

**SUPREME COURT OF NEVADA**

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Elizabeth A. Brown  
Clerk of Supreme Court

Oscar Gomez, Appellant,

vs.

The State of Nevada, Respondent.

Appeal of Denial of Post-Conviction Relief  
Eighth Judicial District Court

**Appendix to Appellant's Opening Brief, Volume 2**

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1 lawyer about his criminal charge of murder?

2 A Since the first day, yes, I was.

3 Q Since the first day. All right. Did you ever speak to her about  
4 what sentence he might be facing?

5 A She never brought it up because I used to always ask her  
6 what was -- what was going on his case and she would say, we don't  
7 have nothing -- nothing yet, nothing yet until he was sentenced here.  
8 That's when she brought up that the sentencing, it was 10 years and  
9 from 10 years that he could get probation and then he was still young  
10 and that's all she said that day.

11 Q Okay. And by sentence, what do you -- do you mean the date  
12 where he --

13 A That he was -- the trial was done right there and then, the last  
14 day.

15 Q Okay. Would that have been around April 2018?

16 A Well, I don't remember the year, but yeah, it was the last  
17 sentence when he was sentenced. I just remember when he used to --  
18 she used to call me and say just have your son take the deal, take the  
19 deal. And I go, well, you know, it's not up to me, it's my son's decision,  
20 so.

21 Q But -- so did she tell you what the deal was before that day in  
22 court?

23 A Never. She never mentioned what the deal was. She just  
24 used to say just have him take the deal.

25 Q Okay. Did you know what the deal was? Did Mr. Gomez talk

1 to you about the deal?

2 A He didn't really. It was like it was between them what the deal  
3 was for him to take.

4 Q Okay, so --

5 A Go to court or take the deal, but I don't remember the -- if you  
6 know, no years, no nothing.

7 Q So you didn't know that until this day in court?

8 A Yes.

9 Q And how did you find out about it? Did Ms. Levy talk to you  
10 about it then?

11 A When the judge announced that it was 10 years.

12 Q When the judge announced 10 years.

13 A Yes.

14 Q That was your understanding.

15 A Yes, that was my understanding and after when she took us to  
16 the back room and told us, you know, this is what a 10 years -- when he  
17 done his 10 years then you can -- he can go for probation. He's still  
18 young like she used to say.

19 Q And who is this she in that sentence?

20 A Ms. Levy.

21 Q Ms. Levy. Thank you. So she told you that day --

22 A Mm-hmm.

23 Q -- 10 years and then probation?

24 A Yes.

25 Q What did you understand about the weapon enhancement?

1           A     The weapon enhancement never -- I didn't never thought or  
2 anything about it because it wasn't mentioned to me that he was going  
3 to be charged more years for that.

4           Q     Okay. And then how would you describe your relationship  
5 with Ms. Levy? Was it -- was there a lot of conflict? Excuse me.

6           A     Well, since the first day when I met her, I did ask her about the  
7 situation of how my son's case was or how was it going? And I asked  
8 her what do you think his -- how is it? Is it really bad or if I could get  
9 another attorney that would help her -- would help him. So that's when  
10 we were sitting in the table and she just like threw her card -- her card at  
11 -- on top of the table and threw it in the top of the table. And she said,  
12 well, where I work we defended Mayweather and we got him out through  
13 what his problems were?

14                     So since then I thought she, you know, that tension that she  
15 didn't like me saying that -- that conversation what I told her. And every  
16 time that I would call her and ask about how the situation in my son's  
17 case was, it was like it's the same, it's the same. That's the only thing I  
18 would hear from her.

19           Q     Okay. So you would say it was not a good relationship?

20           A     Not really.

21           Q     Okay.

22                     MR. HOFFMAN: All right. I have nothing further.

23                     THE COURT: All right. Thank you very much.

24                     Cross-examination?

25                     MR. PALAL: No, Your Honor.

1 THE COURT: All right. Then -- I have no questions for you.  
2 May we release this witness at this time?

3 MR. HOFFMAN: Yes.

4 THE COURT: All right. Thank you for being present. You  
5 may step down and you're welcome to stay in the courtroom now that  
6 you've already testified.

7 THE WITNESS: Okay. Can I add something? Is that okay or  
8 no?

9 THE COURT: Maybe. I'll hear the question.

10 THE WITNESS: On another case -- well, that -- the same  
11 thing is she had called me and told me that my son was gonna get  
12 deported because he wasn't born here, that he was from Guatemala.

13 THE COURT: Okay. So I'm going to stop you there. There's  
14 no question pending.

15 THE WITNESS: Oh, okay.

16 THE COURT: And that would be additional evidence being  
17 received outside of the record.

18 THE WITNESS: Okay. Okay. It's fine.

19 THE COURT: Okay. So that's why I wanted to know what the  
20 question was, but I can't consider that, okay.

21 THE WITNESS: Okay.

22 THE COURT: All right. You may step down.

23 THE WITNESS: Thank you.

24 THE COURT: Thank you very much.

25 Mr. Hoffman, you may call your next witness.

1 MR. HOFFMAN: Next, I would like to call Isabel Gomez.

2 THE COURT: Isabel Gomez. Thank you.

3 Good afternoon. Come on up, you're going to come up right  
4 up to this chair here and if you can remain standing.

5 **ISABEL GOMEZ**

6 [having been called as a witness and being first duly sworn, testified as  
7 follows:]

8 THE WITNESS: I do.

9 THE CLERK: Thank you. Please be seated. If you could  
10 state and spell your name for the record, please.

11 THE WITNESS: Isabel Gomez.

12 THE COURT: And spell your name for us.

13 THE WITNESS: I-S-A-B-E-L, and then Gomez, G-O-M-E-Z.

14 THE COURT: All right. Thank you. And good afternoon,  
15 again, just make sure you're speaking into that microphone and if we  
16 have any questions, we'll follow up with you.

17 Mr. Hoffman, when you're ready.

18 MR. HOFFMAN: Thank you.

19 **DIRECT EXAMINATION**

20 BY MR. HOFFMAN:

21 Q So how are you related to Oscar Gomez?

22 A He's my brother.

23 Q He's your brother. And did you ever speak to his attorney  
24 about his criminal case?

25 A No, that was mainly my mother and my sister.

1 Q Okay. Did you speak with her on the day that he was -- pled  
2 guilty?

3 A Yes.

4 Q You did. Could you tell us about that -- well, did that  
5 conversation involve the deal, the sentence structure?

6 A No. It was about my pregnancy.

7 Q It was about your pregnancy?

8 A Correct.

9 Q What -- was it a -- was it a professional comment to make?

10 A No, it was not.

11 Q Wasn't -- so did she tell you how long your brother was going  
12 to do in prison?

13 A She said the max he would be doing is about 10 years and  
14 then for the gun enhancement at least 2 to 4 years.

15 Q Okay. So she said there was a -- there was two separate  
16 sentences?

17 A Correct.

18 Q Did she say that they would run together or separately?

19 A That I don't recall.

20 Q Okay.

21 MR. HOFFMAN: That's all I have, Your Honor. I'm done.

22 THE COURT: All right. Thank you very much.

23 Mr. Palal, cross-examination?

24 MR. PALAL: Yes.

25



1 **CROSS-EXAMINATION**

2 BY MR. PALAL:

3 Q So your understanding of the sentence that your brother was  
4 going to get was that there was a 10 year sentence; is that right?

5 A Mm-hmm.

6 Q Is that a yes?

7 A Correct.

8 Q Okay.

9 A Sorry.

10 Q And then -- that's okay.

11 THE COURT: Thank you.

12 BY MR. PALAL:

13 Q And then there was a possible added time for the gun  
14 enhancement?

15 A Correct.

16 Q Okay. In fact, you wrote a letter to try and help your brother  
17 as part of his petition. Do you remember doing that?

18 A Correct.

19 MR. PALAL: In fact, Your Honor, it's already, I imagine, part  
20 of the record because it's an attachment to the Defendant's petition, but  
21 I want to mark it if that's okay.

22 THE COURT: That's fine. So this will be --

23 MR. HOFFMAN: Which -- C?

24 MR. PALAL: Exhibit C.

25 MR. HOFFMAN: Okay, thank you.

1 THE COURT: -- State's Exhibit 1 for purposes of the  
2 evidentiary hearing. And I'm sorry, what was the exhibit number for the  
3 attachment, it's C?

4 MR. PALAL: C.

5 THE COURT: C, that's right, okay, thank you.

6 MR. PALAL: And may I approach, Your Honor?

7 THE COURT: You may.

8 BY MR. PALAL:

9 Q And I wrote Exhibit C, but that's not you that wrote it, right?  
10 That's not you.

11 A No.

12 Q Okay. But this is your letter; is that right?

13 A Correct.

14 Q All right. And I just want to go it over with you. You said his  
15 understanding, as was ours, is that he would be sentenced for 10 years,  
16 plus an added two for gun enhancement charges.

17 A Correct.

18 Q And is that what your understanding was?

19 A Correct.

20 Q And you say that it was his understanding and yours. When  
21 you're saying his, you're talking about your brother?

22 A Correct.

23 Q How did you know what his understanding was?

24 A We -- when he's talking -- when we'd speak over the phone,  
25 he does say the same thing we agreed on. That he was max 10 years,

1 plus the two for the gun enhancement.

2 Q Okay. So he was -- when he talked to you, he was aware that  
3 the gun enhancement was consecutive? With plus -- the gun -- he had  
4 to serve some time for the gun enhancement.

5 A Well, the -- we took it as it was included with the 10 because  
6 she said it as a max of 12 years, 10 to 12 years.

7 Q Okay, so you took it as it would be part of the sentence, but it  
8 was more than going to be -- it was going to be more than 10 years.

9 A Correct.

10 Q And that's what he was -- and you got that understanding from  
11 your brother; is that right?

12 A Mm-hmm.

13 Q Is that a yes?

14 A Correct, yes, sorry.

15 Q Because you didn't talk to Ms. Levy and you really didn't talk  
16 about any types of sentencing?

17 A No, I didn't.

18 MR. PALAL: State has nothing further.

19 THE COURT: All right. Thank you.

20 Mr. Hoffman, any redirect examination?

21 MR. HOFFMAN: Yeah, just a little bit.

22 **REDIRECT EXAMINATION**

23 BY MR. HOFFMAN:

24 Q I just want to make sure I have this clear. So Ms. Levy -- your  
25 -- or, sorry, your understanding from your brother was that there was this

1 10 year sentence, 10 years plus sentence, for the murder and this 2  
2 years plus sentence for the gun enhancement charges?

3 A Correct.

4 Q And you understood that those were to go one after the other  
5 or together?

6 A That I'm not too sure, we -- I took it as, you know, as together.

7 Q Okay. So it wasn't really clear to you?

8 A Correct, no.

9 Q Did it seem like it was clear to him?

10 A It sounded like he was sure of what she was sentencing him  
11 with.

12 Q Okay. But he didn't use any words like consecutive, he didn't  
13 clearly express to you that it was going to be one after the other?

14 A No.

15 Q Okay.

16 MR. HOFFMAN: No further questions.

17 THE COURT: All right. And any recross based on the follow  
18 up questions?

19 MR. PALAL: No, Your Honor. But before I submit, I would  
20 like to move State's Exhibit 1 into evidence.

21 THE COURT: Any objection, Mr. Hoffman?

22 MR. HOFFMAN: What's that one again?

23 MR. PALAL: It's the letter. It's the Exhibit C from the petition.

24 MR. HOFFMAN: Oh, okay, Exhibit C. Yeah, no objection.

25 THE COURT: All right. This will be so admitted. And of

1 course it is also part of the petition, so I can consider it in my decision  
2 here today.

3 **[STATE'S EXHIBIT 1 ADMITTED]**

4 THE COURT: Thank you, Ms. Gomez; I have no questions for  
5 you. You may step down and you're welcome to stay in the courtroom  
6 now that you have finished testifying.

7 THE WITNESS: Thank you.

8 THE COURT: Do you have another witness to call?

9 MR. HOFFMAN: Yes. Maria Gomez.

10 THE COURT: Maria Gomez. All right.

11 **MARIA GOMEZ**

12 [having been called as a witness and being first duly sworn, testified as  
13 follows:]

14 THE CLERK: Thank you. Please be seated. If you could  
15 state and spell your name for the record, please.

16 THE WITNESS: Question? He called me by Gomez. Does it  
17 matter my license because my license is different?

18 THE COURT: Do you go by Gomez?

19 THE WITNESS: Well, I'm in the process of changing that, so,  
20 yeah.

21 THE COURT: Okay. That's fine. You can give both names,  
22 it's no problem. Maria is that common spelling?

23 THE WITNESS: Maria Castro.

24 THE COURT: Castro.

25 THE WITNESS: And it's Maria Gomez.

1 THE COURT: C-A-S-T-R-O?

2 THE WITNESS: Yes.

3 THE COURT: All right. And/or Gomez.

4 THE WITNESS: Yes.

5 THE COURT: That's fine. No problem.

6 So when you're ready, Mr. Hoffman, you may begin your  
7 examination.

8 MR. HOFFMAN: Thank you.

9 **DIRECT EXAMINATION**

10 BY MR. HOFFMAN:

11 Q So what is your relationship with Oscar Gomez?

12 A I'm his older sister.

13 Q His older sister. Did you speak to his lawyer, Monti Levi about  
14 his case?

15 A Yes.

16 Q Were you one of the primary people speaking to her about the  
17 case?

18 A Yes.

19 Q Did you ever discuss potential sentences he would receive?

20 A Yes.

21 Q Okay. What was the content of those discussions?

22 A She said it was going to be 10 to 25, possibility of parole at  
23 10. For the gun charges, she said 2 to 4 years. The maximum he would  
24 do was 12 years, 12 to 14 years.

25 Q Okay. So were those --

1 THE COURT: I'm sorry. 12 to what?

2 THE WITNESS: 12 to 14 years.

3 THE COURT: 14. Okay.

4 I'm sorry to interrupt you. Go ahead.

5 MR. HOFFMAN: Oh, no, it's fine.

6 BY MR. HOFFMAN:

7 Q So were those 12 to 14 years, that's what she told you?

8 A Yeah, she said --

9 Q Were those specific words she used?

10 A Yeah, she said the max he would do would be 12 to 14  
11 because he's still young.

12 Q Okay. So you're -- what was your understanding of when he  
13 would get out?

14 A To me it was the 10 to 25 and maybe possibility of parole at  
15 10.

16 Q Okay. Okay. So you viewed as just one kind of lump sentence;  
17 is that fair?

18 A Yeah.

19 Q Did you understand that it was two different sentences?

20 A No. Well, you see the thing there was the gun enhancement,  
21 they told me there was no evidence, so I didn't see why that would be  
22 added to the sentence.

23 Q So then did you think that the 12 to 14 was just for the murder  
24 charge?

25 A No. With the guns -- the gun enhancement if --

1 Q With the gun enhancement.

2 A Yes.

3 Q Okay.

4 A If there was that charge.

5 Q Okay.

6 THE COURT: I'm sorry. I want to make sure I have a clear  
7 record here. So you said there was no evidence, but someone told you  
8 that?

9 THE WITNESS: Her detective, her in --

10 THE COURT: Oh, her investigator.

11 THE WITNESS: -- investigator.

12 THE COURT: And when you're saying her, you mean Monti  
13 Levy?

14 THE WITNESS: Okay. Thank you.

15 Go ahead, Mr. Hoffman.

16 BY MR. HOFFMAN:

17 Q Okay. Without going into specific examples, would you say  
18 that your family had a good relationship with Ms. Levy or a difficult  
19 relationship?

20 A Difficult.

21 Q Difficult. Okay.

22 MR. HOFFMAN: I have no further questions.

23 THE COURT: All right. Cross-examination.

24 MR. PALAL: Yes, Your Honor.

25



1 **CROSS-EXAMINATION**

2 BY MR. PALAL:

3 Q Ma'am, do you prefer Ms. Gomez or Ms. Castro?

4 A Ms. Gomez is fine.

5 Q Okay. Ms. Gomez, I just want to understand a little bit of what  
6 you're saying. So your understanding was your brother was going to  
7 plead guilty to second degree murder; is that fair?

8 A The second degree murder she didn't mention that to me.

9 Q Okay. So you didn't know exactly what he was pleading to?

10 A Yeah, because to her -- well, she had told me it was first  
11 degree murder.

12 Q Okay.

13 A So that was my understanding.

14 Q Okay. So she had told you first degree murder?

15 A Mm-hmm.

16 Q Is that a yes?

17 A Yes. Sorry.

18 Q And your understanding was when the plea was done, he  
19 would have to do 10 years, 10 to 25 years; is that right?

20 A Yes.

21 Q Okay. And then he would have to do an additional 2 or 4  
22 years?

23 A Yes.

24 Q So he would probably -- he'd be up for parole around 12 or 14  
25 years.

1           A     No, that's what I didn't understand.

2           Q     Oh, so you didn't understand exactly how it was all going to  
3 work?

4           A     No, not -- after the 10 years, no, because she said the parole  
5 would be at 10.

6           Q     Okay.

7           A     So that's where I got confused and she didn't explain the rest.

8           Q     Okay. So you didn't understand, but you did think he -- like  
9 there was the additional 2 or 4 years?

10          A     Yes.

11          Q     Okay. And that's -- and then you had some questions about  
12 the gun enhancement because you didn't think there -- you were told  
13 there wasn't any evidence of a gun.

14          A     Yes.

15          Q     Okay.

16               MR. PALAL: All right. That's all I have, thank you.

17               THE COURT: All right. Thank you.

18               Any redirect examination?

19               MR. HOFFMAN: No, thank you.

20               THE COURT: All right. Thank you very much.

21               I don't have any questions for you, so you may step down.

22               And you're welcome to stay in the courtroom as you have now testified.

23               Mr. Hoffman, do you have any additional witnesses to call?

24               MR. HOFFMAN: No, Your Honor.

25               THE COURT: All right. Well, I'll briefly -- I've read all the

1 briefing and I've heard the evidence here today. I'll hear brief argument.  
2 I'll start with Mr. Hoffman. This is your motion.

3 MR. HOFFMAN: Yes, Your Honor. So basically the theory  
4 that we have here is that Ms. Levy did a good job in most respects. Like  
5 she said, she's been doing this for a long time, but I -- there were some  
6 areas where they disagreed about what the conversation was and what  
7 happened. And our argument is that part of this was due to she's just  
8 filling in the blanks of her memory with how she usually does it; she  
9 usually does a good job, so she remembered doing a good job this time.

10 Part of it also I think they had a very difficult relationship with  
11 Mr. Gomez's family, there were some comments that Ms. Levy made  
12 that, you know, were eluded to and referenced in the letter. That's the  
13 State's Exhibit 1/Exhibit C. And so the other, kind of, point I would make  
14 is that I think Ms. Levy was sort of very eager to be done with this and  
15 just, sort of, didn't cross all of her T's and dot all of her I's in explaining  
16 the offer to Mr. Gomez.

17 And, specifically, it was this question of was it consecutive, was  
18 it concurrent, how did he understand that? Like she said she had to  
19 explain it to him a lot of times, he had never been in the prison system  
20 before; he didn't have a good education. He -- she should have done a  
21 better job of making sure that he understood the difference between  
22 consecutive and concurrent. I know that's sort of a fine point in what was  
23 otherwise mostly good work from her, but I think it was unfortunately a  
24 very crucial point that he did not have get.

25 And so that is ineffective assistance of counsel and I'd ask the

1 Court to vacate on that basis.

2 THE COURT: Let me ask you this question, Mr. Hoffman,  
3 understanding the arguments and then the theory that you're advancing.  
4 How do I rectify that theory with the record of the discussions and the  
5 actual plea itself that explains the consequences of the plea?

6 MR. HOFFMAN: So I think like Mr. Gomez said, he felt very  
7 pressured, he felt like he had to rush through it. He, you know, -- the  
8 Judge asked him 20 or 30 questions and he just had to say, yes, I  
9 understand to each of them. I would argue that that wasn't really a  
10 situation that would produce actual understanding on his point. You can  
11 see if you look at the record that, like, literally Mr. Palal had to run up  
12 and get a copy of the guilty plea agreement and then he had, you know,  
13 like, I think he just didn't have a lot of time to process it and actually  
14 understand it.

15 THE COURT: Okay. All right. Anything else you would like  
16 to argue?

17 MR. HOFFMAN: No, Your Honor.

18 THE COURT: Thank you.

19 Mr. Palal.

20 MR. PALAL: Yes, Your Honor, I'm not going to belabor the  
21 point, but there's a few points I would like to make. I think what the  
22 transcripts reflect is October 17<sup>th</sup> of 2017; an offer was made, put on the  
23 record, second with use -- second degree murder with use of a deadly  
24 weapon. So while there's this implication, you know, some kind of rush  
25 to understand this deal, this isn't a situation where the deal changed,

1 which sometimes this Court I'm sure has seen. You're at calendar call,  
2 there's some tweaks to a deal in order to get a deal down prior to trial.

3 In this instance, the offer on October 17<sup>th</sup>, 2017, was the same  
4 offer on April 19<sup>th</sup>, 2018. So we're talking about six months with the  
5 same offer standing. So I don't think it's plausible to say that there was  
6 no time to consider what the deal was. I mean, there may have been  
7 pressure because, hey, look, we're two days before trial and ultimately  
8 you have to make a decision, but that decision wasn't brought to him on  
9 that day, that decision was six months in the making.

10 This Court already mentioned reading the transcript. My  
11 interpretation of the transcript is very early on Judge Adair -- so before  
12 the GPA even arrives, Judge Adair canvases the Defendant on what the  
13 ranges of possibilities are. That's -- what I reference was on page seven  
14 of the April 19<sup>th</sup>, 2018 transcript, is where she goes over the time ranges  
15 and is specific, right, in terms a person can understand. The least  
16 amount of time I can give you on the bottom end is 11 years; the most  
17 amount of time I could give you on the top end is 18 years. He indicates  
18 he understands. And this is very early in the canvas, so this isn't after  
19 having waived all his constitutional rights, all the pro-formal language  
20 that this Court has to go through every time it enters a plea.

21 And then -- so then -- and that hearing gets trailed and that on  
22 page ten you'll see, the hearing gets trailed at 9:46 a.m. and it's  
23 resumed at 10:09 a.m. And that was, as defense counsel appropriately  
24 brings up, was the time that we were typing up the GPA, but the  
25 understanding of the sentence structure was discussed prior to that.

1                   And then he has another out, right, because then he's -- after  
2 the canvas is given about the sentence structure, there's 25 minutes.  
3 He can decide not to sign the GPA at that point, he can decide during  
4 the canvas, subsequent canvas, and say I'm not pleading guilty. So it's  
5 not -- these questions didn't have -- didn't happen consecutively.  
6 There's a 25 minute break where he could have just said, no, I'm feeling  
7 pressure or, no, I don't want this deal.

8                   The last thing I want to talk about is what happened today,  
9 which is -- I understand defense counsel's argument that Ms. Levy is  
10 filling in the blanks because what her normal practice is versus what  
11 happened specifically here. And in some instances, in these types of  
12 hearings, that's true. But Ms. Levy appeared to have -- the record I think  
13 will reflect that Ms. Levy had a very specific recollection of this client  
14 because of, as Mr. Hoffman brings up, his lack of criminal history that  
15 she -- Ms. Levy said, she thought it was very important to review the  
16 sentencing ranges of him and she said in her words, it's the most she's  
17 gone over sentencing ranges with any client in her 19 years of  
18 experience. So that phrasing, I think, belies any notion that this is filling  
19 in the blanks, to -- I think clearly to that is an independent recollection.

20                  And the very last thing I'll bring up, Your Honor, is that while  
21 Mr. Gomez sits here and says, you know, he was -- has absolute  
22 certainty that there was 10 years on the bottom, even his own witnesses  
23 lack that certainty, right. So I don't think there's any -- the record shows  
24 that there's no certainty when it comes to that. In fact the opposite,  
25 Ms. Levy says it's the opposite. The other witnesses say, no, we do not

1 indicate that 10 years was a certainty on the bottom, quite the contrary.

2 Now, the range may not be exactly 18, but certainly it's clear  
3 that there was an understanding that it's beyond that. So unless this  
4 Court has any further inquiry for the State, I'll submit.

5 THE COURT: I don't. I don't have any inquiry at this time.  
6 So I would like to consider the testimony presented here today and,  
7 again, go back and review the information provided through the petition.

8 So the family understands, I read, I prepare, I then go back  
9 and re-read before I make any decision on matters such as this and then  
10 I'll issue a minute order with my decision. I'm going to place this on my  
11 chamber's calendar -- actually, no -- yeah, I'm going to set this on for my  
12 -- actually, I'll set it on a regular Friday calendar.

13 Mr. Hoffman, if Mr. Gomez wants to be transported for  
14 purposes of that decision, he's welcome to or I can waive his presence  
15 for purposes of a decision and that'll be on Friday, September --  
16 actually, I have another decision due on the ninth. So I'm going to issue  
17 my decision on or -- actually, on September 17<sup>th</sup>, 1:30 p.m. This will be  
18 set for decision.

19 Again, Mr. Gomez can be brought down or he can -- his  
20 presence can be waived and I'll pronounce my decision on the record  
21 and Mr. Hoffman can advise the family or they're welcome to come as  
22 well. And you'll also have the option of attending via BlueJeans, which  
23 is the online system that the attorney testified to as well. So you'll have  
24 some options. All right.

25 Anything else we need to address this afternoon?

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MR. PALAL: Nothing from the State, Your Honor.

THE COURT: Okay. All right. Thank you, all, very much.  
Take care and safe travels to the family.

Mr. Gomez, you take care, all right.

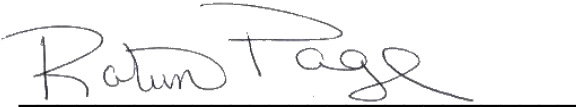
THE DEFENDANT: Thank you.

THE COURT: Thank you.

[Proceeding concluded at 12:46 p.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. Please note: Technical glitches in the BlueJeans audio/video, which resulted in distortion and/or audio cutting out completely were experienced and are reflected in the transcript.



Robin Page  
Court Recorder/Transcriber



## Writ of Habeas Corpus

## COURT MINUTES

September 17, 2021

A-20-815035-W      Oscar Gomez, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

September 17, 2021      01:30 PM      Decision

HEARD BY:      Silva, Cristina D.      COURTROOM: RJC Courtroom 11B

COURT CLERK: Schlitz, Kory

RECORDER:      Villani, Gina

REPORTER:

PARTIES PRESENT:

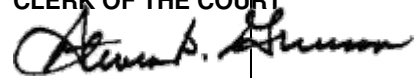
James I. Hoffman      Attorney for Plaintiff

**JOURNAL ENTRIES**

Defendant not present and in custody in the Nevada Department of Corrections; Deputy District Attorney Michelle Fleck present on behalf of the State.

COURT ORDERED, Defendant's presence WAIVED as he requested not to be transported for the hearing. COURT STATED a hearing was conducted regarding the Petition for Writ of Habeas Corpus, and the Court heard testimony in regards to whether the Defendant understood the terms of his negotiations, specifically the consecutive time to follow the second with use, and consecutive time with regards to the deadly weapon enhancement. COURT FURTHER STATED there was testimony from his prior attorney Monti Levy who testified she visited the Defendant over twenty times, discussed the sentence with the Defendant multiple times, and discussed sentencing ranges, adding she testified she wrote down the sentencing ranges in order to explain the consequences of the plea, and the explanation of the deadly weapon, and the consequences of the enhancement. COURT ADDITIONALLY STATED there was representations there was not a good relationship between Ms. Levy and the Defendant's family, however it did not impact her conveyance of offer; adding testimony was heard from Defendant, who testified Ms. Levy did not explain what the deadly weapon enhancement meant, and what it could run consecutive or concurrent, adding the sentence was no explained to Defendant. COURT ORDERED, Post Conviction Petition for Writ of Habeas Corpus DENIED, and FINDS Ms. Levy's testimony to be credible, that the sentence and the consequences of the sentence were explained to the Defendant, not only prior to change of plea, however by Mr. Palal as well in terms of how the sentences would run. Mr. Hoffman stated the Defendant filed three Post Conviction Petitions and requested the Court include their rulings on the other aspects of the Petition when they prepare the order, not just regarding the evidentiary hearing.

NDC



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(702) 483-1816  
jim.hoffman.esq@gmail.com  
**ATTORNEY FOR OSCAR GOMEZ**

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

OSCAR GOMEZ,

Defendant

Case No.: A-20-815035-W  
(C-16-316959-1)

Department IX

**NOTICE OF APPEAL**

Notice is hereby given that OSCAR GOMEZ, by and through his  
counsel JIM HOFFMAN, appeals the denial of his PCR petitions orally announced  
but not yet reduced to writing by the District Court on September 17, 2021.

DATED: October 21, 2021

/s/ Jim Hoffman

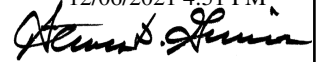
JIM HOFFMAN, ESQ.

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DATED: October 21, 2021

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JIM HOFFMAN, ESQ.

  
CLERK OF THE COURT

1 DECN  
Judge Cristina D. Silva  
2 Eighth Judicial District Court  
Department IX  
3 Regional Justice Center  
200 Lewis Avenue  
4 Las Vegas, Nevada 89155

5 EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

6 OSCAR GOMEZ,

7 Petitioner,

8 -vs-

9 STATE OF NEVADA,

10 Respondent.

CASE NO: A-20-815035-W

DEPT NO: IX

11  
12 DECISION

13 On September 17, 2021, the Court orally pronounced its decision denying Omar Gomez's  
14 Post-Conviction Petition for Writ of Habeas Corpus and Memorandum of Points and Authorities<sup>1</sup>  
15 (hereinafter referred to generally as the "Petition"). The Court hereby issues this written Order  
16 reflecting the Court's decision.

17 I. Summary of Facts and Relevant Procedural History

18 As a threshold matter, the Court adopts the summary of facts set forth in the Pre-Sentence  
19 Investigation report. *See* PSR at 4.

20 On April 19, 2018, Petitioner pleaded guilty pursuant to a plea agreement to Murder (Second  
21 Degree) With Use of a Deadly Weapon. The State of Nevada retained the full right to argue at  
22 sentencing. *See* Guilty Plea Agreement ("GPA") at 1. The GPA set forth the potential penalties the  
23 Petitioner could face as a consequence of his plea. *Id.* at 2. The Defendant was sentenced on July 14,

24  
25 <sup>1</sup> Mr. Gomez filed the Memorandum of Points and Authorities as a supplement to his Post-Conviction Petition for Writ of Habeas Corpus

1 2018. During sentencing, the State of Nevada asked for the maximum potential sentence, this is 10 –  
2 life followed by another 8 – 20 for the deadly weapon enhancement. *See* Jul. 14, 2018 Sentencing  
3 Transcript at 2.

4 On June 14, 2018, Petitioner filed a Notice of Appeal in the underlying case. On May 15, 2019,  
5 the Nevada Court of Appeals affirmed Petitioner’s Judgement of Conviction. Remittur issued on  
6 June 20, 2019.<sup>2</sup>

7 On May 14, 2020, Petitioner filed, pro per, a post-conviction writ of habeas corpus. In sum,  
8 Petitioner set forth four grounds for post-conviction relief. First, he argued that his guilty plea was  
9 invalid due to counsel’s failure to investigate the case. *See generally* PWHC at 8. Second, Mr. Gomez  
10 argues that his guilty plea is invalid due to counsel’s failure to fully explain his guilty plea  
11 agreement. *Id.* at 10. Third, Petitioner argued his guilty plea was the product of coercion at the  
12 hands of his attorney’s actions, or lack thereof. *Id.* at 24. Fourth and related to the second ground set  
13 forth above, Petitioner finally claims that counsel was ineffective for failing to file a presentence  
14 Motion to Withdraw Guilty Plea. *Id.* at 30-31. The Petition requested an evidentiary hearing to  
15 address the allegations set forth therein.

16 On October 13, 2020, Judge Valerie Adair issued a minute order advising an evidentiary  
17 hearing would be scheduled on the sole issue of whether counsel failed to inform Mr. Gomez that he  
18 faced consecutive time for the deadly weapon enhancement. A review of the docket reveals due to  
19 transport and remote appearance issues, an evidentiary hearing on that issue did not occur in 2020.  
20 This Court appointed counsel to assist Mr. Gomez in March of 2021.<sup>3</sup> There were several attempts  
21 to schedule the evidentiary hearing throughout 2021, but factors including the Petitioner’s desire to  
22 appear in-person for the hearing, caused additional delay. On August 20, 2021, the Court held the  
23 evidentiary hearing. Mr. Gomez was present for the hearing via BlueJeans video-conferencing from  
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25 <sup>2</sup> *See Gomez v. State* Case No. 76487.

<sup>3</sup> This Court was reassigned this matter following Judge Adair’s retirement in January of 2021.

1 the Clark County Detention Center for the hearing. The Court heard testimony from Mr. Gomez,  
2 Mr. Gomez's former attorney, Monti Levy, Mr. Gomez's mother, and Mr. Gomez's sister. The  
3 following is a summary of the testimony from the evidentiary hearing.

4 *a. Monti Levy's Testimony*

5 Monti Levy has been an attorney for almost 19 years. Transcript (hereinafter "T.") at 7; 26.  
6 She has spent almost her entire career practicing criminal law. *Id.* Ms. Levy was appointed to Mr.  
7 Gomez's case sometime in 2016. *Id.* She met with the petitioner numerous times during the time she  
8 represented him, noting she visited with the Petitioner over 20 times between the time she was  
9 appointed to time Gomez was sentenced. T. at 8. She recalled numerous meetings during which she  
10 met with the Petitioner either with investigator or with another attorney from her office. *Id.* Ms.  
11 Levy noted she met with the Petitioner more times that she had with any other defendant during  
12 her career. T. at 23-24. During the course of her representation, she received plea offers from the  
13 State, which she conveyed to the Petitioner. *See generally* T. at 10-13. She specifically testified  
14 regarding reviewing an offer within after October of 2017, during which she went over potential  
15 sentencing ranges, including the 40% rule, and that she would quiz the Petitioner to make sure he  
16 understood the potential consequences of accepting the offer. T. at 10-11; 18; 22-23; 27. Ms. Levy also  
17 testified she discussed the potential defenses with Petitioner, the "best" argument they could  
18 present if the matter proceeded to trial, and the possible outcomes if convicted at trial. *See generally*  
19 T. at 14-18; 20-22. To the best of Ms. Levy's recollection, she was prepared to announce ready for  
20 trial at calendar call, but Petitioner changed his mind and accepted the State's offer. T. at 19. Ms.  
21 Levy testified that the Petitioner "absolutely understood" the terms of the plea agreement. T. at 23-  
22 24. Ms. Levy testified Mr. Gomez has been going back and forth on whether or not to accept the  
23 State's offer. T. at 24-25. She further testified that she and the prosecutor discussed the terms of the  
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1 plea with the Defendant in open court. T. at 25. Last, she noted that there was never a question  
2 about consecutive time. *Id.*

3 *b. Oscar Gomez's Testimony*

4 Mr. Gomez testified on his own behalf during the evidentiary hearing. Mr. Gomez agreed  
5 that Ms. Levy had met with him multiple times and that they had discussed a range of sentences. T.  
6 at 33-34. He testified that they discussed the potential sentence range for a plea to a 2<sup>nd</sup> degree  
7 murder with use a deadly woman charge, noting it was either a 10 – 25 year sentence, or 10 to life. T.  
8 at 34. He also testified he knew there was an enhancement for the deadly weapon enhancement. T.  
9 at 34. Mr. Gomez's testified Ms. Levy did not explain that the weapon's enhancement court run  
10 consecutive or concurrent. T. at 34. He further testified he that he would just have to do 10 years and  
11 then he would be eligible for "to go out on the streets." T. at 35. Petitioner recalled talking to the  
12 prosecutor about the offer in his case, and that he asked the prosecutor if he was willing to go down  
13 in terms of the offer, to which the prosecutor declined. T. at 37. Mr. Gomez denied that Ms. Levy  
14 ever quizzed him about sentencing ranges. T. at 36-37. Petitioner stated that he had a sentence of "10  
15 years" in his head. T. at 39. He also testified he recalled that he could get 11 years at the bottom of his  
16 sentence. T. at 38. Towards the end of his testimony, he stated he really did not know what was  
17 going on. *Id.*

18 *c. Laura Olivas' Testimony*

19 Laura Olivas is the Petitioner's mother. T. at 40. Ms. Olivas testified she was involved in  
20 speaking with Mr. Gomez's attorney since the first day. T. at 41. Ms. Olivas testified that prior to  
21 sentencing Ms. Levy never brought up what sort of sentence Mr. Gomez might be facing. *Id.*  
22 According to Ms. Olivas the first time she brought up a potential sentence as at sentencing. *Id.* Ms.  
23 Olivas thought Mr. Gomez testified would be sentenced to a term of 10 years and then he would  
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1 receive probation.<sup>4</sup> T. at 41; 42. She admitted that Mr. Gomez did not discuss the terms of the plea  
2 agreement with her. T. at 42. Ms. Gomez further testified that the weapons enhancement was not  
3 discussed with her. T. at 43.

4 *d. Isabel Gomez's Testimony*

5 Isabel Gomez is Petitioner's sister. T. at 45. Isabel testified she did not speak with Ms. Levy  
6 until the day of sentencing. *Id.* She further testified Ms. Levy told her Oscar would receive a "max"  
7 sentence of 10 years and at least 2 to 4 years for the gun enhancement. T. at 45. Isabel agreed that  
8 Ms. Levy conveyed two separate sentences. *Id.* She could not recall if Ms. Levy explained whether  
9 the time would run consecutively or concurrently. *Id.* During cross-examination, Isabel agreed Ms.  
10 Levy explained there would be a minimum of a 10 year sentence with possible additional time for  
11 the gun enhancement. T. at 47. The State of Nevada introduced a letter written by Isabel that  
12 discussed Mr. Gomez's potential sentence. T. at 48; *see also* State's Exhibit C. The letter explained it  
13 was her understanding that Mr. Gomez would be sentenced to 10 years, plus an added two years for  
14 gun enhancement charges. *Id.* Isabel testified both she and Mr. Gomez believed he would be  
15 sentenced to 10 years followed by an additional two years in prison. T. at 48-49.

16 *e. Maria Gomez's Testimony*

17 Ms. Gomez, who also goes by Ms. Castro, is the Petitioner's older sister. T. at 52. Maria  
18 testified that she was one of the primary persons who spoke with Ms. Levy about Petitioner's case.  
19 *Id.* Maria also testified that she and Ms. Levy did discuss potential sentences Mr. Gomez could  
20 receive. *Id.* One potential was "10 – 25, possibility of parole at 10" and for the gun charges Ms. Levy  
21 told her he could receive "2 to 4 years." *Id.* She further testified that the maximum Petitioner could  
22 receive was "12-14 years." *Id.*; T. at 53. Maria stated that understood to sentence would be 10 to 25  
23 years with the possibility of parole. T. at 53. When asked about the possibility of a second sentence  
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25 <sup>4</sup> The Court interprets the use of the word "probation" to mean parole.



1 for the gun enhancement, Maria testified she was told there was no evidence about the  
2 enhancement so she did not why that would be added to his sentence. *Id.* During cross-examination,  
3 Maria testified it was her understanding that his plea would require him to do 10 to 25 years, and  
4 then an additional 2-4 years. *Id.* at 54. She also testified she did not understand that he would up for  
5 parole around 12 or 14 years. *Id.* at 55-56.

### 6 III. Applicable Law

7 A claim of ineffective assistance of counsel presents a mixed question of law and fact.  
8 *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d  
9 1102, 1107 (1996). To establish that counsel's assistance was ineffective, a petitioner must satisfy a  
10 two-part test. *Strickland*, 466 U.S. at 687, 104 S.Ct. at 2064; *Warden v. Lyons*, 100 Nev. 430, 683 P.2d  
11 504 (1984) (adopting the two-part test). First, a petitioner must demonstrate that his trial or  
12 appellate counsel's performance was deficient. Specifically, a petitioner must show that counsel's  
13 petition fell below an objective standard of reasonableness. Second, the petitioner must show  
14 prejudice as a result of that deficient performance. Both parts of the test do not need to be  
15 considered if an insufficient showing is made on either one. *Strickland*, 466 U.S. at 697, 104 S. Ct. at  
16 2069.

17 Where the claim involves trial counsel, prejudice is demonstrated by showing that, but for  
18 trial counsel's errors, there is a reasonable probability that the result of the proceedings would have  
19 been different. *Id.* at 694; *See Love*, 109 Nev. at 1139, 865 P.2d at 323. A "reasonable probability" is a  
20 probability sufficient to undermine confidence in the outcome of trial. *Id.* at 687-89, 694; *see also*  
21 *Dawson v. State*, 108 Nev. 112, 115, 825 P.2d 593, 595 (1992). There is a strong presumption that  
22 counsel's performance was reasonable and fell within "the wide range of reasonable professional  
23 assistance." *See United States v. Aguirre*, 912 F.2d 555, 560 (2nd Cir. 1990), citing *Strickland*, 466 U.S. at  
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1 689. The defendant carries the affirmative burden of establishing prejudice. *Strickland v. Washington*,  
2 466 U.S. 668, 693, 104 S.Ct. 2052, 2067–68 (1984).

3 Nevada applies the “reasonably effective assistance” standard articulated in *Strickland v.*  
4 *Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984), to determine whether a defendant received effective  
5 assistance of counsel. *Warden v. Lyons*, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984). Specifically, a  
6 defendant who challenges the adequacy of counsel’s representation must prove that he was denied  
7 reasonably effective assistance by satisfying a two-pronged test. *Strickland*, 466 U.S. at 686-87, 104  
8 S.Ct. at 2063-64; *State v. Love*, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

9 Under the *Strickland* test, the defendant must first show that his counsel’s representation fell  
10 below an objective standard of reasonableness. Then, the defendant must show that but for  
11 counsel’s errors, there is a reasonable probability that the result of the proceedings would have been  
12 different. *Strickland*, 466 U.S. at 687-88, 104 S.Ct. at 2065. Counsel cannot be deemed ineffective for  
13 failing to make futile objections, file futile motions, or for failing to make futile arguments. *Ennis v.*  
14 *State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Moreover, this Court “need not consider both  
15 prongs of the test if the defendant makes an insufficient showing on either one.” *Molina v. State*, 120  
16 Nev. 185, 190, 87 P.3d 533, 537 (2004).

17 In considering whether trial counsel was effective, the Court must determine whether  
18 counsel made a “sufficient inquiry into the information . . . pertinent to his client’s case.” *Doleman v.*  
19 *State*, 112 Nev. 843, 848, 921 P.2d 278, 280 (1996) (citing *Strickland*, 466 U.S. at 690-91, 104 S.Ct. at  
20 2066). Then, the Court will consider whether counsel made “a reasonable strategic decision on how  
21 to proceed with his client’s case.” *Id.* Counsel’s strategic decision is a “tactical” decision and will be  
22 “virtually unchallengeable absent extraordinary circumstances.” *Id.*; see also *Howard v. State*, 106 Nev.  
23 713, 722, 800 P.2d 175, 180 (1990); *Strickland*, 466 U.S. at 691, 104 S.Ct. at 2066.

1 Even if a defendant can demonstrate that his counsel's representation fell below an objective  
2 standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability  
3 that, but for counsel's errors, the result of the trial would have been different. *McNelson v. State*, 115  
4 Nev. 396, 403, 990 P.2d 1263, 1268 (1999). "The defendant carries the affirmative burden of  
5 establishing prejudice." *Riley v. State*, 110 Nev. 638, 646, 878 P.2d 272, 278 (1994). "A reasonable  
6 probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S.  
7 at 694, 104 S.Ct. at 2068. "[O]verwhelming evidence of guilt is relevant to the question of whether a  
8 client had ineffective counsel." *Ford v. State*, 105 Nev. 850, 852, 784 P.2d 951, 952 (1989) (citing  
9 *Strickland*, 466 U.S. at 697, 10 S.Ct. at 2069).

10 Importantly, when raising a *Strickland* claim, the defendant bears the burden to demonstrate  
11 the underlying facts by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d  
12 25, 33 (2004). Moreover, claims asserted in a petition for post-conviction relief must be supported  
13 with specific factual allegations, which if true, would entitle the petitioner to relief. *Hargrove v. State*,  
14 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" or "naked" allegations are not sufficient, nor are  
15 those belied and repelled by the record. *Id.*

17 Additionally, in reference to appellate counsel, there is a strong presumption that appellate  
18 counsel's performance was reasonable and fell within "the wide range of reasonable professional  
19 assistance." See *United States v. Aguirre*, 912 F.2d 555, 560 (2nd Cir. 1990); citing *Strickland*, 466 U.S. at  
20 689, 104 S.Ct. at 2065. A claim of ineffective assistance of appellate counsel must satisfy the two-  
21 prong test set forth by *Strickland*. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). In order  
22 to satisfy *Strickland*'s second prong, the defendant must show that the omitted issue would have  
23 had a reasonable probability of success on appeal. *Id.*

24 ...

25 ...

1           IV.     Analysis

2           Mr. Gomez fails to demonstrate that trial counsel's representation fell below an objective  
3 standard of reasonableness. Ms. Levy testified that she discussed the various offers in this case to  
4 Mr. Gomez multiple times. T. at 10. Further, she testified during the time she represented him she  
5 would review potential sentencing ranges with him. *Id.* She testified that she explained the  
6 definition of a deadly weapon as it applied to the case against Mr. Gomez, and the fact a deadly  
7 weapon enhancement carried a consecutive sentence. *Id.* at 11. Not only did she explain the offer he  
8 ultimately accepted, which included the consecutive time for the deadly weapon enhancement, she  
9 testified other persons from her law office also explained the offer to him. *Id.* According to Ms.  
10 Levy, there was no question that Mr. Gomez understood the terms of the plea and the consequences  
11 thereof.

12           Ms. Levy's testimony is supported by witnesses Mr. Gomez called during the evidentiary  
13 hearing. Isabel and Maria Gomez both testified that the sentence for the murder charge would be at  
14 least 10 years, and both testified they understood there was a gun enhancement of at least two years.  
15 *Id.* at 19. The understanding that there would be an enhancement for gun was evidenced further by  
16 the letter written by Isabel. That letter, dated December 29, 2020, states that wrote it was Mr.  
17 Gomez well as his family's understanding that "he would be sentenced to ten years plus and [sic]  
18 added two for gun enhancement charges; which would then grant him eligibility for parole." See  
19 PWHC at Exhibit C.

20           The testimony of Ms. Levy, and Maria and Isabel Gomez, together undermines Mr. Gomez's  
21 argument that he did not understand the terms of the plea, to include the consecutive time for the  
22 deadly weapon enhancement. In fact, in a letter dated December 29, 2020, Isabel Gomez wrote it  
23 was Mr. Gomez and his family's understanding "that he would be sentenced to ten years plus and  
24 [sic] added two for gun enhancement charges; which would then grant him eligibility for parole."  
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1 See PWHC at Exhibit C. Moreover, during Gomez's change of plea hearing, the Court specifically  
2 advised him that the least amount of time he could be sentenced to at the bottom of the sentencing  
3 range was 11 years:

4 THE COURT: And, I mean, obviously nobody wants to plead guilty to second degree  
5 murder. And its full right to argue, is that right?

6 STATE: That's right.

7 THE COURT: And state the penalty –

8 STATE : With a deadly weapon, yeah.

9 THE COURT: -- state the range of penalty on the record,  
10 please.

11 STATE: Yes, Your Honor. It would be either 10 to 25 or  
12 10 to life on the underlying sentence with a consecutive 2 to 20 for the  
13 deadly weapon enhancement.

14 MS. LEVY: One to 20.

15 STATE: One to 20.

16 THE COURT: So --

17 MS. LEVY: One to 20 on the weapon enhancement.

18 THE COURT: One to 20? They keep changing everything all the time.

19 MS. LEVY: I believe it's 1 to 20.

20 THE COURT: So you understand it's up to the Court. The least amount of time the  
21 very least amount of time I could give you on the bottom end is 11 years. Do you  
22 understand that?

23 DEFENDANT GOMEZ: I -- I understand.

24 THE COURT: The most amount of time I could give you on the bottom end is 18  
25 years. Do you understand that?

DEFENDANT GOMEZ: I understand.

THE COURT: And I could give you -- the most amount of time on the top end I could  
give you is life plus 20 years. All right.

DEFENDANT GOMEZ: Okay.

1 THE COURT: The least amount of time I could give you on the bottom end is 25  
2 years plus 30 months.

3 DEFENDANT GOMEZ: Okay.

4 THE COURT: Do you understand that?

5 DEFENDANT GOMEZ: Yes.

6 THE COURT: That's the least amount of time. Now Mr. Palal can argue for the  
7 maximum time, which is a 10 to life and a consecutive 8 to 20. And obviously your  
8 lawyers are going to argue for the least amount of time. And then it's going to be up to  
me to look at everything and determine what, in my opinion, a fair sentence is. Do  
you understand that?

9 DEFENDANT GOMEZ: I understand.

10 THE COURT: So you understand that those are the ranges?

11 DEFENDANT GOMEZ: Yes.

12 Transcript of Change of Plea at 6-8.

13 The evidence before the Court also demonstrates that trial counsel adequately and  
14 reasonably investigated the case and discussed the potential outcomes with the Petitioner. "Where  
15 counsel and the client in a criminal case clearly understand the evidence and the permutations of  
16 proof and outcome, counsel is not required to unnecessarily exhaust all available public or private  
17 resources." *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). However, an attorney must  
18 reasonably investigate in preparing for trial or reasonably decide not to. *Strickland*, 466 U.S. at 691;  
19 *Kirksey v. State*, 112 Nev. 980, 992, 923 P.2d 1102, 1110 (1996) (emphasis added). Defense counsel's  
20 "particular decision not to investigate must be directly assessed for reasonableness in all the  
21 circumstances." *Strickland*, 466 U.S. at 691. *Dawson v. State*, 108 Nev. at 117, 825 P.2d at 596 ("Strategic  
22 choices made by counsel after thoroughly investigating the plausible options are almost  
23 unchallengeable.").  
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1 As a threshold matter, Mr. Gomez stated that Ms. Levy answered all of his questions  
2 sufficiently, and that she and her co-counsel spent sufficient time reviewing the case and discovery  
3 with him.

4 THE COURT: Okay. And did your lawyers answer all your  
5 questions to your satisfaction?

6 DEFENDANT GOMEZ: They did.

7 THE COURT: Okay. Do you feel like Ms. Levy and her co-counsel  
8 have spent enough time with you explaining the discovery and  
9 going over the evidence and everything like that in this case?

10 DEFENDANT GOMEZ: Yeah.

11 T. at 10.

12 Further, in the guilty plea agreement (“GPA”) he signed, Mr. Gomez acknowledged that he  
13 “discussed with my attorney any possible defenses, defense strategies and circumstances which  
14 might be in my favor” and that he was “satisfied with the services provided by my attorney.” GPA at  
15 4, 5. During the evidentiary hearing, Ms. Levy also testified that she discussed the potential defenses  
16 that could be raised if the case proceeded to trial. But in the Petition, Mr. Gomez admits that he was  
17 present during the shooting itself, and the shooting was on video. It calls into question the need to  
18 investigate an “alternate suspect,” and Mr. Gomez provides no explanation how the investigation  
19 into an alternate suspect would have been successful.<sup>5</sup> Mr. Gomez fails to explain how challenging  
20 the photo line-up would have changed the outcome of this case given he was identified and  
21 captured on video committing the murder. PWHC at 12.

22 There is no evidence to support Mr. Gomez’s claims that he was coerced into accepting the  
23 plea or that his attorney abandoned him during the time he decided to enter into the GPA. Mr.  
24 Gomez acknowledged that he was entering into the guilty plea both freely and voluntarily, and after

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25 <sup>5</sup> Mr. Gomez did not raise this issue on appeal and is now considered waived for the purposes of this petition. *See Bolden v. State*, 99 Nev. 181, 659 P.2d 886 (1983) (“a claim that could have been raised on direct appeal from a judgment of conviction, but was not, is considered waived for purposes of a subsequent proceeding for post-conviction relief”);

1 consultation with his attorney, during the plea hearing and when signing of the GPA. *See* GPA at 5.  
2 (“I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting  
3 under duress or coercion...”); T. at 11. Further, Mr. Gomez entered into the plea after discussing the  
4 GPA and other others with his counsel on several occasions, and after he had time to consider  
5 whether or not to accept it and to discuss potential defenses at the calendar call on April 19, 2018.

6 Finally, Mr. Gomez alleges that his counsel was ineffective for failing to file a motion to  
7 withdraw his guilty plea. There is no evidence that he requested Ms. Levy to file motion before  
8 sentencing in this case. At most, Mr. Gomez’s provided evidence that he made such a request after  
9 he was sentenced. In an undated and unaddressed letter, Mr. Gomez wrote he wanted to withdraw  
10 his plea. Mr. Gomez claims this letter was mailed to Ms. Levy. The Court approaches this letter  
11 with extreme caution for a number of reasons. First, it is not dated or signed. And second, it is  
12 unclear is how Mr. Gomez has a copy of this handwritten letter if it was mailed to Ms. Levy. Even if  
13 the Court accepts the representations in the suspect letter as true, it would not support his  
14 allegations that Ms. Levy was ineffective at the time he took the plea. The letter was allegedly  
15 mailed *after* sentencing because it states he had been transferred to Arizona. The letter reflects regret  
16 for entering into the plea, as well as bare, naked allegations he was hurried into doing so. This  
17 suspect letter is insufficient to warrant relief. *See Hargrove v. State*, 100 Nev. 502, 686 P.2d 222, 225  
18 (1984) (“bare” and “naked,” and are insufficient to warrant relief, as are those claims belied and  
19 repelled by the record).

20 Finally, Mr. Gomez alleges that trial counsel was ineffective for never filing a direct appeal of  
21 his Judgment of Conviction and was further ineffective for failing to challenge the terms of  
22 restitution on direct appeal. *See* Memorandum of Points and Authorities at 12-13. On July 18, 2018,  
23 appellate counsel filed a Notice of Appeal on behalf of Mr. Gomez. Mr. Gomez did not provide any  
24 legal authority for the proposition that he was entitled to have any particular attorney file his direct  
25



1 appeal. *Id.* at 12-13. Therefore, Mr. Gomez cannot demonstrate he was prejudiced by trial counsel's  
2 failure to file a notice of appeal on his behalf. Mr. Gomez's claim that appellate counsel was  
3 ineffective for failing to challenge the terms of restitution in Mr. Gomez's Judgment of Conviction  
4 also fails. Mr. Gomez cites no applicable authority to support his arguments that there is an error  
5 with his judgment of conviction that warrant the relief he is seeking.

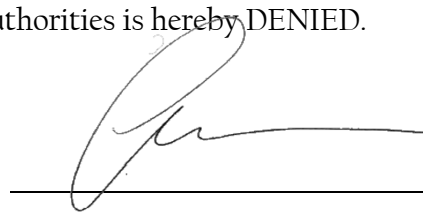
6 Related to his arguments regarding the alleged defects in his judgment of conviction, this  
7 Court denies Mr. Gomez's requested relief based on his claim that he is subject to cruel and unusual  
8 punishment based on the aforementioned defects. The Nevada Court of Appeals already addressed  
9 Mr. Gomez's sentencing on direct appeal, noting he did not demonstrate his sentence was cruel and  
10 unusual. *See Order of Affirmance*, filed May 15, 2019 (Dkt. No. 76487-COA) at 2-3. Further, this  
11 allegation seems unrelated to trial counsel's performance, and therefore, falls outside the scope of  
12 habeas proceedings. *See* NRS 34.810(1)(a).

13 Accordingly, Mr. Gomez did not demonstrate that the aforementioned claims had a  
14 reasonable likelihood of success if it had been appealed. *Kirksey*, 112 Nev. at 998, 923 P.2d at 1114. As  
15 such, Petitioner did not meet his burden under *Strickland*.

16 **V. Conclusion**

17 Therefore, for the reasons set forth Omar Gomez's Post-Conviction Petition for Writ of  
18 Habeas Corpus and Memorandum of Points and Authorities is hereby DENIED.

Dated this 6th day of December, 2021

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21 

EC

22 **48A E35 EC78 9910**  
23 **Cristina D. Silva**  
24 **District Court Judge**

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Oscar Gomez, Plaintiff(s)

CASE NO: A-20-815035-W

7 vs.

DEPT. NO. Department 9

8 State of Nevada, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 12/6/2021

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18 Heather Ungermann

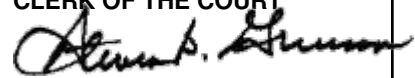
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(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

OSCAR GOMEZ, JR., aka Oscar Gomez,  
#5990519

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-20-815035-W

C-16-316959-1

DEPT NO: II

**STATE'S RESPONSE TO CLAIMS FOUR THROUGH SIX OF DEFENDANT'S  
ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS**

DATE OF HEARING: NOVEMBER 9, 2022  
TIME OF HEARING: 9:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through KAREN MISHLER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Original Petition For Writ Of Habeas Corpus.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On August 3, 2016, OSCAR GOMEZ, JR. (hereinafter “Petitioner”) was charged by  
4 way of Information with one count of Murder With Use of a Deadly Weapon (Category A  
5 Felony – NRS 200.010, 200.030, 193.165) for actions committed on or about June 24, 2016.

6 On April 19, 2018, pursuant to negotiations, the State filed an Amended Information  
7 charging Petitioner with one count of Second Degree Murder With Use of a Deadly Weapon.  
8 A signed Guilty Plea Agreement was also filed in open court. On June 14, 2018, Petitioner  
9 was sentenced to ten years to life in the Nevada Department of Corrections, with a consecutive  
10 term of ninety-six (96) to two hundred forty (240) months for the use of a deadly weapon.  
11 Petitioner received 716 days credit for time served. The Judgment of Conviction was filed on  
12 June 22, 2018.

13 On July 18, 2018, Petitioner filed a Notice of Appeal in the underlying case. On May  
14 15, 2019, the Nevada Court of Appeals affirmed Petitioner’s Judgment of Conviction.  
15 Remittitur issued on June 20, 2019.

16 On May 14, 2020, Petitioner filed a Petition for Writ of Habeas Corpus (Post-  
17 Conviction). Petitioner contemporaneously filed a Motion for Appointment of Counsel and  
18 Request for Evidentiary Hearing. On June 23, 2020, the State filed its Response to Petitioner’s  
19 pleadings.

20 On September 22, 2020, the Court considered the matter on the briefings, and stated  
21 that it rejected all of Petitioner’s arguments, except for the argument about whether counsel  
22 adequately discussed concurrent or consecutive prison time with Petitioner. Thereafter, on  
23 October 13, 2020, the Court issued a Minute Order, scheduling an evidentiary hearing “on the  
24 sole issue of whether counsel informed [Petitioner] that he faced consecutive time for the  
25 deadly weapon enhancement.”

26 On February 4, 2021, Petitioner filed an “Original” Petition for Writ of Habeas Corpus  
27 (Post-Conviction). The Court construed Petitioner’s this filing as a supplemental pleading to  
28 the Petition that he filed on May 14, 2020. On March 5, 2021, the Court granted Petitioner’s

1 request for counsel, and Mr. James Hoffman, Esq. confirmed as counsel. On March 23, 2021,  
2 the State filed its Response to the “Original” Petition for Writ of Habeas Corpus.

3 On August 20, 2021, the Court held an evidentiary hearing on the aforementioned issue.  
4 On September 17, 2021, the Court denied the Petition. On October 21, 2021, Petitioner filed  
5 a Notice of Appeal. On December 6, 2021, the Court filed its Decision and Order. On  
6 September 21, 2022, the Nevada Court of Appeals dismissed the appeal because the Court  
7 found that this Court’s December 6, 2021 Order did not resolve all of the claims raised by  
8 Petitioner. Specifically, the Court of Appeals found that this Court’s order did not resolve  
9 claims four through six raised in the “Original Petition for Writ of Habeas Corpus” filed on  
10 February 4, 2021. See Gomez v. State, No. 83690-COA (Order Dismissing Appeal, Aug. 26,  
11 2022). Thus, the Court of Appeals found the Order was not a final order, as it did not dispose  
12 of all claims raised. Id.

13 On October 12, 2022, this Court set the matter for argument regarding claims four  
14 through six raised in the “Original Petition for Writ of Habeas Corpus” filed on February 4,  
15 2021. The State sets forth its arguments on those grounds below.

## 16 **ARGUMENT**

### 17 **I. CLAIMS FOUR, FIVE, AND SIX EXCEED THE SCOPE OF PERMISSIBLE** 18 **CLAIMS WHEN A PETITIONER’S CONVICTION IS THE RESULT OF A** 19 **GUILTY PLEA**

20 Due to having entered a guilty plea, Petitioner is strictly limited regarding the types of  
21 claims he may raise when requesting habeas relief. Dismissal of a postconviction petition for  
22 writ of habeas corpus is mandatory when “[t]he petitioner’s conviction was upon a plea of  
23 guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea  
24 was involuntarily or unknowingly entered or that the plea was entered without effective  
25 assistance of counsel.” NRS 34.810(1)(a). Claims Four through Six do not concern  
26 ineffectiveness of counsel or the voluntariness of Petitioner’s guilty plea. Petition, at 21-23.  
27 Claims Four and Six challenge the validity of the deadly weapon enhancement statute. Claim  
28 Five alleges violations of Petitioner’s rights under the Fourteenth and Ninth Amendments, and

1 the Privileges and Immunities clause. These claims must be summarily denied as they fall  
2 outside the parameters of NRS 34.810(1)(a). Furthermore, these claims could have been raised  
3 on direct appeal, and consequently are waived on habeas review. See Franklin v. State, 110  
4 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled on other grounds by Thomas v.  
5 State, 115 Nev. 148, 979 P.2d 222 (1999).

## 6 II. PETITIONER'S CLAIMS ARE WITHOUT MERIT

7 Even if Petitioner's claims were not barred from consideration due to the restrictions  
8 of NRS 34.810(1)(a), Petitioner would not be entitled to relief because his claims lack merit.  
9 In Claim Four, Petitioner alleges that the imposition of the deadly weapon enhancement  
10 violates his due process rights. Petition, at 21. He appears to contend that NRS 193.165—the  
11 deadly weapon enhancement statute—is unconstitutionally vague. His sole attempt to support  
12 this claim appears to be a citation to a federal case relating to the validity of federal statute 18  
13 U.S.C. 924(c). As Petitioner was not sentenced pursuant to any federal statute in this case, this  
14 case is obviously inapplicable. Furthermore, the Nevada Supreme Court has previously ruled  
15 that NRS 193.165 is not unconstitutionally vague. Woofert v. O'Donnell, 91 Nev. 756, 762,  
16 542 P.2d 1396, 1400 (1975). Moreover, by entering into the Guilty Plea Agreement, Petitioner  
17 agreed to imposition of the deadly weapon enhancement. See Breault v. State, 116 Nev. 311,  
18 313, 996 P.2d 888, 889 (2000) (stating that where a defendant enters a knowing and voluntary  
19 guilty plea, the Court “will not permit the defendant to manipulate the judicial system” by  
20 alleging error in the sentence imposed pursuant to the guilty plea agreement).

21 In Claim Five, Petitioner alleges violations of his rights under the Fourteenth and Ninth  
22 Amendments, as well as the Privileges and Immunities Clause. Petition, at 22. He offers no  
23 factual allegation as to how these rights were supposedly violated. This failure to set forth  
24 specific factual allegations requires summary dismissal of this claim. NRS 34.735. “A  
25 petitioner for post-conviction relief cannot rely on conclusory claims for relief but must make  
26 specific factual allegations that if true would entitle him to relief.” Colwell v. State, 118 Nev.  
27 807, 813, 59 P.3d 463, 467 (2002) (citing Evans v. State, 117 Nev. 609, 621, 28 P.3d 498, 507

28 //

1 (2001)). See also Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding  
2 that bare or naked allegations are insufficient to entitle a defendant to post-conviction relief).

3 In Claim Six, Petitioner appears to allege that imposition of the deadly weapon  
4 enhancement violates his Fifth Amendment protection against double jeopardy. Petition, at  
5 23. The Nevada Supreme Court has previously held that the deadly weapon enhancement  
6 contained in NRS 193.165 does not violate double jeopardy. Nevada Dep't Prisons v.  
7 Bowen, 103 Nev. 477, 479–81, 745 P.2d 697, 698–99 (1987); Woofert, 91 Nev. at 761–62,  
8 542 P.2d at 1399–400. Therefore, this claim must be denied.

9 **CONCLUSION**

10 Petitioner's claims must be summarily denied for exceeding the scope of permissible  
11 habeas claims under NRS 34.810(1)(a). Even if this statute did not bar his claims from  
12 consideration, he would be entitled to no relief because his claims lack merit, and in some  
13 cases directly contradict rulings of the Nevada Supreme Court. Therefore, the State  
14 respectfully requests that claims four through six of Petitioner's "Original Petition for Writ of  
15 Habeas Corpus" be denied.

16 DATED this 20th day of October, 2022.

17 Respectfully submitted,

18 STEVEN B. WOLFSON  
19 Clark County District Attorney  
Nevada Bar #001565

20  
21 BY /s/ KAREN MISHLER  
22 KAREN MISHLER  
23 Chief Deputy District Attorney  
24 Nevada Bar #013730  
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the foregoing, was made this 20th day of October, 2022,  
by Electronic Filing to:

JIM HOFFMAN, Esquire  
E-mail Address: jim.hoffman.esq@gmail.com

/s/ Laura Mullinax  
Secretary for the District Attorney's Office

16F10719A/KM/lm/GU



**FFCO**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**KAREN MISHLER**  
Chief Deputy District Attorney  
Nevada Bar #013730  
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(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**OSCAR GOMEZ, JR., aka Oscar Gomez,**  
**#5990519**

Petitioner,

-vs-

**THE STATE OF NEVADA,**

Respondent.

CASE NO: A-20-815035-W

(C-16-316959-1)

DEPT NO: II

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER**

DATE OF HEARING: NOVEMBER 9, 2022  
TIME OF HEARING: 9:30 AM

THIS CAUSE having come on for hearing before the Honorable CARLI KIERNY, District Judge, on the 11th day of November, 2022, the Petitioner not being present, represented by JAMES I. HOFFMAN, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through AUSTIN C. BEAUMONT, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On August 3, 2016, OSCAR GOMEZ, JR. (hereinafter "Petitioner") was charged by  
4 way of Information with one count of Murder With Use of a Deadly Weapon (Category A  
5 Felony – NRS 200.010, 200.030, 193.165) for actions committed on or about June 24, 2016.

6 On April 19, 2018, pursuant to negotiations, the State filed an Amended Information  
7 charging Petitioner with one count of Second-Degree Murder With Use of a Deadly Weapon.  
8 A signed Guilty Plea Agreement was also filed in open court. On June 14, 2018, Petitioner  
9 was sentenced to ten years to life in the Nevada Department of Corrections, with a consecutive  
10 term of ninety-six (96) to two hundred forty (240) months for the use of a deadly weapon.  
11 Petitioner received 716 days credit for time served. The Judgment of Conviction was filed on  
12 June 22, 2018.

13 On July 18, 2018, Petitioner filed a Notice of Appeal. On May 15, 2019, the Nevada  
14 Court of Appeals affirmed Petitioner's Judgment of Conviction. Remittitur issued on June 20,  
15 2019.

16 On May 14, 2020, Petitioner filed a Petition for Writ of Habeas Corpus (Post-  
17 Conviction). Petitioner contemporaneously filed a Motion for Appointment of Counsel and  
18 Request for Evidentiary Hearing. On June 23, 2020, the State filed its Response.

19 On September 22, 2020, the Court considered the matter on the briefings, and stated  
20 that it rejected all of Petitioner's arguments, except for the argument about whether counsel  
21 adequately discussed concurrent or consecutive prison time with Petitioner. Thereafter, on  
22 October 13, 2020, the Court issued a Minute Order, scheduling an evidentiary hearing "on the  
23 sole issue of whether counsel informed [Petitioner] that he faced consecutive time for the  
24 deadly weapon enhancement."

25 On February 4, 2021, Petitioner filed an "Original" Petition for Writ of Habeas Corpus  
26 (Post-Conviction). The Court construed Petitioner's this filing as a supplemental pleading to  
27 the Petition that he filed on May 14, 2020. On March 5, 2021, the Court granted Petitioner's

28 ///

1 request for counsel, and Mr. James Hoffman, Esq. confirmed as counsel. On March 23, 2021,  
2 the State filed its Response to the “Original” Petition for Writ of Habeas Corpus.

3 On August 20, 2021, the Court held an evidentiary hearing on the aforementioned  
4 issue— whether counsel adequately discussed concurrent versus consecutive prison time with  
5 Petitioner. On September 17, 2021, the Court denied the Petition. On December 6, 2021, the  
6 Court filed its Decision and Order.

7 On October 21, 2021, Petitioner filed a Notice of Appeal. On September 21, 2022, the  
8 Nevada Court of Appeals dismissed the appeal due to finding that the Court’s December 6,  
9 2021 Order did not resolve all of the claims raised by Petitioner. Specifically, the Court of  
10 Appeals found that the Court’s order did not resolve claims four through six raised in the  
11 “Original Petition for Writ of Habeas Corpus” filed on February 4, 2021. See Gomez v. State,  
12 No. 83690-COA (Order Dismissing Appeal, Aug. 26, 2022).

13 On October 12, 2022, this Court set the matter for argument regarding claims four  
14 through six raised in the “Original Petition for Writ of Habeas Corpus” filed on February 4,  
15 2021. On October 20, 2022, the State filed its Response, which addressed claims four through  
16 six. On November 9, 2022, this Court denied claims four through six, for the reasons stated  
17 below.

## 18 ANALYSIS

### 19 **I. CLAIMS FOUR, FIVE, AND SIX EXCEED THE SCOPE OF PERMISSIBLE** 20 **CLAIMS WHEN A PETITIONER’S CONVICTION IS THE RESULT OF A** 21 **GUILTY PLEA**

22 Due to having entered a guilty plea, Petitioner is strictly limited regarding the types of  
23 claims he may raise when requesting habeas relief. Dismissal of a postconviction petition for  
24 writ of habeas corpus is mandatory when “[t]he petitioner’s conviction was upon a plea of  
25 guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea  
26 was involuntarily or unknowingly entered or that the plea was entered without effective  
27 assistance of counsel.” NRS 34.810(1)(a). Claims Four through Six do not concern  
28 ineffectiveness of counsel or the voluntariness of Petitioner’s guilty plea. Petition, at 21-23.

1 Claims Four and Six challenge the validity of the deadly weapon enhancement statute. Claim  
2 Five alleges violations of Petitioner's rights under the Fourteenth and Ninth Amendments, and  
3 the Privileges and Immunities clause. These claims are summarily denied due to falling outside  
4 the parameters of NRS 34.810(1)(a). Furthermore, these claims could have been raised on  
5 direct appeal, and consequently are waived on habeas review. See Franklin v. State, 110 Nev.  
6 750, 752, 877 P.2d 1058, 1059 (1994), overruled on other grounds by Thomas v. State, 115  
7 Nev. 148, 979 P.2d 222 (1999).

## 8 **II. PETITIONER'S CLAIMS ARE WITHOUT MERIT**

9 Even if Petitioner's claims were not barred from consideration due to the restrictions of  
10 NRS 34.810(1)(a), Petitioner would not be entitled to relief because his claims lack merit. In  
11 Claim Four, Petitioner alleges that the imposition of the deadly weapon enhancement violates  
12 his due process rights. Petition, at 21. He appears to contend that NRS 193.165—the deadly  
13 weapon enhancement statute—is unconstitutionally vague. His sole attempt to support this  
14 claim appears to be a citation to a federal case relating to the validity of federal statute 18  
15 U.S.C. 924(c). As Petitioner was not sentenced pursuant to any federal statute in this case, this  
16 case is obviously inapplicable. Furthermore, the Nevada Supreme Court has previously ruled  
17 that NRS 193.165 is not unconstitutionally vague. Woofert v. O'Donnell, 91 Nev. 756, 762,  
18 542 P.2d 1396, 1400 (1975). Moreover, by entering into the Guilty Plea Agreement, Petitioner  
19 agreed to imposition of the deadly weapon enhancement. See Breault v. State, 116 Nev. 311,  
20 313, 996 P.2d 888, 889 (2000) (stating that where a defendant enters a knowing and voluntary  
21 guilty plea, the Court “will not permit the defendant to manipulate the judicial system” by  
22 alleging error in the sentence imposed pursuant to the guilty plea agreement). Accordingly,  
23 this claim is denied.

24 In Claim Five, Petitioner alleges violations of his rights under the Fourteenth and Ninth  
25 Amendments, as well as the Privileges and Immunities Clause. Petition, at 22. He offers no  
26 factual allegation as to how these rights were supposedly violated. This failure to set forth  
27 specific factual allegations requires summary dismissal of this claim. NRS 34.735. “A  
28 petitioner for post-conviction relief cannot rely on conclusory claims for relief but must make


specific factual allegations that if true would entitle him to relief.” Colwell v. State, 118 Nev. 807, 813, 59 P.3d 463, 467 (2002) (citing Evans v. State, 117 Nev. 609, 621, 28 P.3d 498, 507 (2001)). See also Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding that bare or naked allegations are insufficient to entitle a defendant to post-conviction relief). Accordingly, this claim is denied.

In Claim Six, Petitioner appears to allege that imposition of the deadly weapon enhancement violates his Fifth Amendment protection against double jeopardy. Petition, at 23. The Nevada Supreme Court has previously held that the deadly weapon enhancement contained in NRS 193.165 does not violate double jeopardy. Nevada Dep’t Prisons v. Bowen, 103 Nev. 477, 479–81, 745 P.2d 697, 698–99 (1987); Woofert, 91 Nev. at 761–62, 542 P.2d at 1399–400. Accordingly, this claim is denied.

**ORDER**

THEREFORE, IT IS HEREBY ORDERED that claims four through six of the “Original Petition for Writ of Habeas Corpus” filed on February 4, 2021, shall be, and are, hereby denied.

Dated this 7th day of March, 2023



STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

**4EA 72B 935D 9BFC**  
**Carli Kierny**  
**District Court Judge**

BY /s/ KAREN MISHLER  
KAREN MISHLER  
Chief Deputy District Attorney  
Nevada Bar #013730

///

///

///

///

1 CERTIFICATE OF ELECTRONIC FILING

2 I hereby certify that service of the foregoing, was made this 7th day of March 2023, by  
3 Electronic Filing to:

4 JIM HOFFMAN, ESQ.  
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6  
7 /s/ Janet Hayes  
8 Secretary for the District Attorney's Office  
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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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6 Oscar Gomez, Plaintiff(s)

CASE NO: A-20-815035-W

7 vs.

DEPT. NO. Department 2

8 State of Nevada, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

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19 Jennifer Garcia

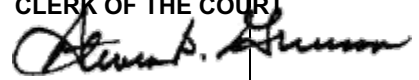
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**ATTORNEY FOR OSCAR GOMEZ**

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
Plaintiff,

vs.

OSCAR GOMEZ,  
Defendant

Case No.: A-20-815035-W  
(C-16-316959-1)

Department II

**NOTICE OF APPEAL**

Notice is hereby given that OSCAR GOMEZ, by and through his  
counsel JIM HOFFMAN, appeals the order denying his PCR petitions entered by  
the District Court on March 7, 2023.

DATED: March 9, 2023

/s/ Jim Hoffman

JIM HOFFMAN, ESQ.



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DATED: March 9, 2023

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JIM HOFFMAN, ESQ.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on July 20, 2023, I served this Appendix on all parties  
3  
4 registered for eservice.

5 DATED: July 20, 2023

6  
7 /s/ Jim Hoffman

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JIM HOFFMAN, ESQ.