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Apr 14 2023 11:03 AM
Elizabeth A. Brown
Clerk of Supreme Court

NOASC
Rene L. Valladares
Federal Public Defender
Nevada State Bar No. 11479
*Laura Barrera
Assistant Federal Public Defender
Nevada State Bar No. 14320C
411 E. Bonneville, Ste. 250
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(702) 388-6577
(702) 388-6419 (Fax)
Laura_Barrera@fd.org

Attorney for Petitioner Troy White

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY

Troy White,

Petitioner,

v.

State of Nevada,

Respondents.

Case No. A-22-859004-W
Dept. No. 1

NOTICE OF APPEAL

Notice is hereby given that Petitioner Troy White appeals to the Nevada Supreme Court from the Order Denying Petition for Writ of Habeas Corpus entered in this action on March 16, 2023. The Notice of Entry of Decision or Order was filed March 20, 2023.

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Dated April 12, 2023

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Laura Barrera

Laura Barrera
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2023, I electronically filed the foregoing with the Clerk of the Eighth Judicial District Court by using the Court's electronic filing system.

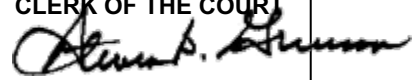
Participants in the case who are registered users in the electronic filing system will be served by the system and include: Steven Wolfson, Steven.Wolfson@clarkcountyda.com, Motions@clarkcountyda.com.

I further certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days, to the following person:

Troy White #1143868 High Desert State Prison P.O. Box 650 Indian Springs, NV 89070	Jaimie Stilz Office of the Attorney General 555 E. Washington Ave., Suite 3900 Las Vegas, NV 89101 jstilz@ag.nv.gov
Jonathan VanBoskerck Clark County District Attorney 200 Lewis Ave. Las Vegas, NV 89101	

/s/ Kaitlyn O'Hearn

An Employee of the Federal Public
Defender, District of Nevada



ASTA
Rene L. Valladares
Federal Public Defender
Nevada State Bar No. 11479
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Attorney for Petitioner Troy White

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY

Troy White,

Petitioner,

v.

State of Nevada,

Respondents.

Case No. A-22-859004-W
Dept. No. 1

CASE APPEAL STATEMENT

1. **Name of petitioner filing this case appeal statement:** Troy White.
2. **Identify the judge issuing the order appealed from:** The Honorable Bitia Yeager, District Court Judge, Dept. No. I, Eighth Judicial District Court, Clark County, Nevada.
3. **Identify each appellant and the name and address of counsel for each appellant:** Mr. White is represented by Laura Barrera, Assistant Federal

Public Defender, Federal Public Defender's Office, District of Nevada, 411 E. Bonneville Avenue, Suite 250, Las Vegas, NV 89101.

4. **Identify each respondent and the name and address of appellate counsel, if known, for each respondent:** The State of Nevada, Steven Wolfson, and Jonathan VanBoskerck, Clark County District Attorney's Office, 200 Lewis Avenue, Las Vegas, NV 89101.

5. **Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42.** The attorneys mentioned above are licensed to practice law in Nevada.

6. **Whether petitioner/appellant was represented by appointed or retained counsel in the district court:** Mr. White was represented in the district court by counsel previously appointed to represent him in a related federal matter.

7. **Whether petitioner/appellant is represented by appointed or retained counsel on appeal:** Mr. White is represented on appeal by counsel previously appointed to represent him in a related federal matter.

8. **Whether petitioner/appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:** An inmate need not pay a fee to file (or appeal from the denial of) a post-conviction petition. NRS 2.250(1)(d); NRS 34.724(1). The federal court determined Mr. White was indigent and appointed counsel on his behalf in a related federal case.

9. **Date proceedings commenced in the district court (e.g., date complaint, indictment, information or petition was filed):** Mr. White filed his Petition for Writ of Habeas Corpus (Post-Conviction) on September 27, 2022.

10. **Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being**

1 **appealed and the relief granted by the district court:** This is an appeal of an
2 order dismissing Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction).

3 11. **Indicate whether the case has previously been the subject of an**
4 **appeal to or original writ proceeding in the Supreme Court or Court of**
5 **Appeals and, if so, the caption and docket number of the prior proceeding:**

6 *White v. State*, 62890

7 *White v. State*, 68632

8 *White v. State*, 82798

9 *White v. State*, 82798-COA

10 12. **Indicate whether this appeal involves child custody or**
11 **visitation:** This appeal does not involve child custody or visitation.

12 13. **If this is a civil case, indicate whether this appeal involves the**
13 **possibility of settlement:** N/A.

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Dated April 12, 2023

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Laura Barrera

Laura Barrera
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2023, I electronically filed the foregoing with the Clerk of the Eighth Judicial District Court by using the Court's electronic filing system.

Participants in the case who are registered users in the electronic filing system will be served by the system and include: Steven Wolfson, Steven.Wolfson@clarkcountyda.com, Motions@clarkcountyda.com.

I further certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days, to the following person:

Troy White
#1143868
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

Jaimie Stilz
Office of the Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101
jstilz@ag.nv.gov

Jonathan VanBoskerck
Clark County District Attorney
200 Lewis Ave.
Las Vegas, NV 89101

/s/ Kaitlyn O'Hearn

An Employee of the Federal Public
Defender, District of Nevada

CASE SUMMARY
CASE SUMMARY
CASE NO. A-22-859004-W

Troy White, Plaintiff(s)
vs.
Calvin Johnson, Defendant(s)

§
§
§
§
§

Location: **Department 1**
Judicial Officer: **Yeager, Bita**
Filed on: **09/27/2022**
Case Number History:
Cross-Reference Case Number: **A859004**

CASE INFORMATION

Related Cases

C-12-286357-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Case Flags: **Appealed to Supreme Court**
NRS 34.730 Case

Statistical Closures

03/16/2023 Summary Judgment

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-22-859004-W
Court Department 1
Date Assigned 09/30/2022
Judicial Officer Yeager, Bita







PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	White, Troy	Barrera, Laura <i>Retained</i> 702-895-0080(W)
Defendant	Johnson, Calvin	Wolfson, Steven B <i>Retained</i> 702-671-2700(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

09/27/2022	 Notice Filed By: Plaintiff White, Troy <i>[1] Notice of Appearance</i>	
09/27/2022	 Motion Filed By: Plaintiff White, Troy <i>[2] Motion for the Court to Take Judicial Notice of the Filings in Mr. White's Criminal Case Number</i>	
09/27/2022	 Petition for Writ of Habeas Corpus Filed by: Plaintiff White, Troy <i>[3] Petition for Writ of Habeas Corpus (Post-Conviction)</i>	
09/27/2022	 Exhibits Filed By: Plaintiff White, Troy <i>[4] Index of Exhibits In Support of Petition for Writ of Habeas Corpus</i>	
09/30/2022	 Notice of Department Reassignment <i>[5] Notice of Department Reassignment</i>	
10/03/2022	 Order for Petition for Writ of Habeas Corpus	

CASE SUMMARY
CASE SUMMARY
CASE NO. A-22-859004-W

[6] Order For Petition for Writ of Habeas Corpus

10/05/2022



Notice of Appearance

Party: Plaintiff White, Troy

[7] Notice of Appearance

11/08/2022



Notice of Change of Hearing

[8] Notice of Change of Hearing

11/15/2022



Response

Filed by: Defendant Johnson, Calvin

[9] States Response to Petitioners Supplement to Petition for Writ of Habeas Corpus (Post-Conviction)

12/22/2022



Petition for Writ of Habeas Corpus (11:00 AM) (Judicial Officer: Yeager, Bitá)
12/22/2022, 03/09/2023

Parties Present: Attorney Barrera, Laura
Attorney Kirshbaum, Jonathan M.
Attorney Judd, Joshua D
Attorney Barrera, Laura
Attorney Kirshbaum, Jonathan M.
Attorney Judd, Joshua D

02/15/2023



Reply

Filed by: Plaintiff White, Troy

[10] PETITIONERS REPLY TO THE STATES RESPONSE TO WHITES PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

03/16/2023



Order Denying Motion

[11] Order Denying Defendant's Petitioner's Petition for Writ of Habeas Corpus (Post Conviction)

03/20/2023



Notice of Entry of Order

[12] Notice of Entry of Order

04/12/2023



Notice of Appeal (Criminal)

Party: Plaintiff White, Troy

[13] Notice of Appeal

04/12/2023



Case Appeal Statement

Filed By: Plaintiff White, Troy

[14] Case Appeal Statement

DISTRICT COURT CIVIL COVER SHEET

Clark County, Nevada
Case No. _____
(Assigned by Clerk's Office)

CASE NO: A-22-859004-W
Department 9

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

Plaintiff(s) (name/address/phone): <div style="text-align: center;">Troy White, NDOC No. 1143868 High Desert State Prison P.O. Box 650 Indian Springs, NV 89070</div>	Defendant(s) (name/address/phone): <div style="text-align: center;">Director, NDOC Warden, High Desert State Prison</div>
Attorney (name/address/phone): <div style="text-align: center;">Jonathan M. Kirshbaum Assistant Federal Public Defender 411 E. Bonneville Ave. Suite 250, Las Vegas, NV 89101 (702) 388-6577</div>	Attorney (name/address/phone): <div style="text-align: center;">Steve Wolfson, Clark County District Attorney 200 Lewis Ave., Las Vegas, NV 89101, (702) 671-2500 cc: Charles Finlayson, Senior Deputy Attorney General 100 North Carson Street, Carson City, NV 89701</div>

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 <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input checked="" type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

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

09/27/2022

Date

/s/ Jonathan M. Kirshbaum

Signature of initiating party or representative

See other side for family-related case filings.

1 **ORDR**

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

4 **THE STATE OF NEVADA**

Case No. A-22-859004-W
(C-12-286357-1)

5 **Plaintiff(s)**

Dept. No. 1

6 **vs.**

7 **TROY RICHARD WHITE,**

8 **Defendant(s)**

9
10
11 **ORDER DENYING DEFENDANT'S PETITIONER'S PETITION FOR WRIT OF**
12 **HABEAS CORPUS (POST-CONVICTION)**

13 **DATE OF HEARING: March 09, 2023**

14 **TIME OF HEARING: 09:00 A.M.**

15 THIS MATTER having come on for hearing before the above entitled Court on the
16 9th day of March, 2023, the Defendant not being present, REPRESENTED BY
17 JONATHAN M. KIRSHBAUM and LAURA BARRERA, Asst. Federal Public Defenders,
18 the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through
19 JOSHUA D. JUDD, Deputy District Attorney, and the Court having heard the arguments of
counsel and good cause appearing therefore, the Court makes the following order:

20 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

21 **PROCEDURAL HISTORY**

22 On December 12, 2012, Petitioner Troy White (hereinafter "Petitioner") was
23 charged by way of Information with the following counts: Count 1, BURGLARY
24 WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS 205.060);
25 Count 2, MURDER WITH USE OF A DEADLY WEAPON (Category A Felony – NRS
26 200.010, 200.030, 193.165); Count 3, ATTEMPT MURDER WITH USE OF A DEADLY
27 WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165); Count 4,
28 CARRYING A CONCEALED FIREARM OR OTHER DEADLY WEAPON (Category C

Felony - NRS 202.350(1)(d)(3)); and Counts 5, 6, 7, 8, and 9, CHILD ABUSE, NEGLECT, OR ENDANGERMENT (Category B Felony - NRS 200.508(1)).

On February 4, 2013, Petitioner filed a pre-trial Petition for Writ of Habeas Corpus, to which the State filed a Return on March 19, 2013. On March 27, 2013, the district court granted Petitioner's Petition as to Count 1 only and denied the Petition as to Count 2 through 9. The State filed a Notice of Appeal that same day. On August 8, 2014, the Supreme Court filed an Order affirming the district court's dismissal of Count 1, holding that a person cannot burglarize his own home. On March 24, 2015, the State filed an Amended Information with the following charges: Count 1, MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165); Count 2, ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165); Count 3, CARRYING A CONCEALED FIREARM OR OTHER DEADLY WEAPON (Category C Felony - NRS 202.350(1)(d)(3)); and Counts 4, 5, 6, 7, and 8, CHILD ABUSE, NEGLECT, OR ENDANGERMENT (Category B Felony - NRS 200.508(1)).

Jury trial began on April 6, 2015, and concluded on April 17, 2015. The State also filed a Second Amended Information on April 6, 2015, charging the same counts as listed in the Amended Information. On April 17, 2015, the jury returned a verdict as follows: as to Count 1, Guilty of Second Degree Murder with Use of a Deadly Weapon; as to Count 2, Guilty of Attempt Murder with Use of a Deadly Weapon; as to Count 3, Guilty of Carrying a Concealed Firearm or Other Deadly Weapon; and as to Counts 4, 5, 6, 7, and 8, Guilty of Child Abuse, Neglect, or Endangerment. Petitioner was sentenced on July 20, 2015 as follows: as to COUNT 1, to LIFE with the eligibility for parole after serving a MINIMUM of TEN (10) YEARS, plus a CONSECUTIVE term of ONE HUNDRED NINETY-TWO (192) MONTHS with a MINIMUM parole eligibility of SEVENTY-SIX (76) MONTHS for the Use of a Deadly Weapon; as to COUNT 2, to a MAXIMUM of ONE HUNDRED NINETY-TWO (192) MONTHS with a MINIMUM parole eligibility of SEVENTY-SIX (76) MONTHS, plus a CONSECUTIVE term of ONE HUNDRED NINETY-TWO (192)

MONTHS with a MINIMUM parole eligibility of SEVENTY-SIX (76) MONTHS for the Use of a Deadly Weapon; CONSECUTIVE to COUNT 1; as to COUNT 3, to a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of NINETEEN (19) MONTHS, CONCURRENT WITH COUNTS 1 & 2; as to COUNT 4, to a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS, CONSECUTIVE TO COUNTS 1 & 2; as to COUNT 5, to a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS, CONCURRENT with ALL OTHER COUNTS; as to COUNT 6, to a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS, CONCURRENT with ALL OTHER COUNTS; as to COUNT 7, to a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS, CONCURRENT with ALL OTHER COUNTS; as to COUNT 8, to a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS, CONCURRENT with ALL OTHER COUNTS; with ONE THOUSAND EIGHTY-EIGHT DAYS (1,088) DAYS credit for time served. The AGGREGATE TOTAL sentence was LIFE with a MINIMUM OF THIRTY FOUR (34) YEARS. The Judgment of Conviction was filed July 24, 2015, but an Amended Judgment of Conviction was filed February 5, 2016, removing the aggregate sentence total language.

On August 12, 2015, Petitioner filed a Notice of Appeal. On April 26, 2017, the Nevada Supreme Court issued its Order affirming Petitioner's Judgment of Conviction. Remittitur issued on May 25, 2017.

On April 24, 2018, Petitioner filed a post-conviction Petition for Writ of Habeas Corpus. On December 20, 2018, Petitioner filed a Supplemental Brief in Support of his Petition for Writ of Habeas Corpus and Motion for Authorization to Obtain Expert and for Payment of Fees Incurred Herein. The State filed its Response to Petitioner's Supplemental Petition and Opposition to the Motion for Authorization to Obtain Expert and for Payment of Fees Incurred on March 26, 2019. On April 24, 2019, Petitioner filed his Reply and Motion for Authorization to Obtain Investigator and Payment of Fees Incurred Herein. The State

1 filed its Opposition on May 2, 2019. The district court granted the Motion for an Investigator
2 on June 12, 2019. The Order was filed on June 21, 2019.

3 On September 2, 2020, this Court denied the Petition in part as to the cell phone
4 and ordered a limited evidentiary on the remaining issues—specifically whether counsel was
5 ineffective for failing to investigate the cell phone. On March 4, 2021, this Court held an
6 evidentiary hearing where Petitioner’s prior counsel, Scott Coffee Esq., testified regarding
7 his investigation of Petitioner’s cell phone. Following the evidentiary hearing, the Court
8 denied the Petition entirely. On April 13, 2021, the Court filed its Findings of Fact,
9 Conclusions of Law and Order. The Notice of Entry of Findings of Fact, Conclusions of Law
10 and Order was filed on April 15, 2021.

11 On April 16, 2021, Petitioner filed a Notice of Appeal. On March 1, 2022, the
12 Nevada Supreme Court issued its Order affirming the denial of Petitioner’s Postconviction
13 Petition for a Writ of Habeas Corpus. Remittitur issued on March 1, 2022.

14 On September 27, 2022, Petitioner filed a Petition for Writ of Habeas Corpus as well
15 as a Motion for the Court to Take Judicial Notice of the Filings in Mr. White’s Criminal
16 Case Number. On November 15, 2022, the State filed its Response To Petitioner’s
17 Supplement To Petition For Writ Of Habeas Corpus (Post-Conviction), and on February 15,
18 2023, Petitioner filed it’s Reply To The State’s Response To White’s Petition For Writ Of
19 Habeas Corpus (Post-Conviction).

20 ANALYSIS

21 **I. THE PETITIONER’S CLAIMS ARE PROCEDURALLY BARRED.**

22 **A. Application of the Procedural Bars is Mandatory.**

23 The Nevada Supreme Court has granted no discretion to the district courts regarding
24 whether to apply statutory procedural bars. Instead, the Nevada Supreme Court has
25 emphatically and repeatedly stated that the procedural bars must be applied.

26 The district courts have a duty to consider whether post-conviction claims are
27 procedurally barred. State v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112
28 P.3d 1070, 1076 (2005). Riker held that the procedural bars “cannot be ignored when

properly raised by the State.” Id. at 233, 112 P.3d at 1075. Accord, State v. Huebler, 128 Nev. 192, 197, 275 P.3d 91, 94-95, footnote 2 (2012), cert. denied, 568 U.S. 1147, 133 S.Ct. 988 (2013) (“under the current statutory scheme the time bar in NRS 34.726 is mandatory, not discretionary” (emphasis added)).

Even “a stipulation by the parties cannot empower a court to disregard the mandatory procedural default rules.” State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003); accord, Sullivan v. State, 120 Nev. 537, 540, footnote 6, 96 P.3d 761, 763-64, footnote 6 (2004) (concluding that a petition was improperly treated as timely and that a stipulation to the petition’s timeliness was invalid). The Sullivan Court “expressly conclude[d] that the district court should have denied [a] petition” because it was procedurally barred. Sullivan, 120 Nev. at 542, 96 P.3d at 765.

The district courts have no discretion in applying procedural bars because to allow otherwise would undermine the finality of convictions. In holding that “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory,” the Riker Court noted:

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

Riker, 121 Nev. at 231, 112 P.3d at 1074.

Moreover, strict adherence to the procedural bars promotes the best interests of the parties:

At some point, we must give finality to criminal cases. Should we allow [petitioner’s] post conviction relief proceeding to go forward, we would encourage defendants to file groundless petitions for federal habeas corpus relief, secure in the knowledge that a petition for post-conviction relief remained indefinitely available to them. This situation would prejudice both the accused and the State since the interests of both the petitioner and the government are best served if post-conviction claims are raised while the evidence is still fresh.

Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989) (citations omitted).

B. Petitioner's Substantive Claims are Waived for Failure to Raise on Direct Appeal.

All of petitioner's claims were appropriate and available for direct appeal. Substantive claims are waived as they should have been raised on direct appeal. NRS 34.724(2)(a); NRS 34.810(1)(b); Evans v. State, 117 Nev. 609, 646-47, 29 P .3d 498, 523 (2001); Franklin v. State, 110 Nev. 750, 752, 877 P .2d 1058, 1059 (1994), disapproved on other grounds, Thomas v. State, 115 Nev. 148, 979 P .2d 222 (1999).

Petitioner claims he was denied his right under the Sixth and Fourteenth Amendments to the United States Constitution to effective trial counsel. Petition, at 6. Petitioner claims that since the evidence presented at trial supported a theory of voluntary manslaughter and defense counsel put forth an untenable argument for voluntary manslaughter, Petitioner's trial counsel was ineffective. Petition, at 7-8, 13. Petitioner's complaint is barred as waived. Petitioner's claim was available for direct appeal, and therefore, cannot be considered by this Court. Thus, Petitioner's substantive claim is waived for failing to raise it on direct appeal.

C. Petitioner's Second Petition is Time Barred.

NRS 34.726(1) states that "unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence 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 Supreme Court issues its remittitur." The one-year time bar is strictly construed and enforced. Gonzales v. State, 118 Nev. 590, 593, 53 P.3d 901, 902 (2002). The Nevada Supreme Court has held that the "clear and unambiguous" provisions of NRS 34.726(1) demonstrate an "intolerance toward perpetual filing of petitions for relief, which clogs the court system and undermines the finality of convictions." Pellegrini v. State, 117 Nev. 860, 875, 34 P.3d 519, 529 (2001).

Remittitur issued from Petitioner's direct appeal on May 22, 2017. (Findings of Fact, Conclusions of Law, and Order, filed April 13, 2021, p. 4). Therefore, Petitioner had until

May 22, 2018, to file a timely habeas petition. Petitioner filed the second Petition on September 27, 2022. (Petition for Writ of Habeas Corpus (Post-Conviction), filed September 27, 2022). As such, the second Petition is time barred.

D. Petitioner’s Second Petition is Barred as an Abuse of Writ.

Petitioner’s Second Petition is procedurally barred because it is an abuse of the writ. NRS 34.810(2) reads:

A second or successive petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the Defendant to assert those grounds in a prior petition constituted an abuse of the writ. (emphasis added). Second or successive petitions are petitions that either fail to allege new or different grounds for relief and the grounds have already been decided on the merits or that allege new or different grounds but a judge or justice finds that the Defendant ’s failure to assert those grounds in a prior petition would constitute an abuse of the writ. Second or successive petitions will only be decided on the merits if the Defendant can show good cause and prejudice.

NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

The Nevada Supreme Court has stated: “Without such limitations on the availability of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-conviction remedies. In addition, meritless, successive and untimely petitions clog the court system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at 950. The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly require a careful review of the record, successive petitions may be dismissed based solely on the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words, if the claim or allegation was previously available with reasonable diligence, it is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

Petitioner's repeated filings of petitions creates the very issue that the Nevada Supreme Court addressed in Lozada. Petitioner's prior petition has been denied, yet Petitioner's continual filing of pleadings serves only to "clog the court system and undermine the finality" of his conviction. Lozada, 110 Nev. At 358, 871 P.2d at 950. Raising a new ground for relief in a successive habeas petition is an abuse of the writ. Therefore, this Court finds that Petitioner's instant Petition must be dismissed.

II. PETITIONER CANNOT DEMONSTRATE GOOD CAUSE TO IGNORE HIS PROCEDURAL DEFAULT.

To overcome the procedural bars, a petition must: (1) demonstrate good cause for delay in filing his petition or for bringing new claims or repeating claims in a successive petition; and (2) demonstrated undue or actual prejudice. NRS 34.726(1); NRS 34.810(3). "To establish good cause, petitioners must show that an impediment external to the defense prevented their compliance with the applicable procedural rule. A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available at the time of default." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003), rehearing denied, 120 Nev. 307, 91 P.3d 35 cert. denied, 543 U.S. 947, 125 S.Ct. 358 (2004); see also Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003) ("In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules."); Pellegrini, 117 Nev. at 887, 34 P.3d at 537 (neither ineffective assistance of counsel, nor a physician's declaration in support of a habeas petition were sufficient "good cause" to overcome a procedural default, whereas finding by Supreme Court that defendant was suffering from Multiple Personality Disorder was). An external impediment could be "that the factual or legal basis for a claim was not reasonably available to counsel, or that 'some interference by officials' made compliance impracticable." Id. (quoting, Murray v. Carrier, 477 U.S. 478, 488, 106 S. Ct. 2639, 2645 (1986)); see also Gonzales, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v. Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)).

The Nevada Supreme Court has held that, "appellants cannot attempt to manufacture

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2 “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71 P.3d at
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5 such as the lack of assistance of counsel when preparing a petition as well as the failure of
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10 Petitioner cannot demonstrate good cause because all the facts and law necessary to
11 raise these claims were available at the appropriate time. Nor does Petitioner attempt to
12 establish an impediment external to the defense. Petitioner appears to attempt to satisfy his
13 burden to demonstrate good cause by arguing that he is raising the same argument in federal
14 court and that his prior habeas counsel was ineffective for not raising the complaints found
15 in this Petition. Neither of these contentions establish good cause. Federal litigation is
16 irrelevant to the Nevada procedural rules. Colley v. Warden, 105 Nev. 235, 236, 773 P.2d
17 1229, 1230 (1989). Further, Petitioner did not have the right to the effective assistance of
18 post-conviction counsel during the previous round of habeas litigation so even if prior post-
19 conviction counsel was ineffective it still fails to establish good cause. Halbert v. Michigan,
20 545 U.S. 605, 610, 125 S.Ct. 2582, 2587 (2005) (The right of assistance of counsel extends
21 only to “first appeals as of right ... however, ... a state need not appoint counsel ... in
22 discretionary appeals”); Brown v. McDaniel, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014);
23 McKague v. Whitley, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996) (“no right to effective
24 assistance of counsel, let alone any constitutional or statutory right to counsel at all, [exists
25 in] post-conviction proceedings”). Indeed, in Brown, the Nevada Supreme Court directly
26 said that “[w]e have consistently held that the ineffectiveness of post-conviction counsel in a
27 noncapital case may not constitute ‘good cause’ to excuse procedural defaults.” Brown, 130
28 Nev. at 569, 331 P.3d at 870.

1 **III. AS PETITIONER HAS NOT DEMONSTRATED GOOD CAUSE TO**
2 **IGNORE HIS PROCEDURAL DEFAULT, THE COURT NEED NOT REACH**
3 **PETITIONER’S ARGUMENT REGARDING THE SUBSTANTIAL PREJUDICE**
4 **NECESSARY TO IGNORE HIS PROCEDURAL DEFAULTS.**

5 To establish prejudice “a petitioner must show that errors in the proceedings
6 underlying the judgment worked to the petitioner’s actual and substantial disadvantage.”
7 State v. Huebler, 128 Nev. 192, 196-197 275 P.3d 91, 94-95 (2012), cert. denied, 568 U.S.
8 1147, 133 S.Ct. 988 (2013). Further, a finding of prejudice sufficient to disregard the
9 procedural bars must be based upon prejudice sufficient to support a finding of ineffective
10 assistance of counsel. Crump v. Warden, 113 Nev. 293, 304-05, 934 P.2d 247, 254 (1997)
11 (error which rises to the level of ineffective assistance of counsel establishes cause and
12 prejudice under NRS 34.810(1)(b)).

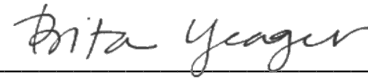
13 Petitioner argues that trial counsel was ineffective in addressing voluntary
14 manslaughter. Specifically, he alleges that counsel failed to “identify the required
15 provocation for voluntary manslaughter” and needed to explain what happened in the room
16 between White and Lucas instead of presenting “the presence of Averman as a ‘sudden and
17 provoking injury[.]” Petition, at 7, 14-15. While this Court does not find it necessary to reach
18 the argument regarding substantial prejudice, this Court notes that the complaints attack
19 virtually unchallengeable strategic decisions. Doleman v. State, 112 Nev. 842, 848, 921
20 P.2d 278, 280-281 (1996); Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 168 (2002).

21 This Court understands that the Petitioner is urging the Court to consider the U.S.
22 Supreme Court’s decision in Martinez v. Ryan, 566 U.S. 1 (2012) in light of the recent
23 decision in Shinn v. Ramirez, 142 S. Ct. 1718 (2022) that additionally restricts a prisoner’s
24 ability to rely on new evidence to raise new ineffective trial counsel claims in a federal
25 habeas petition, and grant relief in the form of an evidentiary hearing on the ineffective
26 assistance of counsel claims. However, this Court is bound by the statutes and controlling
27 law in Brown v. McDaniel, 130 Nev. 565, wherein the Nevada Supreme Court expressly
28 rejected adopting the rule fashioned under Martinez v. Ryan, 566 U.S.1 (2012), as it “ . . .

1 conflict[s] with the current statutory post-conviction scheme, impose[s] significant costs, and
2 undermine[s] the finality of judgments of conviction.” Brown, at 576.

3
4 IT IS THEREFORE ORDERED, that Defendant’s Petition for Writ of Habeas Corpus
5 (Post-Conviction), shall be, and it is DENIED.

6 Dated this 16th day of March, 2023

7 

8
9 **6AB F45 6D34 AC93**
Bita Yeager
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Troy White, Plaintiff(s)

CASE NO: A-22-859004-W

7 vs.

DEPT. NO. Department 1

8 Calvin Johnson, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/16/2023

15 Steven Wolfson

motions@clarkcountyda.com

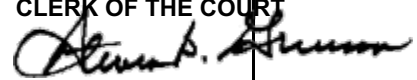
16 Jonathan Kirshbaum

Jonathan_Kirshbaum@fd.org

17 laura barrera

18 laura_barrera@fd.org

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NEOJ

**DISTRICT COURT
CLARK COUNTY, NEVADA**

TROY WHITE,

Petitioner,

Case No: A-22-859004-W

Dept. No: I

vs.

CALVIN JOHNSON,

Respondent,

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on March 16, 2023, 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 March 20, 2023.

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 20 day of March 2023, 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:

Troy White # 1143868
P.O. Box 650
Indian Springs, NV 89070

Rene L. Valladares
Federal Public Defender
411 E. Bonneville, Ste 250
Las Vegas, NV 89101

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

1 **ORDR**

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

4 **THE STATE OF NEVADA**

Case No. A-22-859004-W
(C-12-286357-1)

5 **Plaintiff(s)**

Dept. No. 1

6 **vs.**

7 **TROY RICHARD WHITE,**

8 **Defendant(s)**

9
10
11 **ORDER DENYING DEFENDANT'S PETITIONER'S PETITION FOR WRIT OF**
12 **HABEAS CORPUS (POST-CONVICTION)**

13 **DATE OF HEARING: March 09, 2023**

14 **TIME OF HEARING: 09:00 A.M.**

15 THIS MATTER having come on for hearing before the above entitled Court on the
16 9th day of March, 2023, the Defendant not being present, REPRESENTED BY
17 JONATHAN M. KIRSHBAUM and LAURA BARRERA, Asst. Federal Public Defenders,
18 the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through
19 JOSHUA D. JUDD, Deputy District Attorney, and the Court having heard the arguments of
counsel and good cause appearing therefore, the Court makes the following order:

20 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

21 **PROCEDURAL HISTORY**

22 On December 12, 2012, Petitioner Troy White (hereinafter "Petitioner") was
23 charged by way of Information with the following counts: Count 1, BURGLARY
24 WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS 205.060);
25 Count 2, MURDER WITH USE OF A DEADLY WEAPON (Category A Felony – NRS
26 200.010, 200.030, 193.165); Count 3, ATTEMPT MURDER WITH USE OF A DEADLY
27 WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165); Count 4,
28 CARRYING A CONCEALED FIREARM OR OTHER DEADLY WEAPON (Category C

Felony - NRS 202.350(1)(d)(3)); and Counts 5, 6, 7, 8, and 9, CHILD ABUSE, NEGLECT, OR ENDANGERMENT (Category B Felony - NRS 200.508(1)).

On February 4, 2013, Petitioner filed a pre-trial Petition for Writ of Habeas Corpus, to which the State filed a Return on March 19, 2013. On March 27, 2013, the district court granted Petitioner's Petition as to Count 1 only and denied the Petition as to Count 2 through 9. The State filed a Notice of Appeal that same day. On August 8, 2014, the Supreme Court filed an Order affirming the district court's dismissal of Count 1, holding that a person cannot burglarize his own home. On March 24, 2015, the State filed an Amended Information with the following charges: Count 1, MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165); Count 2, ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165); Count 3, CARRYING A CONCEALED FIREARM OR OTHER DEADLY WEAPON (Category C Felony - NRS 202.350(1)(d)(3)); and Counts 4, 5, 6, 7, and 8, CHILD ABUSE, NEGLECT, OR ENDANGERMENT (Category B Felony - NRS 200.508(1)).

Jury trial began on April 6, 2015, and concluded on April 17, 2015. The State also filed a Second Amended Information on April 6, 2015, charging the same counts as listed in the Amended Information. On April 17, 2015, the jury returned a verdict as follows: as to Count 1, Guilty of Second Degree Murder with Use of a Deadly Weapon; as to Count 2, Guilty of Attempt Murder with Use of a Deadly Weapon; as to Count 3, Guilty of Carrying a Concealed Firearm or Other Deadly Weapon; and as to Counts 4, 5, 6, 7, and 8, Guilty of Child Abuse, Neglect, or Endangerment. Petitioner was sentenced on July 20, 2015 as follows: as to COUNT 1, to LIFE with the eligibility for parole after serving a MINIMUM of TEN (10) YEARS, plus a CONSECUTIVE term of ONE HUNDRED NINETY-TWO (192) MONTHS with a MINIMUM parole eligibility of SEVENTY-SIX (76) MONTHS for the Use of a Deadly Weapon; as to COUNT 2, to a MAXIMUM of ONE HUNDRED NINETY-TWO (192) MONTHS with a MINIMUM parole eligibility of SEVENTY-SIX (76) MONTHS, plus a CONSECUTIVE term of ONE HUNDRED NINETY-TWO (192)

MONTHS with a MINIMUM parole eligibility of SEVENTY-SIX (76) MONTHS for the Use of a Deadly Weapon; CONSECUTIVE to COUNT 1; as to COUNT 3, to a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of NINETEEN (19) MONTHS, CONCURRENT WITH COUNTS 1 & 2; as to COUNT 4, to a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS, CONSECUTIVE TO COUNTS 1 & 2; as to COUNT 5, to a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS, CONCURRENT with ALL OTHER COUNTS; as to COUNT 6, to a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS, CONCURRENT with ALL OTHER COUNTS; as to COUNT 7, to a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS, CONCURRENT with ALL OTHER COUNTS; as to COUNT 8, to a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS, CONCURRENT with ALL OTHER COUNTS; with ONE THOUSAND EIGHTY-EIGHT DAYS (1,088) DAYS credit for time served. The AGGREGATE TOTAL sentence was LIFE with a MINIMUM OF THIRTY FOUR (34) YEARS. The Judgment of Conviction was filed July 24, 2015, but an Amended Judgment of Conviction was filed February 5, 2016, removing the aggregate sentence total language.

On August 12, 2015, Petitioner filed a Notice of Appeal. On April 26, 2017, the Nevada Supreme Court issued its Order affirming Petitioner's Judgment of Conviction. Remittitur issued on May 25, 2017.

On April 24, 2018, Petitioner filed a post-conviction Petition for Writ of Habeas Corpus. On December 20, 2018, Petitioner filed a Supplemental Brief in Support of his Petition for Writ of Habeas Corpus and Motion for Authorization to Obtain Expert and for Payment of Fees Incurred Herein. The State filed its Response to Petitioner's Supplemental Petition and Opposition to the Motion for Authorization to Obtain Expert and for Payment of Fees Incurred on March 26, 2019. On April 24, 2019, Petitioner filed his Reply and Motion for Authorization to Obtain Investigator and Payment of Fees Incurred Herein. The State

1 filed its Opposition on May 2, 2019. The district court granted the Motion for an Investigator
2 on June 12, 2019. The Order was filed on June 21, 2019.

3 On September 2, 2020, this Court denied the Petition in part as to the cell phone
4 and ordered a limited evidentiary on the remaining issues—specifically whether counsel was
5 ineffective for failing to investigate the cell phone. On March 4, 2021, this Court held an
6 evidentiary hearing where Petitioner’s prior counsel, Scott Coffee Esq., testified regarding
7 his investigation of Petitioner’s cell phone. Following the evidentiary hearing, the Court
8 denied the Petition entirely. On April 13, 2021, the Court filed its Findings of Fact,
9 Conclusions of Law and Order. The Notice of Entry of Findings of Fact, Conclusions of Law
10 and Order was filed on April 15, 2021.

11 On April 16, 2021, Petitioner filed a Notice of Appeal. On March 1, 2022, the
12 Nevada Supreme Court issued its Order affirming the denial of Petitioner’s Postconviction
13 Petition for a Writ of Habeas Corpus. Remittitur issued on March 1, 2022.

14 On September 27, 2022, Petitioner filed a Petition for Writ of Habeas Corpus as well
15 as a Motion for the Court to Take Judicial Notice of the Filings in Mr. White’s Criminal
16 Case Number. On November 15, 2022, the State filed its Response To Petitioner’s
17 Supplement To Petition For Writ Of Habeas Corpus (Post-Conviction), and on February 15,
18 2023, Petitioner filed it’s Reply To The State’s Response To White’s Petition For Writ Of
19 Habeas Corpus (Post-Conviction).

20 ANALYSIS

21 **I. THE PETITIONER’S CLAIMS ARE PROCEDURALLY BARRED.**

22 **A. Application of the Procedural Bars is Mandatory.**

23 The Nevada Supreme Court has granted no discretion to the district courts regarding
24 whether to apply statutory procedural bars. Instead, the Nevada Supreme Court has
25 emphatically and repeatedly stated that the procedural bars must be applied.

26 The district courts have a duty to consider whether post-conviction claims are
27 procedurally barred. State v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112
28 P.3d 1070, 1076 (2005). Riker held that the procedural bars “cannot be ignored when

properly raised by the State.” Id. at 233, 112 P.3d at 1075. Accord, State v. Huebler, 128 Nev. 192, 197, 275 P.3d 91, 94-95, footnote 2 (2012), cert. denied, 568 U.S. 1147, 133 S.Ct. 988 (2013) (“under the current statutory scheme the time bar in NRS 34.726 is mandatory, not discretionary” (emphasis added)).

Even “a stipulation by the parties cannot empower a court to disregard the mandatory procedural default rules.” State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003); accord, Sullivan v. State, 120 Nev. 537, 540, footnote 6, 96 P.3d 761, 763-64, footnote 6 (2004) (concluding that a petition was improperly treated as timely and that a stipulation to the petition’s timeliness was invalid). The Sullivan Court “expressly conclude[d] that the district court should have denied [a] petition” because it was procedurally barred. Sullivan, 120 Nev. at 542, 96 P.3d at 765.

The district courts have no discretion in applying procedural bars because to allow otherwise would undermine the finality of convictions. In holding that “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory,” the Riker Court noted:

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

Riker, 121 Nev. at 231, 112 P.3d at 1074.

Moreover, strict adherence to the procedural bars promotes the best interests of the parties:

At some point, we must give finality to criminal cases. Should we allow [petitioner’s] post conviction relief proceeding to go forward, we would encourage defendants to file groundless petitions for federal habeas corpus relief, secure in the knowledge that a petition for post-conviction relief remained indefinitely available to them. This situation would prejudice both the accused and the State since the interests of both the petitioner and the government are best served if post-conviction claims are raised while the evidence is still fresh.

Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989) (citations omitted).

B. Petitioner's Substantive Claims are Waived for Failure to Raise on Direct Appeal.

All of petitioner's claims were appropriate and available for direct appeal. Substantive claims are waived as they should have been raised on direct appeal. NRS 34.724(2)(a); NRS 34.810(1)(b); Evans v. State, 117 Nev. 609, 646-47, 29 P .3d 498, 523 (2001); Franklin v. State, 110 Nev. 750, 752, 877 P .2d 1058, 1059 (1994), disapproved on other grounds, Thomas v. State, 115 Nev. 148, 979 P .2d 222 (1999).

Petitioner claims he was denied his right under the Sixth and Fourteenth Amendments to the United States Constitution to effective trial counsel. Petition, at 6. Petitioner claims that since the evidence presented at trial supported a theory of voluntary manslaughter and defense counsel put forth an untenable argument for voluntary manslaughter, Petitioner's trial counsel was ineffective. Petition, at 7-8, 13. Petitioner's complaint is barred as waived. Petitioner's claim was available for direct appeal, and therefore, cannot be considered by this Court. Thus, Petitioner's substantive claim is waived for failing to raise it on direct appeal.

C. Petitioner's Second Petition is Time Barred.

NRS 34.726(1) states that "unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence 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 Supreme Court issues its remittitur." The one-year time bar is strictly construed and enforced. Gonzales v. State, 118 Nev. 590, 593, 53 P.3d 901, 902 (2002). The Nevada Supreme Court has held that the "clear and unambiguous" provisions of NRS 34.726(1) demonstrate an "intolerance toward perpetual filing of petitions for relief, which clogs the court system and undermines the finality of convictions." Pellegrini v. State, 117 Nev. 860, 875, 34 P.3d 519, 529 (2001).

Remittitur issued from Petitioner's direct appeal on May 22, 2017. (Findings of Fact, Conclusions of Law, and Order, filed April 13, 2021, p. 4). Therefore, Petitioner had until

May 22, 2018, to file a timely habeas petition. Petitioner filed the second Petition on September 27, 2022. (Petition for Writ of Habeas Corpus (Post-Conviction), filed September 27, 2022). As such, the second Petition is time barred.

D. Petitioner’s Second Petition is Barred as an Abuse of Writ.

Petitioner’s Second Petition is procedurally barred because it is an abuse of the writ. NRS 34.810(2) reads:

A second or successive petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the Defendant to assert those grounds in a prior petition constituted an abuse of the writ. (emphasis added). Second or successive petitions are petitions that either fail to allege new or different grounds for relief and the grounds have already been decided on the merits or that allege new or different grounds but a judge or justice finds that the Defendant ’s failure to assert those grounds in a prior petition would constitute an abuse of the writ. Second or successive petitions will only be decided on the merits if the Defendant can show good cause and prejudice.

NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

The Nevada Supreme Court has stated: “Without such limitations on the availability of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-conviction remedies. In addition, meritless, successive and untimely petitions clog the court system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at 950. The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly require a careful review of the record, successive petitions may be dismissed based solely on the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words, if the claim or allegation was previously available with reasonable diligence, it is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

Petitioner's repeated filings of petitions creates the very issue that the Nevada Supreme Court addressed in Lozada. Petitioner's prior petition has been denied, yet Petitioner's continual filing of pleadings serves only to "clog the court system and undermine the finality" of his conviction. Lozada, 110 Nev. At 358, 871 P.2d at 950. Raising a new ground for relief in a successive habeas petition is an abuse of the writ. Therefore, this Court finds that Petitioner's instant Petition must be dismissed.

II. PETITIONER CANNOT DEMONSTRATE GOOD CAUSE TO IGNORE HIS PROCEDURAL DEFAULT.

To overcome the procedural bars, a petition must: (1) demonstrate good cause for delay in filing his petition or for bringing new claims or repeating claims in a successive petition; and (2) demonstrated undue or actual prejudice. NRS 34.726(1); NRS 34.810(3). "To establish good cause, petitioners must show that an impediment external to the defense prevented their compliance with the applicable procedural rule. A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available at the time of default." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003), rehearing denied, 120 Nev. 307, 91 P.3d 35 cert. denied, 543 U.S. 947, 125 S.Ct. 358 (2004); see also Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003) ("In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules."); Pellegrini, 117 Nev. at 887, 34 P.3d at 537 (neither ineffective assistance of counsel, nor a physician's declaration in support of a habeas petition were sufficient "good cause" to overcome a procedural default, whereas finding by Supreme Court that defendant was suffering from Multiple Personality Disorder was). An external impediment could be "that the factual or legal basis for a claim was not reasonably available to counsel, or that 'some interference by officials' made compliance impracticable." Id. (quoting, Murray v. Carrier, 477 U.S. 478, 488, 106 S. Ct. 2639, 2645 (1986)); see also Gonzales, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v. Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)).

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19 conviction counsel was ineffective it still fails to establish good cause. Halbert v. Michigan,
20 545 U.S. 605, 610, 125 S.Ct. 2582, 2587 (2005) (The right of assistance of counsel extends
21 only to “first appeals as of right ... however, ... a state need not appoint counsel ... in
22 discretionary appeals”); Brown v. McDaniel, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014);
23 McKague v. Whitley, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996) (“no right to effective
24 assistance of counsel, let alone any constitutional or statutory right to counsel at all, [exists
25 in] post-conviction proceedings”). Indeed, in Brown, the Nevada Supreme Court directly
26 said that “[w]e have consistently held that the ineffectiveness of post-conviction counsel in a
27 noncapital case may not constitute ‘good cause’ to excuse procedural defaults.” Brown, 130
28 Nev. at 569, 331 P.3d at 870.

1 **III. AS PETITIONER HAS NOT DEMONSTRATED GOOD CAUSE TO**
2 **IGNORE HIS PROCEDURAL DEFAULT, THE COURT NEED NOT REACH**
3 **PETITIONER’S ARGUMENT REGARDING THE SUBSTANTIAL PREJUDICE**
4 **NECESSARY TO IGNORE HIS PROCEDURAL DEFAULTS.**

5 To establish prejudice “a petitioner must show that errors in the proceedings
6 underlying the judgment worked to the petitioner’s actual and substantial disadvantage.”
7 State v. Huebler, 128 Nev. 192, 196-197 275 P.3d 91, 94-95 (2012), cert. denied, 568 U.S.
8 1147, 133 S.Ct. 988 (2013). Further, a finding of prejudice sufficient to disregard the
9 procedural bars must be based upon prejudice sufficient to support a finding of ineffective
10 assistance of counsel. Crump v. Warden, 113 Nev. 293, 304-05, 934 P.2d 247, 254 (1997)
11 (error which rises to the level of ineffective assistance of counsel establishes cause and
12 prejudice under NRS 34.810(1)(b)).

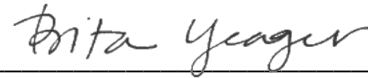
13 Petitioner argues that trial counsel was ineffective in addressing voluntary
14 manslaughter. Specifically, he alleges that counsel failed to “identify the required
15 provocation for voluntary manslaughter” and needed to explain what happened in the room
16 between White and Lucas instead of presenting “the presence of Averman as a ‘sudden and
17 provoking injury[.]” Petition, at 7, 14-15. While this Court does not find it necessary to reach
18 the argument regarding substantial prejudice, this Court notes that the complaints attack
19 virtually unchallengeable strategic decisions. Doleman v. State, 112 Nev. 842, 848, 921
20 P.2d 278, 280-281 (1996); Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 168 (2002).

21 This Court understands that the Petitioner is urging the Court to consider the U.S.
22 Supreme Court’s decision in Martinez v. Ryan, 566 U.S. 1 (2012) in light of the recent
23 decision in Shinn v. Ramirez, 142 S. Ct. 1718 (2022) that additionally restricts a prisoner’s
24 ability to rely on new evidence to raise new ineffective trial counsel claims in a federal
25 habeas petition, and grant relief in the form of an evidentiary hearing on the ineffective
26 assistance of counsel claims. However, this Court is bound by the statutes and controlling
27 law in Brown v. McDaniel, 130 Nev. 565, wherein the Nevada Supreme Court expressly
28 rejected adopting the rule fashioned under Martinez v. Ryan, 566 U.S.1 (2012), as it “ . . .

1 conflict[s] with the current statutory post-conviction scheme, impose[s] significant costs, and
2 undermine[s] the finality of judgments of conviction.” Brown, at 576.

3
4 IT IS THEREFORE ORDERED, that Defendant’s Petition for Writ of Habeas Corpus
5 (Post-Conviction), shall be, and it is DENIED.

6 Dated this 16th day of March, 2023

7 

8
9 **6AB F45 6D34 AC93**
Bita Yeager
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Troy White, Plaintiff(s)

CASE NO: A-22-859004-W

7 vs.

DEPT. NO. Department 1

8 Calvin Johnson, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/16/2023

15 Steven Wolfson

motions@clarkcountyda.com

16 Jonathan Kirshbaum

Jonathan_Kirshbaum@fd.org

17 laura barrera

18 laura_barrera@fd.org

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28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

December 22, 2022

A-22-859004-W Troy White, Plaintiff(s)
vs.
Calvin Johnson, Defendant(s)

**December 22, 2022 11:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Yeager, Bitia **COURTROOM:** RJC Courtroom 05C

COURT CLERK: Michele Tucker

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Barrera, Laura	Attorney
	Judd, Joshua D	Attorney
	Kirshbaum, Jonathan M.	Attorney

JOURNAL ENTRIES

- Court NOTED this is the second petition, first was file 2018, which was ruled on and affirmed. The Court does not see anything in the pleading for good cause to proceed forward. Ms. Kirshbaum there are allegations of ineffective counsel. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 3/09/23 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

March 09, 2023

A-22-859004-W Troy White, Plaintiff(s)
vs.
Calvin Johnson, Defendant(s)

**March 09, 2023 9:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Yeager, Bitia **COURTROOM:** RJC Courtroom 05C

COURT CLERK: Michele Tucker

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT: Barrera, Laura Attorney
Judd, Joshua D Attorney
Kirshbaum, Jonathan M. Attorney

JOURNAL ENTRIES

- Arguments by Ms. Barrera. Mr. Judd submitted on the pleadings. Court STATED it is bound by case law and ORDERED, Petition for Writ of Habeas Corpus DENIED. Mr. Judd to prepare the Order.

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 DENYING DEFENDANT'S PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION); NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES

TROY WHITE,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

Case No: A-22-859004-W

Dept No: I

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 13 day of April 2023.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

