Probation for a PSI. What's the
13 date for sentencing?

14 Recorder's Transcript of Jury Trial Filed on November 2, 2018, at 14-20 (emphasis added).

15 Any claim that Petitioner entered the plea unknowingly and involuntarily is belied by
16 the record and suitable for summary denial under Hargrove, 100 Nev. at 502, 686 P.2d. In his
17 GPA, Petitioner acknowledged that he waived certain rights and privileges. GPA, at 6. He also
18 acknowledged that his decision to enter the plea was voluntary and not because of a promise
19 of leniency. GPA, at 7; Recorder's Transcript of Jury Trial Filed on November 2, 2018, at 19.
20 In both the Court's canvassing and his GPA, Petitioner showed that he understood the nature
21 of his crime as well the terms of plea. The totality of the circumstances show that Petitioner's
22 plea was knowingly and voluntarily entered.

23 **B. Petitioner Fails to Establish He Involuntarily Entered the Guilty Plea Due**
24 **to Counsel's Misrepresentations**

25 Petitioner argues his plea was involuntary because counsel told him he was "guaranteed
26 six (6) to fifteen (15) years in prison." Supplemental Petition, at 22. This is not Petitioner's
27 first attempt to make this claim.⁶ In a prior motion before this Court, Petitioner alleged that
28 trial counsel promised he would receive six (6) to fifteen (15) years. Petitioner's counsel
testified that no such conversation ever took place:

⁶ As discussed above, section I.C., this Court already ruled on this claim. As such, relitigation
of this claim is barred by the doctrine of res judicata.

1
2 Q [Ms. McNeill]: Okay. When you were discussing the deal with
3 Mr. Powell, did you tell him that you were going to get him a 6-
4 to-15-year sentence?

5 A [Mr. Kane]: Never

6 Q: You never told him that.

7 A: Nope

8 Q: Okay. Did you tell him that if it weren't for the uncharged
9 cases, you could have gotten the 3 to 8?

10 A: No

11
12 Recorders Transcript of Hearing Filed on 2/11/2021, at 9. On cross-examination, Petitioner's
13 counsel made further statements regarding their conversation:
14

15 Q [Mr. Giordani]: He also claimed in his affidavit: My
16 attorney told me that regardless of what the guilty plea agreement
17 said, I was going to get a sentence of 6 to 15 years. Is that true or
18 false?

19 A [Mr. Kane]: No, and that's, you know, when I was
20 reading that today, that's the one I took the most offense of, out of
21 all of them. And that's because very early on in my career, I forgot
22 how it came about, but one of my mentors, Josh Tomshek, he says,
23 listen, you can never promise a sentence. Just like in civil cases,
24 you can never promise a client that they're going to get X amount
25 of money out of a settlement. Never have done it on any of my
26 cases, either criminal or civil. And so, yeah, that absolutely did not
27 take place. I've never promised a sentence. And going further, you
28 go -- I went over the Guilty Plea Agreement with him as well as
the sentencing memo multiple times. He -- we cannot guarantee
you a sentence. You cannot be guaranteed a sentence. This is the
sentencing range that you're looking at. The discretion's up to the
Judge. We'll do our best. We're going to get a sentencing memo
for you which we did. And we'll argue like hell for you, but, no,
did not tell him that.

26 Id. at 17-18. At no point does the record indicate that trial counsel made any promises
27 regarding the sentence Petitioner would receive. Thus, Petitioner's claim should be summarily
28 denied. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

1 **V. PETITIONER CANNOT RAISE SUBSTANTIVE CLAIMS**

2 Petitioner argues his conviction for robbery and kidnapping are unconstitutional.
3 Supplemental Brief, at 27-32. As discussed above, section I.B, Petitioner waived any
4 substantive claims by not raising them on appeal. Furthermore, Petitioner unconditionally
5 waived his right to challenge this issue:

6
7 By entering my plea of guilty, I understand that I am waiving and
8 forever giving up the following rights and privileges:

9 . . .
10 The right to appeal the conviction with the assistance of an
11 attorney, either appointed or retained, unless specifically
12 reserved in writing and agreed upon as provided in NRS
13 174.035(3). I understand this means I am unconditionally
14 waiving my right to a direct appeal of this conviction,
15 including any challenge based upon reasonable
16 constitutional, jurisdictional, or other that challenge the
17 legality of the proceedings as stated in NRS 177.015(4).
18 However, I remain free to challenge my conviction through
19 other post-conviction remedies including a habeas corpus
20 petition pursuant to NRS Chapter 34

21 GPA, at 6.

22 Regardless, Petitioner’s substantive claim is meritless. As discussed above, section
23 II.A, a jury could have found the movement “substantially exceeds that required to complete
24 the associated crime charged.” Mendoza v. State, 122 Nev. at 274-75, 130 P.3d at 180. As
25 such, he could have been punished for both robbery and kidnapping. Thus, this Court should
26 deny Petitioner’s claim.

27 **VI. PETITIONER’S CLAIM OF CUMULATIVE ERROR FAILS**

28 Petitioner argues that the cumulation of all the above errors warrants relief.
 Supplemental Brief, at 32-33. However, the Nevada Supreme Court has not endorsed
 application of its direct appeal cumulative error standard to the post-conviction Strickland
 context. McConnell v. State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009). Nor should

1 cumulative error apply on post-conviction review. Middleton v. Roper, 455 F.3d 838, 851 (8th
2 Cir. 2006), cert. denied, 549 U.S. 1134, 1275 S. Ct. 980 (2007) (“a habeas petitioner cannot
3 build a showing of prejudice on series of errors, none of which would by itself meet the
4 prejudice test.”).

5 Even if applicable, a finding of cumulative error in the context of a Strickland claim is
6 extraordinarily rare and requires an extensive aggregation of errors. See, e.g., Harris By and
7 through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). In fact, logic dictates that
8 there can be no cumulative error where the petitioner fails to demonstrate any single violation
9 of Strickland. Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007) (“where individual
10 allegations of error are not of constitutional stature or are not errors, there is ‘nothing to
11 cumulate.’”) (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993)); Hughes v. Epps,
12 694 F.Supp.2d 533, 563 (N.D. Miss. 2010) (citing Leal v. Dretke, 428 F.3d 543, 552-53 (5th
13 Cir. 2005)). Since Petitioner has not demonstrated any claim warranting relief under
14 Strickland, there are no errors to cumulate.

15 Under the doctrine of cumulative error, “although individual errors may be harmless,
16 the cumulative effect of multiple errors may deprive a defendant of the constitutional right to
17 a fair trial.” Pertgen v. State, 110 Nev. 554, 566, 875 P.2d 361, 368 (1994) (citing Sipsas v.
18 State, 102 Nev. 119, 716 P.2d 231 (1986)); see also Big Pond v. State, 101 Nev. 1, 3, 692 P.2d
19 1288, 1289 (1985). The relevant factors to consider in determining “whether error is harmless
20 or prejudicial include whether ‘the issue of innocence or guilt is close, the quantity and
21 character of the error, and the gravity of the crime charged.’” Id., 101 Nev. at 3, 692 P.2d at
22 1289.

23 Here, Petitioner failed to show cumulative error because he only establishes one error.
24 As such, there are no errors to cumulate. Thus, this Court should deny Petitioner’s claim, as
25 he failed to establish cumulative error.

26 //

27 //

28 //

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

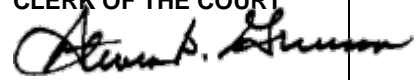
DATED this 2nd day of August, 2022.

STEVEN WOLFSON
Clark County District Attorney
Nevada Bar #001565

CERTIFICATE OF ELECTRONIC FILING

ANTHONY P. SGRO, ESQ.
E-mail Address: tsgro@sgroandroger.com

TP/ds/GCU



RPLY

COLLEEN N. SAVAGE

Nevada Bar No. 14947

SGRO & ROGER

720 S. 7th Street, 3rd Floor

Las Vegas, Nevada 89101

Telephone: (702) 384-9800

Facsimile: (702) 665-4120

csavage@sgroandroger.com

Attorney for Petitioner

ADRIAN POWELL

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ADRIAN POWELL,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO.: A-21-839265-W

Dept. 28

**PETITIONER'S REPLY IN SUPPORT
OF SUPPLEMENT TO PETITION FOR
WRIT OF HABEAS CORPUS**

STATEMENT OF THE CASE

On November 8, 2017, Indictment returned in the District Court charging Defendants Lorenzo Pinkey, and Adrian Powell with two (2) counts of Conspiracy To Commit Robbery (Category B Felony - NRS 200.380, 199.480), two (2) counts of Burglary While In Possession Of A Deadly Weapon (Category B Felony - NRS 205.060), three (3) counts of First Degree Kidnapping With Use Of A Deadly Weapon (Category A Felony - NRS 200.310, 200.320, 193.165), seven (7) counts of Robbery With Use Of A Deadly Weapon (Category B Felony - NRS 200.380, 193.165) and one (1) count of Unlawful Taking Of Vehicle (Gross Misdemeanor - NRS 205.2715). (Exhibit "A" at 1-8). All charges stemmed from robberies that

1 occurred at a Pepe's Tacos restaurant and a Walgreens store in Las Vegas, Nevada on
2 September 28, 2017. *Id.*

3 On November 13, 2017, the defendant Mr. Powell was arraigned on the aforementioned
4 charges in the District Court. Michael Kane Esq. was appointed on the case, and subsequently
5 Roy Nelson Esq. was appointed to assist Mr. Kane. (Exhibit Q at 5). Over the course of the
6 next eight months, Mr. Kane met with Mr. Powell approximately two times. *Id.* at 18. Mr.
7 Nelson allegedly met with Mr. Powell once with Mr. Kane. *Id.* at 16. The case ultimately
8 proceeded to jury trial on July 30, 2018. Voir Dire commenced on Monday, July 30, 2018.
9 (Exhibit "Q" at 6). Court concluded for the day, and the parties returned the following day to
10 resume jury selection. *Id.* at 8. That morning, negotiations commenced, and Mr. Kane was
11 shown a whiteboard with various other robberies that the State claimed to be pursuing. *Id.*
12 Upon information and belief Mr. Nelson was not present during this negotiation period. The
13 State threatened to charge Mr. Powell with these charges unless the plea deal was taken. *Id.* at
14 20. The State also offered to take life sentence off the table. *Id.*

15 Mr. Powell agreed to plead guilty pursuant to the Guilty Plea Agreement after Mr.
16 Kane advised Mr. Powell to take the deal after stating that he would spend the rest of his life in
17 prison if he did not. (Exhibit "I" at 10-11).

18 Mr. Powell pled guilty, the jury was discharged, and a sentencing date was set. On
19 October 31, 2018, prior to sentencing, Mr. Powell expressed concerns regarding his counsel
20 and the guilty plea agreement, and his current counsel, Michael Kane was withdrawn and
21 Monique McNeil, Esq. was appointed. On January 14, 2019, Petitioner filed a Motion to
22 Withdraw Guilty Plea, requesting an evidentiary hearing. (Exhibit "I" at 1). On February 5,
23
24
25
26
27
28

1 2019, the State filed its Opposition. (Exhibit “J” at 1). On February 27 2019, the District Court
2 denied Petitioner’s motion without conducting an evidentiary hearing.

3 On May 22, 2019, Petitioner was sentenced to the Nevada Department of Corrections
4 as follows: as to Count 1 – twelve (12) to forty-eight (48) months; as to Count 2 – thirty-six
5 (36) to one hundred twenty (120) months concurrent with Count 1; as to Count 3 – five (5) to
6 fifteen (15) years with a consecutive term of thirty-six (36) to ninety-six (96) months for use of
7 a deadly weapon concurrent with Count 2; as to Count 4 – thirty-six (36) to one hundred
8 twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for
9 use of a deadly weapon concurrent with Count 3; as to Count 5 - thirty-six (36) to one hundred
10 twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for
11 use of a deadly weapon concurrent with Count 4; as to Count 6 - thirty-six (36) to one hundred
12 twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for
13 use of a deadly weapon concurrent with Count 5; as to Count 7 - thirty-six (36) to one hundred
14 twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for
15 use of a deadly weapon concurrent with Count 6; as to Count 8 – twelve (12) to forty-eight
16 (48) months concurrent with Count 7; as to Count 9 – thirty-six (36) to one hundred twenty
17 (120) months concurrent with Count 8; as to Count 10 - thirty-six (36) to one hundred twenty
18 (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a
19 deadly weapon concurrent with Count 7; as to Count 11 - thirty-six (36) to one hundred twenty
20 (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a
21 deadly weapon concurrent with Count 10; as to Count 13 - five (5) to fifteen (15) years with a
22 consecutive term of thirty-six (36) to ninety-six (96) months for use of a deadly weapon
23 consecutive to Count 3; and as to Count 14 - thirty-six (36) to one hundred twenty (120)

1 months with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a deadly
2 weapon concurrent with Count 11, with six hundred two (602) days credit for time served. The
3 aggregate total sentence was five hundred fifty-two (552) months maximum with a minimum
4 parole eligibility of one hundred ninety-two (192) months. (Exhibit K at 1-4)

5
6 The Judgment of Conviction was filed on May 24, 2019. *Id.*

7 The Defendant filed a direct appeal to the Nevada Supreme Court challenging only the
8 Court's denial of his Motion to Withdraw his Guilty Plea on June 14, 2019. (Exhibit "M" at 1-
9 3) The Nevada Supreme Court reversed and remanded to the district court to conduct an
10 evidentiary hearing on May 11, 2020. (Exhibit "R" at 1). Remittitur was issued on June 5,
11 2020. *Id.* at 6.

12
13 The Court conducted an Evidentiary Hearing on August 13, 2020, at which only Mr.
14 Kane was called as a witness to testify. (Exhibit "Q" at 1). Mr. Nelson was not requested to
15 appear by Ms. McNeil. *Id.* Following the testimony, the Court found the Petitioner was not
16 entitled to relief. *Id.* at 33-37. The Court found there was no ineffective assistance of counsel
17 and no grounds or fair and just reason to withdraw Petitioner's plea. *Id.* The Findings of Fact,
18 Conclusions of Law and Order was filed on March 4, 2021. (Exhibit "S" at 1). Ms. McNeil
19 failed to file a Petition for Writ of Habeas Corpus (Post Conviction) and failed to counsel
20 Petitioner on his ability to do so.
21

22
23 On August 10, 2021, Ms. McNeil filed a declaration stating that she failed to file a
24 timely Petition for Writ of Habeas Corpus (Post Conviction). (Exhibit "Y" at 1-2) On August
25 10, 2021, Petitioner filed the pro se Petition for Writ of Habeas Corpus (Post-Conviction).
26 (Exhibit "E" at 1 to 17). On September 9th, 2021, the state filed a Response to the Writ of
27 Habeas Corpus (Post Conviction).
28

1 On October 14, 2021, Mr. Powell filed a Motion to Dismiss Ms. McNeil as counsel.
2 (Exhibit "T" at 1). District Court granted the Motion to Dismiss Ms. McNeil on November 29,
3 2021. (Id). Undersigned counsel, Colleen Savage, Esq. was subsequently appointed on
4 January 26, 2022.
5

6 **STATEMENT OF FACTS**

7 Adrian Powell and Lorenzo Pinkey were arrested on September 28, 2017. (Exhibit "A"
8 at 1) The following is a summary of the victims' testimony from the Grand Jury presentation,
9 as well as a summary of the forensic evidence and the circumstantial evidence that may have
10 been presented at trial.
11

12 A. Testimony of Jose Chavarria

13 Jose Alfredo Chavarria Valenzuela was working as a cook at Pepe's Tacos located at 2490
14 Fremont Street, Las Vegas, Nevada on September 28, 2017. (Exhibit "B" at 32-33). At
15 approximately 2:40 AM, Chavarria was in kitchen area when two men entered the restaurant.
16 *Id.* at 35. Chavarria ran toward the back refrigerator where his co-worker was located, when
17 one of the men jumped the counter, followed Chavarria and pointed a gun at him. *Id.* The man
18 allegedly pointed his gun at Chavarria and Chavarria jumped on the ground. It is alleged that
19 Chavarria was directed from the back of the store to the front cash registers who was unable to
20 open the till because he did not have the correct password. *Id.* at 36. The second man then
21 retrieved Chavarria's coworker to assist Chavarria in opening the cash registers. *Id.* at 37. One
22 of the men then took Chavarria to the second cash register, where he was either thrown to the
23 ground or ordered to his knees, Chavarria's testimony is unclear. *Id.* The men then took the
24 money from the cash registers but did not take any property from Chavarria. *Id.* at 37-38.
25
26
27
28

1 B. Testimony of Yenir Hessing

2 Yenir Hessing works as the shift lead at the Walgreens located at 4470 East Bonanza, Las
3 Vegas, Nevada. *Id.* at 7. On September 28, 2017, Hessing was working the graveyard shift
4 with four other Walgreens employees when, at approximately 4:05 AM, two masked gunmen
5 entered the store. *Id.* at 8-10.

7 Hessing was stocking the shelves in the food aisle when one of the men allegedly
8 pointed a gun at her, demanding she move to the front of the store where he told her to open
9 the three cash registers, which Hessing did. *Id.* At that moment, another Walgreens employee,
10 Tifnie Bobbitt returned from lunch and was ordered toward the office located at the back of the
11 store. *Id.* at 10.

13 Upon reaching the back office, Hessing entered the code and Hessing and Bobbitt were
14 ordered in. *Id.* at 15-16. In the office, it is alleged that the man began hitting Hessing in the ribs
15 with the gun and demanding that she open the safe. *Id.* at 17. Hessing opened the first of two
16 safes and the man grabbed everything. *Id.* The man then demanded Hessing open the second
17 safe, which she did. *Id.* The gunman grabbed the contents from the second safe and fled. *Id.*

19 **ARGUMENT**

20 **I. ANY FAILURE TO PRESENT CLAIMS ON DIRECT APPEAL WAS A**
21 **RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL**

22 The State contends that NRS 34.810(1)(a) is a procedural bar to Powell's claims because
23 he did not raise them on direct appeal. However, in *Griffin v. State*, 122 Nev. 737, 137 P.3d
24 1165 (2006), the Nevada Supreme Court made clear that NRS 34.810(1)(a) does not apply
25 to claims of ineffective assistance of counsel or challenges to the validity of a guilty plea.

27 In *Griffin*, the defendant entered a guilty plea to an escape charge, and later sought credit
28 for time spent in custody. The Court noted, as it held in *Kirksey v. State*, 112 Nev. 980, 999,

1 923 P.2d 1102 (1996), that NRS 34.810(1)(a) does not apply to claims of ineffective
2 assistance of counsel. *Griffin* at 745, n. 25 (holding that NRS 34.810(1)(a) limits “the scope
3 of a habeas corpus petition challenging a judgment of conviction based upon a guilty plea
4 to claims of ineffective assistance of counsel and challenges to the validity of the guilty
5 plea.”)

7 Here, Mr. Powell's claims directly relate to ineffective assistance of counsel in relation to
8 his guilty plea. First, Mr. Powell’s counsel was ineffective in that, despite the long period of
9 time in which counsel had to prepare for trial in Mr. Powell's case, his counsel was unable to
10 properly investigate his alibi witness in time for trial, nor adequately meet with Mr. Powell
11 to prepare a proper defense strategy. This unduly pressured Powell into accepting a guilty
12 plea. Moreover, Mr. Powell's counsel was ineffective in that both of his attorneys failed to
13 request discovery for the newly alleged charges. Further, both defense counsel had
14 individual conflict on interests with Mr. Powell. Had these severe deficiencies in counsel's
15 performance of Mr. Powell not been present, there is a reasonable probability Mr. Powell
16 would have proceeded to trial rather than plead guilty. Powell's guilty plea as not knowingly
17 and voluntarily entered, which was the direct result of advice from his ineffective counsel,
18 and thus under *Kirksey* his claims are not precluded by NRS 34.810(1)(a).

22 **A. GOOD CAUSE EXISTS TO BRING THIS WRIT OF HABEAS CORPUS.**

23
24 This matter should not be procedurally time barred and should be excused based on
25 good cause. The State of Nevada allows for an untimely filed petition for writ of habeas corpus
26 if “good cause” can be established. NRS 34.726(1)(a) and (b) and “generally, good cause
27 means a substantial reason; one that affords a legal excuse.” *Hathaway v. State*, 119 Nev. 248,
28 252, 71 P.3d 503 (2003). “To show good cause for delay under NRS 34.726(1), a petitioner

1 must demonstrate two things: '[t]hat the delay is not the fault of the petitioner' and that the
2 petitioner will be 'unduly prejudice[d]' if the petition is dismissed as untimely." *State v.*
3 *Huebler*, 128 Nev. 192, 198, 275 P.3d 91, 94-95 (2012).

4
5 Here, appellate counsel providing ineffective counsel and failing to properly bring this
6 Writ of Habeas Corpus in a timely fashion by their own admission alone is good cause for
7 bringing forth this Writ. "[I]f the petitioner had good cause for his failure to exhaust, his
8 unexhausted claims are potentially meritorious, and there is no indication that the petitioner
9 engaged in intentionally dilatory tactics," then the district court likely "should stay, rather than
10 dismiss, the mixed petition." *Pace*, 544 U.S. at 418, 125 S. Ct. at 1814, 161 L. Ed. 2d 669.
11 Under the first requirement, 'a petitioner must show that an impediment external to the defense
12 prevented him or her from complying with the state procedural default rules.'" *Huebler*, 128
13 Nev. at 198, 275 P.3d at 95 (quoting *Hathaway*, 119 Nev. at 252, 71 P.3d at 506 (citing *Lozada*
14 *v. State*, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994)); *Pellegrini v. State*, 117 Nev. 860, 886,
15 34 P.3d 519 (2001). "An impediment external to the defense may be demonstrated by a
16 showing 'that the factual or legal basis for a claim was not reasonably available to counsel, or
17 that some interference by officials, made compliance impracticable.'" *Id.* (citing *Hathaway*,
18 119 Nev. at 252, 71 P.3d at 506) (quoting *Murray v. Carrier*, 477 U.S. 478, 488, 106 S.Ct.
19 2639, 91 L.Ed.2d 397 (1986) (citations and quotations omitted)); *Pellegrini*, 117 Nev. at 886-
20 887; see also, *Riker v. Skolnik*, --Nev. -, *2, 281 P.3d 1213 (2009) (stating that "[t]his
21 standard recognizes that good cause means that some event or circumstance beyond a
22 defendant's control precluded the filing of a timely habeas petition. We conclude that the
23 definition contemplates conditions that are not the 'fault of the petitioner.'").
24
25
26
27
28

1 While good cause is traditionally required to be external to the petitioner's counsel,
2 here we have extraordinary circumstances that have created an untenable and unfair position
3 for Mr. Powell. Ms. McNeil's failure to neither file a timely appeal nor even communicate the
4 necessity of the deadline to the Petitioner is clearly laid out in Ms. McNeil's declaration.
5 (Exhibit "Y" at 1-2). It is prejudicial to Mr. Powell that an individual outside of his control can
6 determine his future and to take away the ability for him to contest his unconstitutional
7 imprisonment. Because of this, Mr. Powell has adequately demonstrated that the delay was not
8 by his own fault; therefore, he has met the first prong of *Huebler* to allow "good cause" to be
9 found by this Court pursuant to NRS 34.726(1). *Huebler*, 128 Nev. at 197, 275 P.3d at 94-95.

12 **B. MR. POWELL HAS EXPERIENCED PREJUDICE WHICH ALLOWS HIM TO**
13 **BRING THIS WRIT OF HABEAS CORPUS**

14 "Under the second requirement [to evidence "good cause" to excuse the procedural bar on
15 a petition], a petitioner must show that errors in the proceedings underlying the judgment
16 worked to the petitioner's actual and substantial disadvantage." *Id.*, 127 Nev. at 197, 275 P.3d
17 at 95 (citing *Hogan v. Warden*, 109 Nev. 952, 959-60, 860 P.2d 710, 716 (1993)). This is the
18 "prejudice" factor attending the *Huebler* test. As argued supra, prejudice should be presumed,
19 but if this Court should decide it is not presumed, Mr. Powell provides the following analysis
20 as an alternative.

22 Mr. Powell experienced prejudice from the onset when he was first appointed trial counsel.
23 Defendants have an incredible reliance on their counsel not only during trial, but through the
24 entire process of litigation. Defense counsel has the responsibility to defend against extraneous
25 charges and engage in pretrial motion practice, which is an objective standard for competent,
26 effective representation. Instead, Mr. Powell was left helpless as his counsel entirely failed to
27 engage in *any* pretrial motion practice which deprived him of a fair trial and prejudiced his
28

1 defense from the start. Mr. Powell’s inability to challenge any charges prior to trial, combined
2 with inexperienced, distracted counsel left him vulnerable to the adversarial process.

3 **II. INEFFECTIVE ASSISTANCE OF COUNSEL**

4
5 The Sixth Amendment right to counsel has been recognized by the United States Supreme
6 Court which includes the right to “the effective assistance of counsel” during criminal
7 proceedings. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S.Ct. 2052, 2063, 80 L.Ed.2d
8 674 (1984) (citing *McMann v. Richardson*, 397 U.S. 759, 771, n. 14, 90 S.Ct. 1441, 1449, n.
9 14, 25 L.Ed.2d 763 (1970)). When measuring any claim of ineffectiveness, the standard is
10 “whether counsel's conduct so undermined the proper functioning of the adversarial process
11 that the proceeding cannot be relied on as having produced a just result.” *Paine v. State*, 110
12 Nev. 609, 620, 877 P.2d 1025, 1031 (1994) (Overruled on other grounds by *Leslie v. Warden*,
13 118 Nev. 773, 59 P.3d 440 (2002)).

14 **A. PRETRIAL MOTIONS**

15
16 The State falsely contends that binding precedent regarding kidnapping and robbery
17 charges does not apply to Mr. Powell’s case and that the the movement of the victims being
18 incidental is unclear. The test found in *Mendoza* differentiated the movement that was
19 incidental to robbery as opposed to kidnapping where the movement (1) substantially increases
20 the risk of harm; and (2) substantially exceeds that required to complete the associated crime.
21
22 *Mendoza v. State*, 122 Nev. 267, 274-75, 130 P.3d 176, 180-81 (2006). The State attempts to
23 paint the picture that this case lacks the clarity to determine as a matter of law by citing *Curtis*
24 *D. v. State* citing *Sheriff v. Medbury*. In those cases; a brutal abduction of a woman concluded
25 with a vicious battery and a prisoner taking hostages in an attempt a prison escape, the facts
26 clearly show movement incidental to the associated offense unlike the facts in the present case.
27
28

1 So long as the kidnapping is incidental to the robbery, defense counsel can attack the
2 kidnapping charges prior to trial. *Sheriff, Clark County v. Medberrv*, 96 Nev. 202, 204, 606 P.
3 2d 181, 182 (1980); *Langford v. State*, 95 Nev. 631, 638-639, 600 P.2d 231, 236-37 (1979).
4
5 Mr. Powell was prejudiced by this deficient performance because there existed a reasonable
6 probability that some, if not all, of the kidnapping charges would have been dismissed if
7 properly raised by counsel. Had these charges been dismissed, there is a significant probability
8 that Powell would have rejected the State's offer and insisted on going to trial.

9 **B. CONFLICT OF INTEREST**

10
11 The State contends that a conflict of interest did not exist between Mr. Powell and his trial
12 counsel, Mr. Nelson and Mr. Kane. The Nevada Supreme Court held that when the defense
13 counsel has based a recommendation on a plea bargain and made tactical decisions based upon
14 factors that would further his own personal ambitions as opposed to his client's best interests, it
15 was that conduct which "fell below an objective standard of reasonableness" and resulted in
16 "prejudice" to his client. *Larson v. State*, 104 Nev. 691, 694, 766 P.2d 261, 263 (1988). Mr.
17 Nelson's misconduct as an attorney for which he was publicly sanctioned, paints the picture
18 that Mr. Nelson was unable to effectively act as lead counsel for Mr. Powell which resulted in
19 prejudice and a conflict of interest in regard to Mr. Powell and his plea agreement. (Exhibit
20 "U", "W", "X"). Also, Mr. Kane's ability to give effective assistance of counsel was similarly
21 impacted by his terrible family tragedy which then created a conflict of interest. (Exhibit "Q"
22 at 24). Under the ABA an attorney must withdraw from representation when the "lawyer's
23 physical or mental condition materially impairs the lawyer's ability to represent the client." *See*
24 *Model Rules of Prof'l Conduct R. 1.16(a)(2)*. Here, it is reasonable to contend that Mr. Kane's
25 personal tragedy would materially impair his ability to competently represent Mr. Powell and
26
27
28

1 impacted the recommendation to sign the plea agreement. Both Mr. Nelson and Mr. Kane
2 clearly had issues and preexisting or developed factors that were adverse to Mr. Powell's
3 interests that infected his representation during the negotiations.
4

5 **C. MR. POWELL'S ALIBI INVESTIGATION**

6 The State argues that the counsel's testimony in regard to the investigation of Mr. Powell's
7 alibi is sufficient to alleviate any claim on ineffectiveness on his part and should be denied as it
8 is belied by the record. The statement reads:

9 A [Mr. Kane]: [H]e would have – he wanted to talk to us about alibi witnesses,
10 you know, that we checked out.
11

12 This statement clearly fails to indicate a thorough investigation was conducted let alone that
13 the specified witnesses were even contacted. The testimony does not indicate anything other
14 than Mr. Kane purportedly speaking with Mr. Powell regarding the alibi witnesses and that Mr.
15 Kane was aware of the witnesses. If Mr. Nelson or Mr. Kane had thoroughly investigated Mr.
16 Powell's alibi witness, his fiancé Daria Perkins, it would have revealed text messages in
17 support of his alibi on the night of the alleged crimes which further establishes the prejudice on
18 the part of his counsel.
19

20 **D. FAILING TO REQUEST DISCOVERY FOR THE NEW UNCHARGED CASES**

21 The State argues that Mr. Powell failed to show that counsel was ineffective for failing to
22 acquire discovery related to the cases dismissed by the plea agreement. The State contends
23 that since the new potential charges that were used to induce Mr. Powell into signing the plea
24 agreement had yet to be charged, those new charges fall under the purview of a Grand Jury
25 Setting and Mr. Powell has no constitutional right to discovery for them. The State falsely
26 asserts that if a person has no right to discovery in a grand jury setting, they have no right
27 prior. Under that reasoning, the State would be able to negotiate a plea deal prior to a Grand
28

1 Jury Proceeding as well as the additional cases were used to induce Mr. Powell's plea deal. It
2 is unreasonable to grant the State the ability to threaten additional charges without counsel
3 having the ability to review the discovery of those potential charges. Under Brady, the
4 suppression by the State of evidence favorable to an accused violates due process where the
5 evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of
6 the State. *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

8 Under Nevada law, however, when the defense requests discoverable evidence, rather than
9 relying on the prosecution's duty to disclose such evidence, reversal of a conviction is required
10 if there is a reasonably "possibility" that the undisclosed evidence would have resulted in a
11 more favorable verdict. *Roberts v. State*, 110 Nev. 1121, 1132, 881 P.2d 1 (1994), overruled on
12 other grounds, *Foster v. State*, 116 Nev. 1088, 1092, 13 P.3d 61 (2000).

14 Here, we have an unprecedented case where the State used uncharged crimes as a tactic to
15 coerce Mr. Powell into accepting a plea deal. Certainly, a person who can be threatened with
16 additional charges exceeding 300 years imprisonment, also has the right to discovery for those
17 charges and should fall under *Brady*. As such, Mr. Powell's representation is deficient for
18 failing to request or acquire the discovery which the Petitioner should be entitled to.

20 **E. APPELLATE COUNSEL'S FAILURE TO APPEAL SUBSTANTIVE CLAIMS**

21 The State contends that Mr. Powell failed to establish his trial counsel was ineffective for
22 not raising other issues on appeal by not asserting what claims could have been raised on direct
23 appeal. This is in direct contradiction to the State's contention that the substantive issues
24 brought in Mr. Powell's Writ of Habeas Corpus are barred due to not being brought in direct
25 appeal. Mr. Powell's Writ argument clearly placed everyone on notice of the ineffective
26 assistance of counsel that plagued his pretrial and appeal process, given that the substantive
27
28

1 claims that were argued within the Writ are the issues appellate counsel failed to bring on
2 appeal. A counsel's ineffectiveness can be found when they failed to properly "preserve a
3 claim for state-court review" but "only if that ineffectiveness itself constitutes an independent
4 constitutional claim". *Edwards v. Carpenter*, 529 U.S. 446, 447, 120 S. Ct. 1587, 1589, 146 L.
5 Ed. 2d 518 (2000). The substantive issue that appellate counsel failed to bring include the
6 State's kidnapping charges being unconstitutional due to the dual criminal liability while also
7 charging for robbery for the same act. In *Mendoza*, the Nevada Supreme Court upheld the
8 Wright standard that when a kidnapping is incidental to a robbery, the defendant cannot be
9 convicted of both crimes. In the test to determine if the movement or detention in the course of
10 a robbery is deficient to charge separate kidnapping charges, the movement/detention must
11 either: (1) substantially increase the risk of harm; (2) substantially exceed that required to
12 complete the associated crime; or (2) stand alone with independent significance from the
13 associated offense. *Mendoza v. State*, 122 Nev. 267, 274-75, 130 P.3d 176, 180-81 (2006). Mr.
14 Powell was charged with both robbery and kidnapping from two separate incidents where none
15 of the facts support the concurrent charging of both crimes under the *Mendoza* test which is
16 indicative of the ineffective assistance by appellate counsel by not being brought on direct
17 appeal.

21 **F. MR. NELSON NOT TESTIFYING AT EVIDENTARY HEARING**

22 The State falsely contends that the reasons for the evidentiary hearing precluded the
23 necessity of having Mr. Nelson from testifying. While the evidentiary hearing's purpose was to
24 determine whether counsel advised Mr. Powell to enter into a plea agreement without
25 understanding his charges and if counsel advised Mr. Powell if he would receive a sentence of
26 6 to 15 years, the purpose extended to the ineffective assistance of counsel that so thoroughly
27
28

1 infected the pretrial proceedings and caused those specific issues. (Exhibit “Q”). Mr. Nelson’s
2 purported misconduct is clearly a factor in the ineffective counsel given to Mr. Powell and the
3 overall purpose of the evidentiary hearing was to determine that cause. Exhibit “U”, “W”,
4 “X”). Mr. Nelson’s absence from the proceeding places Mr. Powell in the unfair position of
5 relying on testimony of only one party that was responsible for the ineffective assistance of
6 counsel when Mr. Nelson had his own conflict of interest that unduly influenced Mr. Powell’s
7 plea agreement.
8

9 **II. CUMULATIVE ERROR**

10
11 The state incorrectly contends that the Nevada Supreme Court’s lack of endorsement of
12 cumulative error standard on post-conviction Strickland arguments should prevent the
13 argument from being brought. (“we are not convinced that [cumulative error] is the correct
14 standard”) *McConnell v. State*, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009), *as*
15 *corrected* (July 24, 2009). When errors of Constitutional magnitude are involved, reversal is
16 warranted where those combined errors have created prejudice for the defendant. *United States*
17 *v. Wallace*, 848 F.2d 1464, 1475 (9th Cir. 1988). Even if an error does not, on its own, rise to
18 the level of a Constitutional violation, a combination of errors renders a trial fundamentally
19 unfair in violation of the Sixth Amendment to the United States Constitution. *See e.g., Lundy v.*
20 *Campbell*, 888 F.2d 467, 472073 (6th Cir. 1989), *cert. denied*, 495 U.S. 950, 110 S.Ct. 2212,
21 109 L.Ed.2d 538 (1990); *Walker v. Engle*, 703 F.2d 959, 963 (6th Cir. 1983), *cert. denied*, 464
22 U.S. 951, 104 S.Ct. 367, 78 L.Ed.2d 327 (1983); *United States v. Necoechea*, 986 F.2d 1273,
23 1282 (9th Cir. 1993); *United States v. Glover*, 83 F.2d 429 (9th Cir. 1996); *United States v.*
24 *McPherson*, 108 F.3d 1387 (9th Cir. 1997); *Big Pond v. State*, 101 Nev. 1 (1985). While no
25 other standard is in place, the cumulative error standard is necessary to protect Mr. Powell’s
26
27
28

1 constitutional right to effective counsel. As argued supra, the quantity and quality of errors by
2 Mr. Powell's counsel are numerous and so infected his pre-trial process to prove the necessity
3 of this Writ of Habeas Corpus. The cumulative errors made by counsel at both the negotiations
4 and appeal rise to the level of deficient performance. Mr. Powell has been prejudiced because,
5 had counsel not committed these errors, there is a reasonable probability that Lyons would
6 have insisted on going to trial and/or had a better outcome on appeal.
7

8
9 DATED this 1st day of September 2022.

10 Respectfully Submitted:

11 **SGRO & ROGER**

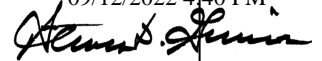
12
13 Colleen Savage
14 COLLEEN N. SAVAGE, ESQ.
15 Nevada Bar No. 14947
16 720 S. 7th Street, 3rd Floor
17 Las Vegas, NV 89101
18 csavage@sgroandroger.com
19 Attorney for Petitioner Adrian Powell
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

STEVEN WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #005734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212 (702) 671-2500
Attorney for Respondent

SGRO & ROGER

Colleen Savage
COLLEEN N. SAVAGE, ESQ.
Nevada Bar No. 14947
720 S. 7th Street, 3rd Floor
Las Vegas, NV 89101
csavage@sgroandroger.com
Attorney for Petitioner Adrian Powell



CLERK OF THE COURT

1 **SAO**

2 **ANTHONY P. SGRO, ESQ.**

3 Nevada Bar No. 3811

4 **COLLEEN N. SAVAGE, ESQ.**

5 Nevada Bar No. 14947

6 **SGRO & ROGER**

7 720 S. 7th Street, Third Floor

8 Las Vegas, Nevada 89101

9 Telephone No.: (702) 384-9800

10 Facsimile No.: (702) 655-4120

11 tsgro@sgroandroger.com

12 csavage@sgroandroger.com

13 *Attorneys for Petitioner*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 **ADRIAN POWELL,**

17 **Petitioner,**

18 **vs.**

19 **THE STATE OF NEVADA,**

20 **Respondent**

Case No.: A-21-839265-W

DEPT. NO.: 28

**STIPULATION AND ORDER TO
CONTINUE HEARING**

Entered in Odyssey./kd

21 COMES NOW Petitioner, ADRIAN POWELL, by and through his attorneys of record,
22 ANTHONY P. SGRO, ESQ., and COLLEEN N. SAVAGE, ESQ., and counsel for the State of
23 Nevada, TALEEN PANDUKHT, ESQ., hereby stipulate and agree to continue the hearing
24 currently set for September 14, 2022 at 10:00a.m.

25 ///

26 ///

27 ///

28 ///

///

///

Due to a conflict of defense counsel, the parties have agreed to a brief continuance of the September 14, 2022, hearing on Petitioner's Supplement to Petition for Writ of Habeas Corpus. The parties further stipulate and agree that this continuance is made in good faith and not intended for the purpose of delay. The proposed hearing date and time is set forth as follows:

	Current	Proposed
Hearing on Petitioner's Supplement to Writ of Habeas Corpus	September 14, 2022 10:00a.m.	October 5, 2022 10:00a.m.

Dated this 12th day of September 2022.

SGRO & ROGER

**OFFICE OF THE CLARK COUNTY
DISTRICT ATTORNEY**

/s/ Colleen N. Savage

/s/ Taleen Pandukht

ANTHONY P. SGRO, ESQ.
Nevada Bar No. 3811

TALEEN PANDUKHT, ESQ
Nevada Bar No. 005734

tsgro@sgroandroger.com

Taleen.pandukht@clarkcountyda.com

COLLEEN N. SAVAGE, ESQ.
Nevada Bar No. 14947

Attorney for Respondent

csavage@sgroandroger.com

Attorneys for Petitioner

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

IT IS SO ORDERED.

kd

Respectfully submitted by:

Colleen N. Savage, ESQ
Nevada Bar No. 14947
720 South 7th Street, Third floor
Las Vegas, Nevada 89101
csavage@sgroandroger.com

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 Stipulation and 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: 9/12/2022

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

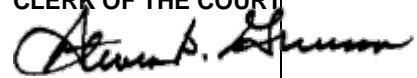
kallison@sgroandroger.com

20 dept 28 LC

dept28lc@clarkcountycourts.us

21
22
23
24
25
26
27
28

APP000738



RTRAN

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ADRIAN POWELL,

Plaintiff,

CASE#: A-21-839265-W

DEPT. XXVIII

vs.

NEVADA DEPARTMENT OF
CORRECTIONS,

Defendant.

BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE
WEDNESDAY, NOVEMBER 2, 2022

**RECORDER'S TRANSCRIPT OF HEARING
PETITION FOR WRIT OF HABEAS CORPUS**

APPEARANCES:

For the Plaintiff:

COLLEEN N. SAVAGE, ESQ.

For the Defendant:

JOSHUA D. JUDD, ESQ.
Deputy District Attorney

RECORDED BY: JUDY CHAPPELL, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, November 2, 2022

2 [Case called at 10:06 a.m.]

3
4 THE COURT: Powell, 839265.

5 MS. SAVAGE: Good morning, Your Honor, Colleen Savage,
6 on behalf of Mr. Powell, who is present via bluejeans, in custody.

7 THE COURT: Good morning. I have read all this stuff. Do
8 you have anything you want to add?

9 MS. SAVAGE: Yes, Your Honor, just briefly. I would like to
10 just address the -- and acknowledge the severity of what we're asking the
11 Court to do in the briefing, right. We're asking the Court to consider the
12 cumulative error which would in fact ask the Court to make a
13 determination that is in contradiction to this Court's prior ruling when this
14 Court ruled that there was no ineffective assistance of counsel which is
15 really the umbrella for which this writ is made, right.

16 In the ineffective assistance of counsel argument, it's really
17 two-fold, both at the trial phase of Mr. Powell's case, in addition to the
18 post-conviction phase of his case, right. So it's very sufficiently set forth
19 within the pleadings that Mr. Powell was provided --

20 THE COURT: Inch and a half worth, yes.

21 MS. SAVAGE: Yes. But at the post-conviction stage of the
22 pleadings -- or of this case, Mr. Powell was provided counsel in which not
23 only did the counsel fail to appeal to the Nevada Supreme Court the
24 Judgment of Conviction attacking the fatally flawed complaint which
25 subjected Mr. Powell to dual criminal liability based on the kidnapping and

1 robbery charges, the post-conviction counsel failed to timely file the writ or
2 advise Mr. Powell of his opportunity to file the writ which lends to the
3 State's first argument in their briefing as to why the Court should not
4 consider this writ because it is untimely. However, post-conviction
5 counsel did file the affidavit stating that it was due to a calendaring error
6 and then ultimately led to me coming on to the case and filing the
7 supplemental writs.

8 So, really, Your Honor, I'd ask this Court to take into
9 consideration the cumulative error and allow Mr. Powell the opportunity to
10 attack the charges with a fair opportunity to do so.

11 THE COURT: All right, let me ask you one thing I didn't. How
12 does a calendaring error lead to two months? I could see days, I could
13 even see weeks, but my recollection is it's two months of mistake, if you
14 will.

15 MS. SAVAGE: Yes, and that was --

16 THE COURT: I didn't see that that was explained.

17 MS. SAVAGE: That was his attorney who was prior to
18 myself --

19 THE COURT: Right, --

20 MS. SAVAGE: -- coming on to the case.

21 THE COURT: -- I got that.

22 MS. SAVAGE: I think it -- it's my understanding that it just
23 went unnoticed on, when I spoke to that attorney, that was the explanation
24 that it was just a mistake and that by the time Mr. Powell had the
25 opportunity, he submitted the initial writ pro se with that attorney's affidavit

1 attached explaining her -- her error.

2 THE COURT: All right. State.

3 MR. JUDD: Thanks, Your Honor. So the -- essentially
4 Counsel's asking this Court to bypass multiple procedural bars and legal
5 bars to the claims and call it cumulative error. We have the time bar to
6 the petition, but also Counsel acknowledges the res judicata that this
7 Court already reviewed and held an evidentiary hearing on the Guilty Plea
8 and found that it was willfully and knowingly entered. To the extent that
9 any claims earlier than the entry of the Guilty Plea are raised, those are
10 waived by the entry of the Guilty Plea and the canvassing of defendant at
11 the time of the Guilty Plea, which, again, this Court's already found was
12 willfully and knowingly entered.

13 So those claims are barred by res judicata, they're procedurally
14 barred, and the State would ask that you deny the instant petition.

15 THE COURT: Anything else? I'll give you the last word.

16 MS. SAVAGE: Unless the Court has any questions,
17 Your Honor, I'll submit it on the pleadings.

18 THE COURT: No. But it's, as I showed you or you know
19 certainly since they filed the papers, it's extremely extensive. So I'm
20 going to issue a written decision. But the State basically agreed that you
21 could file the appeal on the one issue. And I don't want to delay that, but
22 it is going to take 30 days to get out a written decision on all of this
23 because I want to put all of this in -- in there.

24 So -- well, I think that, I think that it all has to be done at once,
25 if you will, but as I said, the State, on the issue of appealing my decision

1 and that narrow one argument, certainly they've agreed to do that.

2 As far as the rest of it, in a very nutshell because we have a
3 huge calendar, there is arguments regarding it being procedurally barred.
4 This is basically asking for another bite at the apple from me regarding my
5 decision. And there was -- there is no grounds regarding the withdrawal
6 of the plea that I see, but, again, I'll let you take that issue up.

7 And as far as the other issues, cumulative error, there's
8 nothing either in the record or your allegations that somehow these
9 attorneys were, I can't remember what you put it as, under extreme stress
10 or something that they were ineffective. There's nothing in there to show
11 that and especially given the fact that he took a deal after halfway -- I can't
12 remember if we were completely done with picking a jury, but the other, or
13 one of the other many issues you brought up, the fact that he didn't see all
14 the discovery on the other cases, they spent, I do recall, an hour going
15 over what they had on those other cases, even though all they were
16 agreeing to is not even charging him with those other cases.

17 In any event, in the overall scheme of things, if you will, I'm
18 going to deny the writ. And I'll issue a very fairly lengthy decision so I can
19 put all of the issues that were brought up in both his petition and your
20 supplement.

21 Thank you.

22 ...

23 ...

24 ...

25 ...


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. SAVAGE: Thank you.

[Hearing concluded at 10:14 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Judy Chappell
Court Recorder/Transcriber

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: Cunningham, Patia

RECORDER: Chappell, Judy

REPORTER:

PARTIES PRESENT:

Colleen N Savage Attorney for Plaintiff

Joshua D Judd Attorney for Other

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

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.

25 ///

26 ///

27 ///

28

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.
28

1
2
3 **IT IS HEREBY ORDERED** Defendant's Petition for Writ of Habeas Corpus
4 is **DENIED. IT IS FURTHER ORDERED** that the instant ruling is dispositive of
5 the case, and the instant case is hereby **CLOSED**.

6 Dated this 16th day of December, 2022

7 

8 A-21-839265-W

kd

9 CEA DF0 E527 F7EE
10 Ronald J. Israel
11 District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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
14 recipients registered for e-Service on the above entitled case as listed below:

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.

25 ///

26 ///

27 ///

28

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.

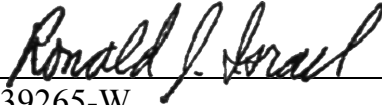
17 The Court also finds that Petitioner has failed to establish he received ineffective
18 counsel. Petitioner fails to make any argument to support his claim that counsel was
19 ineffective for failing to file a pre-trial motion to contest the robbery and kidnapping charges.
20 Additionally, no evidence 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.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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
4 CLARK COUNTY, NEVADA

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
14 recipients registered for e-Service on the above entitled case as listed below:

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

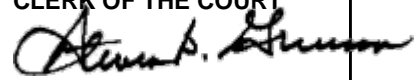
motions@clarkcountyyda.com

19 Kyle Allison

kallison@sgroandroger.com

20 dept 28 LC

dept28lc@clarkcountycourts.us



1 ANTHONY P. SGRO
2 Nevada Bar No. 3811
3 COLLEEN N. SAVAGE
4 Nevada Bar No. 14947
5 **SGRO & ROGER**
6 720 South 7th Street, Third Floor
7 Las Vegas, Nevada 89101
8 Telephone: (702) 384-9800
9 Facsimile: (702) 665-4120
10 tsgro@sgroandroger.com
11 csavage@sgroandroger.com
12 *Attorneys for Appellant*

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 * * * * *

13 THE STATE OF NEVADA,

District Court No: A-21-839265-W

14
15 Plaintiff,

Dept. 28

16 vs.

17 ADRIAN POWELL,

18 Defendant.
19
20

21 **REQUEST FOR TRANSCRIPT OF PROCEEDINGS**

22 TO: Court Reporter; JUDY CHAPPELL

23 Defendant requests preparation of a transcript of the proceedings before the District
24 Court as follows:
25


26 JUDGE: Judge Ronald J. Israel

27 DATES: November 02, 2022

28 ///

1 I hereby certify that on this date I ordered this transcript from the court reporter named
2 above.

3 DATED this 18 day of January, 2023.
4

5
6 
7 ANTHONY P. SGRO, ESQ
8 Nevada Bar No. 3811
9 COLLEEN N. SAVAGE, ESQ
10 Nevada Bar No. 14947
11 720 S. 7th Street, Third Floor
12 Las Vegas, Nevada 89101
13 *Attorneys for Defendant*
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 12th day of January, 2023, I served a true and correct
3 copy of the foregoing document entitled: ***REQUEST FOR TRANSCRIPT OF***
4 ***PROCEEDINGS.***
5

6 X Pursuant to EDCR 8.05(a), electronic service of the foregoing document shall be made
7 in accordance with the Odyssey filing system.

8 _____ By placing a copy of the original in a sealed envelope, first-class postage fully prepaid
9 thereon, and depositing the envelope in the U.S. mail at Las Vegas, Nevada.

10 _____ Pursuant to a filed Consent for Service by Facsimile in this matter, by sending the
11 document by facsimile transmission.

12 _____ Via hand-delivery to the addresses listed below;

13 _____ By transmitting via email the document listed above to the email address set forth
14 below on this date before 5:00 p.m.

15
16 STEVEN B. WOLFSON, ESQ.
17 Clark County District Attorney
18 STEVEN J. ROSE, ESQ.
19 Chief Deputy District Attorney
20 200 Lewis Avenue
21 Las Vegas, NV 89155
22 *Attorneys for Plaintiff*

23 BY *Julia Calabron*
24 An employee of SGRO & ROGER
25
26
27
28

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

ADRIAN POWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 85955
District Court Case No. A839265;C327767

NOTICE OF REJECTION OF DEFICIENT TRANSCRIPT REQUEST

TO: Sgro & Roger \ Colleen Savage

Your transcript request has been rejected for the following reason:

We are looking for the request of transcripts, if you already have them then a certificate of no transcripts would be filed. You submitted the actual transcripts which would be filed in your appendix to your opening brief not filed separately.

Please submit a corrected transcript request that fully complies with the applicable rule within 5 days from the date of this notice.

DATE: January 24, 2023

Elizabeth A. Brown, Clerk of Court

By: Monique Mercier
Deputy Clerk

Notification List
Electronic
Clark County District Attorney \ Alexander G. Chen, Chief Deputy District
Attorney

23-02285
APP000762

1 ANTHONY P. SGRO
Nevada Bar No. 3811
2 COLLEEN N. SAVAGE, ESQ.
Nevada Bar No. 14947
3 **SGRO & ROGER**
720 S. 7th Street, Third Floor
4 Las Vegas, NV 89101
5 Telephone: (702) 384-9800
Facsimile: (702) 665-4120
6 tsgro@sgroandroger.com
csavage@sgroandroger.com
7 *Attorneys for Appellant Adrian Powell*

Electronically Filed
Jan 25 2023 11:55 AM
Elizabeth A. Brown
Clerk of Supreme Court

8
9 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

10
11 ADRIAN POWELL,) No.: 85955
#1217413,)
12)
Appellant,)
13)
vs.)
14)
THE STATE OF NEVADA,)
15)
Defendant.)
16)
17 _____)

**CERTIFICATE OF NO
TRANSCRIPT REQUEST**

18 **CERTIFICATE THAT NO TRANSCRIPT IS BEING REQUESTED**

19 Notice is hereby given that appellant Adrian Powell is not requesting the preparation of
20 transcripts for this appeal.

21 DATED this 25th day of January, 2023.

22
23 /s/ Colleen Savage

24 COLLEEN N. SAVAGE, ESQ.
Nevada Bar No. 14947
25 SGRO & ROGER
720 South 7th Street, Third Floor
26 Las Vegas, Nevada 89101
27 (702) 384-9800
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that on the 25th day of January 2023, I served a copy of this certificate upon counsel of record through electronic service via the Clark County District Court electronic filing system to the following:

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
Taleen Pandukht, Esq, Chief Deputy District Attorney
200 Lewis Ave. Las Vegas, NV 89101

Dated this 25th day of January, 2023.

/s/ Colleen Savage

Signature

1 ANTHONY P. SGRO
Nevada Bar No. 3811
2 COLLEEN N. SAVAGE, ESQ.
Nevada Bar No. 14947
3 **SGRO & ROGER**
720 S. 7th Street, Third Floor
4 Las Vegas, NV 89101
5 Telephone: (702) 384-9800
Facsimile: (702) 665-4120
6 tsgro@sgroandroger.com
csavage@sgroandroger.com
7 *Attorneys for Appellant Adrian Powell*

Electronically Filed
Jan 25 2023 11:59 AM
Elizabeth A. Brown
Clerk of Supreme Court

8
9 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

10
11 ADRIAN POWELL,) No.: 85955
#1217413,)

12 Appellant,)

13 vs.)

14 THE STATE OF NEVADA,)

15 Defendant.)
16)
17)

**DOCKETING STATEMENT
CRIMINAL APPEALS**

18 **GENERAL INFORMATION**

19
20 Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of
21 the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on
22 appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases
for oral argument, classifying cases for expedited treatment and assignment to the Court of Appeals,
and compiling statistical information.

23 **WARNING**

24 This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court
25 may impose sanctions no counsel or appellant if it appears that the information provided is
26 incomplete or inaccurate. Id. Failure to fill out statement completely or to file it in a timely manner
27 constitutes grounds for the imposition of sanctions.
28

APP000765

1. Judicial District: Eighth Judicial District County: Clark County

Judge: Ronald Isreal

District Ct. Case No.: C-17-327767-2 &
A-21-839265-W

2. If the defendant was given a sentence,

(a) What is the sentence:

Defendant was sentenced to life with the possibility of parole after a minimum of twenty (20) years has been served in the Nevada Department of Corrections, a consecutive sentence to life with the possibility of parole after serving ten (10) years, and a concurrent sentence to life with the possibility of parole after serving ten (10) years. A special sentence of lifetime supervision is imposed to commence upon release from any term of probation, parole or imprisonment requiring Defendant to register as a sex offender in accordance with NRS 179D.460 within 48 hours after sentencing or release from custody.

On May 22, 2019, Petitioner was sentenced to the Nevada Department of Corrections as follows: As to Count 1 – twelve (12) to forty-eight (48) months; as to Count 2 – thirty-six (36) to one hundred twenty (120) months concurrent with Count 1; as to Count 3 – five (5) to fifteen (15) years with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a deadly weapon concurrent with Count 2; as to Count 4 – thirty-six (36) to one hundred twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a deadly weapon concurrent with Count 3; as to Count 5 - thirty-six (36) to one hundred twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a deadly weapon concurrent with Count 4; as to Count 6 - thirty-six (36) to one hundred twenty (120) months with a consecutive term of

1 thirty-six (36) to ninety-six (96) months for use of a deadly weapon concurrent
2 with Count 5; as to Count 7 - thirty-six (36) to one hundred twenty (120) months
3 with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a
4 deadly weapon concurrent with Count 6; as to Count 8 – twelve (12) to forty-eight
5 (48) months concurrent with Count 7; as to Count 9 – thirty-six (36) to one
6 hundred twenty (120) months concurrent with Count 8; as to Count 10 - thirty-six
7 (36) to one hundred twenty (120) months with a consecutive term of thirty-six
8 (36) to ninety-six (96) months for use of a deadly weapon concurrent with Count
9 7; as to Count 11 - thirty-six (36) to one hundred twenty (120) months with a
10 consecutive term of thirty-six (36) to ninety-six (96) months for use of a deadly
11 weapon concurrent with Count 10; as to Count 13 - five (5) to fifteen (15) years
12 with a consecutive term of thirty-six (36) to ninety-six (96) months for use
13 of a deadly weapon consecutive to Count 3; and as to Count 14 - thirty-six (36)
14 to one hundred twenty (120) months with a consecutive term of thirty-six (36) to
15 ninety-six (96) months for use of a deadly weapon concurrent with Count 11, with
16 six hundred two (602) days credit for time served. The aggregate total sentence
17 was five hundred fifty-two (552) months maximum with a minimum parole
18 eligibility of one hundred ninety-two (192) months;
19
20
21
22

23 (b) Has the sentence been stayed pending appeal?

24 No.

25 (c) Was defendant admitted to bail pending appeal?

26 No.

27
28 3. Was counsel in the district court appointed or retained?

Appointed.

4. Attorney filing this docketing statement:

Attorney: Colleen Savage, Esq.

Telephone: (702) 384-9800

Firm: Sgro & Roger

Address: 720 S. 7th Street, Third Floor
Las Vegas, Nevada 89101

Client: Adrian Powell

5. Is appellate counsel appointed or retained?

Appointed

6. Attorney(s) representing respondent(s):

Attorney: Taleen Pandukht, Esq.

Telephone: (702) 671-2500

Firm: Clark County District Attorney's Office

Address: 200 Lewis Avenue
Las Vegas, Nevada 89101

Client: State of Nevada

7. Nature of disposition below:

Denial of Order for Petition for Writ of Habeas Corpus

8. Does this appeal raise issues concerning any of the following:

N/A

9. Expedited appeals: The court may decide to expedite the appellate process in this matter.

Are you in favor of proceeding in such manner?

Yes.

1 **10. Pending and prior proceedings in this court.** List the case name and docket number of all
2 appeals or original proceedings presently or previously pending before this court which are
3 related to this appeal (e.g., separate appeals by co-defendants, appeal after post-conviction
4 proceedings):

5 Lorenzo Pinkey v. The State of Nevada- 83336 (Direct Appeal)

6 **11. Pending and prior proceedings in other courts.** List the case name, number and court of
7 all pending and prior proceedings in other courts that are related to this appeal (e.g., habeas
8 corpus proceedings in state or federal court, bifurcated proceedings against co-defendants):

9 The State of Nevada v. Adrian Powell – C-17-327767-2

10 Adrian Powell v. The State of Nevada – A-21-839265-W

11 **12. Nature of action.** Briefly describe the nature of the action and the result below:

12 The State of Nevada filed an Information on April 29, 2005, naming Curt McLellan, as the
13 Appellant pled guilty to multiple charges on the first day of trial. Prior to sentencing, he
14 moved to withdraw his plea and alternate counsel was appointed. An evidentiary hearing was
15 held on ineffective assistance of counsel. Namely, whether he was coerced into the plea
16 based upon a series of robberies that the State agreed not to file against him in exchange for
17 the plea. A petition was filed, oral arguments were had, and ultimately the Court denied the
18 post-conviction writ of habeas corpus.

19 **Issues on appeal.** State specifically all issues in this appeal (attach separate sheets as
20 necessary):

21 The issues on appeal include:

- 22 1. The District Court's Order Denying Post-Conviction Writ of Habeas Corpus;
23 2. Ineffective assistance of counsel at trial and appellate stages;

1 3. Failure to provide Appellant with discovery prior to entry of plea, thus coercing Appellant
2 into said plea, specifically, Mr. Powell was coerced into giving his plea because prior
3 counsel informed him that there were ten uncharged cases that were pending if he did not
4 accept the plea deal.

5 4. Whether Appellant entered into the plea voluntarily, knowingly, and intelligently

6 5. Whether Appellant accepted the plea agreement based on incorrect information from his
7 counsel regarding sentencing;
8

9 **13. Constitutional Issues:** If the State is not a party and if this appeal challenges the
10 constitutionality of a statute or municipal ordinance, have you notified the clerk of this court
11 and the attorney general in accordance with NRAP 44 and NRS 30.130?

12 N/A
13

14 **14. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth
15 whether the matter is presumptively retained by the Supreme Court or assigned to the Court
16 of Appeals under NRAP 17 and cite the subparagraph(s) of the Rule under which the matter
17 falls. If appellant believes that the Supreme Court should retain the case despite its
18 presumptive assignment to the Court of Appeals, identify the specific issues(s) or
19 circumstance(s) that warrant retaining the case, and include an explanation of their
20 importance or significance:
21

22 N/A

23 **15. Issues of first impression or of public interest.** Does this appeal present a substantial legal
24 issue of first impression in this jurisdiction or one affecting an important public interest?

25 First Impression: No

26 Public Interest: Yes
27
28

1 16. **Length of trial.** If this action proceeded to trial or evidentiary hearing in the district court,
2 how many days did the trial or evidentiary hearing last?

3 One (1) day evidentiary hearing addressing ineffective assistance of counsel when ntering
4 guilty plea.

5 17. **Oral Argument.** Would you object to submission of this appeal for disposition without oral
6 argument?

7
8 No.

9 **TIMELINESS OF NOTICE OF APPEAL**

10 18. Date district court announced decision, sentence or order appealed from:

11 December 16, 2022.

12 19. Date of entry of written judgement or order appealed from:

13 December 19, 2022.

14 20. If this appeal is from an order granting or denying a petition for writ of habeas corpus,
15 indicate the date written notice of entry of judgement or order was served by the district
16 court:

17 December 19, 2022.

18 (a) Was service by delivery or by mail?

19 Delivery

20 21. If the time for filing the notice of appeal was tolled by a post judgement motion,

21 (a) Specify the type of motion, and the date of filing the motion:

22 (b) Date of entry of written order resolving motion:

23 N/A

24 22. Date notice of appeal filed:

25 January 11, 2022.

23. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(b), NRS 34.560, NRS 34.575, NRS 177.015(2), or other.
NRAP (4)(b) governs the time limit for filing the notice of appeal in this matter.

SUBSTANTIVE APPEALABILITY

24. Specify statute, rule or other authority that grants this court jurisdiction to review from:
NRS 34.575

VERIFICATION

I certify that the information provided in this docket statement is true and complete to the best of my knowledge, information and belief.

Adrian Powell
Name of Appellant

Colleen Savage
Name of Counsel of Record

January 25, 2023
Date

/s/ Colleen Savage
Signature of Counsel of Record

CERTIFICATE OF SERVICE

I certify that on the 25th day of January 2023, I served a copy of this completed docketing statement upon counsel of record through electronic service via the Clark County District Court electronic filing system to the following:

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
Taleen Pandukht, Esq, Chief Deputy District Attorney
200 Lewis Ave. Las Vegas, NV 89101

Dated this 25th day of January, 2023.

/s/ Colleen Savage

Signature

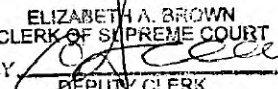
IN THE SUPREME COURT OF THE STATE OF NEVADA

ADRIAN POWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85955

FILED

APR 24 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER GRANTING TELEPHONIC EXTENSION

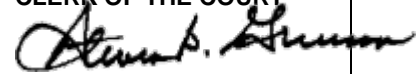
Pursuant to a telephonic request received on April 24, 2023, appellant shall have until May 30, 2023, to file and serve the opening brief and appendix. See NRAP 26(b)(1)(B).

It is so ORDERED.

CLERK OF THE SUPREME COURT
ELIZABETH A. BROWN

BY: 

cc: Sgro & Roger
Attorney General/Carson City
Clark County District Attorney



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

NOASC
ANTHONY P. SGRO
Nevada Bar No. 3811
COLLEEN N. SAVAGE
Nevada Bar No. 14947
SGRO & ROGER
720 South 7th Street, Third Floor
Las Vegas, Nevada 89101
Telephone: (702) 384-9800
Facsimile: (702) 665-4120
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.

NOTICE OF APPEAL

TO: THE STATE OF NEVADA, PLAINTIFF

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

TO: HONORABLE JUDGE RONALD ISRAEL

//

//

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
11 Nevada Bar No. 3811
12 COLLEEN N. SAVAGE, ESQ
13 Nevada Bar No. 14947
14 720 S. 7th Street, Third Floor
15 Las Vegas, Nevada 89101
16 *Attorneys for Adrian Powell*
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

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

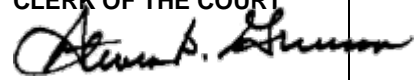
6 **DEFENDANT/APPELLANT**

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

6 **PLAINTIFF/RESPONDENTS**

7 STEVEN B. WOLFSON, ESQ.
8 Clark County District Attorney
9 TALEEN PANDUKHT, ESQ.
10 Chief Deputy District Attorney
11 200 Lewis Avenue
12 Las Vegas, NV 89155
13 *Attorneys for Respondent*

14 BY _____ /s/ *Lauren Hurst*
15 An employee of SGRO & ROGER
16
17
18
19
20
21
22
23
24
25
26
27
28



CAS
ANTHONY P. SGRO
Nevada Bar No. 3811
COLLEEN N. SAVAGE
Nevada Bar No. 14947
SGRO & ROGER
720 South 7th Street, Third Floor
Las Vegas, Nevada 89101
Telephone: (702) 384-9800
Facsimile: (702) 665-4120
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
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DEFENDANT/APPELLANT
ADRIAN POWELL
#1217413
SDCC
P.O. Box 208
Indian Springs, NV, 89070
Appellant
Via US mail

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

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>

APP000785

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.

25 ///

26 ///

27 ///

28

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.

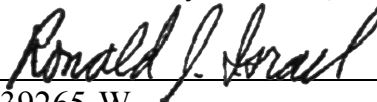
11 The Court finds that Petitioner knowingly and voluntarily entered his plea. The Court
12 properly canvassed Petitioner and he testified to being aware of and understanding the
13 charges and the consequences of the guilty plea agreement. Counsel reviewed evidence with
14 Petitioner and it was his 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.
28

1
2
3 **IT IS HEREBY ORDERED** Defendant's Petition for Writ of Habeas Corpus
4 is **DENIED. IT IS FURTHER ORDERED** that the instant ruling is dispositive of
5 the case, and the instant case is hereby **CLOSED**.

6 Dated this 16th day of December, 2022

7 

8 A-21-839265-W

kd

9 CEA DF0 E527 F7EE
10 Ronald J. Israel
11 District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

Heaven S. Smith
CLERK OF THE COURT

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.

The State of Nevada,
Respondent.

ORDER

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

JUDGE RONALD J. ISRAEL

EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT 28

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.

25 ///

26 ///

27 ///

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.

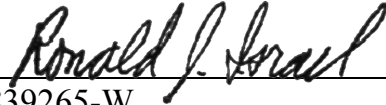
11 The Court finds that Petitioner knowingly and voluntarily entered his plea. The Court
12 properly canvassed Petitioner and he testified to being aware of and understanding the
13 charges and the consequences of the guilty plea agreement. Counsel reviewed evidence with
14 Petitioner and it was his 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.
28

1
2
3 **IT IS HEREBY ORDERED** Defendant's Petition for Writ of Habeas Corpus
4 is **DENIED. IT IS FURTHER ORDERED** that the instant ruling is dispositive of
5 the case, and the instant case is hereby **CLOSED**.

6 Dated this 16th day of December, 2022

7 

8 A-21-839265-W

kd

9 CEA DF0 E527 F7EE
10 Ronald J. Israel
11 District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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
14 recipients registered for e-Service on the above entitled case as listed below:

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),

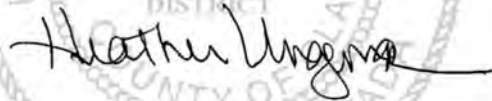
Case No: A-21-839265-W

Dept No: XXVIII

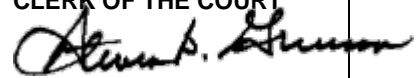
now on file and of record in this office.

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



CAS
ANTHONY P. SGRO
Nevada Bar No. 3811
COLLEEN N. SAVAGE
Nevada Bar No. 14947
SGRO & ROGER
720 South 7th Street, Third Floor
Las Vegas, Nevada 89101
Telephone: (702) 384-9800
Facsimile: (702) 665-4120
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
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DEFENDANT/APPELLANT
ADRIAN POWELL
#1217413
SDCC
P.O. Box 208
Indian Springs, NV, 89070
Appellant
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

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28