IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

RENARD TRUMAN POLK,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: A-18-780833-W
Related Case 00C166490
Docket No: 86465

RECORD ON APPEAL
VOLUME
1

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A-18-780833-W Renard Polk, Plaintiff(s) vs. Timothy Filson, Defendant(s)

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vs.
Timothy Filson, Defendant(s)

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Dept. VIII

2018 AUG 28 PM 1:22

Case No. HC-1808065

Dept. No. 1

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

* * * * *

FILED

AUG 30 2018

CLERK OF COURT

RENARD POLK,

Plaintiff,

-vs-

TIMOTHY FILSON, et al.,

Defendant.

_____/

ORDER TRANSFERRING JURISDICTION BACK TO CLARK COUNTY

On August 20, 2018, this Court recieved the above entitled matter based on an order transferring jurisdiction, because Petitioner is an inmate in this jurisdiction and challenging the computation of time served. See NRS 34.738. A closer review of the file demonstrates that Petitioner is challenging the validity of his conviction in Clark County. Thus, the petition is properly heard in Clark County.

Good cause appearing,

IT IS HEREBY ORDERED that the above entitled file be transferred back to the 8TH Judicial District Court in and For the County of Clark.

DATED this 24 day of August, 2018.

DISTRICT JUDGE

CERTIFIED COPY
The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.
DATE: 8/29/18
Nichole Baldwin, Clerk of the Seventh Judicial District Court in and for the County of White Pine, State of Nevada.
By: _____ Deputy

A-18-780833-W
OTTJ
Order Transferring Jurisdiction
4778620

SEVENTH JUDICIAL DISTRICT COURT
STEVE L. DOBRESCU
DISTRICT JUDGE
DEPARTMENT I
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA

2018 AUG 28 PM 1:22

Case No. HC-1808065
Dept. No. 1

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

* * * * *

RENARD POLK,

Petitioner,

-vs-

TIMOTHY FILSON, et al.,

Respondent(s).

CERTIFICATE OF SERVICE

Pursuant to NRCP (5)(b), I certify that I am an employee of the Seventh Judicial District Court, Department 1, and that on this 28th day of August, 2018, I served by the following method of service:

(X) regular U.S. mail
() certified U.S. mail
() priority U.S. mail
() hand delivery
() copy placed in agency box located in the White Pine County Clerk's Office
() overnight UPS
() overnight Federal express
() Fax to #

a true and correct copy of the: **ORDER TRANSFERRING JURISDICTION BACK TO CLARK COUNTY** to:

RENARD POLK, NDOC #72439
Ely State Prison
P.O. Box 1989
Ely, NV 89301

Carol R. Fielding
CAROL R. FIELDING

RECEIVED
AUG 30 2018
CLERK OF THE COURT

SEVENTH JUDICIAL DISTRICT COURT
STEVE L. DOBRESCU
DISTRICT JUDGE
DEPARTMENT 1
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA

EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT
REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd Fl.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Acting Court Division Administrator

CERTIFICATION OF COPY

STEVEN D. GRIERSON, Clerk of the Court Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the complete court record. In the action entitled:

Renard T. Polk

vs. Case No. **A-18-777370-W**

Timothy Filson; William Ruebart; Tasheena Sandoval

now on file and of record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Eighth Judicial District Court at my office, Las Vegas, Nevada, the 16 day of August 2018.

STEVEN D. GRIERSON, CLERK of the COURT

By: Heather Ungermann
Heather Ungermann, Deputy

OTTJ

DISTRICT COURT
CLARK COUNTY, NEVADA

Renard Polk,

Petitioner,

vs.

Timothy Filson,

Respondent(s).

Case No.: **A-18-777370-W**

Dept. No.: 7

ORDER TRANSFERRING JURISDICTION

Petitioner filed a Petition for Writ of Habeas Corpus on July 11, 2018. In his Petition, he challenges the computation of time served. Petitioner is currently incarcerated in Ely, NV.

Under Nevada Revised Statute 34.738, any petition other than one that challenges the validity of a conviction or sentence "must be filed with the clerk of the district court for the county in which the petitioner is incarcerated". Petitioner challenges the computation of time served, not the validity of the conviction. Therefore, the Petition must be heard in the county where Ely, NV is located.

Ely, NV falls within the jurisdiction of the 7th Judicial District Court in the State of Nevada. Therefore, the Court orders the instant Petition for Writ of Habeas Corpus be transferred to the 7th Judicial District Court.

DATED this 7th day of August, 2018.

LINDA MARIE BELL
DISTRICT COURT JUDGE

2

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of the filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Renard Polk
Ely State Prison #72439
PO BOX 1989
Ely, NV 89301

SYLVIA PERRY, Judicial Executive Assistant

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK

Renard T. Polk,
Petitioner,

vs.

Timothy Filson et al.,
William Ruebart et al.,
Tasheena Sandavol et al.,
Respondents

Case No. A-18-777370-W
Dept No. VII

AMENDED [ACTUAL INNOCENCE] PETITION FOR WRIT OF HABEAS CORPUS AD SUBJUDICIUM, DUCES TECUM, TESTIFICANDUM.

Date of Hearing: _____
Time of Hearing: _____

PETITION.

1. The name of the institution and county the petitioner is being unlawfully, illegally and falsely confined and imprisoned at is the Ely State Prison Maximum Security Penitentiary P.O. Box 1989, North State Rt. 6459, White Pine County Ely, Nevada

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89301.

2. The name and location of the court which entered the judgment of conviction and corresponding commitment warrant being challenged is the 8th Judicial District Court, Clark County, Nevada 89101, 200 Lewis Ave. Las Vegas Dept. 7.

3. The date the judgment of conviction was entered was April 1, 2002

4. The case number is CC166940C.

5. The length of the petitioner's sentence is (4) four to (12) twelve years running consecutively to (20) twenty years to life.

6. The petitioner is not presently serving another sentence for a conviction other than the instant.

7. The nature of the offenses charged were sexual.

8. Initially the petitioner plead not guilty by reason of insanity on the advice of counsel, but later changed it to not guilty.

9. The petitioner did not enter seperate pleas on either count.

10. The petitioner was found guilty by an all white jury.

11. The petitioner testified at trial wer [his] objection according to what trial counsel informed and coached [him] to say.

12. The petitioner appealed the judgment of conviction

with a conflicted direct appellate counsel.

13. The court the direct appeal was appealed to was (a.) The Nevada Supreme Court, (b.) the docket and case citation was 39457 and (c.) the appeal was remanded and dismissed as a result of direct appellate counsel failing to correct the trial court record to perfect the appeal to reflect the petitioner did not plead guilty, although til this date this has not been accomplished.

14. Another appeal thereafter was not pursued.

15. Other than a direct appeal from the judgment of conviction, sentence and confinement the petitioner submitted additional applications to the state and federal courts.

16. Instances of such submissions included:

(a.) An original pretrial and post-conviction petition writ of habeas corpus filed with the 8th Judicial District Court, Clark County Nevada, Las Vegas wherein the petitioner raised and claimed instances of; (A.) double jeopardy, (B.) unreliable and illegally obtained statement (confession), (C.) judicial bias, (D.) prosecutorial misconduct, (E.) failure to certify the petitioner as an adult for juvenille offenses, (F.) unfair jury composition, (G.) ineffective assistance of arraignment, trial and direct appellate counsels and (H.) post-arrest prewarrant execution post-confession delay. (b.) For which, the petitioner received hearings (evidentiary or otherwise) but was not permitted to be present, whereat in excess of judicial authority

the judge proceeded to decision in absence of the petitioner denying discharge from custody on September 8, 2004.

(C.) The petitioner sought additional and alias writs by petition involving (I.) the unlawful suspension of the writ of habeas corpus, (J.) post-conviction prosecutorial misconduct, (K.) clerical malfeasance and (L.) the execution of an illegal sentence, (d.) for which, the petitioner received hearings thereon (evidentiary or otherwise) but was not permitted to be present. In each instance, in excess of judicial authority the judge proceeded to decision in absence of the petitioner denying the relief requested based on district attorney Mary Holthus' fraudulent, false and misinformation presenting that, or suborning another thereto represent the petitioner "waived" [his] post-conviction rights by pleading guilty, the direct appeal was denied rather than remanded and dismissed, the petitioner did not raise these and other issues during pretrial proceedings, the petitioner waived [his] presence on post-conviction proceedings, the petitioner had been served with the state's responses on post-conviction process and the post-conviction petition for writ of habeas corpus had been dismissed, certifying the same knowing or should having known the falsity thereof.

(e.) In every instance the petitioner appealed the adverse decisions to the Nevada Supreme Court, even

thagh the state courts refuse, fail and forego to address the conditions subsequent.

There was no adverse decision the petitioner did not appeal.

17. The grounds of ineffective assistance of arraignment, trial and direct appeal counsels; double jeopardy; failure to certify the petitioner as an adult for a . . . juvenille offense; the usage of an illegally and unreliably obtained statement (confession) and post-arrest prewarrant execution delay post-confession retention are being . . . (re) raised because they relate back to the original initial pretrial petition for writ of habeas corpus involving the same nucleus of operative facts and the decision thereon lacking specificity (Anglo-Canadian v. Federal Commissioners 310 F.2d 606 (CA 4th Cir.)[1986]) and the respondents misconduct going unaddressed (U.S. v. Charley 189 F.3d 1251 (10th Cir. 1999)) resulting in an unfair; incomplete and empty hearing during remedial processes. Morgan v. US 58 S.Ct. 773 (1972)

The reason for (re) raising these grounds and issues, in addition on those previously provided and newly discovered evidence, are due in part to the fact petitioner was not provided an attorney on a second direct appeal challenge or on post-convictial proceedings, Martinez v. Ryan 132 S.Ct. 1309 (2012), contrary and repugnant to and based on an unreasonable, unwarranted and erroneous of facts and clearly

established federal law resulting in a complete mis-carriage of justice rising to levels of fundamental defects or inconsistent with the inherent rudimentary demands of fair procedure as determined by the US Supreme Court.

18.) The new grounds of (M.) intimidating a witness, (N.) judicial abdication, (O.) illegal detention, (P.) void statute for vagueness and overbreadth, (Q.) insufficiency of the evidence and (R.) parole denial are now being raised for the first time due in part to statutory revision, retroactive US Supreme Court decisions, the time limitation for seeking direct review has never expired or began and previously unavailable evidence and facts supporting the petitioner's actual innocence only recently became accessible wherewith the purported victims have been in contact with the petitioner informing [him] as to the prosecutor's misconduct that took place when [they] attempted to recant [their] statements prior to trial and the motivation for falsely accusing the petitioner of criminal misconduct was to disentitle [him] to [his] inheritance which could not have been discovered through the exercise of due diligence showing that but-for the accompanying constitutional errors and violations by clear and convincing evidence viewed as a

while prove no reasonable fact finder would have found the petitioner guilty of the offenses.

19. All of which for the foregoing reasons the petition is being filed more than one year after the filing of the judgment of conviction and the decision on direct review rendering any procedural estoppels, bars, defaults and inexactitudes, and limitations period inapplicable and unenforceable.

20. Although the petitioner does not have any outstanding submissions under review challenging the superceded judgment of conviction [he] does have several civil rights complaints and petitions on conditions of confinement before the federal and state court involving the Nevada Department of Corrections [Prisons] (NDOC, NDOP) right to continue to house and imprison the petitioner under case numbers: 3:05-cv-00252-RCJ-VPC; 2:01-cv-00089-JCM-RJJ; 3:17-cv-00248-MMD-VPC; 3:16-cv-00052-MMD-VPC; A-12-660168; WM15H003 and PI 15-0974.

21. The names of the attorneys that represented the petitioner at arraignment was Nancy Lemke; at trial was Christopher Oram and on direct appeal was David Schieck, as well as, Susan Rooke on juvenille proceedings.

22. The petitioner does not have any future sentences to serve other than the instant.

23 The grounds and prongs are as follows:

~ GROUND ONE ~

Whereas the petitioner's Fifth, sixth and Fourteenth US [Federal] Constitutional Amendment, as well as, Nevada Constitutional Article 1 section 8 priviledge, right and entitlement to a speedy trial, equal protections and due process and to be free from prejudicial, unnecessary, post-arrest prewarrant-execution post-confession and inordinate delay was violated contrary and repugnant to, inconsistent and inadequate with and based on an erroneous, unwarranted and unreasonable determination and application of facts and clearly established law as determined by the US Supreme Court in Barker v. Wingo 407 US 514 (1972) and U.S. v. Ewell 383 U.S. 116 (1966), when district attorney Mary Holthus awaited (8) eight months before executing the arrest and bench warrants against the petitioner after [he] surrendered [himself] to authorities, until juvenille wardship terminated, the state discontinued forcibly administering psychotropic medication and while in possession of the petitioners unreliable and illegally obtained statement (confession), thereby resulting in a complete miscarriage of justice rising to levels of fundamentally inherent defects and inconsistent with the rudimentary demands of Fair procedure associated with having an injurious effect on the jury and presumption of innocence;

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the unlawful, illegal and false arrest, pretrial detention, trial, conviction, sentence and continued confinement of the petitioner from the loss of exculpatory evidence, the preservation of evidence, competency determinations, determining the intelligentness, knowingness and voluntariness of the petitioner's unreliable statement (confession) and demeanor, inter alia, at the time of the delay with which no reasonable fact finder would have found the petitioner guilty, whereby the petitioner must be discharged from state custody allocating a hearing and providing for the petitioner presence thereon, based on the following facts and legal questions presented:

That during the Spring of 1998 the petitioner and [him] grandmother, Gloria Mae Hardin-Polk, began discussing one evening the possibility of obtaining a lump sum payment from her widow's dower being provided by a longshoreman's company from the wrongful or accidental death of her husband

The discussion entailed that should a cash advance, collections or insurance company manage to guarantee or remit a substantial amount of funds then the petitioner would be the grantee of finances retrieved and the inheritor of her estate.

After alerting others of their plans the petitioner's immediate family members became hostile toward [him] when they became aware of their exclusion and of their mother's intention to bequeath

her estate to the petitioner.

Prompted by her ire and fomenting animosity toward the petitioner, the petitioner's Aunt, Susan Sims then manipulated, coached and instructed the purported victims to accuse the petitioner of sexual criminal misconduct because she was disentitled and disinherited of her mother's estate

That the petitioner has only recently become aware of these facts as a result of the purported victims, Anna Polk and Jahala Chatman, informing [him] of [his] aunt's ploy to incarcerate the petitioner and declare [him] incompetent to manage the estate.

That in letters and communique it was understood and agreed, that family members of the petitioner would devise a scheme to obstruct the transferal because it was believed should the petitioner receive the lump sum along with the estate then [he] would neglect the rest of [his] family.

So in order to keep [him] from the finances and estate false statements were made to initialize false charges instructed under the coaching and tutelage of Susan Sims.

That in an attempt to dissuade the petitioner's grandmother from bequeathing [him] her estate or giving [him] control thereof Susan Sims informed her mother, the petitioners grandmother that she had been in contact with the purported victims

to report falsely on the petitioner's alleged criminal misconduct being perpetrated on them.

That on, or about February 23, 1999 after the petitioner had made [his] way home [he] was confronted by Susan Sims, [his] grand mother and purported victims over the false allegations.

Calling the allegations "absurd" the petitioner then left without incident.

During that time Susan Sims called local authorities to report the false accusations.

The responding officers took the purported victim's initial statements, along with Susan Sims but no arrest warrant was issued. Suggesting that the false allegations were not believable, nor the statements corroborating probable cause.

Even so, the petitioner never returned home.

However, on August 14, 1999 after being informed that an arrest warrant and petition had been issued by the juvenille and family courts for a fabricated probation violation the petitioner surrendered [himself] to local authorities.

Also at this time an arrest warrant for the aforementioned false sexual criminal misconduct accusations had been obtained.

That despite the existence of the sexual assault warrant and a coerced unreliable statement (confession) the district attorney's office on the decision of Mary Holthus

chose not to execute the arrest warrant but permitted the petitioner to be released from state custody and county detention.

Based on information and belief it is the petitioner's view that the district attorneys' office at the request of Mary Holthus awaited executing the aforesaid arrest warrant to intentionally gain a tactical advantage over the petitioner in order to, and manifested as substantial and actual, prejudice in the form of:

(i.) preventing the petitioner from challenging the admissibility of the unreliable and illegally obtained statement (confession) before the juvenille courts consisting of attempts to hamper and impair the defense deliberately shielding the court record of the petitioner's minority and mental capacity at the statements retention;

(ii.) bypassing juvenille wardship until it terminated to relieve the prosecution of it's burden of proving the petitioner had reached [his] majority beyond a reasonable doubt to Knowingly, intelligently, and voluntarily consent to a Miranda waiver without juvenille safegaurds, shopping for a forum;

(iii.) avoiding dismissal of the information on the basis of double jeopordy by virtue of the petitioner having been initially penalized for the instant alleged offenses pursuant to a fabricated juvenille probation

violation and revocation;

(iv.) giving the appearance the petitioner fled from authorities rather than leaving the situation and not surrendering [himself] when there was an actual warrant for [his] arrest;

(v.) obstructing the petitioner from invoking [his] right to a speedy trial because the purported victims could not be located and were uncooperative; and

(vi.) doctoring the petitioner's juvenile record to make it appear as if the petitioner was hailed into the juvenile court on a probation violation rather than the instant offenses to disavow juvenile jurisdiction over the charges and the detective's interrogational tactics to obtain an unlawful, illegal and unreliable statement (confession) from the petitioner, inter alia.

This blatant miscarriage of justice undermined the petitioner presumption of innocence indelibly leaving a blemish and blight upon the entire proceedings.

The root of fair procedure required the fact finder to be in possession of and exposed to this information because justice's decision is informed thereby.

No fact finder having this information would have found the petitioner guilty knowing that a "witch hunt" had been constructed by the petitioners family and completed by the district attorneys' office swallowed up in the reckless disregard for those accused of such

offenses.

So much so, juror number (6) six stated to trial counsel, Christopher Cram, " It seems as if the [petitioner] was set-up."

And questioned, "why didn't the [petitioner] challenge the admissibility of the statement?"

The old addage "justice delayed IS justice denied" is not around for no reason.

Fact finders were entitled and had the right to assess information at the time of the delay involving the purported victims being coached, the state doctoring records and files demonstrating the weakness of their case-in-chief and by doing so implying state and county officials and employees knew the petitioner's statement was unreliable and unusable.

There was no need to commit additional illegalities against the petitioner if the statement was trustworthy, further suggesting the purported victims were uncooperative and wanted to recant their statements.

However, due to the intentional delay none of this was brought to light when it was happening.

State and county prosecutors knew the petitioner was actually innocent and in an attempt from exposing themselves to liability for violations visited upon the petitioner orchestrated post-accusation, post-arrest, post-confession and pre-warrant execution delays

for the purpose of finding a sympathetic judge and spoliating processes and evidence.

Culminating officially into the conviction and confinement of an actually innocent person.

Only now discovered.

Clearly and convincingly this newly discovered absent information and evidence show but for the delay implicating the petitioner's due process and speedy trial rights a guilty verdict would not have been returned essentially "working to the petitioner's extreme actual and substantial prejudice and disadvantage infecting the entire trial [process] with errors of constitutional dimensions." Gutierrez v. Smith 702 F.3d 103 (2d Cir. 2012)

Spreading like a cancer upon the entire due course of the proceedings the delay interrupted and cut-off any attempt at demonstrating not only the involuntariness of the petitioner's statement, but the purported victims' unwillingness to initially cooperate consistent with the prosecutor's case and evidence-in-chief.

Such a tactically orchestrated disadvantageous affecting delay was the cornerstone of the prosecutors game to convict the petitioner.

Which begs the question, if no warrant had been issued after the purported victims reported the petitioner's alleged commission of these crimes, How did the state or county gain one following no change in the

evidentiary conditions? Unless of course the district attorneys' office knew the statement existed and the the purported victims' uncooperativeness seeking to conceal both by virtue of time lapse.

Moreover, due to the fact that at the time of the delay the petitioner was a minor without an ad litem guardian during the statement's retention, the fact the petitioner had been committed to a mental health facility whereat [he] was being forcibly administered psychotropic medication and while in county custody [he] was prescribed antipsychotic medication it can be reasonably assumed the statement was in effect a product thereof.

Absent this delay the petitioner could have easily closed-off any attempt for prosecutorial influence to extrajudicially impair the preservation of the aforestated instances and evidence to make it appear as if this were a "cut and dry case."

Not to mention it is more than plausible had counsel known these things he would not have proceeded so incompetently, wholly committed to leaving the statement and the arrest unchallenged.

The US [Federal] and Nevada Constitution under Miranda v. Arizona 384 U.S. 436 (1966) requires that no one be convicted on an constitutionally infirmed unreliable statement (confession), as well as,

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exerting undue influence on the purported victims to elicit knowingly false [recanted] testimony Napue v. Ill 60 US 264 (1966)

This case goes beyond jealousness and constitutional impairment and evinces a nefarious scheme to convict by any means.

Accordingly, state and federal law require the immediate release of the petitioner for such egregious misconduct under Sanders v. State 641 F.2d 659 (4th Cir. 1989) due to the presumptively prejudicial, intentional and tactical nature of the delay.

All of which could have, should have and must now be pursued by the assistance of a competent counsel with the legal expertise and know how to properly present these and other issues before the court that was needed not only at the time of the delay but also now on a second direct appellate process previously abandoned by direct appellate counsel and on the instant amended post-conviction process unavailable for determination with counsel.

Wherefore: the petitioner does incorporate every averment related herein as if fully set forth and presented in the accompanying grounds praying judgment for a hearing be allocated, the petitioner's presence provided for and upon evidence adduced release the petitioner forthwith from an unlawful, illegal, false and unconstitutional confinement.

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~ GROUND TWO ~

Whereas the petitioner's Fourth, Fifth, Sixth and Fourteenth US [Federal] Constitutional Amendment, as well as, Nevada Constitutional Article 1 section 8 privilege, right, entitlement and immunity to counsel, remain silent, a fair trial, due process and equal protections and to be free from self-incrimination and the usage of an illegally, unlawfully and coercively obtained unreliable and untrustworthy statement (confession) to exact a guilty verdict, that neither had a personal narrative nor the hallmarks consistent with the petitioner's prior behavior in dealing with the criminal justice system was violated contrary and repugnant to, inadequately and ineffectively with and based on an erroneous, unwarranted and unreasonable application of facts and clearly established State and federal law as determined by the US Supreme Court in Miranda v. Arizona 384 U.S. 436, (1966), Naovie v. Ill 360 U.S. 264 (1959) and Chavez v. Martinez 538 U.S. 760 (2003); when interrogating detective Trindlly Merriot displayed, furnished and gesticulated toward his gun [holster] and referred to a lie detector test in a suggestive way to imply the petitioner would meet with bodily harm should [lie], without counsel, psychiatrist or guardian (ad litem) refuse to sign a "Miranda" rights waiver card to overbear the petitioner's will and judgment into

purportedly confessing to crimes [he] did not commit, thereby resulting in a complete miscarriage of justice rising to levels of fundamentally inherent defects and inconsistent with the rudimentary demands of fair procedure associated with having an injurious effect on the jury and presumption of innocence, the unlawful, illegal and false arrest, pretrial detention, trial, conviction, sentence and continued confinement of the petitioner by not having the prosecutor prove compliance with "Miranda" in the statement's retention and whether the statement was not the product of coercion without which no reasonable fact finder would have found the petitioner guilty of the offenses; whereby the petitioner must be provided a hearing (evidentiary) and [his] presence thereon to develop the facts surrounding the total circumstances regarding the statement's retention, and upon evidence adduced vacate the sentence scheduling a new trial excluding it therefrom based on the following facts .... and legal questions presented:

That prior to surrendering [himself] to authorities on August 14, 1999 the petitioner was being seen by ... a child psychiatrist for mental health problems brought on by supposed hereditary taint, an attempted suicide and environmental contributors who'd prescribed an anti-psychotic medication "Risperdol" to combat certain psychosis, after having been informed that there was a possible outstanding bench or arrest warrant for [his]

apprehension pursuant to allegations of sexual criminal misconduct committed on the aforestated purported victims, the petitioner's child psychiatrist moved his practice.

With the petitioner in custody [he] was taken to the juvenille detention facility as a product of [his] minority whereat [he] was met by detective Timothy Marriot, the lead interrogating officer commissioned to investigate the instant case.

Despite being housed in a juvenille facility, no visible parents or guardians (ad litem) present, the detective introduced himself and asked the petitioner would "[he] like to give a statement," about the criminal sexual misconduct allegations surrounding this case.

Although the petitioner wanted to answer in the negative, which was customary for the petitioner to do as noted in every criminal proceeding preceding this one, before [he] could answer the detective motioned toward his gun [holster] as if to use it should the petitioner refuse.

Immediately thereafter producing a "Miranda" rights waiver card informing the petitioner [his] signature therein was needed to begin questioning, which the petitioner reluctantly signed assuming the detective would make good on his threat to use his gun should the petitioner refuse.

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That during the interrogation every time the petitioner would begin to answer questions inconsistent with the purported victims' initial statements the detective would motion toward his gun [holster] referring to administering a lie detector test until the petitioner admitted [his] involvement, leaving this portion unrecorded.

Albeit, the statement was never sworn to or narrative given admitting the alleged commission of the offenses in the locations detailed.

Finally recording the interrogation the petitioner gave the same account the detective elicited through threats.

Even so, after the unreliable statement (confession) was given the arrest and bench warrants remained unexecuted suggesting state and county attorneys' unwillingness to use the statement due to its unreliability, untrustworthiness and inadmissibility.

The circumstances in total involving the retention of the petitioner's unreliable statement (confession), and letting it go unchallenged, was the product of an overzealous detective's attempt at securing an obvious false admission of criminal behavior and facts neither supported by the purported victims' accusations or believed by juror number six.

Coupled with the juvenille justice court's ineffectiveness and taking conjunctively with the fact that the petitioner

had just attempted suicide as a result of [his] grandmother's death, had been prescribed the forcible administering of psychotropic medication by county and state employees and the detective's continued threatening gestures toward his gun [holster] demonstrate there was and is no possible way the petitioner remotely voluntarily, intelligently and knowingly made accurate statements without [this] will being overborne and overridden.

... Also, suggesting and implying the weakness of the evidence at the time of the interrogation and consequential delay.

Acting as a fact finder no judge or jury would have returned a guilty verdict were they exposed to this information that the petitioner could have possibly been shot should [he] refuse to participate in the detective's illegalities. . . . . .

In fact the judge would have been obliged to dismiss the amended information without any new evidence being compiled after no warrant was issued upon the purported victims' initial accusations because nothing changed.

Wherefore: the petitioner does incorporate every averment related herein as if fully set forth and presented in the accompanying grounds praying judgment for a hearing to be allocated, the petitioner's presence

provided for, and upon evidence adduced discharge the commitment warrant scheduling a new trial excluding the unreliable statement false (confession) therefrom, releasing the petitioner from an unlawful, illegal and unconstitutional confinement.

~GROUND THREE~

Whereas the petitioner's First, Fourth, Fifth, Sixth and Fourteenth US [Federal] Constitutional Amendment, as well as, Nevada Constitution Article 1 Section 8 privledge, right, entitlement and immunity to the assistance, a fair trial, due process and equal protections and to be free from criminal prosecutions without the assistance of counsel was violated contrary and repugnant to, inadequately and ineffectively with and based on an erroneous, unwarranted and unreasonable application of facts and clearly established state and federal law as determined by the US Supreme Court in Gideon v. Wainwright 372 U.S. 353 (1963); when the petitioner was not provided or appointed counsel during adversarial juvenille proceedings for violating a supposed juvenille probationary condition and term as a result of having been accused of the crimes pertaining to this case; thereby resulting in a complete miscarriage of justice rising to levels of fundamentally inherent defects and inconsistent with the rudimentary demands of fair procedure

associated with having an injurios effect on judge and jury and the presumption of innocence, the unlawful, illegal and false arrest, pretrial detention, trial, conviction and sentence and confinement by not appointing an attorney during liberty depriving juvenille proceedings; whereby the petitioner must be provided a hearing and [his] presence thereon had to develop the facts, and upon evidence adduced vacate the sentence, discharging the commitment warrant, reversing and remanding this matter and case back before the juvenille courts, appointing counsel for certification proceedings and subsequent barring dismissal for double jeopardy. based on the following facts and legal questions presented:

That once the petitioner's unreliable, illegally obtained false (confession) was procured the petitioner came before the juvenille court on hearing for a purported juvenille probation violation, premised on being accused committing criminal offenses pursuant to this case while being appropriated thereto: . . . . . .

Although the petitioner was not on juvenille probation at that time, and even though counsel had not been appointed or provided during the aforesaid hearing, the unreliable statement was utilized to demonstrate the petitioner was no longer suitable for treatment as a minor or juvenille.

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Having only been recently apprised of the fact the petitioner was not appointed or provided counsel, and that the instant offenses pursuant to this case were originally filed in the juvenille courts, after talking with [his] regular juvenille attorney Susan Reske.

The Sixth Amendment in the US constitution provides that "in all criminal prosecutions, the accused shall enjoy the right... to have the assistance of counsel for his defense."

This right is not curtailed by juvenille proceedings . . . or because the district attorneys' office refused to execute the warrant pursuant to the instant offenses in this case, indeed greater protections are afforded for minors.

The petitioner was facing imprisonment in an adult facility, which is the precursor to invoke the right to counsel. Rothgery v. Gillespie Cty. 554 U.S. 191 (2008)

Irrespective of any prejudice that may have entailed as a result of not having the assistance of counsel . . . during juvenille adversarial proceedings, the absence of counsel at all is presumptively prejudicial and requires reversal, per se. Satterwhite v. Tex. 486 U.S. 249 (1988)

Wherefore: the petitioner does incorporate by averment every related herein as fully set forth and presented in the accompanying grounds praying judgment for a hearing allocated, providing for the petitioner's presence

and upon evidence adduced vacate the sentence and discharge the commitment warrant, reversing and remanding this matter and case back before the juvenille courts to appoint counsel and determine the admissibility of the petitioner's statement, to violate the terms and conditions of juvenille probation in supposedly having commited criminal offences while thereon, and amenability to juvenille lawship and certification proceedings for dismissal barring the recharging of the petitioner due to double jeopardy.

~ GROUND FOUR ~

whereas the petitioner's Fifth, Sixth, Eighth and Fourteenth US [Federal] Constitutional Amendment, as well as, Nevada Constitution Article 1 Section 8 privilage, right, entitlement and immunity to a speedy and fair trial; due process; remain silent, equal protections and compulsory process and to be free from cruel and unusual punishment and "selective prosecution" was violated contrary and repignant to, inadequately and ineffectively with and based on an erroneous, unwarranted and unreasonable application of facts and clearly established state and federal law as determined by the US Supreme Court in Wayte v. U.S. 470 U.S. 598 (1985); when the Clark County, Las Vegas, Nevada district attorney's office awaited executing the arrest

and bench warrants pursuant to the instant case and offenses until juvenille wardship terminated and the petitioner was no lauger considered a Minor requiring adult certification proceedings after [he] impliedly exercised [his] right to a speedy trial in surrendering [himself] to authorities prior thereto, thereby resulting in a discriminatory purpose and effect and a complete miscarriage of justice rising to levels of fundamentally inherent defects and inconsistent with the rudimentary demands of fair procedure associated with mandatory juvenille certification proceedings, having an injurious effect on judge and jury and the presumption of innocence and delinquency, the unlawful, illegal and false arrest, pretrial detention; whereby the petitioner must be provided a hearing and [his] presence therein had to develop the facts, and upon evidence adduced vacate the sentence, discharge the commitment warrant, reversing and remanding this matter back before the juvenille courts for dismissal due to the prosecutors' failure to certify the petitioner through selective prosecution and double jeopardy based on the following facts and legal questions presented:

That despite the petitioner having not been on juvenille probation when [he] surrendered [himself] to authorities on August 14, 1999, juvenille wardship did not terminate until January 12, 2000 approximately (1) one year

after the instant series criminal sexual offenses alleged arose.

Still considered a minor and juveille by operation of law and court ordered prolsatiniary term the state and county attorneys were required and mandated to certify the petitioner before the aforesaid charges were brought before the adult criminal justice system.

However, through legal artifice the district attorneys' office selectively delayed until the petitioner was no longer a ward of the juveille justice system to arbitrarily escape their duty to certify under the notion that were the petitioner convicted in the juveille court [he] would receive less time therefor, considering their animosity toward anyone who had been charged and accused of such offenses.

Accordingly, because the state and county have never properly, acquired, exercised, maintained and appropriately discharged jurisdiction of the charges or the petitioner in personam, not only now must the case be reversed and remanded therefor, but this jurisdictional defect remains assertable in perpetuity and without any ascribed limitation.

Current revision to, and legislation at the time of the allegations makes no reference to the nature of the offenses except murder. Any and every other criminal allegation MUST be certified, if not the entire proceedings are void,

ab initio.

A legislative mandate on the government is the equivalent of a prohibition on the citizen. And, where it is prohibited the conduct is VOID.

With no certification process having taken place the charges were not permitted to be disposed of in the adult criminal justice system and personal jurisdiction of the petitioner was lost thereon in absence thereof.

Wherefore: the petitioner does incorporate every averment related herein as if fully set forth and presented in the accompanying grounds praying judgment for a hearing be allocated and the petitioner's presence provided for, and upon evidence adduced vacate the sentence, discharge the commitment warrant, reversing and remanding this matter and case back before the juvenille court for certification proceedings, and thereon dismiss the case with extreme prejudice on grounds of double jeopardy, releasing the petitioner from an unlawful, illegal and unconstitutional confinement forthwith.

~ GROUND FIVE ~

Whereas the petitioner's Fifth and Fourteenth US [Federal] Constitutional Amendment, as well as, Nevada Constitution Article 1 Section 8 privilege, right, entitlement and immunity to a single prosecution and punishment and to be free from multiple punishments for the same offense was violated contrary and repugnant to,

inadequately and ineffectively with and based on an erroneous, unwarranted and unreasonable application of facts and clearly established state and federal law as determined by the US Supreme Court in Breed v. Jones 421 U.S. 519 (1975) and Ficklin v. Hatcher 177 F.3d 1147 (9th Cir. 1999); when state and county prosecuting attorneys initially filed then dismissed charges before the juvenille court to remonstrate the petitioner's incorrigibility through juvenille wardship after having used an unreliable statement given by the petitioner pursuant to the dismissed charges alleged in the instant matter and case only to refile them before the adult court, absent clean hands and good-faith, thereby resulting in double jeopardy and a complete miscarriage of justice rising to levels of fundamentally inherent defects and inconsistent with the rudimentary demands of fair procedure associated with multiple punishments for the same offense, the unlawful, illegal and false arrest, pretrial detention, conviction, sentence and confinement, whereby the petitioner must be provided a hearing and [his] presence therein had, and upon evidence adduced vacate the sentence discharging the commitment warrant, reversing and remanding this matter back before the juvenille court for dismissal due to double jeopardy releasing the petitioner forthwith and sealing [his] juvenille record based on the following facts and legal

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questions presented:

That, initially the allegations pursuant to the instant case were originally filed in the juvenille justice system in order to evince the petitioner had violated the terms and conditions of juvenille probation, even though in truth and in fact the petitioner was not on juvenille probation at that time.

Dissatisfied with the amount of time the petitioner would serve were [he] able to secure [his] delinquency and juvenille status the district attorneys' office for Clark County dismissed the initial charges before the juvenille court and awaited the termination of juvenille wardship to refile the same charges in the adult criminal justice system. Even though the current criminal accusations and the aforementioned unreliable statement had been collaterally used to demonstrate the petitioner was no longer to be treated, and suitable to be treated as a minor delinquent juvenille.

With the initial charges dismissed and refiled the petitioner was adjudge to have violated juvenille probation and sentenced to (30) thirty days of county detention.

That while the petitioner was in custody the district attorneys' office never executed the arrest warrants issued on the refiled charges, but instead permitted the petitioner to be released.

Notwithstanding, another warrant (bench) was

obtained without any additional evidence or charge in the state's and county's case-in chief.

Under the principles of "double jeopardy" a prosecutor's intentioned decision to dismiss charges and later refile them once evidence has been collected and used to violative thereof. U.S. v. Rivera 872 F. 2d 507 (1st Cir. 1989)

Strictly forbidden by statute. see Nevada Revised Statute (NRS) 62.080

Jeopardy had already attached at the juvenille adjudicatory probationary stage when there was an existing warrant and charges, plus the petitioner's unreliable statement's usage, pursuant to this case to aid in the judge's decision to determine whether the petitioner would be treated as a delinquent.

Had the juvenille judge known the state and county would dismiss charges shortly thereafter, it would have never considered or given any evidentiary weight to the petitioner's unreliable statement and its having on the proceedings.

Furthermore, requiring the state and county to certify and proceed with charges altogether.

The district attorneys' office committed legal fraud by refiling the instant offenses in the adult courts, abusing a lawful process and implying, giving the appearance that the petitioner was not a juvenille

delinquent and under the age of (18) eighteen years of age when these allegations arose.

Prejudicing not only [his] right to have the charges disposed of as a minor, but to receive a lesser sentence were [he] found guilty.

Wherefore: the petitioner does incorporate every averment related herein as if fully set forth in the accompanying grounds praying judgment for a hearing be allocated and the petitioner's presence provided for, and upon evidence adduced vacate the sentence, discharge the commitment warrant, reversing and remanding the case back to the juvenille court disposing of the matter and case there, releasing the petitioner from an unlawful, illegal and unconstitutional confinement on grounds of double jeopardy, sealing the petitioner's juvenille record thereafter due to [his] juvenille delinquency.

~GROUND SIX~

Whereas the petitioner's First, Fourth, Fifth, Sixth, Eighth, Thirteenth and Fourteenth US [Federal] Constitutional, as well as, Nevada Constitution Article 1 Sections 8, 9, 10, 6 and 17 privilege, right, entitlement and immunity to a viable criminal defense from trial and appellate counsels' paid, reasonable and professional assistance and to be free from the ineffective assistance of [conflicted]

attorneys was violated contrary and repugnant to, inadequately and ineffectively with and based on an unreasonable, erroneous and unwarranted application of clearly established state and federal law as determined by the US Supreme Court in Strickland v. Washington 466 U.S. 668 (1984) and Butstick v. Stevenson 589 F.3d 160 (4th Cir. 2009), when trial and direct appellate counsels' deficient performances fell below normal objective standards of reasonableness from trial counsels' (Christopher Oram's) refusal, failure or forestalling to: (i.) move to have the charges dismissed on the insufficiency of the evidence, (ii.) move to have the petitioner discharged or released from custody due to instances of constitutional violations, (iii.) move to have himself removed from the instant case due to his conflicted interests in saving state and county appropriated and vouched funds paid in advance of the conclusion of the petitioner's case, (iv.) put forth a not guilty plea rather than a not guilty by reason of insanity over his [client's] objection for the sake of leaving the petitioner's unreliable (false) statement (confession) unchallenged, (v.) investigate and determine the accuracy and correctness of the adjudicatory juvenile proceedings, (vi.) investigate the purported victims' desire to recant

their statements, (vii.) object to the continual usage of the petitioner's unreliable and illegally obtained statement during trial; and from direct appellate counsel's (David Schieck's) refusal, failure or foregoing to: (viii.) brief the issues before the Nevada Supreme Court on direct appeal objected to below and agreed upon to secure a conflict of interest waiver for his appointment . . . . . regarding double jeopardy, failure to certify the juvenille petitioner as an adult, the untrustworthiness, inadmissibility and unreliability of the petitioners illegally obtained statement (confession) and trial counsels meffectiveness, which had been contemporaneously preserved through a pretrial petition for writ of habeas corpus and motion to dismiss the charges submitted by the petitioner and filed by endorsement by trial counsel, and, (ix.) reinitiate a second direct appeal after the first was dismissed due to the trial court record incorrectly reflecting the petitioner plead guilty under a negotiated plea agreement once corrected, that on account of these deficient performances the petitioner was prejudice in the form of going to trial with a conflicted attorney, a trial tainted and fact finders' minds poisoned by false positive proof of the commission of alleged offenses, the petitioner never having a direct appeal, the petitioner being falsely arrested and currently confined, the petitioner being punished twice for the same offenses, the allegations not being disposed of in the juvenille court and the

petitioner not being treated as a minor, grounds for dismissal of the charges, excluding and suppressing the petitioner's unreliable statement and discharging the petitioner going undecided or heard, trial and appellate counsels' attempt at saving money disbursed by the state and county prior to the conclusion of the petitioner's case limited the defense and its resources, and the prosecuting attorneys permitted to continue practicing law and commit other illegalities, in other cases and the instant, during post-conviction processes or otherwise; thereby resulting and culminating into an unreliable and fundamentally unfair outcome in the proceedings circumstantially totalling no representation at all or a complete miscarriage of justice rising to levels of fundamentally inherent defects and inconsistent with the rudimentary demands of fair procedure associated with the rigors and strictures imposed under Nevada and Federal Rules Civil Procedure 11 (N,FRCP), American Bar Association Standards (ABA) , Model Rules of Professional Conduct (MRPC) 8.4, and the unlawful, illegal and false arrest and imprisonment, pretrial detention, conviction and sentence of the petitioner, whereby the petitioner must be provided a hearing and [his] presence thereon had, and upon evidence adduced vacate the sentence discharge the commitment warrant reversing and remanding this matter and case for

further proceedings and retrial or dismissal based on the following facts and legal questions presented:

That, with the withdrawal of initial arraignment counsel, Nancy Leancke, the petitioner began informing trial counsel, Christopher Oram once he was appointed, of [his] intent to proceed to trial.

Having been so informed the petitioner requested ..... trial counsel to obtain discovery from the deputy district attorney, Mary Holthus, and to look into some illegal occurences that took place during abated juveniile ..... proceedings involving the instant offenses, at which time trial counsel told the petitioner that because his services could only be exacted and rendered from county and state vouchers ancillary services would be limited in order to save money for his payment he would not otherwise have to use.

The petitioner resolved in [his] mind to mount up a defense without trial counsel's help.

In one of the numerous attempts at adversarially challenging the state's and county's case the petitioner informed prosecutors, through counsel, that [he] would be open to entering a negotiated plea agreement were [he] able to receive the discovery.

To which the prosecution agreed, upon the condition that the petitioner waive [his] preliminary hearing.

This was a ploy by the prosecutor to gain additional time, because unbeknownst to the petitioner but trial

counsel being fully aware, the purported victims were being uncooperative.

With the preliminary hearing waived, and after continual demands, the prosecutor Mary Holthus finally produced the discovery the same day the petitioner was to enter the negotiated plea agreement when the matter came on hearing . . . . . .

Dissatisfied with the tactical withholding of discovery and due to the petitioners innocence [he] rejected the plea agreement in open court for the purpose of creating a record of [his] desire to go to trial.

Prompted by his hostility toward the petitioner in the petitioner's constant attempts at making trial counsel do his job, trial defense attorney then sought to have the petitioner psychologically evaluated for rejecting the plea agreement.

Trial counsel was more overly concerned about paying for competency evaluations than he was presenting an actual innocence defense.

It was at this point that the petitioner felt trial counsel was trying to aid the prosecutor in convicting [him].

Working against an overtly conflicted trial counsel the petitioner was sent to Lakes Crossing Mental Health, Sanitorium and Hygiene Facility at the behest thereof.

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Although, the psychological tests and competency evaluations were inconclusive, the petitioner was returned to Clark County, Nevada for further criminal proceedings pursuant to this case.

Because counsel had abandoned his role as advocate the petitioner began informing the trial court record of his incompetence. . . . . .

One instance took place when trial counsel blurted out in open court, "I thought this was a robbery," Knowing full well the reason for his appointment and the nature of the allegations. Further evincing his disdain for the petitioner.

Even though the court judge should have withdrawn him from the case at this juncture counsel remained appointed until the conclusion of trial.

In the interim the petitioner told counsel that "the state and county might be in possession of a false confession," and that," [his] constitutional rights had been violated to obtain it and Keep [him] in custody."

Neither inspired to action or convinced trial counsel refused to make inquiry.

Making inquiry for [himself] the petitioner was informed by the deputy district attorney that," no such statement existed."

Trial counsel then sought bail reduction, at which time the unreliable illegally obtain statement was conveniently located and used to not only deny bail but to disallow

bail altogether.

Disheartened by trial counsel's continued refusals to utilize funds to mount a defense, the petitioner submitted and was permitted to file on the endorsement of trial counsel a pretrial motion to dismiss the information and petition for writ of habeas corpus.

Thereby allowing counsel for trial to save money as all papers and copies were provided at the petitioner's expense.

During the hearing thereon the submitted and endorsed challenges to the prosecutor's case left the petitioner with the task of arguing complex legal issues without trial counsel's input or help.

Having denied every argument on irrelevant and immaterial grounds during the dismissal hearing, excessively burdened and compelled by trial counsel's ommissions to personally challenge the admissibility of the unreliable and illegally obtained statement left the petitioner with the only other available option of obtaining a not guilty verdict to preserve the mental health issues at the statement's retention, by reason of insanity.

What trial strategem can be accredited or attributed to an attorney who allows an innocent client to admit the commission of offenses impliedly by [his] plea entered without first challenging the actual commission

of the offenses alleged in the pretense of an alleged confession?

It is especially egregious to forgo investigations when the entire defense strategy pursuant to the nature of the alleged offenses revolve around hearsay and uncorroberated events and locations, and the possible recantation, thereof. .....

Had trial counsel minimally investigated he would have discovered a compelling and viable defense negating the State's and county's case from inception. .....

Were the unreliable statement permitted to fall, the entire case likewise would have fell, and the petitioner's innocence would have prevailed.

That is beyond incompetence, that is fraudulent concealment. Bespeaking a studied indifference toward the petitioner.

Trial counsel's failure to perform basic research on that point alone is a quintessential example of unreasonable performance.

Trial counsel fraudulently concealed the exculpating misconduct perpetrated against the petitioner, and supposedly the purported victims, allowing the malfeasors to remain licensed and employed at state and county expense, as well as, the expense of other unsuspecting individuals subjected to reprehensible government conduct.

The state and county actors committed crimes to

convict the petitioner and trial counsel allowed them to escape accountability and liability at the cost of the petitioner's freedom and reputation. Especially by not reporting this to the court and appropriate authorities under the tutelage of his legal professional assistance.

The petitioner's freedom should have taken precedence over trial counsel's financial concerns. Trial counsel's subjective frame of mind was to simply get paid and profit from his representation.

With trial counsel's every commission the presumption of innocence evaporated into illusion and spectacle.

Considering the evidence that was presented for the defense versus the evidence that was not introduced juror number (6) six still perceived the unreliability and untrustworthiness of the petitioner's statement, which is all that is needed to demonstrate prejudice and reasonable doubt. Buck v. Davis 137 S.Ct. 759 (2017)

Albeit, on the day of trial the judge rejected the petitioner's insanity defense and plea, proceeding thereon with the initially entered plea of not guilty.

After the jury returned with guilty verdicts on (2) two of the (3) three counts, having deliberated for (3) three days, juror number (6) six queried trial counsel as to why had it seemed as if the

recorded statement, given by the petitioner, relied on by the jury to convict, had been coerced and why was it not excluded or suppressed?

Counsel had no answer, but informed the petitioner of the discussion.

Sometime thereafter direct appellate counsel David Schieck was appointed to handle the direct appeal on the agreed upon condition that he would brief the issues contained herein for the purpose of obtaining a conflict of interest waiver from the petitioner.

Moreover, at this time the trial court record incorrectly reflected the petitioner pled guilty, when in truth and in fact [he] went to trial, although direct appellate counsel neither checked or corrected it before filing the initial direct appeal opening brief.

Notwithstanding; appellate counsel submitted and filed the direct appeal opening brief excluding these and other issues preserved and agreed upon without the written and express consent of the petitioner's ascertained waiver.

Alerted to appellate counsel's breach of implied contractual obligation and duty the petitioner submitted but was not permitted to file a supplemental and "Anders" styled opening brief.

Even so, the direct appeal was dismissed because dehors the trial court record incorrectly and falsely reflected the petitioner pled guilty and was reversed

and remanded to correct it.

Standing as one of the objective external impediment factors disallowing these and other issues to be briefed, raised and decided on direct appeal, appellate counsel did not pursue a second direct appeal despite the petitioner's requests he do so.

Without an actual direct appeal the petitioner is presumptively prejudice.

The state's and county's procedural frame work mandate direct appellate counsel pursue a second direct appeal as an inalienable entitlement to resolve issues of guilt, innocence and credibility.

Something clearly beyond the trial court record, juries' knowledge and legal know how of an indigent pro se 'jailhouse lawyer' defendant litigant.

Accordingly, the prejudice, apart from that already mentioned, manifested itself as a polluted stream without the filter of due process meant to avoid a miscarriage of justice.

No objectivity can be illustrated through both counsels' continued argumentative and constant rejections of their [clients] requests to investigate and interview the purported victims' recantations, or not seeking to have the charges dismissed and the petitioner released on grounds of constitutional violations, undermining the proceedings before the trial and appellate courts.

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It would seem as if defense attorneys are making an unwitting participant of the accused to choose between his freedom or proving his innocence without their professional assistance.

What is the difference?

If state or county prosecutors believed in the strength of their case, there would be no justifiable reason for questionable tactics to secure a conviction.

Somehow defense attorneys do not think this way.

Once trial counsel's disregard became apparent the petitioner was just seeking to maintain damage control from the court's and the jury's exposure to evidence that was persuasive, but inadmissible.

What else could fact finders opine about the petitioner on the premise of trial counsel's dereliction, who'd abandoned his [client] to fend for [himself], except to be caused by the emotionalizing effect of an illegally obtained and unreliable recorded statement, nullifying and outweighing both logic and reason. Except to juror number (6) etc.

Preconceived notions of fairness implied and suggested that the statement had already been challenged, but the petitioner lost and the jury was therefor permitted to hear it.

Then harboring the same ill will and conflict direct appellate counsel occludes the only limited probability of correcting this fundamentally unfair circus show.

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Consequently, no judge can conclude that the issues weren't contributory to the verdict or procedurally and substantively bypassed, forfeited, defaulted or barred on direct appeal as a result of direct appellate counsel's dereliction while simultaneously finding appellate counsel's performance was efficient and not prejudicial, one cannot exist without the other. Evitts v. Lucey 469 U.S. 387 (1985)

Admitting the issues and grounds went undecided due to both counsels' predilection admits the scope and breadth of their ineffectiveness.

Trial and direct appeal counsel collusively concealed fraudulently the fact crimes were committed to convict the petitioner.

Such violations predicated the false arrest, illegal detention and unlawful imprisonment of an actually innocent person.

Were the judge or jury privy to an iota of this recalcitrant information both defense attorneys and the deputy district attorney would have been disbarred, or worse.

Even more importantly the petitioner would have been set to [his] liberty possibly without trial.

The judge and jury did not have the benefit of making an informed and unimpaired decision they were simply asked to find the commission of an offense. An easy conclusion

to draw absent any adversarial testing and challenges to the prosecutor's evidence and case-in-chief.

In the interests of justice confidence in the verdict should be undermined and any procedural inexactitude excused on the basis of trial and direct appellate counsels' lack of focus and diligence in order to propagate the complete and utter miscarriage of justice in imprisoning an actually [factometrically] innocent person.

Wherefore: the petitioner does incorporate every averment related herein as if fully set forth in the accompanying grounds praying judgment for an allocated hearing and [his] presence provided for thereon, and upon evidence, testimony and documents adduced vacate the sentence, discharge the commitment warrant, reversing and remanding the case for retrial or dismissal with extreme prejudice, releasing the petitioner from an unlawful, illegal and unconstitutional confinement for ineffective assistance of counsels.

~ GROUND SEVEN ~

Whereas the petitioner's First, Fifth, Sixth and Fourteenth US [Federal] Constitutional Amendment, as well as, Nevada Constitution Article 1 Section 8 priviledge, right, entitlement and immunity to the assistance of counsel on direct appeal and post-conviction processes and to be free from the denial

of equal protections, due process and the absence of counsel during criminal prosecution was violated contrary and repugnant to, inadequately and ineffectively with and based on an erroneous, unwarranted and unreasonable application of facts and clearly established state and federal law as determined by the US Supreme Court in Martinez v. Ryan 132 S.Ct. 1309 (2012) and Trevino v. Thaler 133 S.Ct. 1911 (2013); when the petitioner was not provided a second direct appeal with the assistance of an appellate attorney after the first's dismissal and counsel's presumptive withdrawal by operation of Nevada Supreme Court Rule (NSCR), or when the Eighth Judicial District Court Clerk County Las Vegas Nevada allocated hearings on the initial post-conviction petition for writ of habeas corpus in absence of the petitioner and appointed counsel; thereby resulting in an unreliable and fundamentally unfair outcome in the proceedings and complete miscarriage of justice rising to levels of fundamentally inherent defects and inconsistent with the rudimentary demands of fair procedure associated with not having the assistance of counsel and having an injurious effect on the judge and the presumption of innocence, the unlawful, illegal, false and unconstitutional arrest, pretrial detention, post-trial proceedings and confinement

whereby the petitioner must be provided another direct appeal or hearing and [his] presence thereon had, and upon evidence adduced and testimony given discharged from the custody of the Nevada Department of Corrections [Prisons] (NDOC, NDOP) based on the following facts and legal questions presented:

That, upon the dismissal and limited remand of the direct appeal to correct the trial court's record to reflect the petitioner did not plead guilty appellate attorney David Schieck was presumptively withdrawn from the petitioner's case by operation of NSCR.

So withdrawn the petitioner requested withdrawn appellate attorney to make another run at a direct appeal because [he] was entitled to one without limitation. Lozada v. State

At which time appellate counsel disagreed and discontinued his services

Notwithstanding, the petitioner submitted and was permitted to file an initial post-conviction petition for writ of habeas corpus that was tentatively granted pursuant to NRS 34.770 as a hearing was allocated for relief, rather than dismissal under the strict meaning of the statute in derogation of the common law.

Further, due to the initial post-conviction petition not being dismissed the petitioner was entitled to the appointment of counsel in accordance with NRS

34.750 during the allocated hearing.

Albeit, counsel was never appointed, nor was the petitioner's presence secured thereon.

Without either, and proceeding ex parte, the aforesaid court in excess of authority and compliance with its own order found and concluded the issues enumerated herein were procedurally estopped, barred or precluded.

Pursuant to the newly discovered evidence and the US Supreme Court's decision in Martinez/Trevino, supra, this court is now forbidden to find procedural inexactitudes committed by the petitioner for [his] supposed failures to adhere to procedural strictures, while unilaterally finding no attorneys were needed whenever the state's and county's procedural frame work unconditionally mandates and requires counsel on a [second] direct appeal for initial review of the conviction and sentence, and after the tentative grant of a petition for post-conviction relief, forfeited any constitutional violations, claims and errors.

By admitting one is to admit the other.

Thusly, the state and county failed to [cre)] appoint attorneys in the initial review stages of the collateral or direct proceedings.

Under Nevada State law the petitioner was inalienably entitled to counsel on both the [second] direct appellate proceeding and the hearings allocated on the post-

conviction petition for writ of habeas corpus.

All of which taken in conjunction with the petitioners actual innocence the substantive merits must be reached, and indeed have beenreached on account of the prosecutions confession and avoidance through pleading procedural preclusions.

In which case should the procedural impediment be removed retrial would be barred on the basis of double jeopardy.

Wherefore: the petitioner does incorporate every averment related as if fully set forth in the accompanying grounds praying judgment for a hearing allocated and the petitioners presence had thereon, and upon evidence and testimony adduced vacate the sentence, discharge the commitment warrant and release the petitioner from an unlawful, false, illegal and unconstitutional imprisonment and confinement.

REQUESTED RELIEF

24. For the foregoing reasons the petitioner prays and requests that this court issue writs:

(a.) vacating the sentence;

(b.) discharging the commitment warrant;

(c.) declaring the judgment of conviction, amended or otherwise, void and unenforceable;

(d.) directing the allocation of a hearing, evidentiary or otherwise;

(e.) directing the petitioners return and presence;

(f.) directing the prosecutor to produce any signed written waiver of the petitioner's inalienable rights, and upon evidence adduced or testimony given and the prosecutor's failure to meet their burden or the allegations in the instant petition schedule a new trial excluding the unreliable illegally obtained statement or set the petitioner to [his] liberty forthwith, as well as, any other relief this court deems just and proper.

Respectfully submitted this 5th day of July 2018

Verified under the penalty of perjury:

/s/ RPolk
Renard T. Polk

CERTIFICATE OF MAILING

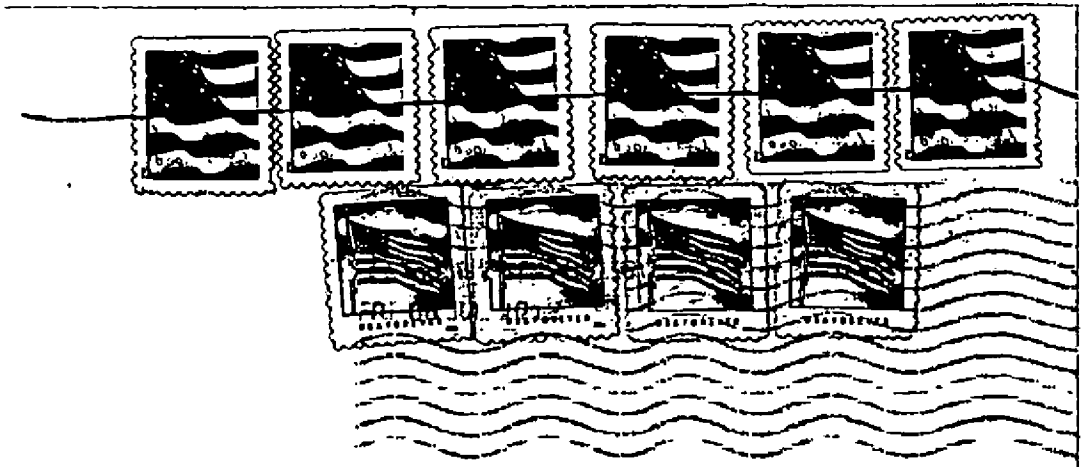
I R. Polk do hereby certify that a true and correct copy, under the penalty of perjury, was delivered this 5th day of July 2018 to an employee at the Ely State Prison for the purpose of being conveyed by mail to the following locations:

- Regional Justice Center/District Attorneys Office
  200 Lewis Ave
  Las Vegas, Nevada

/s/ RPolk
RENARD POLK

Ps. 52 of 52

Renard T. Polk #72439
(ESP) P.O. Box 1989
Ely, Nevada 89301



INMATE LEGAL

MAIL CONFIDENTIAL

Regional Justice Center
Clerks Office
200 Lewis Ave.
Las Vegas, Nevada 89155

7-5-18 81-5-7

HC-1808065

DEPARTMENT 7

CASE SUMMARY

CASE NO. A-18-777370-W

Renard Polk, Plaintiff(s)	§	Location: **Department 7**
vs.	§	Judicial Officer: **Bell, Linda Marie**
Timothy Filson, Defendant(s)	§	Filed on: **07/11/2018**
	§	Cross-Reference Case Number: **A-777370-W**
	§	

RECEIVED
JUL 20 2018
CLERK

2018 JUL 20 A 7:03

CASE INFORMATION

Case Type: **Writ of Habeas Corpus**

DATE	CASE ASSIGNMENT

Current Case Assignment

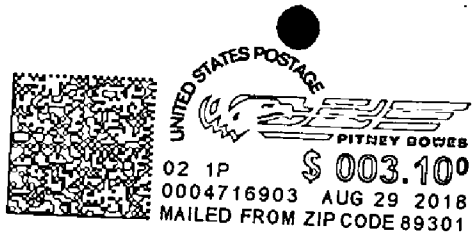
Case Number	A-18-777370-W
Court	Department 7
Date Assigned	07/11/2018
Judicial Officer	Bell, Linda Marie

PARTY INFORMATION

Plaintiff	**Polk, Renard**	**Pro Se**
Defendant	**Filson, Timothy**	
	Ruebart, William	
	Sandoval, Tasheena	

DATE	EVENTS & ORDERS OF THE COURT	INDEX
07/11/2018	Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Polk, Renard *Amended Actual Innocence Petition for Writ of Habeas Corpus AD Subjudiceum, Duces Tecum, Testificandum*	
08/14/2018	Order Transferring Jurisdiction *Order Transferring Jurisdiction*	

White Pine County Clerk
801 Clark Street, Suite 4
Ely, NV 89301



Clerk of the Court
8th Judicial District Court
200 Lewis Avenue
Las Vegas, Nevada 89155

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55

FILED
SEP 14 2018
CLERK OF COURT

PPOW

DISTRICT COURT
CLARK COUNTY, NEVADA

Renard Polk,

Petitioner,

vs.

Timothy Filson,

Respondent,

Case No: A-18-780833-W
Department 8

ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on August 30, 2018. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's Calendar on the 14 day of November, 2018, at the hour of 8:00 o'clock for further proceedings.

District Court Judge

RECEIVED
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CLERK OF THE COURT

A-18-780833-W
OPWH
Order for Petition for Writ of Habeas Corpu
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IN THE EIGHTH JUDICIAL DISTRICT COURT, IN AND FOR CLARK COUNTY, STATE OF NEVADA

FILED
2018 SEP 27 P 3:23
CLERK OF THE COURT

Renard T. Polk,
Movant-Petitioner-Relator

vs.

Timothy Filson et al,
William Gittere et al,
Respondent(s)

Case No.: A-18-780833-W
Dept. No.: VIII

Date of Hearing: Nov. 14, 2018
Time of Hearing: 8:00 a.m.

CONSOLIDATED MOTION TO QUASH "POST-CONVICTION" ORDER (AND/OR) IN THE ALTERNATIVE NOTICE OF INTENT TO APPEAR BY COMMUNICATIONS EQUIPMENT FOR TRANSPORTATION (PRODUCTION) OF PRISONER

Comes, Now, the Movant, Renard T. Polk, herein after referred to as the "Movant-Petitioner-Relator", and thereby moves this court to quash the "post-conviction" habeas corpus order for writ and remand this matter back to the Seventh Judicial District Court, White Pine

County, Nevada for further proceedings, or in the alternative notifies this court of [his] intent to appear by telecommunications devices or transportation (production).

This Motion is made and based upon all papers, pleadings, documents and files on record herein, as well as, the order transferring jurisdiction back and hearing date scheduled.

MEMORANDUM OF POINTS AND AUTHORITIES.

Whereas the instant involves an incarcerated party who wishes to be transported (produced) or appear consistent with the hearing's order entered in this matter, and

Whereas in accordance with the order adopting Part IV-B of the Supreme Court Rules and pursuant to the order issued by this court on September 14, 2018 in this matter, and

Whereas Movant-Petitioner-Relator intends to be present or appear at the aforestated hearing, via electronic devices or transportation (production), and

Whereas the movant-petitioner-relator illegally resides at the Ely State Prison P.O. Box 1989,

4569 North State Rt., Ely, Nevada 89301, Unit 2A cell 36, and

Whereas Nevada Revised Statute (NRS) 209.274 mandates an inmate's [prisoner's] presence when, as here, the court's order and the clear, unambiguous language and meaning of the statute NRS 34.770(c) requires production (transportation or appearance) hauling: "[ ] grant[ed] the writ and set[ting] a date for the hearing", and

Whereas in the cases of Gebers v. State 50 P.3d 1092 (2003) and Hightower v. State 771 P.3d [ ] (2007) "[w]hen a hearing is allocated the party's presence is required...", and

Whereas this can be accomplished by means of telecommunications or transportation, and

Whereas the Nevada Supreme Court amended NCRCP 43(a) to clarify that a court may for good cause shown, as "appearing" at line 14 of this court's hearing order for writ of habeas corpus, also "permit permit presentation of testimony by contemporaneous transmission from a different location", and

Whereas the State of Nevada through the Department of Corrections [Prisons] will continue to

incur substantial costs by continuing to confine the movant-petitioner-relator excessively against preexisting and previously issued orders for writ of habeas corpus, as opposed to transporting (producing) Movant-Petitioner-Relator judgment-creditor, and

Whereas the matter was "judge shopped" by the respondents resulting in this case being assigned another case number A-18-780833-W and reassigned to judge Douglas Herndon who's earlier null, void and nugatory mala fides actions disobeyed initial habeas corpus writs from the newly original case number A-18-777370-W and judge Linda Bell, and

Whereas the intrinsic factors of the case are especially complex making the Movant-petitioner-relator's presence essential, and

Whereas to the degree the presiding judge would again erroneously narrowly construe this matter as simply a "post-conviction" application the Movant-petitioner-relator maintains [he] did not file, nor did [he] seek "post-conviction" relief, as the judgment of conviction and concomitant commitment warrant have been superceded and rendered absolutely null due to the issuance and subsequent peremptory effect,

disobedience and attempted abetted avoidance of previously duly issued habeas corpus writs making this exclusively a challenge to the conditions of excessive confinement and illegal-ver detention with this court's geographical jurisdiction or otherwise having been divested, exceeded, avoided and lost, which cannot now be reacquired by virtue of accepting and creating new processes and subject-matter or personal jurisdiction to suit it's now convenient forum and collusively misjoin the instant with foregone conclusions and authority, and

whereas such narrow construction will ultimately result in the procedural "recharacter-[ization]" of the proceedings seriously affecting the judicial fairness, integrity and reputation thereof simultaneously affecting the movant-petitioner-relator judgment-creditor substantial rights permitting quashal, and

Whereas for the foregoing reasons the movant-petitioner-relator judgment-creditor makes the following requisition.

REQUESTED RELIEF

wherefore: to the degree practicable the

movant-petitioner-relator requests this court,

1. relinquish jurisdiction remanding, returning and transferring this matter back to the Seventh Judicial District Court, White Pine County, Nevada for further proceedings quashing the "post-conviction" order for writ of habeas corpus, or

2. (re) reassign this case with the appropriate case number and to the appropriately presiding judge, or

3. provide for the movant-petitioner-relator's judgment-creditor's presence or appearance, or

4. any provision for relief deemed proper, equitable, and just in the premises.

Dated this 08 day of September 2018.

Verification:

Isl. [signature]
Renard T. Polk

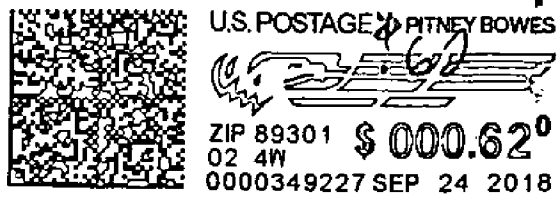
NOTICE OF MOTION.

Attention: Nevada Attorney General Adam Laxalt, Deputy District Attorney Mary Holthus,

The following foregoing motion will come on hearing on the 29th day of October 2018 at In Chambers

Reward T. Polk #72439
(FSH) P.O. Box 1989
Ely, Nevada 89301

1.20



INMATE LEGAL

MAIL CONFIDENTIAL

Regional Justic Center
Clerks office
200 Lewis Ave.
Las Vegas, Nevada 89155

89101$6300 0075

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RENARD POLK,
#1521718

Defendant.

CASE NO: **A-18-780833-W**
00C166490

DEPT NO: **VIII**

STATE'S RESPONSE TO DEFENDANT'S MOTION TO QUASH "POST-CONVICTION" ORDER (AND/OR) IN THE ALTERNATIVE NOTICE OF INTENT TO APPEAR BY COMMUNICATIONS EQUIPMENT OR TRANSPORTATION (PRODUCTION) OF PRISONER

DATE OF HEARING: **OCTOBER 29, 2018**
TIME OF HEARING: **8:00 AM**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JAMES R. SWEETIN, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Motion to Quash "Post-Conviction" Order (and/or) in the Alternative Notice of Intent to Appear by Communications Equipment or Transportation (Production) Of Prisoner.

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.

//

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On April 13, 2000, the State filed an Information charging Renard Polk ("Defendant") as follows: Counts 1 and 2 – Sexual Assault with a Minor under Sixteen Years of Age (Felony – NRS 200.364, 200.366); and Count 3 – First Degree Kidnapping (Felony – NRS 200.310, 200.320). On November 22, 2000, the State filed an Amended Information charging Defendant with three (3) counts of Sexual Assault with a Minor under Sixteen Years of Age (Felony – NRS 200.364, 200.366). On January 27, 2002, the State filed a Second Amended Information charging Defendant with three (3) counts of Sexual Assault with a Minor under Fourteen Years of Age (Felony – NRS 200.364, 200.366).

Defendant's jury trial began on January 7, 2002. On January 10, 2002, the jury returned the following verdicts: Count 1 – guilty of Attempt Sexual Assault with a Minor under Fourteen; Count 2 – guilty of Sexual Assault with a Minor under Fourteen; and Count 3 – not guilty.

On March 14, 2002, this Court sentenced Defendant to the Nevada Department of Corrections as follows: Count 1 – to a maximum of one hundred twenty (120) months and a minimum of forty-eight (48) months and a special sentence of lifetime supervision; and Count 2 – to a maximum of life with minimum parole eligibility of two hundred forty (240) months, consecutive to Count 1. Defendant received six hundred ninety-one (691) days credit for time served. The Judgment of Conviction was filed on April 1, 2002.

Defendant filed a Notice of Appeal on April 3, 2002. On August 25, 2003, the Nevada Supreme Court affirmed Defendant's conviction and issued a limited remand to correct the Judgment of Conviction, which incorrectly stated that Defendant pleaded guilty rather than was found guilty by a jury. Remittitur issued on September 19, 2003, and an Amended Judgment of Conviction was filed on February 9, 2005.

On July 1, 2004, Defendant filed a Petition for Writ of Habeas Corpus. The State filed a Response on August 31, 2004. This Court denied Defendant's Petition on September 8, 2004. The Findings of Fact, Conclusions of Law and Order were filed on September 14, 2004.

Defendant filed a Notice of Appeal on October 8, 2004. The Nevada Supreme Court affirmed the denial of Defendant's Petition on January 25, 2005. Remittitur issued on February 22, 2005.

On December 7, 2007, Defendant filed a Motion to Vacate, Set Aside or Correct Illegal Sentence of Judgment, Consolidated Writ of Error. The State filed an Opposition on December 17, 2007. This Court denied the Motion on December 18, 2007, and filed a written Order on December 31, 2007. Defendant filed a Notice of Appeal on January 18, 2008. On June 9, 2008, the Nevada Supreme Court affirmed the denial of Defendant's Motion. Remittitur issued on September 9, 2008.

On January 27, 2010, Defendant filed his second Petition for Writ of Habeas Corpus (Post-Conviction). On March 18, 2010, the State filed a Response and Motion to Dismiss the Petition. On April 8, 2010, this Court denied Defendant's Petition as time-barred. A written Order was filed on April 28, 2010.

On May 19, 2011, Defendant filed his third Petition for Writ of Habeas Corpus (Post-Conviction). The State did not file a response. This Court denied Defendant's third Petition as untimely on July 26, 2011.

On March 16, 2012, Defendant filed a second Motion to Correct Illegal Sentence. The State filed an Opposition on April 23, 2012. On May 10, 2012, Defendant filed an Amended Motion to Correct Illegal Sentence. This Court denied the Motion on May 29, 2012, and filed a written Order on June 8, 2012.

On April 9, 2013, Defendant filed his fourth Petition for Writ of Habeas Corpus (Post-Conviction). The State filed a Response on June 5, 2013. This Court denied the Petition on June 11, 2013, and filed a written Order on August 2, 2013.

On December 2, 2013, Defendant filed his fifth Petition for Writ of Habeas Corpus (Post-Conviction). On March 10, 2014, the State filed a Response and Motion to Dismiss Defendant's Petition and a Countermotion for Determination of Vexatious Litigation and Request for Order to Show Cause why the Court should not Issue a Pre-Filing Injunction Order.

On February 11, 2014, Defendant filed a Motion for Sanctions and to Disqualify the District Attorney's Office. The State filed an Opposition on February 25, 2014. This Court denied the Motion on March 4, 2014, and filed a written Order on March 14, 2014.

On April 1, 2014, Defendant filed a Motion to Strike and/or for Sanctions. The State filed its Opposition on April 25, 2014. This Court denied the Motion on April 29, 2014. On May 19, 2014, Defendant filed a Motion for Reconsideration (and/or) to Reduce to Writing. On June 4, 2014, the State filed its Opposition. The Court denied the Motion on June 10, 2014.

On September 17, 2015, Defendant filed a pro per Petition for Writ of Mandamus {and/or} in the Alternative Prohibition. This Court denied the Petition on October 8, 2015; a written Order issued on October 27, 2015. Defendant filed a Notice of Appeal on November 5, 2015. The Nevada Supreme Court affirmed the district court's decision. Remittitur issued September 16, 2016.

On November 5, 2015, Defendant filed a Petition Writ of Execution, which was denied on December 2, 2015.

On November 4, 2016, Defendant filed a Motion to Vacate, Set Aside, or Correct an Illegal Sentence. The State filed its Opposition on November 22, 2016. This Court denied Defendant's Motion on November 28, 2016. The written Order was filed December 1, 2016, and Defendant filed a Notice of Appeal on December 16, 2016. The Nevada Supreme Court affirmed the district court's order; remittitur issued January 4, 2018.

On July 26, 2017, Defendant filed a Supplemental Motion for Sanctions and Finding of Contempt. This Court denied the Motion on August 2, 2017. The written Order was filed August 30, 2016, and Defendant filed a Notice of Appeal on August 31, 2017. The Nevada Supreme Court dismissed the appeal because no statute or court rule permits an appeal from the relevant orders; remittitur issued December 19, 2018.

Defendant currently has pending before this Court a Motion to Alter, Amend, or Modify Sentence, filed September 18, 2018, and an Amended [Actual Innocence] Petition for Writ of Habeas Corpus Ad Subjudiceum, Duces Tecum, Testificandum, filed July 11, 2018.

//

RESPONSE

On September 27, 2018, Defendant filed the instant Motion to Quash Post-Conviction Order. The State has no opposition to Defendant's request to appear by telecommunication devices or by transportation. Motion at 6.

DATED this 5th day of October, 2018.

Respectfully submitted,

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

BY /s/ JAMES R. SWEETIN
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 5th day of OCTOBER, 2017, to:

RENARD POLK, BAC#72439
ELY STATE PRISON
P.O. BOX 1989
ELY, NV 89301

BY /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA

FILED
OCT 29 2018
CLERK OF COURT

In Re: The State of Nevada ex rel.,
Renard T. Polk et al,
Petitioner(s),

vs.

Clark County ex rel.,
Pershing County ex rel.,
White Pine County ex rel.,
Nevada Corrections [Prisons] Department et al,
Nevada Prison Commissioners Board et al,
Ely State Prison et al,
Renee Baker et al,
William Gittere et al,
Tasheena Sandoval et al,
William Ruebart et al,
Respondent(s)

A-18-780833-W
CASE NO.: ~~A-18-777370-W~~
DEPT NO.: VII

A-18-780833-W
SUPP
Supplemental
4802931

SUPPLEMENTAL
(EMERGENCY) AMENDED [ACTUAL INNOCENCE] PETITION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM, DUECES TECUM, AD SUBJUDICEUM [SUBJUDICIENDUM].

Petitioner, Renard T. Polk, hereby supplements the petition filed herein on the basis of this Court having continuing jurisdiction pursuant to Nevada Revised Statutes (NRS) 125.150 and

125A.315 to modify the "Transferring Jurisdiction Back" order for changed circumstances and conditions relating to the parties and instances of fraud or mistake common to the petitioner's confinement, mistakenly converse from the conclusion in this court's decree" challenging the judgment of conviction, to prevent a miscarriage of justice, as follows:

~ GROUND EIGHT ~

Whereas the petitioner's Article 1 Section(s) 9 and 10, First, Fourth, Fifth, Sixth, Eighth, Thirteenth and Fourteenth US (Federal) Constitutional Amendment, as well as, Nevada Constitutional Article 1 Section(s) 3, 5, 6, 8, 9, 10, 15, 17 and 18, Article 3 Section 1, Article 6 Section(s) 4 and 6, Article 4 Section 20 and Article 15 Section 4 priviledges, rights, immunities, guarantees and entitlements to due process, equal protections, full faith and credit, access to the courts (judicial review), seperation of powers and to be free from perpetuities, double jeopardy, involuntary servitude and slavery, unlawful seizures (false imprisonment), the unlawful suspension of writ of habeas corpus, unequal treatment, cruel and unusual punishment,

arbitrary, capricious and selective enforcement, unlawful bills of attainder (pain and penalties), titles of nobility and ex post facto laws were violated, abridged and denied contrary and repugnant to, in violation, overbreadth and vagueness of, inadequately, ineffectively and inconsistently with and based on an erroneous, unwarranted and unreasonable application of facts and clearly established state and federal law as determined by the US Supreme Court in Fay v. Noia 9 LED 2d 837 [ ], Brown v. Poole 337 F.3d 1155 (9th. Cir. 2003) and Blair v. Crawford 275 F.3d 1156 (2002), when on July 7, 2004, February 6 2010, April 16, 2013, and again on January 2, 2014, once the petitioner had been granted habeas corpus relief, Nevada Corrections [Prisons] Departmental custodial administrators Jackie Crawford, Craig Farwell, Jack Palmer, Leonard Vera, Tony Cord, Renee Baker and William Gittere disobeyed, refused, failed, forewent or forestalled, or otherwise elvded, aided, abetted and transferred custody to neglect or avoid obedience and compliance with habeas corpus orders then thereafter having unlawfully, illegally and falsely detained and imprisoned the petitioner against court order

Nevada district court judges) Douglas Herndon, Douglas Smith, Jim Shirley and Steve Obrescu in bad faith breached, failed, refused, forewent or forestalled obligations and duties to honestly discharge and comply with judicial oaths, offices and orders and to judicially review State agency agents' ommissions to continue to confine the petitioner under protective custody safe housing status or to strictly adhere to court ordered writs of habeas corpus; thereby resulting in a complete miscarriage of justice rising to levels of fundamentally inherent defects and inconsistent with the rudimentary demands of fair procedure associated with full and fair hearings, state-created-dangers, excessive confinements and over detentions, false imprisonment and abortive-void processes; whereby the petitioner must be released from state confinement forthwith, based on the following facts and legal questions presented:

That is to say, that,

On July 7, 2004 the Eighth Judicial District Court Clark County, Nevada, Las Vegas, 89155 issued an order for writ of habeas corpus having found good cause apparent from the face of the petitioner's petition scheduling a hearing date thereon and the petitioner's return

tentatively invalidating the judgment of conviction.

With the hearing date scheduled for September 14, 2004 the petitioner attempted to secure [his] presence by filing inmate grievances and motioning the court for [his] return.

However, in each and every instance, starting with Jackie Crawford of the Lovelock Correctional Center (LCC) the grievances were rejected inconsistent with legislative directives to unconditionally and unequivocally address, review and compensate the petitioner's accounts, concerns and injury.

With the hearing date having come and gone, Judge (Joseph Bonaventure) in contravention of the habeas corpus' order to return, in absence of the petitioner, in absence of the district attorney's office serving a response on the petitioner, in absence of counsel for the petitioner and in excess of the judge's jurisdiction and authority said judge proceeded to decision rather than providing a continuance until the order was complied with.

Dissatisfied with the situation the petitioner then sought alias writs from the Court to facilitate [his] return, (and/or) otherwise [his] release and discharge from state custody.

Nonetheless, on each allocated hearing for relief thereafter the initial aforementioned one,

the district attorneys' office through deputy Mary Holthus falsely certified, concealed, presented, or suborned another thereto represent that, the:

i.) petitioner "waived" [his] rights by entering into a guilty plea agreement,

ii.) initial "post-conviction" petition for writ of habeas corpus was "dismissed," and

iii.) petitioner was provided counsel on post-conviction process, Knowing, Knew or should having Known the falsity thereof.

When in truth and in fact the initial "post-conviction" petition had been granted, there was no preexisting guilty plea agreement entered into by the petitioner and petitioner has been acting in pro se ever since.

Uniformly, NRS Chapter 34 mirroring Title 28 United States Code (USC) 2241-2254 codified the precept that when a successful habeas corpus petitioner has not been accorded conditional relief the next available equitable remedy is unconditional release of the aggrieved party.

Pointedly on (5) five occassions the convicting trial court [judges] granted habeas corpus orders pursuant to NRS 34.770, which states in relevant portion:

"[I]f the petitioner is not

ENTITLED to relief the court SHALL DISMISS the petition without a HEARING." (emphasis added) id. 34.770(c)

If not, then the court" SHALL GRANT the petition and set a date for the HEARING." (emphasis added) id. 34.770(b)

With the "granting" of the writ a "hearing" is afforded implying the petitioner is entitled to relief.

Moreover, the petitioner's "return" to court.

What happens in the interim is of the utmost importance, because under the Uniform Habeas Corpus Act adopted by Nevada, NRS 34.500 (2) exemplifies the notion and legislative fiat that jurisdictional structure ommission divests the de facto authority of any residual or presumed authority

Voiding exercise of any inherent power or process following.

And, as is always the case "void power or process constitutes false imprisonment."

Even though it should have ended there once the petitioner brought this before the aforestated judges on numerous applications and occassions, the judges likewise derelicted to perform their duties.

In that, the aforestated judges went behind the habeas corpus proceedings and order to disengage reviewing the actions, decisions and nonperformances by the judges abdicating [their] role, obligation and duty to judicially review and enforce, take cognizance of and address the predicated adverse procedural or substantive conditions subsequent their imposition and state but instead impermissibly retroactively applying foregone administrative conclusions expired over the interim for the purpose of occluding the exercise of the failure to comply with the habeas corpus order upon the prospective equitable conscience of the court.

Aborting it's peremptory effect.

Essentially attempting to ratify void power and process with void decisions.

Overall the governmental actors assume by virtue of the petitioner's confinement [they] are still exercising rightful authority over Petitioner.

Make no mistake the petitioner is under no such delusion.

It [thier power] (the judgment of conviction and concomitant commitment warrant) has been superceded by court order and subsequent disobedience thereto.

So much so, the law recognizes the right of

the petitioner to extricate and defend [himself] by any means from intrusion or unlawful detention turned Kidnapping.

Legally, jurisprudentially and legitimately a court's mandate is the equivalent of a prohibition on governmental employees.

Empowered by court edict the government is now forbidden to continue to incarcerate the petitioner.

Simply put, the petitioner can likewise be excused from most criminal intent specific statutes including up to murder to protect [himself] from harm.

Especially when, as here, corrections [prisons] departmental staff, administrators, personnel and officials are threatening to remove the petitioner from segregated protective custody safe housing, confinement, unit, cell and status into general custody.

The same government employees who should likewise be prosecuted from any resultant injury therefrom.

Wherefore: the petitioner does hereby incorporate every averment as if fully set forth in the accompanying grand in the instant supplement as if stated in the initial praying judgment for immediate and unconditional release from state custody - confinement forthwith from this unlawful incarceration, false imprisonment, excessive confinement and illegal-

over detention.

ADDITIONAL REQUESTED RELIEF.

24. For the foregoing additional reasons the petitioner prays and requests that this court issue writs:

(g.) directing the immediate discharge of the petitioner without delay.

Dated this 2nd day of October 2018.

Verification:

/s/ [signature]

Renard T. Polk

CERTIFICATE OF MAILING.

I Polk, R do hereby certify that a true and correct copy of the foregoing supplement was deposited with an Ely State Prison employee this 2nd day of October 20 18 for the purpose of being conveyed by US Postal Service to:

Regional Justice Center Clerk Office
200 Lewis Ave, Las Vegas, NV 89101

Verification:

/s/ [signature]

Renard T. Polk

Renard T. Polk #72439
(ESP) P.O. Box 1989
Ely, Nevada 89301

INMATE LEGAL

MAIL CONFIDENTIAL

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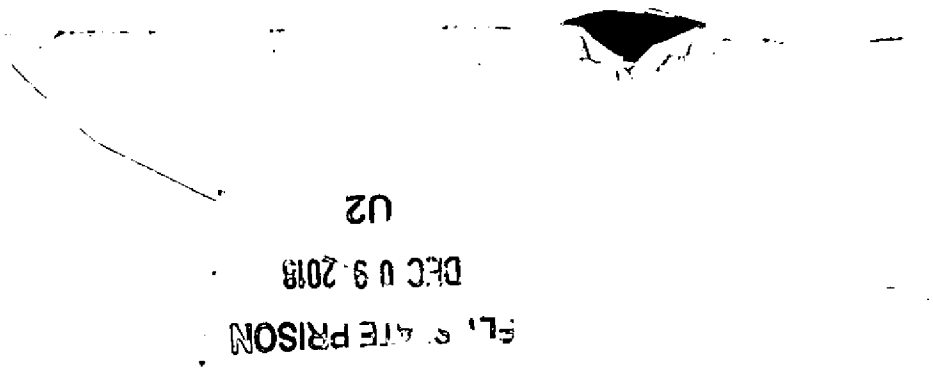

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IN THE EIGHTH JUDICIAL DISTRICT COURT, IN AND FOR CLARK COUNTY, STATE OF NEVADA

FILED
OCT 29 2018
CLERK OF COURT

Renard T. Polk
Movant-Petitioner

vs.

The State of Nevada ex rel.,
Respondent(s)

A-18-780833-W
~~00C166440C~~
Case No. ~~A-18-772370-W~~
Dept No. ~~VII~~ VIII

MOTION FOR LEAVE TO FILE SUPPLEMENTAL (EMERGENCY) AMENDED [ACTUAL INNOCENCE] PETITION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM, DUCES TECUM, AD SUBJUDICEUM [SUB-JUDICIENDUM.

Comes, Now, the petitioner, Renard T. Polk, acting in pro se, and hereby submits for filing this motion for leave in accordance with Nevada Rules Civil Procedure (NRP) 15 (a).

This Motion is Made in good faith seeking to be filed to prevent a manifest miscarriage of justice and fraud [see pg. 2 of the appended petition.]

Dated this 23rd day of October 2018.

Verification:

Isl. RTP

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A-18-780833-W
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Motion for Leave to File
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FCL
STEVEN B. WOLFSON
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RENARD TRUMAN POLK, #1521718

Defendant.

CASE: A-18-780833-W
CASE NO: ~~00C166490~~
DEPT NO: ~~VIII~~ IX

FINDINGS OF FACT, AND CONCLUSIONS OF LAW, AND ORDER

DATE OF HEARING: November 14, 2018
TIME OF HEARING: 8:00 A.M.

THIS CAUSE having come on for hearing before the Honorable DOUGLAS E. SMITH, District Judge, on the 14th day of November, 2018, the Petitioner not being present, not represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through BRIANNA LAMANNA, 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.

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On April 13, 2000, the State filed an Information charging Renard Polk ("Defendant") as follows: Counts 1 and 2 – Sexual Assault with a Minor under Sixteen Years of Age (Felony

☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☐ Motion to Dismiss by Deft(s)
■ Summary Judgment
☐ Stipulated Judgment
☐ Default Judgment
☐ Judgment of Arbitration

– NRS 200.364, 200.366); and Count 3 – First Degree Kidnapping (Felony – NRS 200.310, 200.320). On November 22, 2000, the State filed an Amended Information charging Defendant with three (3) counts of Sexual Assault with a Minor under Sixteen Years of Age (Felony – NRS 200.364, 200.366). On January 27, 2002, the State filed a Second Amended Information charging Defendant with three (3) counts of Sexual Assault with a Minor under Fourteen Years of Age (Felony – NRS 200.364, 200.366).

Defendant's jury trial began on January 7, 2002. On January 10, 2002, the jury returned the following verdicts: Count 1 – guilty of Attempt Sexual Assault with a Minor under Fourteen; Count 2 – guilty of Sexual Assault with a Minor under Fourteen; and Count 3 – not guilty.

On March 14, 2002, this Court sentenced Defendant to the Nevada Department of Corrections as follows: Count 1 – to a maximum of one hundred twenty (120) months and a minimum of forty-eight (48) months and a special sentence of lifetime supervision; and Count 2 – to a maximum of life with minimum parole eligibility of two hundred forty (240) months, consecutive to Count 1. Defendant received six hundred ninety-one (691) days credit for time served. The Judgment of Conviction was filed on April 1, 2002.

Defendant filed a Notice of Appeal on April 3, 2002. On August 25, 2003, the Nevada Supreme Court affirmed Defendant's conviction and issued a limited remand to correct the Judgment of Conviction, which incorrectly stated that Defendant pleaded guilty rather than was found guilty by a jury. Remittitur issued on September 19, 2003, and an Amended Judgment of Conviction was filed on February 9, 2005.

On July 1, 2004, Defendant filed a Petition for Writ of Habeas Corpus. The State filed a Response on August 31, 2004. This Court denied Defendant's Petition on September 8, 2004. The Findings of Fact, Conclusions of Law and Order were filed on September 14, 2004. Defendant filed a Notice of Appeal on October 8, 2004. The Nevada Supreme Court affirmed the denial of Defendant's Petition on January 25, 2005. Remittitur issued on February 22, 2005.

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On December 7, 2007, Defendant filed a Motion to Vacate, Set Aside or Correct Illegal Sentence of Judgment, Consolidated Writ of Error. The State filed an Opposition on December 17, 2007. This Court denied the Motion on December 18, 2007, and filed a written Order on December 31, 2007. Defendant filed a Notice of Appeal on January 18, 2008. On June 9, 2008, the Nevada Supreme Court affirmed the denial of Defendant's Motion. Remittitur issued on September 9, 2008.

On January 27, 2010, Defendant filed his second Petition for Writ of Habeas Corpus (Post-Conviction). On March 18, 2010, the State filed a Response and Motion to Dismiss the Petition. On April 8, 2010, this Court denied Defendant's Petition as time-barred. A written Order was filed on April 28, 2010.

On May 19, 2011, Defendant filed his third Petition for Writ of Habeas Corpus (Post-Conviction). The State did not file a response. This Court denied Defendant's third Petition as untimely on July 26, 2011.

On March 16, 2012, Defendant filed a second Motion to Correct Illegal Sentence. The State filed an Opposition on April 23, 2012. On May 10, 2012, Defendant filed an Amended Motion to Correct Illegal Sentence. This Court denied the Motion on May 29, 2012, and filed a written Order on June 8, 2012.

On April 9, 2013, Defendant filed his fourth Petition for Writ of Habeas Corpus (Post-Conviction). The State filed a Response on June 5, 2013. This Court denied the Petition on June 11, 2013, and filed a written Order on August 2, 2013.

On December 2, 2013, Defendant filed his fifth Petition for Writ of Habeas Corpus (Post-Conviction). On March 10, 2014, the State filed a Response and Motion to Dismiss Defendant's Petition and a Countermotion for Determination of Vexatious Litigation and Request for Order to Show Cause why the Court should not Issue a Pre-Filing Injunction Order.

On February 11, 2014, Defendant filed a Motion for Sanctions and to Disqualify the District Attorney's Office. The State filed an Opposition on February 25, 2014. This Court denied the Motion on March 4, 2014, and filed a written Order on March 14, 2014.

On April 1, 2014, Defendant filed a Motion to Strike and/or for Sanctions. The State filed its Opposition on April 25, 2014. This Court denied the Motion on April 29, 2014. On May 19, 2014, Defendant filed a Motion for Reconsideration (and/or) to Reduce to Writing. On June 4, 2014, the State filed its Opposition. The Court denied the Motion on June 10, 2014.

On September 17, 2015, Defendant filed a pro per Petition for Writ of Mandamus {and/or} in the Alternative Prohibition. This Court denied the Petition on October 8, 2015; a written Order issued on October 27, 2015. Defendant filed a Notice of Appeal on November 5, 2015. The Nevada Supreme Court affirmed the district court's decision. Remittitur issued September 16, 2016.

On November 5, 2015, Defendant filed a Petition Writ of Execution, which was denied on December 2, 2015.

On November 4, 2016, Defendant filed a Motion to Vacate, Set Aside, or Correct an Illegal Sentence. The State filed its Opposition on November 22, 2016. This Court denied Defendant's Motion on November 28, 2016. The written Order was filed December 1, 2016, and Defendant filed a Notice of Appeal on December 16, 2016. The Nevada Supreme Court affirmed the district court's order; remittitur issued January 4, 2018.

On July 26, 2017, Defendant filed a Supplemental Motion for Sanctions and Finding of Contempt. This Court denied the Motion on August 2, 2017. The written Order was filed August 30, 2016, and Defendant filed a Notice of Appeal on August 31, 2017. The Nevada Supreme Court dismissed the appeal because no statute or court rule permits an appeal from the relevant orders; remittitur issued December 19, 2018.

Defendant currently has pending before this Court a Motion to Quash Post-Conviction Order, filed September 27, 2018, and a Motion to Alter, Amend, or Modify Sentence, filed September 18, 2018.

On July 11, 2018, Defendant filed an Amended [Actual Innocence] Petition for Writ of Habeas Corpus Ad Subjudiceum, Duces Tecum, Testificandum ("Sixth Petition"). The State filed its Response on October 8, 2018. The Court now finds as follows.

///

STATEMENT OF FACTS[1]

[Defendant] lived in Las Vegas with his four younger siblings and his grandmother. In January 1999, eighteen-year-old [Defendant] attempted to anally penetrate his twelve-year-old sister. [Defendant] managed to penetrate her enough to cause her pain. [Defendant] later apologized for his actions. His victim told only her ten-year-old sister what took place.

Several months later, [Defendant's] ten-year-old sister remained at home with Polk while her two older sisters went to the store. [Defendant] forced his sister into his room, which was across the hall from his ailing grandmother. Once inside his room, [Defendant] pushed her to the floor on her hands and knees and anally penetrated her. When she asked him to stop, [Defendant] decided instead to put a pillow over her head to cover her mouth. The victim told her older sisters what happened, as both sisters were aware [Defendant] had molested the victim before.

The children's aunt called the police, but [Defendant] fled before police arrived. Las Vegas Police Department Detective David Dunn investigated the assault by interviewing all three sisters. The sexual abuse investigative team examined both victims but at separate times. Dunn submitted the case to the distort attorney several days later.

Several months after [Defendant's] attack, Officer Newton responded to a call from an individual wanting to surrender. [Defendant], the caller, incorrectly thought there was an outstanding sexual assault warrant for his arrest. [Defendant] told Newton he was ashamed of sexually assaulting his sister six months earlier and wanted to surrender. Newton took [Defendant] into custody.

Although there was no outstanding warrant for [Defendant], Detective Timothy Moniot interviewed [Defendant] based on a brief narrative in the police database. The interview took place in the office of a juvenile hall employee. Moniot provided [Defendant] with a card with Miranda rights printed on it; [Defendant] signed a form acknowledging he received his Miranda warning.

Next, Moniot recorded an interview with [Defendant] regarding the sexual assaults. During the interview, [Defendant] admitted raping his little sister on several occasions since 1996. Specifically, [Defendant] told Moniot he "did her [his sister] in the booty." [Defendant] stated he was "high and

[1] Taken directly from the Order of Affirmance in the direct appeal. Order of Affirmance, filed August 25, 2003, at 1–2.

drunk" when the rapes occurred. He also admitted attempting to anally penetrate his other younger sister as well. Police released [Defendant] after the interview because there was no outstanding arrest warrant. The record is silent as to why police failed to arrest [Defendant] at that time.

The State filed an amended complaint charging [Defendant] with three counts of sexual assault with a minor under fourteen years of age. [Defendant] waived his preliminary hearing and negotiated a plea agreement with the State. At the arraignment, however, [Defendant] changed his mind and wanted to proceed to trial. This Court ordered [Defendant] to undergo psychological evaluation to determine competency. Pursuant to statute, this Court remanded [Defendant] to a secure mental health facility. Doctors found [Defendant] competent to stand trial, so this Court set the matter for trial.

ARGUMENT

I. DEFENDANT'S SIXTH PETITION IS PROCEDURALLY BARRED ON SEVERAL GROUNDS

A. This Sixth Petition Is Time-Barred

Pursuant to NRS 34.726(1):

> 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 of the 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. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
>
> (a) That the delay is not the fault of the petitioner; and
>
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). The one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

///

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

Furthermore, the Nevada Supreme Court has held that the District Court has a duty to consider whether a defendant's post-conviction petition claims are procedurally barred. State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory," noting:

> 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.

Id. (emphasis added).

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

Here, remittitur from the direct appeal issued on September 19, 2003. Thus, the one-year time bar began to run from that date. The instant Sixth Petition was not filed until July 11, 2018. This is almost fourteen (14) years in excess of the one-year time frame. As in Gonzales, where the petition was filed only two days too late, the procedural time-bar is mandatory as to this Sixth Petition. Defendant's Sixth Petition is untimely.

B. This Sixth Petition Is Barred by the Doctrine of Laches

Certain limitations exist on how long a defendant may wait to assert a post-conviction request for relief. Consideration of the equitable doctrine of laches is necessary in determining whether a defendant has shown 'manifest injustice' that would permit a modification of a

sentence. Hart, 116 Nev. at 563–64, 1 P.3d at 972. In Hart, the Nevada Supreme Court stated: "Application of the doctrine to an individual case may require consideration of several factors, including: (1) whether there was an inexcusable delay in seeking relief; (2) whether an implied waiver has arisen from the defendant's knowing acquiescence in existing conditions; and (3) whether circumstances exist that prejudice the State. See Buckholt v. District Court, 94 Nev. 631, 633, 584 P.2d 672, 673–74 (1978)." Id.

NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period exceeding five years [elapses] between the filing of a judgment of conviction, an order imposing a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the filing of a petition challenging the validity of a judgment of conviction..." The Nevada Supreme Court has observed, "[P]etitions 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." Groesbeck v. Warden, 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the statute requires the State plead laches. NRS 34.800(2).

Here, the State affirmatively pleaded laches. As discussed supra, it has been almost fifteen (15) years since Remittitur issued in Defendant's direct appeal—well past the five-year period for the presumption of prejudice. Moreover, Defendant makes no effort to rebut the presumption. Thus, laches applies.

C. This Sixth Petition Is Successive

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 petitioner 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 petitioner'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 petitioner 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.

This Sixth Petition is successive. Petitioner has already filed five (5) Petitions for Writ of Habeas Corpus in this case –on July 1, 2004, January 27, 2010, May 19, 2011, April 9, 2013, and December 2, 2013. This Court denied Defendant's first habeas petition on the merits on September 8, 2004. The Nevada Supreme Court subsequently affirmed this Court's denial on the merits January 25, 2005, with the Remittitur issuing on February 22, 2005. Thereafter, this Court has denied Defendant's second, third, fourth, and fifth petitions as time-barred and successive.

Defendant actually raises in this Sixth Petition several of the claims he raised in prior petitions. He admits that these are repeated claims. Sixth Petition at 5. However, his argument that they "relate back" to the First Petition is utterly nonsensical under the post-conviction statutory scheme, which *requires* dismissal of repeat claims adjudicated on the merits. Sixth Petition at 5; NRS 34.810(2). These include the following grounds, raised in his First Petition and re-raised here in this Sixth Petition: Ground 1 –alleged pre-trial delay, First Petition at 17-27; Ground 2—alleged issues with Defendant's confession, First Petition at 55–59; Ground 4—alleged denial of a certification hearing, First Petition at 13–16; Ground 5—

alleged double jeopardy violations, First Petition at 50–54; and Ground 6—alleged ineffective assistance of trial and appellate counsel, First Petition at 28–36, 38–49. This Court rejected all five of these claims on the merits. Findings of Fact, Conclusions of Law and Order, filed September 14, 2010, at 3–6. The Nevada Supreme Court then affirmed the district court's denial of these five claims, holding that the ineffective assistance of counsel claims were properly rejected on the merits and that all other claims could have been raised on direct appeal and were therefore waived. Order of Affirmance, filed January 25, 2005, at 2–10. Threfore, these repeated claims, which were decided on the merits, are dismissed under NRS 34.810(2).

Defendant also previously raised his current Ground 7—allegations that the district court improperly adjudicated his post-conviction complaints without Defendant being present—in his Third Petition. See Third Petition at 6–7. Defendant's failure to raise them in the First Petition constituted an abuse of the writ under NRS 34.810(2). This Court rejected the claim as part of the untimely, successive Third Petition.[2] Court Minutes, July 26, 2011.

The only "new and different" grounds are Ground 3, alleged lack of appointed counsel during juvenile proceedings, and portions of Ground 7, complaints about denial of a second direct appeal. Sixth Petition at 23–26, 47–51. Defendant should have raised these grounds for relief in his First Petition. He offers absolutely no explanation as to why they are only being raised now, fifteen (15) years after his conviction. His failure to raise the grounds in a previous petition is an abuse of the writ per NRS 34.810(2).

II. DEFENDANT CANNOT ESTABLISH GOOD CAUSE TO OVERCOME THE PROCEDURAL BARS

To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading and proving specific facts that demonstrate good cause for his failure to present his claim in earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will

[2] Thereafter, Defendant re-raised several previously rejected Grounds in his Fifth Petition: Ground 1, Fifth Petition at 22-23; Ground 2, Fifth Petition at 22; Ground 5, Fifth Petition at 21; Ground 6, Fifth Petition at 27; and Ground 7, Fifth Petition at 24, 26–29. This Court rejected them as part of the untimely, successive Fifth Petition. Order Regarding Motions of April 29, 2014, filed May 28, 2014, at 2. The Nevada Supreme Court then affirmed this Court's denial of the Petition based on the procedural bars. Order of Affirmance, filed September 18, 2014, at 1–4.

be unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a) (emphasis added); see Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep't of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). "A court ***must*** dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001) (emphasis added).

To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate the following: (1) "[t]hat the delay is not the fault of the petitioner" and (2) that the petitioner will be "unduly prejudice[d]" if the petition is dismissed as untimely. NRS 34.726. To meet the first requirement, "a petitioner ***must*** show that an impediment external to the defense prevented him or her from complying with the state procedural default rules." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (emphasis added). "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) (emphasis added). The Court continued, "appellants cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526. To find good cause there must be a "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Examples of good cause include interference by State officials and the previous unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

Further, a petitioner raising good cause to excuse procedural bars must do so within a reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably available to the petitioner during the statutory time period did not constitute good cause to excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good

cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446, 453 120 S. Ct. 1587, 1592 (2000).

As "good cause" to overcome the mandatory procedural bars to his Sixth Petition, Defendant alleges "actual innocence" based on so-called "new evidence" from the victims in this case. Sixth Petition at 6–7, 9–10. However, this does not establish good cause to overcome the mandatory bars.

A. Defendant's "Actual Innocence" Claim Fails

The United States Supreme Court has held that actual innocence "itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits." Schlup v. Delo, 513 U.S. 298, 327, 115 S. Ct. 851, 867 (1995). In order for a defendant to obtain a reversal of his conviction based on a claim of actual innocence, he must prove that "'it is more likely than not that *no* reasonable juror would have convicted him in light of the new evidence' presented in habeas proceedings." Calderon v. Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503 (1998) (emphasis added) (quoting Schlup). It is true that "the newly presented evidence may indeed call into question the credibility of the witnesses presented at trial." Schlup, 513 U.S. at 330, 115 S. Ct. at 868. However, this requires "a stronger showing than that needed to establish prejudice." Id. at 327, 115 S. Ct. at 867.

Defendant argues that he is innocent of Sexual Assault (Count 1) and Attempt Sexual Assault (Count 2) and that this is good cause to overcome the mandatory procedural bars. Sixth Petition at 6–7, 9–10. However, Defendant fails to show actual innocence.

Defendant claims that he has "recently" discovered that this conviction was the result of a "witch hunt": that his victims—his two younger sisters—were "coached" by their mother to accuse him of sexual assault due to her anger at changes in her mother's (Defendant's grandmother's) will. Sixth Petition at 9–11, 13–15. However, Defendant undermines his own argument that this is "new" evidence by claiming that his trial counsel was ineffective for failure to "investigate the purported victims' desire to recant their statements" and that "the

victims were being uncooperative," suggesting that Defendant knew about issues of "possible recantation" fifteen (15) years ago during the trial proceedings. Sixth Petition at 34–35, 38, 41. This claim cannot, then, constitute good cause, because Defendant did not assert it within a reasonable time after it arose. Pellegrini, 117 Nev. at 869–70, 34 P.3d at 525–26.

Moreover, Defendant offers absolutely no proof that the victims wish--or have ever wished—to recant their statements that their older brother raped them. The actual innocence claim is thus a bare and naked claim and not good cause to overcome the procedural bars. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

B. Defendant Offers No Other Good Cause for the Delay in Filing

The only other potential "good cause" are the Defendant's individual grounds, themselves. However, as discussed supra, each of his claims is procedurally barred as not new or different or as grounds that could have been raised previously but was not. Riker, 121 Nev. at 235, 112 P.3d at 1077 (holding that a claim that is itself procedurally barred cannot constitute good cause); see also Edwards v. Carpenter, 529 U.S. 446, 453 120 S. Ct. 1587, 1592 (2000).

Further, all of the facts and law necessary to raise Defendant's Grounds 1 through 7 have been available for years. The so-called "actual innocence" claim does not explain why he is bringing repeated claims that this Court has already decided on the merits, nor why he is only now bringing new grounds.[3] Defendant fails to establish any impediment external to the defense which could have possibly prevented him from complying with NRS Chapter 34's procedural rules. The delay in filing this petition is the fault of Defendant, and therefore good cause is not established.

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[3] Ground 3—alleged lack of appointed counsel during juvenile proceedings—and portions of Ground 7—complaints about denial of a second direct appeal. Sixth Petition at 23–26, 47–51.

III. DEFENDANT CANNOT ESTABLISH PREJUDICE TO OVERCOME THE PROCEDURAL BARS

In order to establish prejudice, the defendant must show "'not merely that the errors of [the proceedings] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional dimensions.'" Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

Here, as discussed supra, none of the grounds raised in this Sixth Petition can be considered by this Court. This Court has already rejected five of the grounds on the merits—and that decision was affirmed by the Nevada Supreme Court. Findings of Fact, Conclusions of Law and Order, filed September 14, 2010, at 3–6; Order of Affirmance, filed January 25, 2005, at 2–10. Res judicata thus bars their consideration as constituting prejudice. Further, this Court cannot overrule the Nevada Supreme Court. NEV. CONST. Art. VI Sec. 6. The two "new" grounds should have been brought in the First Petition, and Defendant abuses the writ in asserting them now. Defendant does not and cannot establish that any of these grounds constitute undue prejudice.

A. Defendant's Claim Regarding Pre-Trial Delay Is Without Merit

Defendant appears to argue that the State intentionally delayed service of the arrest warrant to gain tactical advantages. Sixth Petition at 8–17. From this, he argues multiple specific instances of alleged prejudice—including that the so-called "delay" prevented him from making evidentiary challenges, "bypass[ed] juvenile wardship," led to double jeopardy violations, made it seem that Defendant fled, affected speedy trial rights, and allowed the State to "doctor" Defendant's juvenile record. Sixth Petition at 13. As an initial matter, this Court found in deciding this ground in the First Petition that "claims of misconduct by the State . . . are barred from consideration by the doctrine of law of the case as these issues were previously decided on direct appeal." Findings of Fact, Conclusions of Law and Order, filed September

14, 2004, at 3. Defendant cannot establish that, fifteen (15) years later, he would be unduly prejudiced by this Court's just and proper refusal to re-review these claims.

Further, claims asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id. Defendant's premise that the State delayed in bringing his case to trial to gain a "tactical advantage" is nothing more than a naked assertion suitable only for summary denial under Hargrove. Sixth Petition at 12. There is absolutely no evidence nor even any indication other than Defendant's say-so that the State delayed his arrest, "doctored" his record, or committed any of the underhanded actions of which Defendant accuses it. Nor does Defendant provide any support, other than the naked allegation, for the claim that he would have been able to "easily close[]-off any attempt for prosecutorial influence" over the victims had he been arrested sooner. Sixth Petition at 16. Thus, this claim does not establish prejudice.

B. Defendant's Claim Regarding His Confession Is Without Merit

Defendant claims his confession was involuntary because he did not have his parents present and because the detective coerced a confession by motioning toward his gun. Sixth Petition at 18–23. However, both complaints are belied by the record.

NRS 62C.010 does provide that when a juvenile is taken into custody, the officer has to advise the parent or guardian of the child's custody status. But Defendant was eighteen (18)—not a minor—when he confessed to police that he raped his little sisters. Order of Affirmance, filed August 25, 2003, at 1–2; see also Criminal Bindover at 16 (showing that Defendant's date of birth is October 14, 1980) and Reporter's Transcript of Jury Trial, Day 2 at 265 (showing that Defendant was interviewed by Detective Moniot on August 14, 1999). Thus, Defendant had no right to have his parents present during his questioning. Defendant's accusation that the questioning detective motioned toward his gun in a threatening manner, or that he did not record certain "portions" of the interview, is a bare and naked accusation

insufficient to support post-conviction relief. Sixth Petition at 20–21; see Hargrove, 100 Nev. at 502, 686 P.2d at 225. Any other complaints Defendant has regarding his statement are belied by the record, as Defendant admits that he received his Miranda warning and signed a card indicating he understood his rights. Sixth Petition at 20; see also Order of Affirmance, filed August 25, 2003, at 1–2.[4] Thus, this claim does not establish prejudice.

C. Defendant's Claim Regarding Juvenile Counsel Is Without Merit

Defendant complains that he was denied counsel during some unspecified juvenile proceeding. Sixth Petition at 23–36. Defendant never indicates how that alleged juvenile proceeding is relevant to this criminal matter. Regardless, Defendant provides nothing to substantiate his claim, which should be denied as a naked assertion under Hargrove, 100 Nev. at 502, 686 P.2d at 225. Finally, Defendant cannot demonstrate prejudice because he received the benefit of counsel in *this* matter. Thus, this claim does not establish prejudice.

D. Defendant's Claim Regarding His Certification Hearing Is Without Merit

Defendant complains that he was denied a certification hearing wherein the Juvenile Court could have waived or retained jurisdiction. Sixth Petition at 26–29. As an initial matter, the Nevada Supreme Court already held in affirming the denial of Defendant's First Petition that this claim is "outside the scope of a post-conviction petition for a writ of habeas corpus." Order of Affirmance, filed January 25, 2005, at 10. Further, this claim is suitable only for summary denial under Hargrove because it is belied by the record. 100 Nev. at 502, 686 P.2d at 225. Defendant's date of birth is October 14, 1980. Criminal Bindover at 16. The Seconded Amended Information lists only offense dates between October 14, 1998, and March 12, 1999. Seconded Amended Information at 2. As such, Defendant was over eighteen (18) at the time of the offenses and thus not subject to Juvenile Court jurisdiction. NRS 62A.030(1)(a); NRS 62B.330(1). It does not matter how long the State may have "awaited" charging the crime;

[4] For example, Defendant seems to complain that around this time, he had been taking psychotropic drugs—but what that has to do with the admissibility of Defendant's statement remains unclear. Sixth Petition at 21–22. He does not, for instance, allege that he was under the influence and therefore unable to give a statement voluntarily.

Defendant was not a minor when he committed the crime. Sixth Petition at 26–27. Defendant offers absolutely no support for his claim that he was under "juvenile wardship" until January 12, 2000. Sixth Petition at 27. In fact, Defendant undermines his argument when he later asserts that he "was not on juvenile probation at that time" of the instant offense. Sixth Petition at 31. Thus, Defendant was not entitled to a certification hearing. This claim does not constitute prejudice.

E. Defendant's Claim Regarding Double Jeopardy Is Without Merit

Defendant claims that filing charges in juvenile court and then refiling them in criminal court was a violation of double jeopardy. Sixth Petition at 29–33. This claim is only suitable for summary denial under Hargrove because Defendant does nothing to demonstrate that charges were ever filed in Juvenile Court. 100 Nev. at 502, 686 P.2d at 225. Regardless, the Juvenile Court lacked jurisdiction over this case, because as discussed supra, Defendant was eighteen (18) on the earliest possible date listed in the Second Amended Information. Even by Defendant's own logic, he cannot have been subject to multiple punishments for this offense because the Juvenile Court never retained jurisdiction over this matter. Sixth Petition at 30. Thus, this claim does not constitute prejudice.

F. Defendant's Claim Regarding Ineffective Assistance of Counsel Is Without Merit

Defendant complains of several instances of ineffective assistance of trial and appellate counsel. Sixth Petition at 33–47. As an initial matter, the Nevada Supreme Court held in the appeal from the First Petition that Defendant's ineffective assistance of counsel claims were properly rejected on the merits. Order of Affirmance, filed January 25, 2005, at 2–10.[5]

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[5]These claims included 1) failure to object to alleged errors at Defendant's motion for own recognizance release; 2) failure to move to suppress Defendant's statement; 3) failure to move to disqualify the district court judge; 4) failure to object to the composition of the jury; 5) failure to cross-examine police regarding Defendant's arrest warrant; 6) failure to pursue an insanity defense; 7) failure to do several things, including object to alleged prosecutorial misconduct, object to judicial misconduct, move for a new trial based on newly discovered evidence, properly investigate the case, obtain an affidavit from Juror No. 5, object to an untimely discovery request, object to the use of spoilated evidence, file any meritorious pre-trial motions, and interview police officers; and 8) failure of appellate counsel to appeal alleged violations of the right to a speedy trial, to argue

Defendant assets several new complaints of ineffective assistance of counsel, each a naked assertion that should be summarily denied under Hargrove. 100 Nev. at 502, 686 P.2d at 225. Sixth Petition at 34–35. Some even seem related to the ineffective assistance claims this Court rejected in the First Petition. Further, Defendant largely ignores the basics of an ineffective assistance of counsel claim: the fact that what defense to present is a virtually unchallengeable strategic decision, Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002); that trial counsel need not undertake futile actions. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006); and that competent appellate counsel focuses on only the strongest issues. Jones v. Barnes, 463 U.S. 745, 751, 103 S. Ct. 3308, 3312 (1983); Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). This claim does not constitute prejudice.

G. Defendant's Claim Regarding Denial of a Second Direct Appeal Is Without Merit

Defendant complains first that he was denied a second direct appeal after the direct appeal was "dismissed," and second that the lower court improperly adjudicated his post-conviction complaints without having Petitioner present and without appointing him counsel. Sixth Petition at 17, 43–44, 47–51. Each of these claims is meritless.

First, Defendant seems to misunderstand the nature of the direct appeal in his case. Though he claims that the appeal was "dismissed" and only remanded to correct a clerical error, the Nevada Supreme Court in fact affirmed his conviction on the merits. Sixth Petition at 48–49; Order of Affirmance, filed August 25, 2003, at 1–2. It was only remanded back to the district court in order to correct the error in the Judgment of Conviction, to clarify that Defendant was convicted by a jury and had not pled guilty. Thus, Defendant's claim that he was entitled to another direct appeal, one "without limitation," is belied by the record, as he did receive a direct appeal on the merits. Sixth Petition at 49; Hargrove, 100 Nev. at 502, 686 P.2d at 225. Regardless, a defendant is not entitled to a second direct appeal. See NRS 177.015(3).

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double jeopardy violations, to communicate with Defendant, and to investigate claims preserved before trial. Id.

Second, contrary to Defendant's claim, Defendant was *not* entitled to the assistance of counsel during his post-conviction proceedings. Brown v. McDaniel, 130 Nev. __, __, 331 P.3d 867, 870 (2014); McKague v. Warden, Nev. State Prison, 112 Nev. 159, 163–65, 912 P.2d 255, 258 (1996); NRS 34.750. This Court found that as to the First Petition that "Defendant [wa]s not entitled to the appointment of an attorney as his petition is being summarily dismissed." Findings of Fact, Conclusions of Law and Order, filed September 14, 2004, at 3. Finally, unless the Court held an evidentiary hearing, Petitioner had no right to be present. See Gebers v. State, 118 Nev. 500, 50 P.3d 1092 (Nev. 2002). Defendant's final ground does not constitute prejudice. Lacking both good cause and prejudice to overcome the mandatory procedural bars, this Sixth Petition is dismissed in its entirety.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby denied.

DATED this 28 day of November, 2018.

DISTRICT JUDGE

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

BY
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144

CERTIFICATE OF SERVICE

I certify that on the 20th day of November, 2018, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

RENARD POLK, #72439
ELY STATE PRISON
P.O. BOX 1989
ELY, NV 89301

BY _____
Secretary for the District Attorney's Office

JVB/AO/jg/SVU

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NEO

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RENARD TRUMAN POLK,
#1521718

Defendant.

Case No.: A-18-780833-W
Dept. No.: IX

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

PLEASE TAKE NOTICE that on July 19, 2019, the Court entered a decision or order in this matter, a true and correct copy of which is attached to this notice as Exhibit A.

DATED this 19th day of July, 2019.

CRISTINA D. SILVA
DISTRICT COURT JUDGE

CRISTINA D. SILVA
DISTRICT COURT JUDGE
DEPARTMENT IX

CERTIFICATE OF SERVICE

I certify that on the 20th day of November, 2018, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

RENARD POLK, #72439
ELY STATE PRISON
P.O. BOX 1989
ELY, NV 89301

BY _____
Secretary for the District Attorney's Office

JVB/AO/jg/SVU

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EXHIBIT A

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RENARD TRUMAN POLK, #1521718

Defendant.

CASE: A-18-780833-W
CASE NO: ~~00C166490~~
DEPT NO: ~~VIII~~ IX

FINDINGS OF FACT, AND CONCLUSIONS OF LAW, AND ORDER

DATE OF HEARING: November 14, 2018
TIME OF HEARING: 8:00 A.M.

THIS CAUSE having come on for hearing before the Honorable DOUGLAS E. SMITH, District Judge, on the 14th day of November, 2018, the Petitioner not being present, not represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through BRIANNA LAMANNA, 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.

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On April 13, 2000, the State filed an Information charging Renard Polk ("Defendant") as follows: Counts 1 and 2 – Sexual Assault with a Minor under Sixteen Years of Age (Felony

☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☐ Motion to Dismiss by Deft(s)
■ Summary Judgment
☐ Stipulated Judgment
☐ Default Judgment
☐ Judgment of Arbitration

– NRS 200.364, 200.366); and Count 3 – First Degree Kidnapping (Felony – NRS 200.310, 200.320). On November 22, 2000, the State filed an Amended Information charging Defendant with three (3) counts of Sexual Assault with a Minor under Sixteen Years of Age (Felony – NRS 200.364, 200.366). On January 27, 2002, the State filed a Second Amended Information charging Defendant with three (3) counts of Sexual Assault with a Minor under Fourteen Years of Age (Felony – NRS 200.364, 200.366).

Defendant's jury trial began on January 7, 2002. On January 10, 2002, the jury returned the following verdicts: Count 1 – guilty of Attempt Sexual Assault with a Minor under Fourteen; Count 2 – guilty of Sexual Assault with a Minor under Fourteen; and Count 3 – not guilty.

On March 14, 2002, this Court sentenced Defendant to the Nevada Department of Corrections as follows: Count 1 – to a maximum of one hundred twenty (120) months and a minimum of forty-eight (48) months and a special sentence of lifetime supervision; and Count 2 – to a maximum of life with minimum parole eligibility of two hundred forty (240) months, consecutive to Count 1. Defendant received six hundred ninety-one (691) days credit for time served. The Judgment of Conviction was filed on April 1, 2002.

Defendant filed a Notice of Appeal on April 3, 2002. On August 25, 2003, the Nevada Supreme Court affirmed Defendant's conviction and issued a limited remand to correct the Judgment of Conviction, which incorrectly stated that Defendant pleaded guilty rather than was found guilty by a jury. Remittitur issued on September 19, 2003, and an Amended Judgment of Conviction was filed on February 9, 2005.

On July 1, 2004, Defendant filed a Petition for Writ of Habeas Corpus. The State filed a Response on August 31, 2004. This Court denied Defendant's Petition on September 8, 2004. The Findings of Fact, Conclusions of Law and Order were filed on September 14, 2004. Defendant filed a Notice of Appeal on October 8, 2004. The Nevada Supreme Court affirmed the denial of Defendant's Petition on January 25, 2005. Remittitur issued on February 22, 2005.

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On December 7, 2007, Defendant filed a Motion to Vacate, Set Aside or Correct Illegal Sentence of Judgment, Consolidated Writ of Error. The State filed an Opposition on December 17, 2007. This Court denied the Motion on December 18, 2007, and filed a written Order on December 31, 2007. Defendant filed a Notice of Appeal on January 18, 2008. On June 9, 2008, the Nevada Supreme Court affirmed the denial of Defendant's Motion. Remittitur issued on September 9, 2008.

On January 27, 2010, Defendant filed his second Petition for Writ of Habeas Corpus (Post-Conviction). On March 18, 2010, the State filed a Response and Motion to Dismiss the Petition. On April 8, 2010, this Court denied Defendant's Petition as time-barred. A written Order was filed on April 28, 2010.

On May 19, 2011, Defendant filed his third Petition for Writ of Habeas Corpus (Post-Conviction). The State did not file a response. This Court denied Defendant's third Petition as untimely on July 26, 2011.

On March 16, 2012, Defendant filed a second Motion to Correct Illegal Sentence. The State filed an Opposition on April 23, 2012. On May 10, 2012, Defendant filed an Amended Motion to Correct Illegal Sentence. This Court denied the Motion on May 29, 2012, and filed a written Order on June 8, 2012.

On April 9, 2013, Defendant filed his fourth Petition for Writ of Habeas Corpus (Post-Conviction). The State filed a Response on June 5, 2013. This Court denied the Petition on June 11, 2013, and filed a written Order on August 2, 2013.

On December 2, 2013, Defendant filed his fifth Petition for Writ of Habeas Corpus (Post-Conviction). On March 10, 2014, the State filed a Response and Motion to Dismiss Defendant's Petition and a Countermotion for Determination of Vexatious Litigation and Request for Order to Show Cause why the Court should not Issue a Pre-Filing Injunction Order.

On February 11, 2014, Defendant filed a Motion for Sanctions and to Disqualify the District Attorney's Office. The State filed an Opposition on February 25, 2014. This Court denied the Motion on March 4, 2014, and filed a written Order on March 14, 2014.

On April 1, 2014, Defendant filed a Motion to Strike and/or for Sanctions. The State filed its Opposition on April 25, 2014. This Court denied the Motion on April 29, 2014. On May 19, 2014, Defendant filed a Motion for Reconsideration (and/or) to Reduce to Writing. On June 4, 2014, the State filed its Opposition. The Court denied the Motion on June 10, 2014.

On September 17, 2015, Defendant filed a pro per Petition for Writ of Mandamus {and/or} in the Alternative Prohibition. This Court denied the Petition on October 8, 2015; a written Order issued on October 27, 2015. Defendant filed a Notice of Appeal on November 5, 2015. The Nevada Supreme Court affirmed the district court's decision. Remittitur issued September 16, 2016.

On November 5, 2015, Defendant filed a Petition Writ of Execution, which was denied on December 2, 2015.

On November 4, 2016, Defendant filed a Motion to Vacate, Set Aside, or Correct an Illegal Sentence. The State filed its Opposition on November 22, 2016. This Court denied Defendant's Motion on November 28, 2016. The written Order was filed December 1, 2016, and Defendant filed a Notice of Appeal on December 16, 2016. The Nevada Supreme Court affirmed the district court's order; remittitur issued January 4, 2018.

On July 26, 2017, Defendant filed a Supplemental Motion for Sanctions and Finding of Contempt. This Court denied the Motion on August 2, 2017. The written Order was filed August 30, 2016, and Defendant filed a Notice of Appeal on August 31, 2017. The Nevada Supreme Court dismissed the appeal because no statute or court rule permits an appeal from the relevant orders; remittitur issued December 19, 2018.

Defendant currently has pending before this Court a Motion to Quash Post-Conviction Order, filed September 27, 2018, and a Motion to Alter, Amend, or Modify Sentence, filed September 18, 2018.

On July 11, 2018, Defendant filed an Amended [Actual Innocence] Petition for Writ of Habeas Corpus Ad Subjudiceum, Duces Tecum, Testificandum ("Sixth Petition"). The State filed its Response on October 8, 2018. The Court now finds as follows.

///

STATEMENT OF FACTS[1]

[Defendant] lived in Las Vegas with his four younger siblings and his grandmother. In January 1999, eighteen-year-old [Defendant] attempted to anally penetrate his twelve-year-old sister. [Defendant] managed to penetrate her enough to cause her pain. [Defendant] later apologized for his actions. His victim told only her ten-year-old sister what took place.

Several months later, [Defendant's] ten-year-old sister remained at home with Polk while her two older sisters went to the store. [Defendant] forced his sister into his room, which was across the hall from his ailing grandmother. Once inside his room, [Defendant] pushed her to the floor on her hands and knees and anally penetrated her. When she asked him to stop, [Defendant] decided instead to put a pillow over her head to cover her mouth. The victim told her older sisters what happened, as both sisters were aware [Defendant] had molested the victim before.

The children's aunt called the police, but [Defendant] fled before police arrived. Las Vegas Police Department Detective David Dunn investigated the assault by interviewing all three sisters. The sexual abuse investigative team examined both victims but at separate times. Dunn submitted the case to the distort attorney several days later.

Several months after [Defendant's] attack, Officer Newton responded to a call from an individual wanting to surrender. [Defendant], the caller, incorrectly thought there was an outstanding sexual assault warrant for his arrest. [Defendant] told Newton he was ashamed of sexually assaulting his sister six months earlier and wanted to surrender. Newton took [Defendant] into custody.

Although there was no outstanding warrant for [Defendant], Detective Timothy Moniot interviewed [Defendant] based on a brief narrative in the police database. The interview took place in the office of a juvenile hall employee. Moniot provided [Defendant] with a card with Miranda rights printed on it; [Defendant] signed a form acknowledging he received his Miranda warning.

Next, Moniot recorded an interview with [Defendant] regarding the sexual assaults. During the interview, [Defendant] admitted raping his little sister on several occasions since 1996. Specifically, [Defendant] told Moniot he "did her [his sister] in the booty." [Defendant] stated he was "high and

[1] Taken directly from the Order of Affirmance in the direct appeal. Order of Affirmance, filed August 25, 2003, at 1–2.

drunk" when the rapes occurred. He also admitted attempting to anally penetrate his other younger sister as well. Police released [Defendant] after the interview because there was no outstanding arrest warrant. The record is silent as to why police failed to arrest [Defendant] at that time.

The State filed an amended complaint charging [Defendant] with three counts of sexual assault with a minor under fourteen years of age. [Defendant] waived his preliminary hearing and negotiated a plea agreement with the State. At the arraignment, however, [Defendant] changed his mind and wanted to proceed to trial. This Court ordered [Defendant] to undergo psychological evaluation to determine competency. Pursuant to statute, this Court remanded [Defendant] to a secure mental health facility. Doctors found [Defendant] competent to stand trial, so this Court set the matter for trial.

ARGUMENT

I. DEFENDANT'S SIXTH PETITION IS PROCEDURALLY BARRED ON SEVERAL GROUNDS

A. This Sixth Petition Is Time-Barred

Pursuant to NRS 34.726(1):

> 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 of the 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. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
>
> (a) That the delay is not the fault of the petitioner; and
>
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). The one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

///

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

Furthermore, the Nevada Supreme Court has held that the District Court has a duty to consider whether a defendant's post-conviction petition claims are procedurally barred. State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory," noting:

> 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.

Id. (emphasis added).

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

Here, remittitur from the direct appeal issued on September 19, 2003. Thus, the one-year time bar began to run from that date. The instant Sixth Petition was not filed until July 11, 2018. This is almost fourteen (14) years in excess of the one-year time frame. As in Gonzales, where the petition was filed only two days too late, the procedural time-bar is mandatory as to this Sixth Petition. Defendant's Sixth Petition is untimely.

B. This Sixth Petition Is Barred by the Doctrine of Laches

Certain limitations exist on how long a defendant may wait to assert a post-conviction request for relief. Consideration of the equitable doctrine of laches is necessary in determining whether a defendant has shown 'manifest injustice' that would permit a modification of a

sentence. Hart, 116 Nev. at 563–64, 1 P.3d at 972. In Hart, the Nevada Supreme Court stated: "Application of the doctrine to an individual case may require consideration of several factors, including: (1) whether there was an inexcusable delay in seeking relief; (2) whether an implied waiver has arisen from the defendant's knowing acquiescence in existing conditions; and (3) whether circumstances exist that prejudice the State. See Buckholt v. District Court, 94 Nev. 631, 633, 584 P.2d 672, 673–74 (1978)." Id.

NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period exceeding five years [elapses] between the filing of a judgment of conviction, an order imposing a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the filing of a petition challenging the validity of a judgment of conviction..." The Nevada Supreme Court has observed, "[P]etitions 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." Groesbeck v. Warden, 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the statute requires the State plead laches. NRS 34.800(2).

Here, the State affirmatively pleaded laches. As discussed supra, it has been almost fifteen (15) years since Remittitur issued in Defendant's direct appeal—well past the five-year period for the presumption of prejudice. Moreover, Defendant makes no effort to rebut the presumption. Thus, laches applies.

C. This Sixth Petition Is Successive

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 petitioner 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 petitioner'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 petitioner 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.

This Sixth Petition is successive. Petitioner has already filed five (5) Petitions for Writ of Habeas Corpus in this case –on July 1, 2004, January 27, 2010, May 19, 2011, April 9, 2013, and December 2, 2013. This Court denied Defendant's first habeas petition on the merits on September 8, 2004. The Nevada Supreme Court subsequently affirmed this Court's denial on the merits January 25, 2005, with the Remittitur issuing on February 22, 2005. Thereafter, this Court has denied Defendant's second, third, fourth, and fifth petitions as time-barred and successive.

Defendant actually raises in this Sixth Petition several of the claims he raised in prior petitions. He admits that these are repeated claims. Sixth Petition at 5. However, his argument that they "relate back" to the First Petition is utterly nonsensical under the post-conviction statutory scheme, which *requires* dismissal of repeat claims adjudicated on the merits. Sixth Petition at 5; NRS 34.810(2). These include the following grounds, raised in his First Petition and re-raised here in this Sixth Petition: Ground 1 –alleged pre-trial delay, First Petition at 17-27; Ground 2—alleged issues with Defendant's confession, First Petition at 55–59; Ground 4—alleged denial of a certification hearing, First Petition at 13–16; Ground 5—

alleged double jeopardy violations, First Petition at 50–54; and Ground 6—alleged ineffective assistance of trial and appellate counsel, First Petition at 28–36, 38–49. This Court rejected all five of these claims on the merits. Findings of Fact, Conclusions of Law and Order, filed September 14, 2010, at 3–6. The Nevada Supreme Court then affirmed the district court's denial of these five claims, holding that the ineffective assistance of counsel claims were properly rejected on the merits and that all other claims could have been raised on direct appeal and were therefore waived. Order of Affirmance, filed January 25, 2005, at 2–10. Threfore, these repeated claims, which were decided on the merits, are dismissed under NRS 34.810(2).

Defendant also previously raised his current Ground 7—allegations that the district court improperly adjudicated his post-conviction complaints without Defendant being present—in his Third Petition. See Third Petition at 6–7. Defendant's failure to raise them in the First Petition constituted an abuse of the writ under NRS 34.810(2). This Court rejected the claim as part of the untimely, successive Third Petition.[2] Court Minutes, July 26, 2011.

The only "new and different" grounds are Ground 3, alleged lack of appointed counsel during juvenile proceedings, and portions of Ground 7, complaints about denial of a second direct appeal. Sixth Petition at 23–26, 47–51. Defendant should have raised these grounds for relief in his First Petition. He offers absolutely no explanation as to why they are only being raised now, fifteen (15) years after his conviction. His failure to raise the grounds in a previous petition is an abuse of the writ per NRS 34.810(2).

II. DEFENDANT CANNOT ESTABLISH GOOD CAUSE TO OVERCOME THE PROCEDURAL BARS

To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading and proving specific facts that demonstrate good cause for his failure to present his claim in earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will

[2] Thereafter, Defendant re-raised several previously rejected Grounds in his Fifth Petition: Ground 1, Fifth Petition at 22-23; Ground 2, Fifth Petition at 22; Ground 5, Fifth Petition at 21; Ground 6, Fifth Petition at 27; and Ground 7, Fifth Petition at 24, 26–29. This Court rejected them as part of the untimely, successive Fifth Petition. Order Regarding Motions of April 29, 2014, filed May 28, 2014, at 2. The Nevada Supreme Court then affirmed this Court's denial of the Petition based on the procedural bars. Order of Affirmance, filed September 18, 2014, at 1–4.

be unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a) (emphasis added); see Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep't of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). "A court ***must*** dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001) (emphasis added).

To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate the following: (1) "[t]hat the delay is not the fault of the petitioner" and (2) that the petitioner will be "unduly prejudice[d]" if the petition is dismissed as untimely. NRS 34.726. To meet the first requirement, "a petitioner ***must*** show that an impediment external to the defense prevented him or her from complying with the state procedural default rules." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (emphasis added). "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) (emphasis added). The Court continued, "appellants cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526. To find good cause there must be a "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Examples of good cause include interference by State officials and the previous unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

Further, a petitioner raising good cause to excuse procedural bars must do so within a reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably available to the petitioner during the statutory time period did not constitute good cause to excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good

cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446, 453 120 S. Ct. 1587, 1592 (2000).

As "good cause" to overcome the mandatory procedural bars to his Sixth Petition, Defendant alleges "actual innocence" based on so-called "new evidence" from the victims in this case. Sixth Petition at 6–7, 9–10. However, this does not establish good cause to overcome the mandatory bars.

A. Defendant's "Actual Innocence" Claim Fails

The United States Supreme Court has held that actual innocence "itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits." Schlup v. Delo, 513 U.S. 298, 327, 115 S. Ct. 851, 867 (1995). In order for a defendant to obtain a reversal of his conviction based on a claim of actual innocence, he must prove that "'it is more likely than not that *no* reasonable juror would have convicted him in light of the new evidence' presented in habeas proceedings." Calderon v. Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503 (1998) (emphasis added) (quoting Schlup). It is true that "the newly presented evidence may indeed call into question the credibility of the witnesses presented at trial." Schlup, 513 U.S. at 330, 115 S. Ct. at 868. However, this requires "a stronger showing than that needed to establish prejudice." Id. at 327, 115 S. Ct. at 867.

Defendant argues that he is innocent of Sexual Assault (Count 1) and Attempt Sexual Assault (Count 2) and that this is good cause to overcome the mandatory procedural bars. Sixth Petition at 6–7, 9–10. However, Defendant fails to show actual innocence.

Defendant claims that he has "recently" discovered that this conviction was the result of a "witch hunt": that his victims—his two younger sisters—were "coached" by their mother to accuse him of sexual assault due to her anger at changes in her mother's (Defendant's grandmother's) will. Sixth Petition at 9–11, 13–15. However, Defendant undermines his own argument that this is "new" evidence by claiming that his trial counsel was ineffective for failure to "investigate the purported victims' desire to recant their statements" and that "the

victims were being uncooperative," suggesting that Defendant knew about issues of "possible recantation" fifteen (15) years ago during the trial proceedings. Sixth Petition at 34–35, 38, 41. This claim cannot, then, constitute good cause, because Defendant did not assert it within a reasonable time after it arose. Pellegrini, 117 Nev. at 869–70, 34 P.3d at 525–26.

Moreover, Defendant offers absolutely no proof that the victims wish--or have ever wished—to recant their statements that their older brother raped them. The actual innocence claim is thus a bare and naked claim and not good cause to overcome the procedural bars. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

B. Defendant Offers No Other Good Cause for the Delay in Filing

The only other potential "good cause" are the Defendant's individual grounds, themselves. However, as discussed supra, each of his claims is procedurally barred as not new or different or as grounds that could have been raised previously but was not. Riker, 121 Nev. at 235, 112 P.3d at 1077 (holding that a claim that is itself procedurally barred cannot constitute good cause); see also Edwards v. Carpenter, 529 U.S. 446, 453 120 S. Ct. 1587, 1592 (2000).

Further, all of the facts and law necessary to raise Defendant's Grounds 1 through 7 have been available for years. The so-called "actual innocence" claim does not explain why he is bringing repeated claims that this Court has already decided on the merits, nor why he is only now bringing new grounds.[3] Defendant fails to establish any impediment external to the defense which could have possibly prevented him from complying with NRS Chapter 34's procedural rules. The delay in filing this petition is the fault of Defendant, and therefore good cause is not established.

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[3] Ground 3—alleged lack of appointed counsel during juvenile proceedings—and portions of Ground 7—complaints about denial of a second direct appeal. Sixth Petition at 23–26, 47–51.

III. DEFENDANT CANNOT ESTABLISH PREJUDICE TO OVERCOME THE PROCEDURAL BARS

In order to establish prejudice, the defendant must show "'not merely that the errors of [the proceedings] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional dimensions.'" Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

Here, as discussed supra, none of the grounds raised in this Sixth Petition can be considered by this Court. This Court has already rejected five of the grounds on the merits—and that decision was affirmed by the Nevada Supreme Court. Findings of Fact, Conclusions of Law and Order, filed September 14, 2010, at 3–6; Order of Affirmance, filed January 25, 2005, at 2–10. Res judicata thus bars their consideration as constituting prejudice. Further, this Court cannot overrule the Nevada Supreme Court. NEV. CONST. Art. VI Sec. 6. The two "new" grounds should have been brought in the First Petition, and Defendant abuses the writ in asserting them now. Defendant does not and cannot establish that any of these grounds constitute undue prejudice.

A. Defendant's Claim Regarding Pre-Trial Delay Is Without Merit

Defendant appears to argue that the State intentionally delayed service of the arrest warrant to gain tactical advantages. Sixth Petition at 8–17. From this, he argues multiple specific instances of alleged prejudice—including that the so-called "delay" prevented him from making evidentiary challenges, "bypass[ed] juvenile wardship," led to double jeopardy violations, made it seem that Defendant fled, affected speedy trial rights, and allowed the State to "doctor" Defendant's juvenile record. Sixth Petition at 13. As an initial matter, this Court found in deciding this ground in the First Petition that "claims of misconduct by the State . . . are barred from consideration by the doctrine of law of the case as these issues were previously decided on direct appeal." Findings of Fact, Conclusions of Law and Order, filed September

14, 2004, at 3. Defendant cannot establish that, fifteen (15) years later, he would be unduly prejudiced by this Court's just and proper refusal to re-review these claims.

Further, claims asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id. Defendant's premise that the State delayed in bringing his case to trial to gain a "tactical advantage" is nothing more than a naked assertion suitable only for summary denial under Hargrove. Sixth Petition at 12. There is absolutely no evidence nor even any indication other than Defendant's say-so that the State delayed his arrest, "doctored" his record, or committed any of the underhanded actions of which Defendant accuses it. Nor does Defendant provide any support, other than the naked allegation, for the claim that he would have been able to "easily close[]-off any attempt for prosecutorial influence" over the victims had he been arrested sooner. Sixth Petition at 16. Thus, this claim does not establish prejudice.

B. Defendant's Claim Regarding His Confession Is Without Merit

Defendant claims his confession was involuntary because he did not have his parents present and because the detective coerced a confession by motioning toward his gun. Sixth Petition at 18–23. However, both complaints are belied by the record.

NRS 62C.010 does provide that when a juvenile is taken into custody, the officer has to advise the parent or guardian of the child's custody status. But Defendant was eighteen (18)—not a minor—when he confessed to police that he raped his little sisters. Order of Affirmance, filed August 25, 2003, at 1–2; see also Criminal Bindover at 16 (showing that Defendant's date of birth is October 14, 1980) and Reporter's Transcript of Jury Trial, Day 2 at 265 (showing that Defendant was interviewed by Detective Moniot on August 14, 1999). Thus, Defendant had no right to have his parents present during his questioning. Defendant's accusation that the questioning detective motioned toward his gun in a threatening manner, or that he did not record certain "portions" of the interview, is a bare and naked accusation

insufficient to support post-conviction relief. Sixth Petition at 20–21; see Hargrove, 100 Nev. at 502, 686 P.2d at 225. Any other complaints Defendant has regarding his statement are belied by the record, as Defendant admits that he received his Miranda warning and signed a card indicating he understood his rights. Sixth Petition at 20; see also Order of Affirmance, filed August 25, 2003, at 1–2.[4] Thus, this claim does not establish prejudice.

C. Defendant's Claim Regarding Juvenile Counsel Is Without Merit

Defendant complains that he was denied counsel during some unspecified juvenile proceeding. Sixth Petition at 23–36. Defendant never indicates how that alleged juvenile proceeding is relevant to this criminal matter. Regardless, Defendant provides nothing to substantiate his claim, which should be denied as a naked assertion under Hargrove, 100 Nev. at 502, 686 P.2d at 225. Finally, Defendant cannot demonstrate prejudice because he received the benefit of counsel in *this* matter. Thus, this claim does not establish prejudice.

D. Defendant's Claim Regarding His Certification Hearing Is Without Merit

Defendant complains that he was denied a certification hearing wherein the Juvenile Court could have waived or retained jurisdiction. Sixth Petition at 26–29. As an initial matter, the Nevada Supreme Court already held in affirming the denial of Defendant's First Petition that this claim is "outside the scope of a post-conviction petition for a writ of habeas corpus." Order of Affirmance, filed January 25, 2005, at 10. Further, this claim is suitable only for summary denial under Hargrove because it is belied by the record. 100 Nev. at 502, 686 P.2d at 225. Defendant's date of birth is October 14, 1980. Criminal Bindover at 16. The Seconded Amended Information lists only offense dates between October 14, 1998, and March 12, 1999. Seconded Amended Information at 2. As such, Defendant was over eighteen (18) at the time of the offenses and thus not subject to Juvenile Court jurisdiction. NRS 62A.030(1)(a); NRS 62B.330(1). It does not matter how long the State may have "awaited" charging the crime;

[4] For example, Defendant seems to complain that around this time, he had been taking psychotropic drugs—but what that has to do with the admissibility of Defendant's statement remains unclear. Sixth Petition at 21–22. He does not, for instance, allege that he was under the influence and therefore unable to give a statement voluntarily.

Defendant was not a minor when he committed the crime. Sixth Petition at 26–27. Defendant offers absolutely no support for his claim that he was under "juvenile wardship" until January 12, 2000. Sixth Petition at 27. In fact, Defendant undermines his argument when he later asserts that he "was not on juvenile probation at that time" of the instant offense. Sixth Petition at 31. Thus, Defendant was not entitled to a certification hearing. This claim does not constitute prejudice.

E. Defendant's Claim Regarding Double Jeopardy Is Without Merit

Defendant claims that filing charges in juvenile court and then refiling them in criminal court was a violation of double jeopardy. Sixth Petition at 29–33. This claim is only suitable for summary denial under Hargrove because Defendant does nothing to demonstrate that charges were ever filed in Juvenile Court. 100 Nev. at 502, 686 P.2d at 225. Regardless, the Juvenile Court lacked jurisdiction over this case, because as discussed supra, Defendant was eighteen (18) on the earliest possible date listed in the Second Amended Information. Even by Defendant's own logic, he cannot have been subject to multiple punishments for this offense because the Juvenile Court never retained jurisdiction over this matter. Sixth Petition at 30. Thus, this claim does not constitute prejudice.

F. Defendant's Claim Regarding Ineffective Assistance of Counsel Is Without Merit

Defendant complains of several instances of ineffective assistance of trial and appellate counsel. Sixth Petition at 33–47. As an initial matter, the Nevada Supreme Court held in the appeal from the First Petition that Defendant's ineffective assistance of counsel claims were properly rejected on the merits. Order of Affirmance, filed January 25, 2005, at 2–10.[5]

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[5]These claims included 1) failure to object to alleged errors at Defendant's motion for own recognizance release; 2) failure to move to suppress Defendant's statement; 3) failure to move to disqualify the district court judge; 4) failure to object to the composition of the jury; 5) failure to cross-examine police regarding Defendant's arrest warrant; 6) failure to pursue an insanity defense; 7) failure to do several things, including object to alleged prosecutorial misconduct, object to judicial misconduct, move for a new trial based on newly discovered evidence, properly investigate the case, obtain an affidavit from Juror No. 5, object to an untimely discovery request, object to the use of spoilated evidence, file any meritorious pre-trial motions, and interview police officers; and 8) failure of appellate counsel to appeal alleged violations of the right to a speedy trial, to argue

Defendant assets several new complaints of ineffective assistance of counsel, each a naked assertion that should be summarily denied under Hargrove. 100 Nev. at 502, 686 P.2d at 225. Sixth Petition at 34–35. Some even seem related to the ineffective assistance claims this Court rejected in the First Petition. Further, Defendant largely ignores the basics of an ineffective assistance of counsel claim: the fact that what defense to present is a virtually unchallengeable strategic decision, Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002); that trial counsel need not undertake futile actions. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006); and that competent appellate counsel focuses on only the strongest issues. Jones v. Barnes, 463 U.S. 745, 751, 103 S. Ct. 3308, 3312 (1983); Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). This claim does not constitute prejudice.

G. Defendant's Claim Regarding Denial of a Second Direct Appeal Is Without Merit

Defendant complains first that he was denied a second direct appeal after the direct appeal was "dismissed," and second that the lower court improperly adjudicated his post-conviction complaints without having Petitioner present and without appointing him counsel. Sixth Petition at 17, 43–44, 47–51. Each of these claims is meritless.

First, Defendant seems to misunderstand the nature of the direct appeal in his case. Though he claims that the appeal was "dismissed" and only remanded to correct a clerical error, the Nevada Supreme Court in fact affirmed his conviction on the merits. Sixth Petition at 48–49; Order of Affirmance, filed August 25, 2003, at 1–2. It was only remanded back to the district court in order to correct the error in the Judgment of Conviction, to clarify that Defendant was convicted by a jury and had not pled guilty. Thus, Defendant's claim that he was entitled to another direct appeal, one "without limitation," is belied by the record, as he did receive a direct appeal on the merits. Sixth Petition at 49; Hargrove, 100 Nev. at 502, 686 P.2d at 225. Regardless, a defendant is not entitled to a second direct appeal. See NRS 177.015(3).

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double jeopardy violations, to communicate with Defendant, and to investigate claims preserved before trial. Id.

Second, contrary to Defendant's claim, Defendant was *not* entitled to the assistance of counsel during his post-conviction proceedings. Brown v. McDaniel, 130 Nev. __, __, 331 P.3d 867, 870 (2014); McKague v. Warden, Nev. State Prison, 112 Nev. 159, 163–65, 912 P.2d 255, 258 (1996); NRS 34.750. This Court found that as to the First Petition that "Defendant [wa]s not entitled to the appointment of an attorney as his petition is being summarily dismissed." Findings of Fact, Conclusions of Law and Order, filed September 14, 2004, at 3. Finally, unless the Court held an evidentiary hearing, Petitioner had no right to be present. See Gebers v. State, 118 Nev. 500, 50 P.3d 1092 (Nev. 2002). Defendant's final ground does not constitute prejudice. Lacking both good cause and prejudice to overcome the mandatory procedural bars, this Sixth Petition is dismissed in its entirety.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby denied.

DATED this 28 day of November, 2018.

DISTRICT JUDGE

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

BY
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144

CERTIFICATE OF SERVICE

I certify that on the 20th day of November, 2018, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

RENARD POLK, #72439
ELY STATE PRISON
P.O. BOX 1989
ELY, NV 89301

BY [signature]
Secretary for the District Attorney's Office

JVB/AO/jg/SVU

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED
AUG 12 2019
CLERK OF COURT

Renard T. Polk,
Movant-Petitioner, Dept No.: 11B
vs. Case No.: A-18-780833-W
Nevada Board of Prison Commissioners, ex rel.,
David Dzerunda, et al.,
Nevada Department of Corrections [Prisons], ex rel.,
Ely State Prison, et al.,
William Gittere, et al.,
Respondent(s).

MOTION FOR REHEARING (RECONSIDERATION)

Come, Now, the movant, Renard T. Polk, acting in pro se and hereby submits for filing this motion for rehearing (reconsideration).

This motion is made in good faith pursuant to Nevada Rules Civil Procedure (NRCP) 12(h), 59(e) and 60(b).

This motion is further based on all papers, pleadings and exhibits on record and file herein, and appended hereto.

MEMORANDUM OF POINTS, AUTHORITIES AND ARGUMENTS.

RECEIVED
AUG 12 2019
CLERK OF THE COURT

A-18-780833-W
MOT
Motion
4855593

The ability to contest and challenge a null, void per se and nugatory judgment, order and decree exists in perpetuity when, as here, the decision is (was) based on: (1.) manifestly unjust inherent fatal jurisdictional defects involving plainly clear prejudicial judicial errors; (2.) the presentment and introduction of new factual predicates as a result of newly discovered evidence previously unavailable even with the exercise of due diligence; and (3.) intervening (superseding) retroactive changes in controlling laws supporting a ruling to the contrary. Moore v. City of Las Vegas 92 Nev. 402 (Nev. 1976); Masonry and Tile v. Jolley, Urga and Wirth, Ltd., 941 P.2d 486 (Nev. 1997.)

which can be brought up at any time, on any application, on the suggestion of any party. Haines v. Nault 101 P.3d 308 (Nev. 2004.)

Especially when, as here, strict statutory prerequisites and requirements have not been followed or fulfilled in derogation of the common law or writs of habeas corpus. Besosini v. People for the Humane and Ethical Treatment of Animals 971 P.2d 383 (Nev. 1998.)

Since jurisdiction is dependent on

statutory provisions, the extent of jurisdiction is limited to that conferred by statute, and courts [will] lack jurisdiction, under or in absence of, statutory provisions. Washoe County v. Otto 282 P.3d 719 (Nev. 2012)

In the instant amend [actual innocence] petition filed, new issues of fact and law raised by the movant-petitioner supported a decision contrary to the court's rationale in ruling the claims were untimely or successive.

As alleged in the amend [actual innocence], the movant had just received information and affidavits from the purported victims recanting [their] accusations and statements that were retained and secured through intimidating, coercive and threatening governmental misconduct. (See; Exhibit: A, page 7, lines 19-21

There is no possible or practicable way the movant-petitioner could have facilitated gathering the exculpatory evidence aforementioned, as a pro se inmate [prisoner] (detainee) in light of [his] imprisonment, and due to the fact that the trial court judge issued a standing "no contact" order between the accused and the recanters.

Furthermore, the judge did not address the

amended [actual innocence] petition through the lens of the newly discovered and adverse facts and conditions subsequent their prospectively prejudicial and injurious impact and affect upon the jury's deliberative process.

Even so, recently amended Nevada Revised Statute (NRS) 176, on "post-conviction" hearings, now mandates that when an accused has presented evidence in relation to a purported victim's recantations of [their] accusations and statements an evidentiary hearing is unequivocally necessitated.

In as much, the judge clearly and plainly erred, or otherwise abused its discretion in failing to schedule an evidentiary hearing though being bound by statute to do so.

Accordingly, the issues should be reheard, and an evidentiary hearing scheduled thereon.

CONCLUSION.

For the foregoing reasons the movant's amended [actual innocence] petition for writ of habeas corpus should be reheard.

Dated this ___ day of _____ 20___

Verification

Isl. _____
RENARD T. POLK

CERTIFICATE OF MAILING

I, Polk, R do hereby certify that a true and correct copy of the foregoing motion for rehearing was delivered this 8th day of August 2019 to an employee at the Ely State Prison for the purpose of being conveyed by U.S. Postal Service to the following locations:

- Regional Justice Center
  Clerk
  200 Lewis Ave.
  Las Vegas, NV 89155

- Brianna Lamanna
  100 N. Carson St.
  Carson City, NV 89701

Verification:

I.S. Renard T. Polk

INDEX OF EXHIBITS

Exhibit: A, "Affidavit (Declaration) of Actual Innocence." pgs. 6-9

ANNA POLK'S AFFIDAVIT (DECLARATION)

IN SUPPORT OF CORROBORATING

RENARD POLK'S ACTUAL INNOCENCE.

Anna Polk states: that,

1.) I am the affiant and i make this declaration under the penatly of purjury verified by my signature and notary affixed hereto,

2.) I futher make this declaration to establish and corroborate Renard Polk's (my biological brother's) actual innocence,

3.)Based on information, belief and understanding during the time my grandmother (Gloria Polk) and my brother were discussing to whom she'd be leaving her estate to, or whether she could turn her annuities into a lump sumof cash upon her death as a result of her terminal cancer diagnoses; My aunt (Susan Sims) had been devising a way to make herself sole beneficiary since my mother's attempted suicide when she was released from prison, whereat upon which time my mother legally transferred parental custody rghts of my siblings and I to be the care of my grandmother,

4.) My aunt fearing she would be left out as a joint beneficiary, she then began manipulating my sisters and i into presuming that whenever my brother would wrestle and play with us that it was sexually assaultive,

5.) Eventually culminating into the night my brother left my aunt discovered that he had just came home from the juvenille justce center and was out with friends, after being accused of sexually inappropriate behavior with his girlfriend at the time Freda White,

6.) The charges at the time were inevitably dropped, but my aunt seized upon the opportunity to persuade my grandmother into believing my brother had sexually assaulted me and our siblings in the past, having been supplied with the presumptive behavior inferred by false allegations asserted by Mrs. White to inform my grandmothers reasoning,

7.) Armed with this persuasive tool she even convince my grandmother over the phone of the possibility that we had been sexually assaulted that very night,

8.) My aunt then came over and questioned my siblings and I as to whether my brother had "horse-played" or "wrestled" with us upon his return, thereby further nurturing our miss conception and her deceit she's been fomenting for years,

9.) This prompted my siblings (Jahala Chatman) [my sister] and I into stating that we were

EXHIBIT - A

sexually assaulted that night when my brother returned home from the juvenile detention center being misinformed of what is sexual assault actually is,

10.) My grandmother and aunt did not immediately call authorities thereafter, but awaited his (my brother's) arrival home in order to confront him about the allegations,

11.) However; In my opinion it was a delay tactic by my Aunt to gain leverage to be sole beneficiary of my grandmothers estate, and initially she (my aunt) had no intention of calling the police,

12.) After my brother arrived home a heated argument took place between the three of them, resulting in my brother leaving,

13.) Once he left authorities were contacted, but after responding and investigating officers and detectives were present they did not immediately issue an arrest warrant after we gave our statements, which I assume to some degree because none of our stories made sense,

14.) Since we could not get our story straight the officers and detectives informed us to come down to their offices once we did,

15.) From the time the officers and detectives left we [Jahala and I] were instructed by my aunt Susan that the next time we were required to give statements to the authorities we were to restate and recant what we'd secretly spied our brother doing with other females he'd invited over to our home as if it were us and he did not have our permission to do the sexual things we'd covertly witnessed him doing,

16.) When we were finally brought before authorities again we did as our aunt had instructed us to do with respect to our statements,

17.) Notwithstanding, some time later we were informed that my brother had been arrested on our false allegations and that a trial would possibly take place,

18.) Leading up to the day of trial my sister and I had come to the agreement that we would not be going along with my aunts ploy,

19.) Albeit, on the Day of trial when we voice the position that we wanted to retract our statements the authorities and our relatives threatened us with imprisonment ourselves,

20.) Erupting into a fight in the witness hallway of the courthouse between our relatives, where each took the stand and simply followed our aunt's and prosecutors instructions,

21.) Eventuating into a (3) three day trial our brother was convicted on our false, misinformed and coerced testimony.

22.) Furthermore the affiant sayeth naught.

State of California

County of Los Angeles

on this 22nd day of July

2019, Before me, the undersigned, a Notary Public, in and for said State, personally appeared Anna Polk known or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the instant instrument, and acknowledged to me that she executed it.

Witness my hand and official seal:

See attached

Notary Public

The undersigned under penalty of perjury:

Anna Polk

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On 7/22/2019 (Date) before me, Cary Scott Friedman Notary Public, (Here Insert Name and Title of the Officer)

personally appeared Anna Polk (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

CARY SCOTT FRIEDMAN
Commission No. 2165326
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
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Partner – Limited General	Partner – Limited General
Individual Attorney in Fact	Individual Attorney in Fact
Trustee Guardian or Conservator	Trustee Guardian or Conservator
Other: _____	Other: _____
Signer Is Representing: _____	Signer Is Representing: _____

Renord T. Polk #72489
(ESP) P.O. Box 1989
Ely, NV 89301

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Las Vegas, NV 89155

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DISTRICT COURT
CLARK COUNTY, NEVADA

FILED
OCT 01 2019
CLERK OF COURT

Renard T. Polk
Relator-Movant-Petitioner,

vs.

Nevada Prison Commissioners Board, ex rel.,
David Dzurenda, et al.,
Nevada Corrections [Prisons] Department, et al.,
Ely State Prison, et al.,
William Gittere, et al.,
Respondent(s).

Dept. No.: 11B
Case No.: A-18-780833-W/
00C1664900C

REQUEST FOR SUBMISSION
AND TO PLACE ON CALENDAR
FOR HEARING.

I, Polk, R., do hereby request that the motion for rehearing (reconsideration) be placed on the calendar for hearing and submitted to the court for decision; filed on August 12, 2019.

Dated this 26th day of September 2019

Verification:

/s/ [signature]
Renard T. Polk

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A-18-780833-W
REQT
Request
4866819

Renard T. Polk #72439
(ESP) P.O. Box 1989
Ely, Nevada 89301

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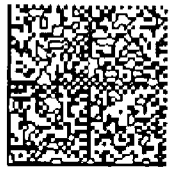

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ELY STATE PRISON

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OCT 2 1 2019
CLERK OF COURT

NOCA
Renard T. Polk #72439
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Movant In Pro Se

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

* * * * *

Renard T. Polk, Movant,

-vs-

The State of Nevada, ex rel, Respondent.

Case No. A-18-780833-W, et seq.

Dept. No.

NOTICE OF CHANGE OF ADDRESS

NOTICE IS HEREBY GIVEN THAT the address of Renard T. Polk, in pro se, has been changed to the following:

Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

All further correspondence should be addressed to Renard Polk at his new address above.

Dated this 17th day of October, 2019.

Renard T. Polk #72439
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Movant In Pro Se

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OCT 21 2019
CLERK OF THE COURT

LL FORM 24.065

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF CHANGE OF ADDRESS to the below address(es) on this 17th day of Oct, 2019, by placing same in the U.S. Mail, First-Class postage, per NRCP 5(b):

• Regional Justice Center
200 Lewis Ave
Las Vegas, NV 89155

Renard T. Polk
1st. Polk #72463
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Movant In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

I do affirm that the preceding document, NOTICE OF CHANGE OF ADDRESS, does NOT contain the social security number of any person.

Dated this 17th day of October, 2019.

Renard T. Polk
1st. Polk
Movant In Pro Se

Renard T. Polk #72439
Lovelock Correctional Center
1200 Prison Rd.
Lovelock, NV 89419

Lovelock Correctional Center NV
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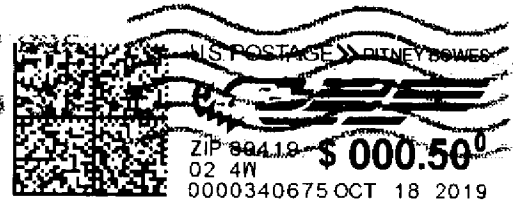

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Las Vegas, NV 89155

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FILED
JAN 31 2020
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Renard T. Polk,
Movant, Dept. No. XI B
vs. Case No. A-18-780833-W
Nevada Prison Commissioners Board, ex rel.,
Charles Daniels, et al.,
Nevada Corrections [Prisons] Department, et al.,
Lovelock Correctional Center, et al.,
Renee Baker, et al.,
Respondent(s).

A-18-780833-W
MAPA
Motion for Appointment of Attorney
4893874

MOTION FOR THE APPOINTMENT OF COUNSEL.

Comes, Now, the Movant, Renard T. Polk, and hereby submit this request for the appointment of counsel because the Movant is currently being obstructed from retaining an attorney on [his] own due to bad acting government employees canceling or restricting telecommunications; the Movant is unable to afford counsel; the issues are complex; the Movant is housed in punitive administrative isolation at the Lovelock Correctional Center with extremely

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CLERK OF THE COURT

limited physical access to the law library's paging system; and the movant has limited knowledge of the law involving discovery as a result of a purported victim's recantation and repudiation of [their] allegations.

This motion is based on all papers, pleadings and documents on file and record herein; further this motion is made pursuant to Nevada Revised Statute (NRS.) 34.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO APPOINT COUNSEL.

With the arrival of the retroactively seminal decision in Martinez v. Ryan 132 S.Ct. 1309 (2012), coupled with the holding in Koerschner v. Warden 508 F.Supp. 2d 849 (D. Nv. 2007), the appointment of counsel is arguably mandated and unconditional when, as here, the applicant is being housed at the Lovelock Correctional Center, and newly discovered evidence has been presently obtained with the absence of counsel on initial-post conviction review.

Very simply, in the above cited cases the courts essentially abandoned standing precedent regarding the requirements needed to be met

in order to afford counsel in favor of addressing the conditions subsequent the direct criminal appeal process.

In as much, the movant meets and exceeds the criteria therefor.

CONCLUSION

Wherefore: this honorable court should appoint counsel to represent the movant.

Dated this 27th day of Jan 2020.

Verification

I SI. RPolk

Renard T. Polk

CERTIFICATE OF MAILING.

I, Polk, R.T., do hereby certify a true and correct copy of the foregoing request for counsel was deposited with an employee at the Lovelock Correctional Center this 27th day of Jan. 2020 for the purpose of being covered by U.S. Postal Service to the following locations:

- Regional Justice Centers
  Clerks Office
  200 Lewis Ave.
  Las Vegas, NV 89101

- Brianna Lamanna
  100 N. Carson St.
  Carson City, NV 89701

Verification

I SI. RPolk

DISTRICT COURT

CLARK COUNTY, NEVADA

FILED
JAN 31 2020
CLERK OF COURT

Renard T. Polk,
Movant-Defendant, Dept No. VIII
vs. Case No. 00C166490C
The State of Nevada, ex rel.,
Nevada Parole Board Commissioners, et al.,
Tony Corda, et al.,
Nevada Corrections [Prisons] Department, et al.,
Charles Daniels, et al.,
Lovelock Correctional Center, et al.,
Renee Baker, et al.,
Respondent(s)-Plaintiff

MOTION FOR ORDER TO SHOW CAUSE

Comes, Now, the movant-defendant, Renard T. Polk, and submits [his] motion for an order to show cause as to why the respondent(s) have not complied with the letter and spirit of Nevada Revised Statute (NRS) 213.12135 subsection 1 and why this court should not take remedial action to enforce the mandates of the statute.

MEMORANDUM OF POINTS AND AUTHORITIES.

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JAN 31 2020
CLERK OF THE COURT

A-18-780833-W
MOSC
Motion for Order to Show Cause
4893875

In that, during the 79th Nevada legislative Session Assembly Bill (AB) 267 codified at 213.12135(1) revised parole eligibility requirements excluding from its purview the term or word "consideration" when denoting and delineating the parole board's discretion. See, Exhibit "A."

Instead included in the new language the legislature utilized the word "is" to express the frequency with which parole is to be afforded, proscribing that any inmate [prisoner] that is now been imprisoned for (15) fifteen years or more in state custody who was under the age of (18) eighteen years at the purported commission of a criminal offense but was sentenced as an adult {[("is")]} eligible for parole.

Albeit, the movant came before the parole board on April 13, 2016 and again on January 25, 2018, but was "denied" parole release on both occassions.

The afore cited statute does not bespeak a discretionary component provided to the parole board, but in reading the statute the plain meaning (Pelligrini v. State 34 P.2d 519 (Nev. 2001)) specifically says "is eligible."

CONCLUSION

wherefore: this honorable court should ORDER the parole board, et al., to show cause as to why [they] have failed, refused, deferred and forewent to comply with the relevant statute's mandate, or as to why this court should not take action to enforce the same.

Dated this 27th day of January 20 20

Verification

I/s/ [signature]

Renard T. Polk

CERTIFICATE OF MAILING

I Polk, R.T. do hereby certify that a true and correct copy of the foregoing motion for order to show cause was deposited this 27th day of Jan. 2020 with an employee at the Lovelock Correctional Center for the purpose of being conveyed by U.S. Postal Service to the following locations:

- Regional Justice center's
  Clerks office
  200 Lewis Ave.
  Las Vegas, NV 89101

Verification:

I/s/ [signature]

213.12135. Eligibility for parole of prisoner sentenced as adult for offense committed when prisoner was less than 18 years of age.

1. Notwithstanding any other provision of law, except as otherwise provided in subsection 2 or unless a prisoner is subject to earlier eligibility for parole pursuant to any other provision of law, a prisoner who was sentenced as an adult for an offense that was committed when he or she was less than 18 years of age is eligible for parole as follows:

(a) For a prisoner who is serving a period of incarceration for having been convicted of an offense or offenses that did not result in the death of a victim, after the prisoner has served 15 calendar years of incarceration, including any time served in a county jail.

(b) For a prisoner who is serving a period of incarceration for having been convicted of an offense or offenses that resulted in the death of only one victim, after the prisoner has served 20 calendar years of incarceration, including any time served in a county jail.

2. The provisions of this section do not apply to a prisoner who is serving a period of incarceration for having been convicted of an offense or offenses that resulted in the death of two or more victims.

HISTORY:
2015, ch. 152, § 3, p. 618.

Editor's Notes

Acts 2015, ch. 152, § 5(2) provides: "The amendatory provisions of section 3 of this act apply to an offense committed before, on or after October 1, 2015."

Effective date.

This section is effective October 1, 2015.

Notes to Decisions

Sentence of Juvenile.

An aggregate sentence imposed against a juvenile defender, convicted of more than one non-homicide offense, was the equivalent of a life-without-parole sentence, when requiring the petitioner to serve approximately 100 years before being eligible for parole. The enactment of this section remedies the juvenile defendant's unconstitutional sentence. State v. Boston, 363 P.3d 453, 131 Nev. Adv. Rep. 98, 2015 Nev. LEXIS 121 (Nev. 2015).

POLK'S EXHIBIT A

153

Renard T. Polk #72439
Lovelock Correctional Center
1200 Prison Rd
Lovelock, NV 89419

Lovelock Correctional Center

RENO NV

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IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK

A-18-780833-W
Dept. IX

Renard T. Polk,
Petitioner,

vs.

Renee Baker, et al.,
Respondent(s).

Case No. 00C166490C
Dept. No. VIII
HEARING REQUESTED

SECOND AMENDED [ACTUAL INNOCENCE] PETITION FOR WRIT OF HABEAS CORPUS AD SUBJICIENDUM, AD TESTIFICANDUM AND DUECES TECUM.

Date of Hearing: _____
Time of Hearing: _____

Petition.

1. The name of the institution and county the petitioner is being unlawfully, illegally and falsely confined and imprisoned at is the Lovelock Correctional Center 1200 Prison Rd, Pershing County Lovelock, Nevada 89419, formerly at Ely State Prison, White Pine County, Nevada

89301.

2. The name and location of the court which entered the judgment of conviction and corresponding commitment warrant being challenged is the 8th Judicial District Court, Clark County, Nevada 89101, 200 Lewis Ave. Las Vegas Dept. 7.

3. The date the judgment of conviction was entered was April 1, 2002

4. The case number is 00C166490C.

5. The length of the petitioner's sentence is (4) four to (12) twelve years running consecutively to (20) twenty years to life.

6. The petitioner is not presently serving another sentence for a conviction other than the instant.

7. The nature of the offenses charged were sexual.

8. Initially the petitioner plead not guilty by reason of insanity on the advice of counsel, but later changed it to not guilty.

9. The petitioner did not enter seperate pleas on either count.

10. The petitioner was found guilty by an all white jury.

11. The petitioner testified at trial wer [his] objection according to what trial counsel informed and coached [him] to say.

12. The petitioner appealed the judgment of conviction

with a conflicted direct appellate counsel.

13. The court the direct appeal was appealed to was (a.) The Nevada Supreme Court, (b.) The docket and case citation was 39457 and (c.) the appeal was remanded and dismissed as a result of direct appellate counsel failing to correct the trial court record to perfect the appeal to reflect the petitioner did not plead guilty, although til this date this has not been accomplished.

14. Another appeal thereafter was not pursued.

15. Other than a direct appeal from the judgment of conviction, sentence and confinement the petitioner submitted additional applications to the state and federal courts.

16. Instances of such submissions included:

(a.) An original pretrial and post-conviction petition writ of habeas corpus filed with the 8th Judicial District Court, Clark County Nevada, Las Vegas wherein the petitioner raised and claimed instances of; (A.) double jeopardy, (B.) unreliable and illegally obtained statement (confession), (C.) judicial bias, (D.) prosecutorial misconduct, (E.) failure to certify the petitioner as an adult for juvenile offenses, (F.) unfair jury composition, (G.) ineffective assistance of arraignment, trial and direct appellate counsels and (H.) post-arrest prewarrant execution post-confession delay. (b.) For which, the petitioner received hearings (evidentiary or otherwise) but was not permitted to be present, whereat in excess of judicial authority

the judge proceeded to decision in absence of the petitioner denying discharge from custody on September 8, 2004.

(C.) The petitioner sought additional and alias writs by petition involving (I.) the unlawful suspension of the writ of habeas corpus, (J.) post-conviction prosecutorial misconduct, (K.) clerical malfeasance and (L.) the execution of an illegal sentence. (d.) For which, the petitioner received hearings thereon (evidentiary or otherwise) but was not permitted to be present. In each instance, in excess of judicial authority the judge proceeded to decision in absence of the petitioner denying the relief requested based on district attorney Mary Holthus' fraudulent, false and misinformation presenting that, or suborning another thereto represent the petitioner "waived" [his] post-conviction rights by pleading guilty, the direct appeal was denied rather than remanded and dismissed, the petitioner did not raise these and other issues during pretrial proceedings, the petitioner waived [his] presence on post-conviction proceedings, the petitioner had been served with the state's response on post-conviction process and the post-conviction petition for writ of habeas corpus had been dismissed, certifying the same knowing or should having known the falsity thereof.

(e.) In every instance the petitioner appealed the adverse decisions to the Nevada Supreme Court, even

though the state courts refuse, fail and forego to address the conditions subsequent.

There was no adverse decision the petitioner did not appeal.

17. The grounds of ineffective assistance of arraignment, trial and direct appeal counsels, double jeopardy; failure to certify the petitioner as an adult for a juvenille offense; the usage of an illegally and unreliably obtained statement (confession) and post-arrest prewarrant execution delay post-confession retention are being (re)raised because they relate back to the original initial pretrial petition for writ of habeas corpus involving the same nucleus of operative facts and the decision thereon lacking specificity (Anglo-Canadian v. Federal Commissioners 310 F.2d 606 (CA 9th Cir.)[1986]) and the respondents misconduct going unaddressed (U.S. v. Charley 189 F.3d 1251 (10th Cir. 1999)) resulting in an unfair, incomplete and empty hearing during remedial processes. Morgan v. US 58 S.Ct. 773 (1972)

The reason for (re)raising these grands and issues, in addition those previously provided and newly discovered evidence, are due in part to the fact petitioner was not provided an attorney on a second direct appeal challenge or an post-convictial proceedings, Martinez v. Ryan 132 S.Ct. 1309 (2012), contrary and repugnant to and based on an unreasonable, unwarranted and erroneous of facts and clearly

established federal law resulting in a complete miscarriage of justice rising to levels of fundamental defects or inconsistent with the inherent rudimentary demands of fair procedure as determined by the US Supreme Court.

18.) The new grounds of (M.) intimidating a witness, (N.) judicial abdication, (O.) illegal detention, (P.) void statute for vagueness and overbreadth, (Q.) insufficiency of the evidence and (R.) parole denial are now being raised for the first time due in part to statutory revision, retroactive US Supreme Court decisions, the time limitation for seeking direct review has never expired or began and previously unavailable evidence and facts supporting the petitioner's actual innocence only recently became accessible wherewith the purported victims have been in contact with the petitioner informing [him] as to the prosecutor's misconduct that took place when [they] attempted to recant [their] statements prior to trial and the motivation for falsely accusing the petitioner of criminal misconduct was to disentitle [him] to [his] inheritance which could not have been discovered through the exercise of due diligence showing that but-for the accompanying constitutional errors and violations by clear and convincing evidence viewed as a

whole prove no reasonable fact finder would have found the petitioner guilty of the offenses. See, Exhibit: "A."

19. All of which for the foregoing reasons the petition is being filed more than one year after the filing of the judgment of conviction and the decision on direct review rendering any procedural estoppels, bars, defaults and inexactitudes, and limitations period inapplicable and unenforceable.

20. Although the petitioner does not have any outstanding submissions under review challenging the superceded judgment of conviction [he] does have several civil rights complaints and petitions on conditions of confinement before the federal and state court involving the Nevada Department of Corrections [Prisons] (NDOC, NDOP) right to continue to house and imprison the petitioner under case numbers: 3:05-cv-00252-RCJ-VPC; 2:01-cv-00089-JCM-RJJ; 3:17-cv-00248-HDM-VPC; 3:16-cv-00052-MMD-VPC; A-12-660168; WM15110003 and PI 15-0974.

21. The names of the attorneys that represented the petitioner at arraignment was Nancy Lemke, at trial was Christopher Oram and on direct appeal was David Schieck, as well as, Susan Roske on juvenille proceedings.

22. The petitioner does not have any future sentences to serve other than the instant.

23. The grounds and proves are as follows:

~ GROUND ONE ~

Whereas the petitioner's Fifth, Sixth and Fourteenth US [Federal] Constitutional Amendment, as well as, Nevada Constitutional Article 1 section 8 priviledge, right and entitlement to a speedy trial, equal protections and due process and to be free from prejudicial, unnecessary, post-arrest prewarrant-execution post-confession and inordinate delay was violated contrary and repugnant to, inconsistent and inadequate with and based on an erroneous, unwarranted and unreasonable determination and application of facts and clearly established law as determined by the US Supreme Court in Barker v. Wingo 407 US 514 (1972) and U.S. v. Ewell 383 U.S. 116 (1966), when district attorney Mary Holthus awaited (8) eight months before executing the arrest and bench warrants against the petitioner after [he] surrendered [himself] to authorities, until juvenille wardship terminated, the state discontinued forcibly administering psychotropic medication and while in possession of the petitioners unreliable and illegally obtained statement (confession), thereby resulting in a complete miscarriage of justice rising to levels of fundamentally inherent defects and inconsistent with the rudimentary demands of fair procedure associated with having an injurious effect on the jury and presumption of innocence,

the unlawful, illegal and false arrest, pretrial detention, trial, conviction, sentence and continued confinement of the petitioner from the loss of exculpatory evidence, the preservation of evidence, competency determinations, determining the intelligentness, knowingness and voluntariness of the petitioner's unreliable statement (confession) and demeanor, inter alia, at the time of the delay with which no reasonable fact finder would have found the petitioner guilty, whereby the petitioner must be discharged from state custody allocating a hearing and providing for the petitioner presence thereon, based on the following facts and legal questions presented:

That during the Spring of 1998 the petitioner and [his] grandmother, Gloria Mae Hardin-Polk, began discussing one evening the possibility of obtaining a lump sum payment from her widow's dowry being provided by a longshoreman's company from the wrongful or accidental death of her husband

The discussion entailed that should a cash advance, collections or insurance company manage to guarantee or remit a substantial amount of funds then the petitioner would be the grantee of finances retrieved and the inheritor of her estate.

After alerting others of their plans the petitioner's immediate family members became hostile toward [him] when they became aware of their exclusion and of their mother's intention to bequeath

to report falsely on the petitioner's alleged criminal misconduct being perpetrated on them.

That on, or about February 23, 1999 after the petitioner had made [his] way home [he] was confronted by Susan Sims, [his] grandmother and purported victims over the false allegations.

Calling the allegations "absurd" the petitioner then left without incident.

During that time Susan Sims called local authorities to report the false accusations.

The responding officers took the purported victim's initial statements, along with Susan Sims but no arrest warrant was issued. Suggesting that the false allegations were not believable, nor the statements corroborating probable cause.

Even so, the petitioner never returned home.

However, on August 14, 1999 after being informed that an arrest warrant and petition had been issued by the juvenille and family courts for a fabricated probation violation the petitioner surrendered [himself] to local authorities.

Also at this time an arrest warrant for the aforementioned false sexual criminal misconduct accusations had been obtained.

That despite the existence of the sexual assault warrant and a coerced unreliable statement (confession) the district attorney's office on the decision of Mary Holthus

her estate to the petitioner.

Prompted by her ire and fomenting animosity toward the petitioner, the petitioner's Aunt, Susan Sims then manipulated, coached and instructed the purported victims to accuse the petitioner of sexual criminal misconduct because she was disentitled and disinherited of her mother's estate

That the petitioner has only recently become aware of these facts as a result of the purported victims, Anna Polk and Jahala Chatman, informing [him] of [his] aunt's play to incarcerate the petitioner and declare [him] incompetent to manage the estate.

That in letters and communique it was understood and agreed, that family members of the petitioner would devise a scheme to obstruct the transferal because it was believed should the petitioner receive the lump sum along with the estate then [he] would neglect the rest of [his] family.

So in order to keep [him] from the finances and estate false statements were made to initialize false charges instructed under the coaching and tutelage of Susan Sims.

That in an attempt to dissuade the petitioner's grandmother from bequeathing [him] her estate or giving [him] control thereof Susan Sims informed her mother, the petitioner's grandmother that she had been in contact with the purported victims

chose not to execute the arrest warrant but permitted the petitioner to be released from state custody and county detention.

Based on information and belief it is the petitioner's view that the district attorneys' office at the request of Mary Holthus awaited executing the aforesaid arrest warrant to intentionally gain a tactical advantage over the petitioner in order to, and manifested as substantial and actual prejudice in the form of:

(i.) preventing the petitioner from challenging the admissibility of the unreliable and illegally obtained statement (confession) before the juvenile courts consisting of attempts to hamper and impair the defense deliberately shielding the court record of the petitioner's minority and mental capacity at the statements retention;

(ii.) bypassing juvenile wardship until it terminated to relieve the prosecution of it's burden of proving the petitioner had reached [his] majority beyond a reasonable doubt to knowingly, intelligently and voluntarily consent to a miranda waiver without juvenile safeguards, shopping for a forum;

(iii.) avoiding dismissal of the information on the basis of double jeopardy by virtue of the petitioner having been initially penalized for the instant alleged offenses pursuant to a fabricated juvenile probation

violation and revocation;

(iv.) giving the appearance the petitioner fled from authorities rather than leaving the situation and not surrendering [himself] when there was an actual warrant for [his] arrest;

(v.) obstructing the petitioner from invoking [his] right to a speedy trial because the purported victims could not be located and were uncooperative; and

(vi.) doctoring the petitioner's juvenille record to make it appear as if the petitioner was hailed into the juvenille court on a probation violation rather than the instant offenses to disavow juvenille jurisdiction over the charges and the detective's interrogational tactics to obtain an unlawful, illegal and unreliable statement (confession) from the petitioner, inter alia.

This blatent miscarriage of justice undermined the petitioners presumption of innocence indelibly leaving a blemish and blight upon the entire proceedings.

The root of fair procedure required the fact finder to be in possession of and exposed to this information because justice's decision is informed thereby.

No fact finder having this information would have found the petitioner guilty knowing that a "witch hunt" had been constructed by the petitioners family and completed by the district attorneys' office swallowed up in the reckless disregard for those accused of such

offenses.

So much so, juror number (6) six stated to trial counsel, Christopher Cram, " It seems as if the [petitioner] was set-up."

And questioned, "why didn't the [petitioner] challenge the admissibility of the statement?"

The old addage "justice delayed IS justice denied" is not around for no reason.

Fact finders were entitled and had the right to assess information at the time of the delay involving the purported victims being coached, the state doctoring records and files demonstrating the weakness of their case-in-chief and by doing so implying state and county officials and employees knew the petitioner's statement was unreliable and unusable.

There was no need to commit additional illegalities against the petitioner if the statement was trustworthy, further suggesting the purported victims were uncooperative and wanted to recant their statements.

However, due to the intentional delay none of this was brought to light when it was happening.

State and county prosecutors knew the petitioner was actually innocent and in an attempt from exposing themselves to liability for violations visited upon the petitioner orchestrated post-accusation, post-arrest, post-confession and prewarrant execution delays

for the purpose of finding a sympathetic judge and spoliating processes and evidence.

Culminating officially into the conviction and confinement of an actually innocent person.

Only now discovered. See, Exhibit "A," at pg. 52 (ii).

Clearly and convincingly this newly discovered absent information and evidence slew but for the delay implicating the petitioner's due process and speedy trial rights a guilty verdict would not have been returned essentially "working to the petitioner's extreme actual and substantial prejudice and disadvantage infecting the entire trial [process] with errors of constitutional dimensions." Gutierrez v. Smith 702 F.3d 103 (2d Cir. 2012)

Spreading like a cancer upon the entire due course of the proceedings the delay interrupted and cut-off any attempt at demonstrating not only the involuntariness of the petitioner's statement, but the purported victims' unwillingness to initially cooperate consistent with the prosecutor's case and evidence-in-chief.

Such a tactically orchestrated disadvantageous affecting delay was the cornerstone of the prosecutors game to convict the petitioner.

Which begs the question, if no warrant had been issued after the purported victims reported the petitioner's alleged commission of these crimes, How did the state or county gain one following no change in the

evidentiary conditions? Unless of course the district attorneys' office knew the statement existed and the the purported victims' uncooperativeness seeking to conceal both by virtue of time lapse.

Moreover, due to the fact that at the time of the delay the petitioner was a minor without an ad litem guardian during the statement's retention, the fact the petitioner had been committed to a mental health facility whereat [he] was being forcibly administered psychotropic medication and while on county custody [he] was prescribed antipsychotic medication it can be reasonably assumed the statement was in effect a product thereof.

Absent this delay the petitioner could have easily closed-off any attempt for prosecutorial influence to extrajudicially impair the preservation of the aforestated instances and evidence to make it appear as if this were a "cut and dry case."

Not to mention it is more than plausible had counsel known these things he would not have proceeded so incompetently, wholly committed to leaving the statement and the arrest unchallenged.

The US [Federal] and Nevada Constitution under Miranda v. Arizona 384 U.S. 436 (1966) requires that no one be convicted on an constitutionally infirmed unreliable statement (confession), as well as,

exerting undue influence on the purported victims to elicit Knowingly false [recanted] testimony Napue v. Ill 60 US 264 (1966)

This case goes beyond zealousness and constitutional impairment and evinces a nefarious scheme to convict by any means.

Accordingly, state and federal law require the immediate release of the petitioner for such egregious misconduct under Sanders v. State 641 F.2d 659 (4th Cir. 1989) due to the presumptively prejudicial, intentional and tactical nature of the delay.

All of which could have, should have and must now be pursued by the assistance of a competent counsel with the legal expertise and know how to properly present these and other issues before the court that was needed not only at the time of the delay but also now on a second direct appellate process previously abandoned by direct appellate counsel and on the instant amended post-conviction process unavailable for determination with counsel.

Wherefore: the petitioner does incorporate every averment related herein as if fully set forth and presented in the accompanying grounds praying judgment for a hearing be allocated, the petitioner's presence provided for and upon evidence adduced release the petitioner forthwith from an unlawful, illegal, false and unconstitutional confinement.

~ GROUND TWO ~

Whereas the petitioner's Fourth, Fifth, Sixth and Fourteenth US [Federal] Constitutional Amendment, as well as, Nevada Constitutional Article 1 section 8 privilege, right, entitlement and immunity to counsel, remain silent, a fair trial, due process and equal protections and to be free from self-incrimination and the usage of an illegally, unlawfully and coercively obtained unreliable and untrustworthy statement (confession) to exact a guilty verdict, that neither had a personal narrative nor the hallmarks consistent with the petitioner's prior behavior in dealing with the criminal justice system was violated contrary and repugnant to, inadequately and ineffectively with and based on an erroneous, unwarranted and unreasonable application of facts and clearly established State and federal law as determined by the US Supreme Court in Miranda v. Arizona 384 U.S. 436 (1966), Napue v. Ill 360 U.S. 264 (1959) and Chavez v. Martinez 538 U.S. 760 (2003); when interrogating detective Trinolly Meniot displayed, furnished and gesticulated toward his gun [holster] and referred to a lie detector test in a suggestive way to imply the petitioner would meet with bodily harm should [lie], without counsel, psychiatrist or guardian (ad litem) refuse to sign a "Miranda" rights waiver cued to overbear the petitioner's will and judgment into

purportedly confessing to crimes [he] did not commit, thereby resulting in a complete miscarriage of justice rising to levels of fundamentally inherent defects and inconsistent with the rudimentary demands of fair procedure associated with having an injurious effect on the jury and presumption of innocence, the unlawful, illegal and false arrest, pretrial detention, trial, conviction, sentence and continued confinement of the petitioner by not having the prosecutor prove compliance with "Miranda" in the statement's retention and whether the statement was not the product of coercion without which no reasonable fact finder would have found the petitioner guilty of the offenses; whereby the petitioner must be provided a hearing (evidentiary) and [his] presence thereon to develop the facts surrounding the total circumstances regarding the statement's retention, and upon evidence adduced vacate the sentence scheduling a new trial excluding it therefrom based on the following facts and legal questions presented:

That prior to surrendering [himself] to authorities on August 14, 1999 the petitioner was being seen by a child psychiatrist for mental health problems brought on by supposed hereditary taint, an attempted suicide and environmental contributors who'd prescribed an anti-psychotic medication "Risperedol" to combat certain psychosis, after having been informed that there was a possible outstanding bench or arrest warrant for [his]

apprehension pursuant to allegations of sexual criminal misconduct committed on the aforestated purported victims, the petitioner's child psychiatrist moved his practice.

With the petitioner in custody [he] was taken to the juvenile detention facility as a product of [his] minority whereat [he] was met by detective Timothy Monroe, the lead interrogating officer commissioned to investigate the instant case.

Despite being housed in a juvenile facility, no visible parents or guardians (ad litem) present, the detective introduced himself and asked the petitioner would "[he] like to give a statement," about the criminal sexual misconduct allegations surrounding this case.

Although the petitioner wanted to answer in the negative, which was customary for the petitioner to do as noted in every criminal proceeding preceding this one, before [he] could answer the detective motioned toward his gun [holster] as if to use it should the petitioner refuse.

Immediately thereafter producing a "Miranda" rights waiver card informing the petitioner [his] signature thereon was needed to begin questioning, which the petitioner reluctantly signed assuming the detective would make good on his threat to use his gun should the petitioner refuse.

That during the interrogation every time the petitioner would begin to answer questions inconsistent with the purported victims' initial statements the detective would motion toward his gun [holster] referring to administering a lie detector test until the petitioner admitted [his] involvement, leaving this portion unrecorded.

Albeit, the statement was never sworn to or narrative given admitting the alleged commission of the offenses in the locations detailed.

Finally recording the interrogation the petitioner gave the same account the detective elicited through threats.

Even so, after the unreliable statement (confession) was given the arrest and bench warrants remained unexecuted suggesting state and county attorneys' unwillingness to use the statement due to its unreliability, untrustworthiness and inadmissibility.

The circumstances in total involving the retention of the petitioner's unreliable statement (confession), and letting it go unchallenged, was the product of an overzealous detective's attempt at securing an obvious false admission of criminal behavior and facts neither supported by the purported victims' accusations or believed by juror number six.

Coupled with the juvenille justice court's ineffectiveness and taking conjunctively with the fact that the petitioner

had just attempted suicide as a result of [his] grandmother's death, had been prescribed the forcible administering of psychotropic medication by county and state employees and the detective's continued threatening gestures toward his gun [holster] demonstrate there was and is no possible way the petitioner remotely voluntarily, intelligently and knowingly made accurate statements without [his] will being overborne and overridden.

Also, suggesting and implying the weakness of the evidence at the time of the interrogation and consequential delay.

Acting as a fact finder no judge or jury would have returned a guilty verdict were they exposed to this information that the petitioner could have possibly been shot should [he] refuse to participate in the detective's illegalities.

In fact the judge would have been obliged to dismiss the amended information without any new evidence being compiled after no warrant was issued upon the purported victims' initial accusations because nothing changed.

Wherefore: the petitioner does incorporate every averment related herein as if fully set forth and presented in the accompanying grounds praying judgment for a hearing to be allocated, the petitioner's presence

provided for, and upon evidence adduced discharge the commitment warrant scheduling a new trial excluding the unreliable statement false (confession) therefrom, releasing the petitioner from an unlawful, illegal and unconstitutional confinement.

~GROUND THREE~

Whereas the petitioner's First, Fourth, Fifth, Sixth and Fourteenth US [Federal] Constitutional Amendment, as well as, Nevada Constitution Article 1 Section 8 privilege, right, entitlement and immunity to the assistance, a fair trial, due process and equal protections and to be free from criminal prosecutions without the assistance of counsel was violated contrary and repugnant to, inadequately and ineffectively with and based on an erroneous, unwarranted and unreasonable application of facts and clearly established state and federal law as determined by the US Supreme Court in Gideon v. Wainwright 372 U.S. 353 (1963); when the petitioner was not provided or appointed counsel during adversarial juvenile proceedings for violating a supposed juvenile probationary condition and term as a result of having been accused of the crimes pertaining to this case; thereby resulting in a complete miscarriage of justice rising to levels of fundamentally inherent defects and inconsistent with the rudimentary demands of fair procedure

associated with having an injurios effect on judge and jury and the presumption of innocence, the unlawful, illegal and false arrest, pretrial detention, trial, conviction and sentence and confinement by not appointing an attorney during liberty depriving juvenille proceedings; whereby the petitioner must be provided a hearing and [his] presence thereon had to develop the facts, and upon evidence adduced vacate the sentence, discharging the commitment warrant, reversing and remanding the matter and case back before the juvenille courts, appointing counsel for certification proceedings and subsequent barring dismissal for double jeopardy. based on the following facts and legal questions presented:

That once the petitioner's unreliable, illegally obtained false (confession) was procured the petitioner came before the juvenille court on hearing for a purported juvenille probation violation, premised on being accused committing criminal offenses pursuant to this case while being appropriated thereto.

Although the petitioner was not on juvenille probation at that time, and even though counsel had not been appointed or provided during the aforesaid hearing, the unreliable statement was utilized to demonstrate the petitioner was no longer suitable for treatment as a minor or juvenille.

Having only been recently apprised of the fact the petitioner was not appointed or provided counsel, and that the instant offenses pursuant to this case were originally filed in the juvenille courts, after talking with [his] regular juvenille attorney Susan Roske.

The Sixth Amendment in the US constitution provides that "in all criminal prosecutions, the accused shall enjoy the right... to have the assistance of counsel for his defense."

This right is not curtailed by juvenille proceedings or because the district attorneys' office refused to execute the warrant pursuant to the instant offenses in this case, indeed greater protections are afforded for minors.

The petitioner was facing imprisonment in an adult facility, which is the precursor to invoke the right to counsel. Rothgery v. Gillespie Cty. 554 U.S. 191 (2008)

Irrespective of any prejudice that may have entailed as a result of not having the assistance of counsel during juvenille adversarial proceedings, the absence of counsel at all is presumptively prejudicial and requires reversal, per se. Satterwhite v. Tex. 486 U.S. 249 (1988)

Wherefore: the petitioner does incorporate by averment every related herein as fully set forth and presented in the accompanying grounds praying judgment for a hearing allocated, providing for the petitioner's presence

and upon evidence adduced vacate the sentence and discharge the commitment warrant, reversing and remanding this matter and case back before the juvenille courts to appoint counsel and determine the admissibility of the petitioner's statement, to violate the terms and conditions of juvenille probation in supposedly having committed criminal offenses while thereon, and amenability to juvenille waivership and certificatial proceedings for dismissal barring the recharging of the petitioner due to double jeopardy.

~ GROUND FOUR ~

whereas the petitioner's Fifth, Sixth, Eighth and Fourteenth US [Federal] Constitutional Amendment, as well as, Nevada Constitution Article 1 Section 8 privilege, right, entitlement and immunity to a speedy and fair trial, due process, remain silent, equal protections and compulsory process and to be free from cruel and unusual punishment and "selective prosecution" was violated contrary and repugnant to, inadequately and ineffectively with and based on an erroneous, unwarranted and unreasonable application of facts and clearly established state and federal law as determined by the US Supreme Court in Wayte v. U.S. 470 U.S. 598 (1985), when the Clark County, Las Vegas, Nevada district attorneys' office awaited executing the arrest

and bench warrants pursuant to the instant case and offenses until juvenille wardship terminated and the petitioner was no longer considered a Minor requiring adult certification proceedings after [he] impliedly exercised [his] right to a speedy trial in surrendering [himself] to authorities prior thereto, thereby resulting in a discriminatory purpose and effect and a complete miscarriage of justice rising to levels of fundamentally inherent defects and inconsistent with the rudimentary demands of fair procedure associated with mandatory juvenille certification proceedings, having an injurious effect on judge and jury and the presumption of innocence and delinquency, the unlawful, illegal and false arrest, pretrial detention; whereby the petitioner must be provided a hearing and [his] presence thereon had to develop the facts, and upon evidence adduced vacate the sentence, discharge the commitment warrant, reversing and remanding this matter back before the juvenille courts for dismissal due to the prosecutors' failure to certify the petitioner through selective prosecution and double jeopardy based on the following facts and legal questions presented:

That despite the petitioner having not been on juvenille probation when [he] surrendered [himself] to authorities on August 14, 1999, juvenille wardship did not terminate until January 12, 2000 approximately (1) one year

after the instant serious criminal sexual offenses alleged arose.

Still considered a minor and juvenille by operation of law and court ordered probationary term the state and county attorneys were required and mandated to certify the petitioner before the aforesaid charges were brought before the adult criminal justice system.

However, through legal artifice the district attorneys' office selectively delayed until the petitioner was no longer a ward of the juvenille justice system to arbitrarily escape their duty to certify under the notion that were the petitioner convicted in the juvenille court [he] would receive less time therefor, considering their animousity toward anyone who had been charged and accused of such offenses.

Accordingly, because the state and county have never properly, acquired, exercised, maintained and appropriately discharged jurisdiction of the charges or the petitioner in personam, not only now must the case be reversed and remanded therefor, but this jurisdictional defect remains assertable in perpetuity and without any ascribed limitation.

Current revision to, and legislation at the time of the allegations makes no reference to the nature of the offenses except murder. Any and every other criminal allegation MUST be certified, if not the entire proceedings are void,

ab initio.

A legislative mandate on the government is the equivalent of a prohibition on the citizen. And, where it is prohibited the conduct is VOID.

With no certification process having taken place the charges were not permitted to be disposed of in the adult criminal justice system and personal jurisdiction of the petitioner was lost thereon in absence thereof.

Wherefore: the petitioner does incorporate every averment related herein as if fully set forth and presented in the accompanying grounds praying judgment for a hearing be allocated and the petitioner's presence provided for, and upon evidence adduced vacate the sentence, discharge the commitment warrant, reversing and remanding this matter and case back before the juvenile court for certification proceedings, and thereon dismiss the case with extreme prejudice on grounds of double jeopardy, releasing the petitioner from an unlawful, illegal and unconstitutional confinement forthwith.

~ GROUND FIVE ~

Whereas the petitioner's Fifth and Fourteenth US [Federal] Constitutional Amendment, as well as, Nevada Constitution Article 1 Section 8 priviledge, right, entitlement and immunity to a single prosecution and punishment and to be free from multiple punishments for the same offense was violated contrary and repugnant to,

inadequately and ineffectively with and based on an erroneous, unwarranted and unreasonable application of facts and clearly established State and federal law as determined by the US Supreme Court in Breed v. Jones 421 U.S. 519 (1975) and Ficklin v. Hatcher 177 F.3d 1147 (9th Cir. 1999); when state and county prosecuting attorneys initially filed then dismissed charges before the juvenille court to remonstrate the petitioner's incorrigibility through juvenille wardship after having used an unreliable statement given by the petitioner pursuant to the dismissed charges alleged in the instant matter and case only to refile them before the adult court, absent clean hands and good-faith, thereby resulting in double jeopardy and a complete miscarriage of justice rising to levels of fundamentally inherent defects and inconsistent with the rudimentary demands of fair procedure associated with multiple punishments for the same offense, the unlawful, illegal and false arrest, pretrial detention, conviction, sentence and confinement; whereby the petitioner must be provided a hearing and [his] presence thereon had, and upon evidence adduced vacate the sentence discharging the commitment warrant, reversing and remanding this matter back before the juvenille court for dismissal due to double jeopardy releasing the petitioner forthwith and sealing [his] juvenille record based on the following facts and legal

questions presented:

That, initially the allegations pursuant to the instant case were originally filed in the juvenille justice system in order to evince the petitioner had violated the terms and conditions of juvenille probation, even though in truth and in fact the petitioner was not on juvenille probation at that time.

Dissatisfied with the amount of time the petitioner would serve were [he] able to secure [his] delinquency and juvenille status the district attorneys' office for Clark County dismissed the initial charges before the juvenille court and awaited the termination of juvenille wardship to refile the same charges in the adult criminal justice system. Even though the current criminal accusations and the aforementioned unreliable statement had been collaterally used to demonstrate the petitioner was no longer to be treated, and suitable to be treated as a minor delinquent juvenille.

With the initial charges dismissed and refiled the petitioner was adjudge to have violated juvenille probation and sentenced to (30) thirty days of county detention.

That while the petitioner was in custody the district attorneys' office never executed the arrest warrants issued on the refiled charges, but instead permitted the petitioner to be released.

Notwithstanding, another warrant (bench) was

obtained without any additional evidence or charge on the State's and county's case-in chief.

Under the principles of "double jeopardy" a prosecutor's intentioned decision to dismiss charges and later refile them once evidence has been collected and used is violative thereof. U.S. v. Rivera 872 F. 2d 507 (1st Cir. 1989)

Strictly forbidden by statute. see Nevada Revised Statute (NRS) 62.080

Jeopardy had already attached at the juvenille adjudicatory probationary stage when there was an existing warrant and charges, plus the petitioner's unreliable statement's usage, pursuant to this cause to aid in the judge's decision to determine whether the petitioner would be treated as a delinquent.

Had the juvenille judge known the state and county would dismiss charges shortly thereafter, it would have never considered or given any evidentiary wieght to the petitioner's unreliable statement and its having on the proceedings.

Furthermore, requiring the state and county to certify and proceed with charges altogether.

The district attorneys' office committed legal fraud by refiling the instant offenses on the adult courts, abusing a lawful process and implying, giving the appearance that the petitioner was not a juvenille

delinquent and under the age of (18) eighteen years of age when these allegations arose.

Prejudicing not only [his] right to have the charges disposed of as a minor, but to receive a lesser sentence were [he] found guilty.

Wherefore: the petitioner does incorporate every averment related herein as if fully set forth in the accompanying grounds praying judgment for a hearing be allocated and the petitioner's presence provided for, and upon evidence adduced vacate the sentence, discharge the commitment warrant, reversing and remanding the case back to the juvenille court disposing of the matter and case there, releasing the petitioner from an unlawful, illegal and unconstitutional confinement on grounds of double jeopardy, sealing the petitioner's juvenille record thereafter due to [his] juvenille delinquency.

~GROUND SIX~

Whereas the petitioner's First, Fourth, Fifth, Sixth, Eighth, Thirteenth and Fourteenth US [Federal] Constitutional, as well as, Nevada Constitution Article 1 Sections 8, 9, 10, 6 and 17 privilege, right, entitlement and immunity to a viable criminal defense from trial and appellate counsels' paid, reasonable and professional assistance and to be free from the ineffective assistance of [conflicted]

attorneys was violated contrary and repugnant to, inadequately and ineffectively with and based on an unreasonable, erroneous and unwarranted application of clearly established state and federal law as determined by the US Supreme Court in Strickland v. Washington 466 U.S. 668 (1984) and Butstick v. Stevenson 559 F.3d 160 (4th Cir. 2009), when trial and direct appellate counsels' deficient performances fell below normal objective standards of reasonableness from trial counsels' (Christopher Oram's) refusal, failure or forestalling to: (i.) move to have the charges dismissed on the insufficiency of the evidence, (ii.) move to have the petitioner discharged or released from custody due to instances of constitutional violations, (iii.) move to have himself removed from the instant case due to his conflicted interests in saving state and county appropriated and vouched funds paid in advance of the conclusion of the petitioner's case, (iv.) put forth a not guilty plea rather than a not guilty by reason of insanity over his [client's] objection for the sake of leaving the petitioner's unreliable (false) statement (confession) unchallenged, (v.) investigate and determine the accuracy and correctness of the adjudicatory juvenille proceedings, (vi.) investigate the purported victims' desire to recant

their statements, (vii.) object to the continual usage of the petitioner's unreliable and illegally obtained statement during trial; and from direct appellate counsel's (David Schieck's) refusal, failure or foregoing to: (viii.) brief the issues before the Nevada Supreme Court on direct appeal objected to below and agreed upon to secure a conflict of interest waiver for his appointment regarding double jeopardy, failure to certify the juvenille petitioner as an adult, the untrustworthiness, inadmissibility and unreliability of the petitioners illegally obtained statement (confession) and trial counsels' ineffectiveness, which had been contemporaneously preserved through a pretrial petition for writ of habeas corpus and motion to dismiss the charges submitted by the petitioner and filed by endorsement by trial counsel, and, (ix.) reinitiate a second direct appeal after the first was dismissed due to the trial court record incorrectly reflecting the petitioner plead guilty under a negotiated plea agreement once corrected, that on account of these deficient performances the petitioner was prejudice in the form of going to trial with a conflicted attorney, a trial tainted and fact finders' minds poisoned by false positive proof of the commission of alleged offenses, the petitioner never having a direct appeal, the petitioner being falsely arrested and currently confined, the petitioner being punished twice for the same offenses, the allegations not being disposed of in the juvenille court and the

petitioner not being treated as a minor, grounds for dismissal of the charges, excluding and suppressing the petitioner's unreliable statement and discharging the petitioner going undecided or heard, trial and appellate counsels' attempt at saving money disbursed by the state and county prior to the conclusion of the petitioner's case limited the defense and its resources, and the prosecuting attorneys permitted to continue practicing law and commit other illegalities, in other cases and the instant, during post-conviction processes or otherwise; thereby resulting and culminating into an unreliable and fundamentally unfair outcome in the proceedings circumstantially totalling no representation at all or a complete miscarriage of justice rising to levels of fundamentally inherent defects and inconsistent with the rudimentary demands of fair procedure associated with the rigors and structures imposed under Nevada and Federal Rules Civil Procedure 11 (N,FRCP), American Bar Association Standards (ABA) , Model Rules of Professional Conduct (MRPC) 8.4, and the unlawful, illegal and false arrest and imprisonment, pretrial detention, conviction and sentence of the petitioner; whereby the petitioner must be provided a hearing and [his] presence thereon had, and upon evidence adduced vacate the sentence discharge the commitment warrant reversing and remanding this matter and case for

further proceedings and retrial or dismissal based on the following facts and legal questions presented:

That, with the withdrawal of initial arraignment counsel, Nancy Leocke, the petitioner began informing trial counsel, Christopher Oram once he was appointed, of [his] intent to proceed to trial.

Having been so informed the petitioner requested trial counsel to obtain discovery from the deputy district attorney, Mary Holthus, and to look into some illegal occurences that took place during abated juveille proceedings involving the instant offenses, at which time trial counsel told the petitioner that because his services could only be exacted and rendered from county and state vouchers ancillary services would be limited in order to save money for his payment he would not otherwise have to use.

The petitioner resolved in [his] mind to mount up a defense without trial counsel's help.

In one of the numerous attempts at adversarially challenging the state's and county's case the petitioner informed prosecutors, through counsel, that [he] would be open to entering a negotiated plea agreement were [he] able to receive the discovery.

To which the prosecution agreed, upon the condition that the petitioner waive [his] preliminary hearing.

This was a play by the prosecutor to gain additional time, because unbeknownst to the petitioner but trial

counsel being fully aware, the purported victims were being uncooperative.

With the preliminary hearing waived, and after continual demands, the prosecutor Mary Holthus finally produced the discovery the same day the petitioner was to enter the negotiated plea agreement when the matter came on hearing

Dissatisfied with the tactical withholding of discovery and due to the petitioners innocence [he] rejected the plea agreement in open court for the purpose of creating a record of [his] desire to go to trial.

Prompted by his hostility toward the petitioner in the petitioner's constant attempts at making trial counsel do his job, trial defense attorney then sought to have the petitioner psychologicaly evaluated for rejecting the plea agreement.

Trial counsel was more overly concerned about paying for competency evaluations than he was presenting an actual innocence defense.

It was at this point that the petitioner felt trial counsel was trying to aid the prosecutor in convicting [him].

Working against an overtly conflicted trial counsel the petitioner was sent to Lakes Crossing Mental Health, Sanitorium and Hygiene Facility at the behest thereof.

Although, the psychological tests and competency evaluations were inconclusive, the petitioner was returned to Clark County, Nevada for further criminal proceedings pursuant to this case.

Because counsel had abandoned his role as advocate the petitioner began informing the trial court record of his incompetence.

One instance took place when trial counsel blurted out in open court, "I thought this was a robbery," Knowing full well the reason for his appointment and the nature of the allegations. Further evincing his disdain for the petitioner.

Even though the court judge should have withdrawn him from the case at this juncture counsel remained appointed until the conclusion of trial.

In the interim the petitioner told counsel that "the state and county might be in possession of a false confession," and that," [his] constitutional rights had been violated to obtain it and keep [him] in custody."

Neither inspired to action or convinced trial counsel refused to make inquiry.

Making inquiry for [himself] the petitioner was informed by the deputy district attorney that," no such statement existed."

Trial counsel then sought bail reduction, at which time the unreliable illegally obtain statement was conveniently located and used to not only deny bail but to disallow

bail altogether.

Disheartened by trial counsel's contrived refusals to utilize funds to mount a defense, the petitioner submitted and was permitted to file on the endorsement of trial counsel a pretrial motion to dismiss the information and petition for writ of habeas corpus.

Thereby allowing counsel for trial to save money as all papers and copies were provided at the petitioner's expense.

During the hearing thereon the submitted and endorsed challenges to the prosecutor's case left the petitioner with the task of arguing complex legal issues without trial counsel's input or help.

Having denied every argument on irrelevant and immaterial grounds during the dismissal hearing, excessively burdened and compelled by trial counsel's ommissions to personally challenge the admissibility of the unreliable and illegally obtained statement left the petitioner with the only other available option of obtaining a not guilty verdict to preserve the mental health issues at the statement's retention, by reason of insanity.

What trial strategem can be accredited or attributed to an attorney who allows an innocent client to admit the commission of offenses impliedly by [his] plea entered without first challenging the actual commission

of the offenses alleged on the pretense of an alleged confession?

It is especially egregious to forgo investigations when the entire defense strategy pursuant to the nature of the alleged offenses revolve around hearsay and uncorroberated events and locations, and the possible recantation thereof.

Had trial counsel minimally investigated he would have discovered a compelling and viable defense negating the State's and county's case from inception.

Were the unreliable statement permitted to fall, the entire case likewise would have fell, and the petitioner's innocence would have prevailed.

That is beyond incompetance, that is fraudulent concealment. Bespeaking a studied indiffence toward the petitioner.

Trial counsel's failure to perform basic research on that point alone is a quintessential example of un-reasonable performance.

Trial counsel fraudulently concealed the exculpatory misconduct perpetrated against the petitioner, and supposedly the purported victims, allowing the malfeasors to remain licensed and employed at state and county expense, as well as, the expense of other unsuspecting individuals subjected to reprehensible government conduct.

The state and county actors committed crimes to

convict the petitioner and trial counsel allowed them to escape accountability and liability at the cost of the petitioner's freedom and reputation. Especially by not reporting this to the court and appropriate authorities under the tutelage of his legal professional assistance.

The petitioner's freedom should have taken precedence over trial counsel's financial concerns. Trial counsel's subjective frame of mind was to simply get paid and profit from his representation.

With trial counsel's every commission the presumption of innocence evaporated into illusion and spectacle.

Considering the evidence that was presented for the defense versus the evidence that was not introduced juror number (6) six still perceived the unreliability and untrustworthiness of the petitioner's statement, which is all that is needed to demonstrate prejudice and reasonable doubt. Buck v. Davis 137 S.Ct. 759 (2017)

Albeit, on the day of trial the judge rejected the petitioner's insanity defense and plea, proceeding thereon with the initially entered plea of not guilty.

After the jury returned with guilty verdicts on (2) two of the (3) three counts, having deliberated for (3) three days, juror number (6) six queried trial counsel as to why had it seemed as if the

recorded statement, given by the petitioner, relied on by the jury to convict, had been coerced and why was it not excluded or suppressed?

Counsel had no answer, but informed the petitioner of the discussion.

Sometime thereafter direct appellate counsel David Schieck was appointed to handle the direct appeal on the agreed upon condition that he would brief the issues contained herein for the purpose of obtaining a conflict of interest waiver from the petitioner.

Moreover, at this time the trial court record incorrectly reflected the petitioner pled guilty, when in truth and in fact [he] went to trial, although direct appellate counsel neither checked or corrected it before filing the initial direct appeal opening brief.

Notwithstanding; appellate counsel submitted and filed the direct appeal opening brief excluding these and other issues preserved and agreed upon without the written and express consent of the petitioner's assenting waiver.

Alerted to appellate counsel's breach of implied contractual obligation and duty the petitioner submitted but was not permitted to file a supplemental and "Anders" styled opening brief.

Even so, the direct appeal was dismissed because dehors the trial court record incorrectly and falsely reflected the petitioner pled guilty and was reversed

and remanded to correct it.

Standing as one of the objective external impediment factors disallowing these and other issues to be briefed, raised and decided on direct appeal, appellate counsel did not pursue a second direct appeal despite the petitioner's requests he do so.

Without an actual direct appeal the petitioner is presumptively prejudice.

The state's and county's procedural frame work mandate direct appellate counsel pursue a second direct appeal as an inalienable entitlement to resolve issues of guilt, innocence and credibility.

Something clearly beyond the trial court record, juries' knowledge and legal know how of an indigent pro se 'jailhouse lawyer' defendant litigant.

Accordingly, the prejudice, apart from that already mentioned, manifested itself as a polluted stream without the filter of due process meant to avoid a miscarriage of justice.

No objectivity can be illustrated through both counsels' continued argumentative and constant rejections of their [clients] requests to investigate and interview the purported victims' recantations, or not seeking to have the charges dismissed and the petitioner released on grounds of constitutional violations, undermining the proceedings before the trial and appellate courts.

It would seem as if defense attorneys are making an unwitting participant of the accused to choose between his freedom or proving his innocence without their professional assistance.

What is the difference?

If state or county prosecutors believed in the strength of their case there would be no justifiable reason for questionable tactics to secure a conviction.

Somehow defense attorneys do not think this way.

Once trial counsel's disregard became apparent the petitioner was just seeking to maintain damage control from the court's and the jury's exposure to evidence that was persuasive, but inadmissible.

What else could fact finders opine about the petitioner on the premise of trial counsel's dereliction, who'd abandoned his [client] to fend for [himself], except to be aroused by the emotionalizing effect of an illegally obtained and unreliable recorded statement, nullifying and outweighing both logic and reason. Except to juror number (6) etc.

Preconceived notions of fairness implied and suggested that the statement had already been challenged, but the petitioner lost and the jury was therefor permitted to hear it.

Then harboring the same ill will and conflict direct appellate counsel occludes the only limited probability of correcting this fundamentally unfair circus show.

Consequently, no judge can conclude that the issues weren't contributory to the verdict or procedurally and substantively bypassed, forfeited, defaulted or barred on direct appeal as a result of direct appellate counsel's dereliction while simultaneously finding appellate counsel's performance was efficient and not prejudicial, one cannot exist without the other. Evitts v. Lucey 469 U.S. 387 (1985)

Admitting the issues and grounds went undecided due to both counsels' predilection admits the scope and breadth of their ineffectiveness.

Trial and direct appeal counsel collusively concealed fraudulently the fact crimes were committed to convict the petitioner.

Such violations predicated the false arrest, illegal detention and unlawful imprisonment of an actually innocent person.

Were the judge or jury privy to an iota of this recalcitrant information both defense attorneys and the deputy district attorney would have been disbarred, or worse.

Even more importantly the petitioner would have been set to [his] liberty possibly without trial.

The judge and jury did not have the benefit of making an informed and unimpaired decision they were simply asked to find the commission of an offense. An easy conclusion

to draw absent any adversarial testing and challenges to the prosecutor's evidence and case-in-chief.

In the interests of justice confidence in the verdict should be undermined and any procedural inexactitude excused on the basis of trial and direct appellate counsel's lack of focus and diligence in order to propagate the complete and utter miscarriage of justice in imprisoning an actually [Isometrically] innocent person.

Wherefore: the petitioner does incorporate every averment related herein as if fully set forth in the accompanying grounds praying judgment for an allocated hearing and [his] presence provided for thereon, and upon evidence, testimony and documents adduced vacate the sentence, discharge the commitment warrant, reversing and remanding the case for retrial or dismissal with extreme prejudice, releasing the petitioner from an unlawful, illegal and unconstitutional confinement for ineffective assistance of counsels.

~ GROUND SEVEN ~

Whereas the petitioner's First, Fifth, Sixth and Fourteenth US [Federal] Constitutional Amendment, as well as, Nevada Constitution Article 1 Section 8 privledge, right, entitlement and immunity to the assistance of counsel on direct appeal and post-conviction processes and to be free from the denial

of equal protections, due process and the absence of counsel during criminal prosecution was violated contrary and repugnant to, inadequately and ineffectively with and based on an erroneous, unwarranted and unreasonable application of facts and clearly established state and federal law as determined by the US Supreme Court in Martinez v. Ryan 132 S.Ct. 1309 (2012) and Trevino v. Thaler 133 S.Ct. 1911 (2013); when the petitioner was not provided a second direct appeal with the assistance of an appellate attorney after the first's dismissal and counsel's presumptive withdrawal by operation of Nevada Supreme Court Rule (NSCR), or when the Eighth Judicial District Court Clerk County Las Vegas Nevada allocated hearings on the initial post-conviction petition for writ of habeas corpus in absence of the petitioner and appointed counsel; thereby resulting in an unreliable and fundamentally unfair outcome on the proceedings and complete miscarriage of justice rising to levels of fundamentally inherent defects and inconsistent with the rudimentary demands of fair procedure associated with not having the assistance of counsel and having an injurious effect on the judge and the presumption of innocence, the unlawful, illegal, false and unconstitutional arrest, pretrial detention, post-trial proceedings and confinement

whereby the petitioner must be provided another direct appeal or hearing and [his] presence thereon had, and upon evidence adduced and testimony given discharged from the custody of the Nevada Department of Corrections [prisons] (NDOC, NDOP) based on the following facts and legal questions presented:

That, upon the dismissal and limited remand of the direct appeal to correct the trial court's record to reflect the petitioner did not plead guilty appellate attorney David Schieck was presumptively withdrawn from the petitioner's case by operation of NSCR.

So withdrawn the petitioner requested withdrawn appellate attorney to make another run at a direct appeal because [he] was entitled to one without limitation. Lozada v. State

At which time appellate counsel disagreed and discontinued his services.

Notwithstanding, the petitioner submitted and was permitted to file an initial post-conviction petition for writ of habeas corpus that was tentatively granted pursuant to NRS 34.770 as a hearing was allocated for relief, rather than dismissal under the strict meaning of the statute in derogation of the common law.

Further, due to the initial post-conviction petition not being dismissed the petitioner was entitled to the appointment of counsel in accordance with NRS

34.750 during the allocated hearing.

Albeit, counsel was never appointed, nor was the petitioner's presence secured thereon.

Without either, and proceeding ex parte, the aforesaid court in excess of authority and compliance with its own order found and concluded the issues enumerated herein were procedurally estopped, barred or precluded.

Pursuant to the newly discovered evidence and the US Supreme Court's decision in Martinez/Trevino, supra, this court is now forbidden to find procedural inexactitudes committed by the petitioner for [his] supposed failures to adhere to procedural strictures, while unilaterally finding no attorneys were needed whenever the state's and county's procedural frame work unconditionally mandates and requires counsel on a [second] direct appeal for initial review of the conviction and sentence, and after the tentative grant of a petition for post-conviction relief, forfeited any constitutional violations, claims and errors.

By admitting one is to admit the other.

Thusly, the state and county failed to [(re)] appoint attorneys in the initial review stages of the collateral or direct proceedings.

Under Nevada State law the petitioner was inalienably entitled to counsel on both the [second] direct appellate proceeding and the hearings allocated on the post-

conviction petition for writ of habeas corpus.

All of which taken in conjunction with the petitioners actual innocence the substantive merits must be reached, and indeed have beenreached on account of the prosecutions confession and avoidance through pleading procedural preclusions.

In which case should the procedural impediment be removed retrial would be barred on the bases of double jeopardy.

Wherefore: the petitioner does incorporate every averment related as if fully set forth in the accompanying grounds praying judgment for a hearing allocated and the petitioner's presence had thereon, and upon evidence and testimony adduced vacate the sentence, discharge the commitment warrant and release the petitioner from an unlawful, false, illegal and unconstitutional imprisonment and confinement.

REQUESTED RELIEF

24. For the foregoing reasons the petitioner prays and requests that this court issue writs:

(a.) vacating the sentence;

(b.) discharging the commitment warrant;

(c.) declaring the judgment of conviction, unvenedelor otherwise, void and unenforceable;

(d.) directing the allocation of a hearing, evidentiary or otherwise;

(e.) directing the petitioner's return and
(f.) directing the prosecutor to produce any signed written waiver of the petitioner's inalienable rights, and upon evidence adduced or testimony given and the prosecutor's failure to meet their burden of the allegations in the instant petition schedule a new trial excluding the unreliable illegally obtained statement or set the the petitioner to [his] liberty forthwith, as well as, any other relief just and proper.

Verified under the penalty of perjury:

/s/ _____
Renard T. Polk

CERTIFICATE OF MAILING

I Renard T. Polk do hereby certify that a true and correct copy of the foregoing petition was deposited with an employee at the Lovelock Correctional Center this 1st day of April 2020 for the purpose of being conveyed by U.S. Postal Service to the addresses below:

- Regional Justice center clerk
200 Lewis Ave.
Las Vegas, NV 89155

Verification:

/s/ _____
RENARD POLK

ANNA POLK'S AFFIDAVIT (DECLARATION)

IN SUPPORT OF CORROBORATING

RENARD POLK'S ACTUAL INNOCENCE.

Anna Polk states: that,

1.) I am the affiant and i make this declaration under the penatly of purjury verified by my signature and notary affixed hereto,

2.) I futher make this declaration to establish and corroborate Renard Polk's (my biological brother's) actual innocence,

3.)Based on information, belief and understanding during the time my grandmother (Gloria Polk) and my brother were discussing to whom she'd be leaving her estate to, or whether she could turn her annuities into a lump sumof cash upon her death as a result of her terminal cancer diagnoses; My aunt (Susan Sims) had been devising a way to make herself sole beneficiary since my mother's attempted suicide when she was released from prison, whereat upon which time my mother legally transferred parental custody rghts of my siblings and I to be the care of my grandmother,

4.) My aunt fearing she would be left out as a joint beneficiary, she then began manipulating my sisters and i into presuming that whenever my brother would wrestle and play with us that it was sexually assaultive,

5.) Eventually culminating into the night my brother left my aunt discovered that he had just came home from the juvenille justce center and was out with friends, after being accused of sexually inappropriate behavior with his girlfriend at the time Freda White,

6.) The charges at the time were inevitably dropped, but my aunt seized upon the opportunity to persuade my grandmother into believing my brother had sexually assaulted me and our siblings in the past, having been supplied with the presumptive behavior inferred by false allegations asserted by Mrs. White to inform my grandmothers reasoning,

7.) Armed with this persuasive tool she even convince my grandmother over the phone of the possibility that we had been sexually assaulted that very night,

8.) My aunt then came over and questioned my siblings and I as to whether my brother had "horse-played" or "wrestled" with us upon his return, thereby further nurturing our miss conception and her deceit she's been fomenting for years,

9.) This prompted my siblings (Jahala Chatman) [my sister] and I into stating that we were

POLK'S EXHIBIT A

sexually assaulted that night when my brother returned home from the juvenile detention center being misinformed of what is sexual assault actually is,

10.) My grandmother and aunt did not immediately call authorities thereafter, but awaited his (my brother's) arrival home in order to confront him about the allegations,

11.) However; In my opinion it was a delay tactic by my Aunt to gain leverage to be sole beneficiary of my grandmothers estate, and initially she (my aunt) had no intention of calling the police,

12.) After my brother arrived home a heated argument took place between the three of them, resulting in my brother leaving,

13.) Once he left authorities were contacted, but after responding and investigating officers and detectives were present they did not immediately issue an arrest warrant after we gave our statements, which I assume to some degree because none of our stories made sense,

14.) Since we could not get our story straight the officers and detectives informed us to come down to their offices once we did,

15.) From the time the officers and detectives left we [Jahala and I] were instructed by my aunt Susan that the next time we were required to give statements to the authorities we were to restate and recant what we'd secretly spied our brother doing with other females he'd invited over to our home as if it were us and he did not have our permission to do the sexual things we'd covertly witnessed him doing,

16.) When we were finally brought before authorities again we did as our aunt had instructed us to do with respect to our statements,

17.) Notwithstanding, some time later we were informed that my brother had been arrested on our false allegations and that a trial would possibly take place,

18.) Leading up to the day of trial my sister and I had come to the agreement that we would not be going along with my aunts ploy,

19.) Albeit, on the Day of trial when we voice the position that we wanted to retract our statements the authorities and our relatives threatened us with imprisonment ourselves,

20.) Erupting into a fight in the witness hallway of the courthouse between our relatives, where each took the stand and simply followed our aunt's and prosecutors instructions,

21.) Eventuating into a (3) three day trial our brother was convicted on our false, misinformed and coerced testimony.

22.) Furthermore the affiant sayeth naught.

State of California

County of Los Angeles

on this 22nd day of July

2019, Before me, the undersigned, a Notary Public, in and for said State, personally appeared Anna Polk known or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the instant instrument, and acknowledged to me that she executed it.

Witness my hand and official seal:

The undersigned under penalty of perjury:

See attached

Notary Public

Anna Polk

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On 7/22/2019 before me, Cary Scott Friedman Notary Public,
Date *Here Insert Name and Title of the Officer*

personally appeared Anna Polk
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

CARY SCOTT FRIEDMAN
Commission No. 2165326
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
My Comm. Expires SEPTEMBER 22, 2020

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title or Type of Document: Affidavit Document Date: 7/22/19
Number of Pages: 3 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
Corporate Officer – Title(s): _____
Partner – Limited General
Individual Attorney in Fact
Trustee Guardian or Conservator
Other: _____
Signer Is Representing: _____

Signer's Name: _____
Corporate Officer – Title(s): _____
Partner – Limited General
Individual Attorney in Fact
Trustee Guardian or Conservator
Other: _____
Signer Is Representing: _____

Pg. 52 (v) of 52 (v)

RENARD T. POLK #72439
Lovelock Correctional Center
1200 Prison Rd.
Lovelock, NV 89419

Lovelock Correctional Center

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Las Vegas, NV 89155

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DISTRICT COURT
CLARK COUNTY, NEVADA

Renard Polk,

Petitioner,

vs.

Timothy Filson; William Ruebart; Tasheena Sandoval,

Respondent,

Case No: A-18-780833-W
Department 9

ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on May 19, 2020. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's Calendar on the 22nd day of July, 2020, at the hour of 8:30am o'clock for further proceedings. XXX

CRISTINA D. SILVA
District Court Judge

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RENARD POLK,
#1521718

Defendant.

CASE NO: **A-18-780833-W**
00C166490

DEPT NO: **IX**

STATE'S RESPONSE TO PETITIONER'S SECOND AMENDED [ACTUAL INNOCENCE] PETITION FOR WRIT OF HABEAS CORPUS AD SUBJICIENDUM AD TESTIFICANDUM AND DUECES TECUM

DATE OF HEARING: **JULY 22, 2020**
TIME OF HEARING: **1:45 PM**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JAMES R. SWEETIN, Chief Deputy District Attorney, and submits the attached Points and Authorities in this State's Response to Petitioner's Second Amended [Actual Innocence] Petition for Writ of Habeas Corpus ad Subjiciendum ad Testificandum and Dueces Tecum.

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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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On April 13, 2000, the State filed an Information charging Renard Polk ("Petitioner") as follows: Counts 1 and 2 – Sexual Assault with a Minor under Sixteen Years of Age (Felony – NRS 200.364, 200.366); and Count 3 – First Degree Kidnapping (Felony – NRS 200.310, 200.320). On November 22, 2000, the State filed an Amended Information charging Petitioner with three (3) counts of Sexual Assault with a Minor under Sixteen Years of Age (Felony – NRS 200.364, 200.366). On January 27, 2002, the State filed a Second Amended Information charging Petitioner with three (3) counts of Sexual Assault with a Minor under Fourteen Years of Age (Felony – NRS 200.364, 200.366).

Petitioner's jury trial began on January 7, 2002. On January 10, 2002, the jury returned the following verdicts: Count 1 – guilty of Attempt Sexual Assault with a Minor under Fourteen; Count 2 – guilty of Sexual Assault with a Minor under Fourteen; and Count 3 – not guilty.

On March 14, 2002, this Court sentenced Petitioner to the Nevada Department of Corrections as follows: Count 1 – to a maximum of one hundred twenty (120) months and a minimum of forty-eight (48) months and a special sentence of lifetime supervision; and Count 2 – to a maximum of life with minimum parole eligibility of two hundred forty (240) months, consecutive to Count 1. Petitioner received six hundred ninety-one (691) days credit for time served. The Judgment of Conviction was filed on April 1, 2002.

Petitioner filed a Notice of Appeal on April 3, 2002. On August 25, 2003, the Nevada Supreme Court affirmed Petitioner's conviction and issued a limited remand to correct the Judgment of Conviction, which incorrectly stated that Petitioner pleaded guilty rather than was found guilty by a jury. Remittitur issued on September 19, 2003, and an Amended Judgment of Conviction was filed on February 9, 2005.

On July 1, 2004, Petitioner filed a Petition for Writ of Habeas Corpus. The State filed a Response on August 31, 2004. This Court denied Petitioner's Petition on September 8, 2004. The Findings of Fact, Conclusions of Law and Order were filed on September 14, 2004.

Petitioner filed a Notice of Appeal on October 8, 2004. The Nevada Supreme Court affirmed the denial of Petitioner's Petition on January 25, 2005. Remittitur issued on February 22, 2005.

On December 7, 2007, Petitioner filed a Motion to Vacate, Set Aside or Correct Illegal Sentence of Judgment, Consolidated Writ of Error. The State filed an Opposition on December 17, 2007. This Court denied the Motion on December 18, 2007, and filed a written Order on December 31, 2007. Petitioner filed a Notice of Appeal on January 18, 2008. On June 9, 2008, the Nevada Supreme Court affirmed the denial of Petitioner's Motion. Remittitur issued on September 9, 2008.

On January 27, 2010, Petitioner filed his second Petition for Writ of Habeas Corpus (Post-Conviction). On March 18, 2010, the State filed a Response and Motion to Dismiss the Petition. On April 8, 2010, this Court denied Petitioner's Petition as time-barred. A written Order was filed on April 28, 2010.

On May 19, 2011, Petitioner filed his third Petition for Writ of Habeas Corpus (Post-Conviction). The State did not file a response. This Court denied Petitioner's third Petition as untimely on July 26, 2011.

On March 16, 2012, Petitioner filed a second Motion to Correct Illegal Sentence. The State filed an Opposition on April 23, 2012. On May 10, 2012, Petitioner filed an Amended Motion to Correct Illegal Sentence. This Court denied the Motion on May 29, 2012, and filed a written Order on June 8, 2012.

On April 9, 2013, Petitioner filed his fourth Petition for Writ of Habeas Corpus (Post Conviction). The State filed a Response on June 5, 2013. This Court denied the Petition on June 11, 2013, and filed a written Order on August 2, 2013.

On December 2, 2013, Petitioner filed his fifth Petition for Writ of Habeas Corpus (Post-Conviction). On March 10, 2014, the State filed a Response and Motion to Dismiss Petitioner's Petition and a Countermotion for Determination of Vexatious Litigation and Request for Order to Show Cause why the Court should not Issue a Pre-Filing Injunction Order.

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On February 11, 2014, Petitioner filed a Motion for Sanctions and to Disqualify the District Attorney's Office. The State filed an Opposition on February 25, 2014. This Court denied the Motion on March 4, 2014, and filed a written Order on March 14, 2014.

On April 1, 2014, Petitioner filed a Motion to Strike and/or for Sanctions. The State filed its Opposition on April 25, 2014. This Court denied the Motion on April 29, 2014. On May 19, 2014, Petitioner filed a Motion for Reconsideration (and/or) to Reduce to Writing. On June 4, 2014, the State filed its Opposition. The Court denied the Motion on June 10, 2014.

On September 17, 2015, Petitioner filed a pro per Petition for Writ of Mandamus {and/or} in the Alternative Prohibition. This Court denied the Petition on October 8, 2015; a written Order issued on October 27, 2015. Petitioner filed a Notice of Appeal on November 5, 2015. The Nevada Supreme Court affirmed the district court's decision. Remittitur issued September 16, 2016.

On November 5, 2015, Petitioner filed a Petition Writ of Execution, which was denied on December 2, 2015.

On November 4, 2016, Petitioner filed a Motion to Vacate, Set Aside, or Correct an Illegal Sentence. The State filed its Opposition on November 22, 2016. This Court denied Petitioner's Motion on November 28, 2016. The written Order was filed December 1, 2016, and Petitioner filed a Notice of Appeal on December 16, 2016. The Nevada Supreme Court affirmed the district court's order; remittitur issued January 4, 2018.

On July 26, 2017, Petitioner filed a Supplemental Motion for Sanctions and Finding of Contempt. This Court denied the Motion on August 2, 2017. The written Order was filed August 30, 2016, and Petitioner filed a Notice of Appeal on August 31, 2017. The Nevada Supreme Court dismissed the appeal because no statute or court rule permits an appeal from the relevant orders; remittitur issued December 19, 2018.

On September 18, 2018, Petitioner filed a Motion to Alter, Amend, or Modify Sentence. On September 27, 2018 Petitioner filed a Motion to Quash Post-Conviction Order. On October 4, 2018, the State filed its Opposition to Petitioner's Motion to Alter, Amend, or Modify Sentence. Also on October 4, 2018, the State filed its Response to Petitioner's Motion to Quash

Post-Conviction Order. On October 10, 2018, the Court denied Petitioner's Motion to Alter, Amend or Modify Sentence. On September 20, 2019 the Nevada Court of Appeals affirmed the denial of this Motion.

On July 11, 2018, Petitioner filed an Amended [Actual Innocence] Petition for Writ of Habeas Corpus Ad Subjudiceum, Duces Tecum, Testificandum ("Sixth Petition"). On October 8, 2018, the State's filed its Response. On October 29, 2018, Petitioner filed a Supplemental (Emergency) Amended (Actual Innocence) Petition for Writ of Habeas Corpus and Testificandum, Dueces Tecum, Ad Subjudicem. On November 14, 2018, the Court denied Petitioner's Petition. On December 7, 2018, the Court filed the Findings of Fact, Conclusions of Law and Order denying the Petition.

On May 19, 2020, Petitioner filed a Second Amended Petition for Writ of Habeas Corpus. The State's Response follows.

ARGUMENT

Petitioner has titled his filing as a Second Amended Petition for Writ of Habeas Corpus. However, his most recent Petition for Writ of Habeas Corpus (his sixth such filing) was denied by the Court. A Findings of Fact, Conclusions of Law and Order was filed to this effect on December 7, 2018. Therefore, the Petition has already been ruled on, and Petitioner cannot seek to amend it.

Further, the Court ordered the State to respond to the filed Petition on May 20, 2020. As such, the State is construing Petitioner's filing as a seventh Petition for Writ of Habeas Corpus.

I. THIS SEVENTH PETITION IS BARRED ON SEVERAL GROUNDS

A. This Seventh Petition is Time Barred

Pursuant to NRS 34.726(1):

> 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 of the 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. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:

> (a) That the delay is not the fault of the petitioner; and
>
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). The one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

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

Furthermore, the Nevada Supreme Court has held that the District Court has a duty to consider whether a defendant's post-conviction petition claims are procedurally barred. State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found that "[a]pplication of the statutory procedural default rules to postconviction habeas petitions is mandatory," noting:

> 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.

Id. (emphasis added).

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

//

//

Here, remittitur from the direct appeal issued on September 19, 2003. Thus, the one-year time bar began to run from that date. The instant Seventh Petition was not filed until May 19, 2020. This is over sixteen (16) years in excess of the one-year time frame. As in Gonzales, where the petition was filed only two days too late, the procedural time-bar is mandatory as to this Sixth Petition. Absent a showing of good cause for this delay and undue prejudice to Petitioner if the petition is dismissed, Petitioner's Seventh Petition must be denied as untimely.

B. This Seventh petition is Barred by the Doctrine of Laches

Certain limitations exist on how long a defendant may wait to assert a post-conviction request for relief. Consideration of the equitable doctrine of laches is necessary in determining whether a defendant has shown 'manifest injustice' that would permit a modification of a sentence. Hart, 116 Nev. at 563–64, 1 P.3d at 972. In Hart, the Nevada Supreme Court stated: "Application of the doctrine to an individual case may require consideration of several factors, including: (1) whether there was an inexcusable delay in seeking relief; (2) whether an implied waiver has arisen from the defendant's knowing acquiescence in existing conditions; and (3) whether circumstances exist that prejudice the State. See Buckholt v. District Court, 94 Nev. 631, 633, 584 P.2d 672, 673–74 (1978)." Id.

NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period exceeding five years [elapses] between the filing of a judgment of conviction, an order imposing a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the filing of a petition challenging the validity of a judgment of conviction…" The Nevada Supreme Court has observed, "[P]etitions 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." Groesbeck v. Warden, 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the statute requires the State plead laches. NRS 34.800(2).

Here, the State affirmatively pleads laches. As discussed supra, it has been over sixteen (16) years since Remittitur issued in Petitioner's direct appeal—well past the five-year period for the presumption of prejudice. Moreover, Petitioner makes no effort to rebut the

presumption. Thus, laches bars consideration of this Seventh Petition.

C. The Seventh Petition is Successive

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 petitioner 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 petitioner'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 petitioner 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 postconviction 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.

This Sixth Petition is undoubtedly successive. Petitioner has already filed six (6) Petitions for Writ of Habeas Corpus in this case—on July 1, 2004, January 27, 2010, May 19, 2011, April 9, 2013, December 2, 2013, and July 11, 2018. This Court denied Petitioner's first habeas petition on the merits on September 8, 2004. The Nevada Supreme Court subsequently

affirmed this Court's denial on the merits January 25, 2005, with the Remittitur issuing on February 22, 2005. Thereafter, this Court has denied Petitioner's second, third, fourth, fifth, and sixth petitions as time-barred and successive.

The State would further not that the instant Seventh Petition is a near carbon copy of Petitioner's Sixth Petition. The claims, language, and even page numbering is identical to the Petition filed on July 11, 2018. In fact, the only thing new in this Petition is the attached Exhibit A, which Petitioner references on page 15 of his Seventh Petition. However, given that every claim Petitioner brings in this petition has already been brought (and denied) in an earlier Petition, this petition is the very definition of successive. As such, this Petition must be denied.

II. PETITIONER CANNOT ESTABLISH GOOD CAUSE TO OVERCOME THE PROCEDURAL BARS

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

To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate the following: (1) "[t]hat the delay is not the fault of the petitioner" and (2) that the petitioner will be "unduly prejudice[d]" if the petition is dismissed as untimely. NRS 34.726. To meet the first requirement, "a petitioner *must* show that an impediment external to the defense prevented him or her from complying with the state procedural default rules." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (emphasis added). "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) (emphasis added). The Court continued, "appellants cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526. To find good cause there must be a "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Examples of good cause include interference by State officials and the previous unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a)

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

As "good cause" to overcome the mandatory procedural bars to his Seventh Petition, Petitioner alleges "actual innocence" based on so-called "new evidence" from the victims in this case. Seventh Petition at 6–7, 9–10. For the reasons discussed below, this alleged good cause fails. As such, Petitioner cannot establish good cause to overcome the mandatory bars and his Petition must be denied.

A. Petitioner's Actual Innocence Claim Fails

A showing of actual innocence can overcome the procedural bars, as it demonstrates a fundamental miscarriage of justice. See Mitchell v. State, 122 Nev. 1269, 1273, 149 P.3d 33, 36 (2006). The United States Supreme Court has held that actual innocence "itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits." Schlup v. Delo, 513 U.S. 298, 327, 115 S. Ct. 851, 867 (1995). In order for a defendant to obtain a reversal of his

conviction based on a claim of actual innocence, he must prove that "'it is more likely than not that no reasonable juror would have convicted him in light of the new evidence' presented in habeas proceedings." Calderon v. Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503 (1998) (emphasis added) (quoting Schlup). It is true that "the newly presented evidence may indeed call into question the credibility of the witnesses presented at trial." Schlup, 513 U.S. at 330, 115 S. Ct. at 868. However, this requires "a stronger showing than that needed to establish prejudice." Id. at 327, 115 S. Ct. at 867.

Petitioner argues that he is innocent of Sexual Assault (Count 1) and Attempt Sexual Assault (Count 2) and that this is good cause to overcome the mandatory procedural bars. Seventh Petition at 6–7, 9–10. However, Petitioner fails to show actual innocence.

The only evidence Petitioner brings of his actual innocence is an affidavit, allegedly signed by one of the victims of his sexual assaults, recanting that Petitioner sexually assaulted her. See Seventh Petition, at 52(ii).

In recantation cases, the trial court should apply the following standard:

> (1) the court is satisfied that the trial testimony of material witnesses was false;
>
> (2) the evidence showing that false testimony was introduced at trial is newly discovered;
>
> (3) the evidence could not have been discovered and produced for trial even with the exercise of reasonable diligence; and
>
> (4) it is probable that had the false testimony not been admitted, a different result would have occurred at trial.
>
> Only if each component is met should the trial court order a new trial.

Callier v. Warden, Nev. Women's Corr. Ctr., 111 Nev. 976, 990, 901 P.2d 619, 627–28 (1995). In Callier, this Court held:

> We also conclude, however, that the general "new trial" standard does not adequately emphasize the need for a finding that the recanting witness' trial testimony was false. Numerous courts have determined that recantations should be viewed with suspicion and that before granting a new trial, the trial court must be satisfied that the witness' trial testimony was false. See, e.g., United States ex rel. Sostre v. Festa, 513 F.2d 1313, 1318 (2d Cir.) (noting that traditionally, recantation of trial testimony is viewed with suspicion), cert. denied, 423 U.S. 841, 46 L. Ed. 2d 60, 96 S. Ct. 72 (1975); State v. Frank, 298

> N.W.2d 324, 329 (Iowa 1980) (recognizing that a court should look upon witnesses' recantations with suspicion and concluding that a new trial should not be granted unless the trial court is satisfied that the testimony of a material witness was false or mistaken); State v. White, 146 Mont. 226, 405 P.2d 761, 771 (Mont. 1965) (concluding that where it appears that witness' recantation is motivated by family pressure, recantation is not credible), cert. denied, 384 U.S. 1023, 16 L. Ed. 2d 1026, 86 S. Ct. 1955 (1966); State v. Britt, 320 N.C. 705, 360 S.E.2d 660, 665 (N.C. 1987) (concluding that in considering witness recantations, the trial court must first be reasonably well satisfied that the testimony of material witnesses was false).

Id. at 989–90, 901 P.2d at 627.

Here, the factors identified in Callier do not merit a new trial or finding of actual innocence. First, this Court should not be satisfied that the trial testimony of the victim ("A.P.") was false. A.P.'s trial testimony was consistent with the rest of the evidence admitted at trial. For example, both A.P. and her sister J.P. noted that during one instance, when J.P heard A.P crying in the bathroom, that Petitioner told J.P. A.P. was crying because the water was too hot. Reporter's Transcript of Jury Trial: January 7, 2002, at 76, 93-94. Further, J.P. described an instance where Petitioner tried to sexually assault her that shared many similarities with A.P.'s account of Petitioner's sexual assault. Id. at 62-64, 97-101. For instance, both victims described Petitioner as engaging in covering their mouths, forcing them into anal sex, and asking them to sit on top of him while he was in a seated position. Id.

Further, given that Petitioner confessed to the crime, and multiple witnesses testified regarding Petitioner's alleged sexual assaults and attempted sexual assaults, no reasonable jury would have failed to convict Petitioner even if A.P.'s testimony had not been admitted.

The State would also note a potential defect in the affidavit Petitioner has attached as Exhibit A. While the attachment claims to be a notarized affidavit, no notarized stamp appears anywhere on the affidavit itself. It is unclear therefore the extent to which the "all-purpose acknowledgment" filed with the affidavit was notarized in connection with said affidavit.

As such, Petitioner has failed to establish that he is actually innocent of the crime he was convicted of. Pursuant to Mitchell and Schulp, Petitioner cannot show a fundamental miscarriage of justice, and he cannot overcome the procedural bars.

//

B. Petitioner Offers No Other Good Cause for Delay in Filing

The only other potential "good cause" are the Petitioner's individual grounds, themselves. However, as discussed supra, each of his claims is procedurally barred as not new. Riker, 121 Nev. at 235, 112 P.3d at 1077 (holding that a claim that is itself procedurally barred cannot constitute good cause); see also Edwards v. Carpenter, 529 U.S. 446, 453 120 S. Ct. 1587, 1592 (2000).

Further, all of the facts and law necessary to raise Petitioner's Grounds 1 through 7 have been available for years. The so-called "actual innocence" claim does not explain why he is bringing repeated claims that this Court has already decided on the merits. Petitioner fails to establish any impediment external to the defense which could have possibly prevented him from complying with NRS Chapter 34's procedural rules. The delay in filing this petition is the fault of Petitioner, and therefore good cause is not established. Thus, this Seventh Petition must be dismissed.

III. PETITIONER CANNOT ESTABLISH PREJUDICE TO OVERCOME THE PROCEDURAL BARS

In order to establish prejudice, the defendant must show "'not merely that the errors of [the proceedings] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional dimensions.'" Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

Here, as discussed supra, none of the grounds raised in this seventh Petition should be considered by this Court. This Court rejected each of the grounds raised in this Petition on the merits when it denied Petitioner's Sixth Petition. See Findings of Fact, Conclusions of Law, and Order, at 14-19, December 7, 2018 (stating: "Defendant does not and cannot establish that any of these grounds constitute undue prejudice.") Res Judicata thus bars their consideration as constituting prejudice. See Mason v. State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine's applicability in the criminal context); see also York v. State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011). Accordingly, by simply continuing to file petitions with the same

arguments, his Petition is barred by the doctrine of res judicata. Id.; Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). In addition, and as illustrated below, each of Petitioner's claims are without merit.

A. Petitioner's Claim Regarding Pre-Trial Delay is Without Merit

Petitioner appears to argue that the State intentionally delayed service of the arrest warrant to gain tactical advantages. Seventh Petition at 8–17. From this, he argues multiple specific instances of alleged prejudice—including that the so-called "delay" prevented him from making evidentiary challenges, "bypass[ed] juvenile wardship," led to double jeopardy violations, made it seem that Petitioner fled, affected speedy trial rights, and allowed the State to "doctor" Petitioner's juvenile record. Seventh Petition at 13. As an initial matter, this Court found in deciding this ground in the First Petition that "claims of misconduct by the State . . . are barred from consideration by the doctrine of law of the case as these issues were previously decided on direct appeal." Findings of Fact, Conclusions of Law and Order, filed September 14, 2004, at 3. Petitioner cannot establish that, fifteen (15) years later, he would be unduly prejudiced by this Court's just and proper refusal to re-review these claims.

Further, claims asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id. Petitioner's premise that the State delayed in bringing his case to trial to gain a "tactical advantage" is nothing more than a naked assertion suitable only for summary denial under Hargrove. Seventh Petition at 12. There is absolutely no evidence nor even any indication other than Petitioner's say-so that the State delayed his arrest, "doctored" his record, or committed any of the underhanded actions of which Petitioner accuses it. Nor does Petitioner provide any support, other than the naked allegation, for the claim that he would have been able to "easily close[]-off any attempt for prosecutorial influence" over the victims had he been arrested sooner. Seventh Petition at 16. Thus, this claim does not establish prejudice.

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B. Petitioner's Claim Regarding His Confession is Without Merit

Petitioner claims his confession was involuntary because he did not have his parents present and because the detective coerced a confession by motioning toward his gun. Seventh Petition at 18–23. However, both complaints are belied by the record.

NRS 62C.010 does provide that when a juvenile is taken into custody, the officer has to advise the parent or guardian of the child's custody status. But Petitioner was eighteen (18)—not a minor—when he confessed to police that he raped his little sisters. Order of Affirmance, filed August 25, 2003, at 1–2; see also Criminal Bindover at 16 (showing that Petitioner's date of birth is October 14, 1980) and Reporter's Transcript of Jury Trial, Day 2 at 265 (showing that Petitioner was interviewed by Detective Moniot on August 14, 1999). Thus, Petitioner had no right to have his parents present during his questioning. Petitioner's accusation that the questioning detective motioned toward his gun in a threatening manner, or that he did not record certain "portions" of the interview, is a bare and naked accusation insufficient to support post-conviction relief. Seventh Petition at 20–21; see Hargrove, 100 Nev. at 502, 686 P.2d at 225. Any other complaints Petitioner has regarding his statement are belied by the record, as Petitioner admits that he received his Miranda warning and signed a card indicating he understood his rights. Seventh Petition at 20; see also Order of Affirmance, filed August 25, 2003, at 1–2.4 Thus, this claim does not establish prejudice.

C. Petitioner's Claim Regarding Juvenile Counsel is Without Merit

Petitioner complains that he was denied counsel during some unspecified juvenile proceeding. Seventh Petition at 23–36. Petitioner never indicates how that alleged juvenile proceeding is relevant to this criminal matter. Regardless, Petitioner provides nothing to substantiate his claim, which should be denied as a naked assertion under Hargrove, 100 Nev. at 502, 686 P.2d at 225. Finally, Petitioner cannot demonstrate prejudice because he received the benefit of counsel in this matter. Thus, this claim does not establish prejudice.

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D. Petitioner's Claim Regarding His Certification Hearing Is Without Merit

Petitioner complains that he was denied a certification hearing wherein the Juvenile Court could have waived or retained jurisdiction. Seventh Petition at 26–29. As an initial matter, the Nevada Supreme Court already held in affirming the denial of Petitioner's First Petition that this claim is "outside the scope of a post-conviction petition for a writ of habeas corpus." Order of Affirmance, filed January 25, 2005, at 10. Further, this claim is suitable only for summary denial under Hargrove because it is belied by the record. 100 Nev. at 502, 686 P.2d at 225. Petitioner's date of birth is October 14, 1980. Criminal Bindover at 16. The Seconded Amended Information lists only offense dates between October 14, 1998, and March 12, 1999. Seconded Amended Information at 2. As such, Petitioner was over eighteen (18) at the time of the offenses and thus not subject to Juvenile Court jurisdiction. NRS 62A.030(1)(a); NRS 62B.330(1). It does not matter how long the State may have "awaited" charging the crime; Petitioner was not a minor when he committed the crime. Seventh Petition at 26–27. Petitioner offers absolutely no support for his claim that he was under "juvenile wardship" until January 12, 2000. Seventh Petition at 27. In fact, Petitioner undermines his argument when he later asserts that he "was not on juvenile probation at that time" of the instant offense. Seventh Petition at 31. Thus, Petitioner was not entitled to a certification hearing. This claim does not constitute prejudice.

E. Petitioner's Claim Regarding Double Jeopardy is Without Merit

Petitioner claims that filing charges in juvenile court and then refiling them in criminal court was a violation of double jeopardy. Seventh Petition at 29–33. This claim is only suitable for summary denial under Hargrove because Petitioner does nothing to demonstrate that charges were ever filed in Juvenile Court. 100 Nev. at 502, 686 P.2d at 225. Regardless, the Juvenile Court lacked jurisdiction over this case, because as discussed supra, Petitioner was eighteen (18) on the earliest possible date listed in the Second Amended Information. Even by Petitioner's own logic, he cannot have been subject to multiple punishments for this offense because the Juvenile Court never retained jurisdiction over this matter. Seventh Petition at 30. Thus, this claim does not constitute prejudice.

F. Petitioner's Claim Regarding Ineffective Assistance of Counsel is Without Merit

Petitioner complains of several instances of ineffective assistance of trial and appellate counsel. Seventh Petition at 33–47. As an initial matter, the Nevada Supreme Court held in the appeal from the First Petition that Petitioner's ineffective assistance of counsel claims were properly rejected on the merits. Order of Affirmance, filed January 25, 2005, at 2–10.[1] Petitioner assets several new complaints of ineffective assistance of counsel, each a naked assertion that should be summarily denied under Hargrove. 100 Nev. at 502, 686 P.2d at 225. Seventh Petition at 34–35. Some even seem related to the ineffective assistance claims this Court rejected in the First Petition. Further, Petitioner largely ignores the basics of an ineffective assistance of counsel claim: the fact that what defense to present is a virtually unchallengeable strategic decision, Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002); that trial counsel need not undertake futile actions. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006); and that competent appellate counsel focuses on only the strongest issues. Jones v. Barnes, 463 U.S. 745, 751, 103 S. Ct. 3308, 3312 (1983); Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). This claim does not constitute prejudice.

G. Petitioner's Claim Regarding Denial of a Second Direct Appeal Is Without Merit

Petitioner complains first that he was denied a second direct appeal after the direct appeal was "dismissed," and second that the lower court improperly adjudicated his postconviction complaints without having Petitioner present and without appointing him counsel. Seventh Petition at 17, 43–44, 47–51. Each of these claims is meritless.

First, Petitioner seems to misunderstand the nature of the direct appeal in his case. Though he claims that the appeal was "dismissed" and only remanded to correct a clerical error, the Nevada Supreme Court in fact affirmed his conviction on the merits. Seventh Petition at 48–49; Order of Affirmance, filed August 25, 2003, at 1–2. It was only remanded

[1] These claims included 1) failure to object to alleged errors at Petitioner's motion for own recognizance release; 2) failure to move to suppress Petitioner's statement; 3) failure to move to disqualify the district court judge; 4) failure to object to the composition of the jury; 5) failure to cross-examine police regarding Petitioner's arrest warrant; 6) failure to pursue an insanity defense; 7) failure to do several things, including object to alleged prosecutorial misconduct, object to judicial misconduct, move for a new trial based on newly discovered evidence, properly investigate the case, obtain an affidavit from Juror No. 5, object to an untimely discovery request, object to the use of spoilated evidence, file any meritorious pre-trial motions, and interview police officers; and 8) failure of appellate counsel to appeal alleged violations of the right to a speedy trial, to argue double jeopardy violations, to communicate with Petitioner, and to investigate claims preserved before trial. Id.

back to the district court in order to correct the error in the Judgment of Conviction, to clarify that Petitioner was convicted by a jury and had not pled guilty. Thus, Petitioner's claim that he was entitled to another direct appeal, one "without limitation," is belied by the record, as he did receive a direct appeal on the merits. Seventh Petition at 49; Hargrove, 100 Nev. at 502, 686 P.2d at 225. Regardless, a defendant is not entitled to a second direct appeal. See NRS 177.015(3).

Second, contrary to Petitioner's claim, Petitioner was not entitled to the assistance of counsel during his post-conviction proceedings. Brown v. McDaniel, 130 Nev. __, __, 331 P.3d 867, 870 (2014); McKague v. Warden, Nev. State Prison, 112 Nev. 159, 163–65, 912 P.2d 255, 258 (1996); NRS 34.750. This Court found that as to the First Petition that "Defendant [wa]s not entitled to the appointment of an attorney as his petition is being summarily dismissed." Findings of Fact, Conclusions of Law and Order, filed September 14, 2004, at 3. Finally, unless the Court held an evidentiary hearing, Petitioner had no right to be present. See Gebers v. State, 118 Nev. 500, 50 P.3d 1092 (Nev. 2002). Petitioner's final ground does not constitute prejudice, and this Seventh Petition should be dismissed in its entirety.

CONCLUSION

For the reasons set forth above, the court should deny Petitioner's Second Amended [Actual Innocence] Petition for Writ of Habeas Corpus Ad Subjiciendum, As Testificandum and Dueces Tecum.

DATED this 30th day of June, 2020.

Respectfully submitted,

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

BY */s/ James R Sweetin*
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 30TH day of JUNE, 2020, to:

RENARD POLK, BAC#72439
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NV, 89419

BY /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

FILED
JUL - 8 2020
CLERK OF COURT

27

NAME: Renard T. Polk

NDOC # 72439

IN THE EIGHTH JUDICIAL COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK

Renard T. Polk
Petitioner,
vs.
Timothy Filson, et al.,
Respondent.

Case No: A-18-780833W

NOTICE OF CHANGE OF ADDRESS

COMES NOW, Petitioner-Renard T. Polk, in Pro Per, and files this **NOTICE OF CHANGE OF ADDRESS** in the above entitled case. The Petitioner is in custody and has been transferred to another institution within the Nevada Department of Corrections.

The Petitioner has been transferred from Lovelock Correctional Center to Ely State Prison. Correspondence to the Petitioner should be addressed as follows:

Inmate Name
NDOC #
P. O. Box 1989
Ely, NV 89301

Dated this 14th day of June, 2020.

Respectfully submitted,

/s/ R

NDOC# 72439

RECEIVED
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CLERK OF THE COURT

Ps. 1 of 1

Case No. A-18-780833-C

Dept. No. IX

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

* * * * *

Renard T. Polk,

Petitioner,

-vs-

Timothy Filson et al.,

Respondent.

MOTION FOR APPOINTMENT OF COUNSEL

COMES NOW Petitioner, Renard T. Polk, in pro se, and moves the Court for an order appointing counsel in the instant petition for writ of habeas corpus (post-conviction).

This motion is made and based upon NRS 34.750; all papers, pleadings and documents on file herein; and the points and authorities below.

POINTS AND AUTHORITIES

Petitioner is unable to afford counsel. *See Application to Proceed In Forma Pauperis* on file herein.

The substantive issues and procedural requirements of this case are difficult and incomprehensible to Petitioner.

Petitioner, due to his incarceration, cannot investigate, take depositions or otherwise proceed with discovery herein.

Petitioner's sentence is: indeterminate.

LCCLI FORM 26.042

There ___ are ___ are not additional facts in support of this motion attached hereto on separate page(s).

Counsel would assist Petitioner with a clearer presentation of his issues before this Court and would likewise facilitate and ease this Court's task of discerning the issues and adjudicating same upon their merits.

Discretion lies with the Court to appoint counsel under NRS 34.750. Crump v. Warden, 113 Nev. 293, 934 P.2d 247, 254 (1997). The Court is to consider: (1) the complexity of the issues; (2) whether Petitioner comprehends the issues; (3) whether counsel is necessary to conduct discovery; and (4) the severity of Petitioner's sentence. NRS 34.750(1)-(1)(c).

Under similar discretionary standards, Federal courts are encouraged to appoint counsel when the interests of justice so require - a showing which increases proportionately with the increased complexities of the case and the penalties involved in the conviction. Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986). Attorneys should be appointed for indigent petitioners who cannot "adequately present their own cases." Jeffers v. Lewis, 68 F.3d 295, 297-98 (9th Cir. 1995).

Although Petitioner need meet but one (1) of the enumerated criteria of NRS 34.750 in order to merit appointment of counsel, he meets all of them. He also presents a classic example of one meriting counsel under the interest of justice test bespoken by the Ninth Circuit. Indeed, Petitioner's sentence, coupled with the other factors set forth above, demonstrate that appointment of counsel to him would not only satisfy justice, but fundamental fairness, as well.

CONCLUSION

For the reasons set forth above, the Court should appoint counsel to represent Petitioner in and for all further proceedings in this habeas corpus action.

Dated this 14th day of June, 2020.

/s/ Renard T. Polk #72439
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing MOTION FOR APPOINTMENT OF COUNSEL to the below address on this 14th day of June, 2020, by placing same in the U.S. Mail via prison law library staff:

Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155

Attorney For Respondent

/s/ Renard T. Polk #72439

Petitioner In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION FOR APPOINTMENT OF COUNSEL DOES *not* contain the social security number of any person.

Dated this 14th day of June, 2020.

/s/ Renard T. Polk #72439

Petitioner In Pro Se

Case No. A-18-780883-W

Dept. No. IX

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

* * * * *

Renard T. Polk,

Petitioner,

-vs-

Timothy Filson, et al.,

Respondent.

ORDER APPOINTING COUNSEL

THE COURT, having considered Petitioner's Motion for Appointment of Counsel, and with Good Cause appearing,

IT IS HEREBY ORDERED that the motion is **GRANTED**.

Attorney _____ is hereby appointed to represent Petitioner for and in relation to all further proceedings in the above-entitled habeas corpus action.

IT IS SO ORDERED.

Dated this _____ day of _____, 20____.

_____

District Court Judge

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JUN 18 2020
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FILED
JUL - 8 2020
CLERK OF COURT

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IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

In Re: The State of Nevada, ex rel.,
Renard T. Polk, et al.,
Petitioner(s)

Case No: A-18-780833-W
Dept. No: IX

VS.

Clark County, ex rel.,
Pershing County, ex rel.,
White Pine County, ex rel.,
Nevada Corrections [Prisons] Department, et al.,
Nevada Prison Board Commissioners, et al.,
Ely State Prison, et al.,
Timothy Filson, et al.,
William Gittere, et al.,
Tasheena Sandoval, et al.,
William Ruebart, et al.,
Respondent(s).

SUPPLEMENTAL SECOND AMENDED [ACTUAL INNOCENCE] PETITION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM, DUCES TECUM, AD SUBJICIENDUM

Petitioner, Renard T. Polk, hereby supplements the second amended petition filed herein scheduled for hearing on July 22, 2020 with this court having continuing jurisdiction pursuant to NRS 12

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125A.315 to modify his "Transferring Jurisdiction Back" order for changed circumstances and conditions relating to the parties and instances of fraud or mistake common to the petitioner's confinement, mistakenly converse from the conclusion in this court's decree" challenging the judgment of conviction, to prevent a miscarriage of justice, as follows:

~ GROUND EIGHT ~

Whereas the petitioner's Article 1 Section(s) 9 and 10, First, Fourth, Fifth, Sixth, Eighth, Thirteenth and Fourteenth US (Federal) Constitutional Amendment, as well as, Nevada Constitutional Article 1 Section(s) 3, 5, 6, 8, 9, 10, 15, 17 and 18, Article 3 Section 1, Article 6 Section(s) 4 and 6, Article 4 Section 20 and Article 15 Section 4 priviledges, rights, immunities, guarantees and entitlements to due process, equal protections, full faith and credit, access to the courts (judicial review), seperation of powers and to be free from perpetuities, double jeopardy, involuntary servitude and slavery, unlawful seizures (false imprisonment), the unlawful suspension of writ of habeas corpus, unequal treatment, cruel and unusual punishment,

arbitrary, capricious and selective enforcement, unlawful bills of attainder (pain and penalties), titles of nobility and ex post facto laws were violated, abridged and denied contrary and repugnant to, in violation, overbreadth and vagueness of, inadequately, ineffectively and inconsistently with and based on an erroneous, unwarranted and unreasonable application of facts and clearly established state and federal law as determined by the US Supreme Court in Fay v. Noia 9 LED 2d 837 [ ], Brown v. Poole 337 F.3d 1155 (9th. Cir. 2003) and Blair v. Crawford 275 F.3d 1156 (2002); when on July 7, 2004, February 6 2010, April 16, 2013, and again on January 2, 2014, once the petitioner had been granted habeas corpus relief, Nevada Corrections [Prisons] Departmental custodial administrators Jackie Crawford, Craig Farwell, Jack Palmer, Leonard Vera, Tony Cord, Renee Baker and William Gittere disobeyed, refused, failed, forewent or forestalled, or otherwise eluded, aided, abetted and transferred custody to neglect or avoid obedience and compliance with habeas corpus orders then thereafter having unlawfully, illegally and falsely detained and imprisoned the petitioner against court order

Nevada district court judges) Douglas Herndon, Douglas Smith, Jim Shirley and Steve Obrescu in bad faith breached, failed, refused, forewent or forestalled obligations and duties to honestly discharge and comply with judicial oaths, offices and orders and to judicially review State agency agents' ommissions to continue to confine the petitioner under protective custody safe housing status or to strictly adhere to court ordered writs of habeas corpus; thereby resulting in a complete miscarriage of justice rising to levels of fundamentally inherent defects and inconsistent with the rudimentary demands of fair procedure associated with full and fair hearings, state-created-dangers, excessive confinements and over detentions, false imprisonment and abortive-void processes; whereby the petitioner must be released from state confinement forthwith, based on the following facts and legal questions presented:

That is to say, that,

On July 7, 2004 the Eighth Judicial District Court Clark County, Nevada, Las Vegas, 89155 issued an order for writ of habeas corpus having found good cause apparent from the face of the petitioner's petition scheduling a hearing date thereon and the petitioner's return

tentatively invalidating the judgment of conviction.

With the hearing date scheduled for September 14, 2004 the petitioner attempted to secure [his] presence by filing inmate grievances and motioning the court for [his] return.

However, in each and every instance, starting with Jackie Crawford of the Lovelock Correctional Center (LCC) the grievances were rejected inconsistent with legislative directives to unconditionally and unequivocally address, review and compensate the petitioner's accounts, concerns and injury.

With the hearing date having come and gone, Judge (Joseph Bonaventure) in contravention of the habeas corpus' order to return, in absence of the petitioner, in absence of the district attorneys office serving a response on the petitioner, in absence of counsel for the petitioner and inexcess of the judge's jurisdiction and authority said judge proceeded to decision rather than providing a continuance until the order was complied with.

Dissatisfied with the situation the petitioner then sought alias writs from the Court to facilitate [his] return, (and/or) otherwise [his] release and discharge from state custody.

Nonetheless, on each allocated hearing for relief thereafter the initial aforementioned one,

PLEADING CONTINUES IN NEXT VOLUME