

IN THE SUPREME COURT OF THE STATE OF NEVADA

RENARD TRUMAN POLK,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
May 18 2023 01:10 PM
Elizabeth A. Brown
Clerk of Supreme Court

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

RECORD ON APPEAL VOLUME 2

ATTORNEY FOR APPELLANT
RENARD POLK # 72439,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

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

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A-18-780833-W

Renard Polk, Plaintiff(s)

vs.

Timothy Filson, Defendant(s)

I N D E X

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 have 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 prose 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 occasions 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 stricture omission 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 aforesaid
judges on numerous applications and occasions,
the judges likewise derelicted to perform their
duties.

In that, the afore stated 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 its 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 [their power] (the judgment of conviction and concomitant commitment warrant) has been superseded 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-

CERTIFICATE OF SERVICE

I, Renard T. Polk, hereby certify pursuant to
NRCP 5(b) that on this 14th day of June, 2070, I did serve a
true and correct copy of the foregoing, Supplemental Second
Amended Petition For Writ,
by giving it to a prison guard at Ely State Prison to deposit in the U.S. Mail,
sealed in an envelope, postage pre-paid, addressed to the following:

Regional Justice Center
200 Nevada Ave
Las Vegas NV 89155

Signed,

161. [Signature]

Renard T. Polk

Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

Additional Requested Relief

24. For the foregoing additional reasons this court
should:
(3) direct the immediate discharge of the
petitioner unconditionally.

PS. 10 of 10

Remond T. Polk #72439
Elk State Prison (ESP)
P.O. Box 1989
Elk, NV 89301

INMATE LEGAL
MAIL CONFIDENTIAL

Regional Justice Center
Clerk's Office

200 Lewis Ave.

Las Vegas, NV 89155

RECEIVED
JUN 18 2020
CLERK OF THE COURT



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

FILED

OCT 29 2020

Ronald T. Polk

Movant

CLERK OF COURT

vs.

Case No. ~~A-18-780883-W~~

Timothy Filson, et al.,

Respondent(s)

A-18-780833-W
Dept: IX

Betsy Allen, et al.,

Real Party - At Interest

State-County Treasurer-Controller, et al.,

Real Third Party At Interest.

IN THE REQUEST for Submission, Hearing
Date, and to Calendar Motion
To Terminate Post-conviction
Attorney.

I, the undersigned, request that the motion
to terminate post-conviction attorney, which
was filed on October 14, 2020 and all
other documents appertaining thereto be submitted
to the Court and placed on calendar (2) two
weeks out from the receipt of this request
for decision thereon

Dated: 10/25/20

Respectfully:

161.

Ronald T. Polk

CLERK OF THE COURT
OCT 29 2020

Renard T. Polk #72439

Ely State Prison

P.O. Box 1989

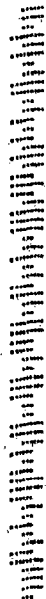
Ely, NV 89301

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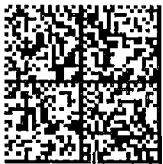
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Regional Justice Center

Clerk's Office

200 Lewis Ave. 2nd Flr.

Las Vegas, NV 89155

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OCT 25 2020
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DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
12/8/2020 1:44 PM
Steven D. Grierson
CLERK OF THE COURT



Renard Polk, Plaintiff(s)

vs.

Timothy Filson, Defendant(s)

Case No.: A-18-780833-W

Department 9

NOTICE OF HEARING

Please be advised that the Plaintiff's Supplemental Motion to Terminate Post Conviction Counsel and Appoint an Alternative Attorney and/or for Sanctions Under Nevada Rules Civil Procedure NRPC 11 (b) in the above-entitled matter is set for hearing as follows:

Date: January 14, 2021

Time: Chambers

Location: RJC Courtroom 11B
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

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

Electronically Filed
12/08/2020

Renard T. Polk,
Movant,

Alvin S. Amin
CLERK OF THE COURT

vs. Case No. A-18-780833 - W
Timothy Filson, et al., Dept No. I - RJC #11B
Respondent(s), — HEARING BY AUDIOVISUAL
Betsy Allen, et al., TRANSMISSION REQUESTED!!
Real Party At Interest,
Clark County Treasurer-controller, et al.,
Real Third-Party At Interest

SUPPLEMENTAL MOTION TO
TERMINATE POST-CONVICTION
COUNSEL AND APPOINT AN
ALTERNATE ATTORNEY, (AND/OR)
FOR SANCTIONS UNDER NEVADA
RULES CIVIL PROCEDURE (NRCP)
11 (b).

Comes, Now, Renard T. Polk, herein after
referred to as the {"Movant"}, and hereby
files this supplement to the motion to terminate
post-conviction counsel pursuant to NRCP
15 in the interests of justice.

This motion is made in good faith and based
on all papers, pleadings, documents and [the]

Pg. 1 of 4

RECEIVED
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1 the initial motion, as well as, the
2 accompanying documents and any hearing
3 allocated herein.
4

5 STATEMENT OF SUPPLEMENTAL
6 FACTS.
7

8 Since filing the initial motion to terminate
9 Betsy Allen, Esq., as post-conviction counsel,
10 as of the date of this supplement Mrs.

11 Allen has not spoken to or accepted any of
12 [her] clients, Renard Polk's, the movant's
13 calls for over (117) one-hundred and seventeen
14 days, and accruing.

15 With the movant having informed Mrs. Allen
16 through the U.S. Postal Service, that:

17 1.) the movant's personal property
18 including but not limited to, [his] legal
19 materials, books, letters, affidavits and
20 electronic devices for preparing legal drafts
21 have been unlawfully seized, damaged or
22 intentionally destroyed;

23 2.) Anna Polk, one of the purported victims,
24 attempted to mail a revised affidavit for the
25 purpose of including a notary directly on the
26 actual printout rather than an addendum to
27 denote the same was lost, confiscated,
28 destroyed or given to another prisoner at the

1 Ely State Prison, P.O. Box 1989, 4569 North
2 State Rt., Ely, Nevada 89301;

3 3.) medical staff at the Ely State
4 Prison, with respect to the movant's on-going
5 and recurring illnesses, refuse, fail or
6 forego to provide the movant with any physical
7 evaluations or treatment irrespective of
8 [his] numerous written requests therefor,
9 thereby impacting [his] psychological
10 well-being;

11 4.) pursuant to Nevada Revised
12 Statute 213.12135 the movant has been
13 granted parole release by operation of
14 law diverting the Nevada Department of
15 Corrections ("NDOC") authority to continue to
16 confine the movant; and

17 5.) the movant being placed on an
18 arbitrary classification status neither provided
19 for under statutory authority and lacking
20 any guiding criterion. Mrs. Allen refuses, fails
21 or foregoes to take any mitigating or corrective
22 steps to abate the illegalities.

23 Though Mrs. Allen could seek an injunction to
24 ensure [her] client's health and the retention
25 of innocence corroborating material, due to
26 the recanting purported victim's reluctance
27 to work with government employees, [she]
28 instead continues to ignore [her] client's

1 situation.

2 whereby the attorney-client relationship
3 and trust has evaporated beyond repair.

4 Mrs. Allen has a professional, as well as,
5 a legal obligation to maintain [her] clients'
6 interests under fiduciary responsibilities.

7 None of which allow [her] to conceal or
8 fail to report the misdeeds being visited
9 upon [her] client.
10

11 RELIEF REQUESTED

12
13 WHEREFORE: again the movant's request is
14 that this Honorable Court to terminate Betsy
15 Allen, Esq., as post-conviction counsel
16 forthwith and appoint an alternate attorney,
17 inter alia.

18 Dated this 15th day of Nov. 20 20.

19 Verification:

20 151. R. P. R.

21 Renard T. RIK
22

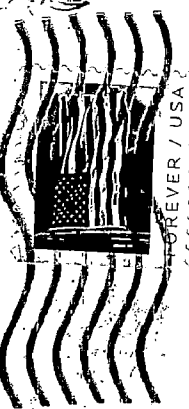
23 CERTIFICATE OF MAILING

24
25 I certify that service of the foregoing was
26 made this 15th day of Nov., 2020 by depositing
27 copies of the same for mailing at Elly State
28 Prison to the Regional Justice Center 151. R. P. R.

Revised T. Polk #224366
Ely State Prison P.O. Box 1289
Ely, NV 89301

LAS VEGAS NV 890

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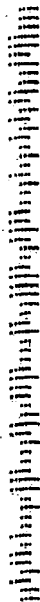


c/o: Clerk's Office
Regional Justice Center

200 Lewis Ave.
Las Vegas, NV 89101

INMATE LEGAL

MAIL CONFIDENTIAL



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ELY STATE PRISON
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Heather S. Smith
CLERK OF THE COURT

1 NODR

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3
4
5 EIGHTH JUDICIAL DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 RENARD POLK,

Case No.: A-18-780833-W

8 Petitioner,

9 vs.

10 TIMOTHY FILSON; WILLIAM RUEBART;
11 TASHEENA SANDOVAL,

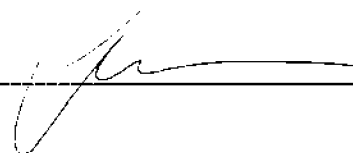
12 Respondents.

13 NOTICE OF DEPARTMENT REASSIGNMENT

14 NOTICE IS HEREBY GIVEN that the above-entitled action has been reassigned to
15 Department XXIII, District Court Judge Jasmin Lilly-Spells. Parties should check any
16 hearing dates as they may be reset by the new department. Please update your caption to
17 include the new department number and submit future orders to
18 DC23inbox@clarkcountycourts.us.

19 Dated this 7th day of January, 2021

20

21 
22

23 7AA E5E 5FF1 8044
24 Cristina D. Silva
District Court Judge

1 **CSERV**

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

5
6 **Renard Polk, Plaintiff(s)**

CASE NO: A-18-780833-W

7 **vs.**

DEPT. NO. Department 23

8 **Timothy Filson, Defendant(s)**
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 **Service Date: 1/7/2021**

16 **Steven Wolfson**

motions@clarkcountyda.com

17 If indicated below, a copy of the above mentioned filings were also served by mail
18 via United States Postal Service, postage prepaid, to the parties listed below at their last
19 known addresses on 1/8/2021

20 **Betsy Allen**

Law Offices of Betsy Allen
P. O. Box 46991
Las Vegas, NV, 89114

Steven B. Wolfson

RESP
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar # 06528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

RENARD POLK,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

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

DEPT NO: XXIII

**STATE'S RESPONSE TO PETITIONER'S SUPPLEMENTAL MOTION TO
TERMINATE POST CONVICTION COUNSEL AND APPOINT AN
ALTERNATIVE ATTORNEY AND/OR SANCTIONS UNDER NEVADA RULES OF
CIVIL PROCEDURE NRPC 11(b)**

DATE OF HEARING: JANUARY 19, 2021
TIME OF HEARING: 9:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JONATHAN VANBOSKERCK, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in response to Petitioner's Supplemental Motion to Terminate Post Conviction Counsel and Appoint an Alternative Attorney and/or Sanctions Under Nevada Rules of Civil Procedure 11(b).

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.

///

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On April 13, 2000, the State filed an Information charging Renard Polk ("Petitioner")
4 as follows: Counts 1 and 2 – Sexual Assault with a Minor under Sixteen Years of Age (Felony
5 – NRS 200.364, 200.366); and Count 3 – First Degree Kidnapping (Felony – NRS 200.310,
6 200.320). On November 22, 2000, the State filed an Amended Information charging Petitioner
7 with three (3) counts of Sexual Assault with a Minor under Sixteen Years of Age (Felony –
8 NRS 200.364, 200.366). On January 27, 2002, the State filed a Second Amended Information
9 charging Petitioner with three (3) counts of Sexual Assault with a Minor under Fourteen Years
10 of Age (Felony – NRS 200.364, 200.366).

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

15 On March 14, 2002, this Court sentenced Petitioner to the Nevada Department of
16 Corrections as follows: Count 1 – to a maximum of one hundred twenty (120) months and a
17 minimum of forty-eight (48) months and a special sentence of lifetime supervision; and Count
18 2 – to a maximum of life with minimum parole eligibility of two hundred forty (240) months,
19 consecutive to Count 1. Petitioner received six hundred ninety-one (691) days credit for time
20 served. The Judgment of Conviction was filed on April 1, 2002.

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

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

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

3 On December 7, 2007, Petitioner filed a Motion to Vacate, Set Aside or Correct Illegal
4 Sentence of Judgment, Consolidated Writ of Error. The State filed an Opposition on December
5 17, 2007. This Court denied the Motion on December 18, 2007, and filed a written Order on
6 December 31, 2007. Petitioner filed a Notice of Appeal on January 18, 2008. On June 9, 2008,
7 the Nevada Supreme Court affirmed the denial of Petitioner's Motion. Remittitur issued on
8 September 9, 2008.

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

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

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

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

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

28 ///

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

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

8 On September 17, 2015, Petitioner filed a pro per Petition for Writ of Mandamus
9 {and/or} in the Alternative Prohibition. This Court denied the Petition on October 8, 2015; a
10 written Order issued on October 27, 2015. Petitioner filed a Notice of Appeal on November 5,
11 2015. The Nevada Supreme Court affirmed the district court's decision. Remittitur issued
12 September 16, 2016.

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

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

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

25 On September 18, 2018, Petitioner filed a Motion to Alter, Amend, or Modify Sentence.

26 On September 27, 2018 Petitioner filed a Motion to Quash Post-Conviction Order. On
27 October 4, 2018, the State filed its Opposition to Petitioner's Motion to Alter, Amend, or
28 Modify Sentence. Also on October 4, 2018, the State filed its Response to Petitioner's Motion

1 to Quash Post-Conviction Order. On October 10, 2018, the Court denied Petitioner's Motion
2 to Alter, Amend or Modify Sentence. On September 20, 2019 the Nevada Court of Appeals
3 affirmed the denial of this Motion.

4 On July 11, 2018, Petitioner filed an Amended [Actual Innocence] Petition for Writ of
5 Habeas Corpus Ad Subjudicium, Duces Tecum, Testificandum ("Sixth Petition"). On October
6 8, 2018, the State's filed its Response. On October 29, 2018, Petitioner filed a Supplemental
7 (Emergency) Amended (Actual Innocence) Petition for Writ of Habeas Corpus and
8 Testificandum, Duces Tecum, Ad Subjudicem. On November 14, 2018, the Court denied
9 Petitioner's Petition. On December 7, 2018, the Court filed the Findings of Fact, Conclusions
10 of Law and Order denying the Petition.

11 On May 19, 2020, Petitioner filed a Second Amended Petition for Writ of Habeas
12 Corpus. On June 30, 2020, the State filed its Response. On July 8, 2020, Petitioner filed a
13 Motion for Appointment of Counsel. Also on July 8, 2020, Petitioner filed a Supplemental
14 Second Amended (Actual Innocence) Petition for Writ of Habeas Corpus, AD Testificandum,
15 Duces Tecum, AD Subjiciendum. On July 20, 2020, the Court appointed Betsy Allen as post-
16 conviction counsel.

17 On December 8, 2020, Petitioner filed a Supplemental Motion to Terminate Post
18 Conviction Counsel and Appoint an Alternative Counsel and/or Sanctions Under Nevada
19 Rules of Civil Procedure NRCp 11(b). The State's Response follows herein.

20 ARGUMENT

21 Petitioner's Motion asks for three (3) things. Petitioner requests that (1) this Court
22 remove Betsy Allen as post-conviction counsel; (2) appoint new counsel; and (3) levy
23 sanctions against his current counsel. The first is that this Court remove his current post-
24 conviction counsel. The State has no position on whether this Court remove Petitioner's
25 current post-conviction counsel. Neither does the State have any position on whether this
26 Court should levy sanctions against his current counsel. The State would note however that
27 nothing in Petitioner's Motion seems to support sanctions. See Armeni v. Eighth Judicial
28 District Court, 416 P.3d 205, *1 (Nev. 2018) (unpublished disposition) (stating: "[s]anctions

1 may be justified where defense counsel files a motion, with 'no credible basis,' that demeans
2 the criminal justice system in general and unnecessarily delays the proceedings.”)

3 However, in the event that this Court chooses to remove current counsel, new counsel
4 should not be appointed. It is well settled that a defendant has no right to post-conviction
5 counsel in a non-capital case. See Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546,
6 2566 (1991); see also McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996).

7 While NRS 34.750 clearly grants the Court the discretion to appoint post-conviction
8 counsel, here, the factors articulated in NRS 34.750 do not support counsel being appointed.
9 NRS 34.750 states:

10 A petition may allege that the petitioner is unable to pay the costs of
11 the proceedings or to employ counsel. If the court is satisfied that the
12 allegation of indigency is true and the petition is not dismissed
13 summarily, the court may appoint counsel to represent the petitioner.
14 In making its determination, the court may consider, among other
15 things, the severity of the consequences facing the petitioner and
16 whether:

- 17 (a) The issues presented are difficult;
- 18 (b) The petitioner is unable to comprehend the proceedings; or
- 19 (c) Counsel is necessary to proceed with discovery.

20 Here, the issues presented are not difficult. As the State noted in its Response filed June
21 30, 2020, Petitioner's Petition is procedurally barred as untimely and successive. Further,
22 Petitioner is clearly able to understand the proceedings, as he has a lengthy history of filing
23 his own Motions and Petitions. Finally, counsel is not needed to proceed with discovery.

24 The State would also note that the Court has already exercised considerable leniency in
25 appointing counsel to represent Petitioner on what was his seventh post-conviction petition.
26 However, Petitioner remains unsatisfied, and seems to desire not only appointed counsel, but
27 counsel of his choosing. Such a request is unsupported by the law, as a post-conviction
28 defendant has no constitutional or statutory right to counsel at all, let alone counsel of his
choosing. As such, this Court should not appoint new post-conviction counsel in the instant
case.

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CONCLUSION

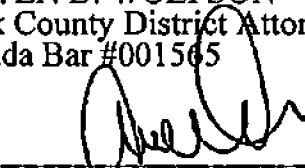
For the reasons set forth above, the court should deny Petitioner's request for new counsel.

DATED this 5th day of January, 2021.

Respectfully submitted,

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

BY



JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #06528

99F04726X/JV/re/mlb/MVU



DISTRICT COURT
CLARK COUNTY, NEVADA

Renard Polk, Plaintiff(s)

vs.

Timothy Filson, Defendant(s)

Case No.: A-18-780833-W

00C166490

Department 9

NOTICE OF DEPARTMENT REASSIGNMENT

NOTICE IS HEREBY GIVEN that the above-entitled action has been reassigned to Judge Cristina D. Silva.

☒ This reassignment is due to: Per Administrative Order 20-25.

ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE RESET BY THE NEW DEPARTMENT.

Any motions or hearings presently scheduled in the FORMER department will be heard by the NEW department as set forth below.

Motion, on 01/20/2021, at 11:00 AM

PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE FILINGS.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Heather Kordenbrock

Heather Kordenbrock, Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that this 13th day of January, 2021

☒ The foregoing Notice of Department Reassignment was electronically served to all registered parties for case number A-18-780833-W.

/s/ Heather Kordenbrock

Heather Kordenbrock, Deputy Clerk of the Court



1 **MOT**

2 BETSY ALLEN, ESQ.
3 Nevada Bar No. 6678
4 P.O. Box 46991
5 Las Vegas, Nevada 89114
6 Phone (702) 386-9700
7 Fax (702) 386-4723
8 betsyallenesq@yahoo.com

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**
12

13 THE STATE OF NEVADA)

14 Plaintiff,)

15 v.)

16 RENARD POLK,)

17 Defendant.)

CASE NO: A-18-780833-W

DEPT NO: IX

HEARING REQUESTED

18
19 **MOTION TO WITHDRAW AS COUNSEL**
20

21 COMES NOW, counsel for the Defendant, RENARD POLK, and hereby
22 requests this Court allow counsel to withdraw.
23

24 This motion is made and based upon the points and authorities attached
25 hereto, the pleading and papers on file herein and the argument of counsel adduced
26 at the time of the hearing.
27

28 Respectfully Submitted By:

/s/ Betsy Allen
BETSY ALLEN, ESQ.
Nevada Bar #6878
P.O. Box 46991
Las Vegas, NV 89114
(702) 386-9700

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**
3

4 An attorney may withdraw from a case with the consent of the client or for
5 justifiable cause upon leave of court. The Eighth Judicial District Court Rule
6 (EJDCR) 7.40(b)(2) states that an attorney may withdraw:

7 [W]hen no attorney has been retained to replace the attorney
8 withdrawing, by order of the court, granted upon written motion, and

9 (i) If the application is made by the attorney, the attorney must
10 include an affidavit with the address, or last known address, at which
11 the client may be served with notice of further proceedings taken in
12 the case in the event the application for withdrawal is granted, and
13 the telephone number, or last known telephone number, at which the
14 client may be reached and the attorney must serve a copy of the
application upon the client and all other parties to the action or their
attorney...

15 Additionally, Nevada Rules of Professional Conduct, Rule 1.16 allows an
16 attorney to withdraw from representation of a client if any of the following factors are
17 present:
18

19 (a) Except as stated in paragraph (c), a lawyer shall not represent
20 a client or, where representation has commenced, shall
21 withdraw from the representation of a client if:

22 (1) The representation will result in violation of the Rules of
23 Professional Conduct or other law;

24 (2) The lawyer's physical or mental condition materially
25 impairs the lawyer's ability to represent the client; or

26 (3) The lawyer is discharged.
27
28

///

1
2 (b) Except as stated in paragraph (c), a lawyer may withdraw from
3 representing a client if:

4 (1) Withdrawal can be accomplished without material adverse
5 effect on the interests of the client;

6 (2) The client persists in a course of action involving the
7 lawyer's services that the lawyer reasonably believes is
8 criminal or fraudulent;

9 (3) The client has used the lawyer's services to perpetrate a
10 crime or fraud;

11 (4) A client insists upon taking action that the lawyer
12 considers repugnant or with which the lawyer has
13 fundamental disagreement;

14 (5) The client fails substantially to fulfill an obligation to the
15 lawyer regarding the lawyer's services and has been
16 given reasonable warning that the lawyer will withdraw
17 unless the obligation is fulfilled;

18 (6) The representation will result in an unreasonable
19 financial burden on the lawyer or has been rendered
20 unreasonably difficult by the client; or

21 (7) Other good cause for withdrawal exists.

22 In the instant case, Mr. Polk as indicated he does not want counsel to continue
23 and after a series of phone calls, counsel believes it is in the best interest of both
24 parties that she withdraw.

25 DATED this 21st day of January, 2021.

26 /s/ Betsy Allen
27 BETSY ALLEN, ESQ.
28 Nevada Bar #6878
P.O. Box 46991
Las Vegas, NV 89114
(702) 386-9700

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CERTIFICATE OF SERVICE

I hereby certify on the 21st day of January, 2021, I served a true and correct copy of
the foregoing Notice of Withdrawal as Counsel to the following:

Renard Polk, #72439
Ely State Prison
P.O. Box 1989
Ely, NV 89301

pdmotions@clarkcountyda.com

/s/ Betsy Allen
Betsy Allen

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
1/26/2021 12:51 PM
Steven D. Grierson
CLERK OF THE COURT



Renard Polk, Plaintiff(s)

vs.

Timothy Filson, Defendant(s)

Case No.: A-18-780833-W

Department 9

NOTICE OF HEARING

Please be advised that the Petitioner's Motion to Withdraw as Counsel in the above-entitled matter is set for hearing as follows:

Date: February 24, 2021

Time: 11:00 AM

Location: RJC Courtroom 11B
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Joshua Raak
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Joshua Raak
Deputy Clerk of the Court

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
2/4/2021 9:26 AM
Steven D. Grierson
CLERK OF THE COURT



Renard Polk, Plaintiff(s)

vs.

Timothy Filson, Defendant(s)

Case No.: A-18-780833-W

Department 9

NOTICE OF HEARING

Please be advised that the Plaintiff/Petitioner's - Amended Motion to Terminate Post Conviction Counsel and Appoint an Alternative Attorney and/or for Sanctions Under Nevada Rules Civil Procedures NRCP 11(b) in the above-entitled matter is set for hearing as follows:

Date: March 08, 2021

Time: 11:00 AM

Location: RJC Courtroom 11B
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
02/04/2021

Heaven & Son
CLERK OF THE COURT

Renard Polk,
Movant-Petitioner-Plaintiff,

vs.

CASE NO. A-18-780833-W

Timothy Filson, et al.,

DEPT NO. IX

Respondent(s),

— HEARING BY AUDIOVISUAL

Betsy Allen, et al.,

TRANSMISSION REQUESTED

Real Party At Interest,

State-County Treasurer-Controller,

Real Third Party At Interest

AMENDED MOTION TO TERMINATE
POST-CONVICTION COUNSEL AND
APPOINT AN ALTERNATE ATTORNEY,
(AND/OR) FOR SANCTIONS UNDER
NEVADA RULES CIVIL PROCEDURE
(NRCp) 11 (b).

Comes, Now, the petitioner-plaintiff, Renard Polk,
herein after referred to as the {"[Movant]"},
and hereby files this amended motion to
terminate post-conviction counsel and for the
appointment of alternate legal representation
pursuant to Eighth Judicial District Court
Rules (EJDCR) 8.7, NRCp 11(b), 15 and
16

Pg. 1 of 19

RECEIVED

JAN 27 2021

CLERK OF THE COURT

1 This motion is made in good-faith and
2 based on the appended affidavit attached
3 hereto, as well as, on any and all papers,
4 pleadings and documents on file and
5 record herein, and any hearing deemed
6 necessary by this court.
7

8 PROCEEDURAL HISTORY 9

10 Prior to attorney-at-law Betsy Allen's
11 appointment, herein after referred to as
12 "Ms. Allen" or otherwise, the movant submitted
13 and was permitted to file a motion for
14 rehearing (reconsideration) in case A-18-780-
15 833-W, [underlying criminal case 00C166490C],
16 before the Honorable Christina Silva of the
17 Eighth Judicial District Court Clark County,
18 Nevada, regarding [his] initial amended petition
19 for writ of habeas corpus and subjiciendum
20 involving fatal jurisdictional breaches, on
21 August 12, 2019, consisting of, but not limited
22 to: 1.) failing to appoint counsel during juvenile
23 adjudicatory processes, 2.) failing to certify
24 the movant as an adult before the prosecution
25 of the instant false allegations, 3.) failing to
26 adhere to or perform previously duly issued
27 and served provisional statutory writs of
28 habeas corpus, and 4.) failing to set the movant

Pg. 2 of 19

1 to [his] conditional release on parole, all of
2 which instances require the movant's
3 immediate discharge, forthwith.

4 Though the rehearing motion has yet to be
5 decided in excess of almost (2) two years,
6 Ms. Allen confirmed [her] appointment on
7 July 20, 2020, despite having an onerous
8 case load to handle in the midst of an
9 international, national, regional and local
10 crisis over the COVID-19 virus pandemic.

11 After having forestalling, foregoing or
12 refusing to communicate with [her] client (the
13 movant) for over half a year after [her]
14 appointment, the movant submitted and was
15 permitted to file motions and supplements to
16 terminate Ms. Allen's legal representation, with
17 a rehearing scheduled thereon for January
18 14, 2021.

19 Although the court took the motions and
20 supplements off-calendar, Ms. Allen was
21 cautiously advised by the judge in chambers, in
22 ex-parte absence of the movant, to communicate
23 with [her] client to gain some clarity into [his]
24 submissions and filings for post-conviction review.

25 At the same time Ms. Allen was also directed
26 to place the motion to terminate [her] legal
27 representation of the movant back on-calendar
28 should any conflict of interests persist.

STATEMENT OF FACTS

Since Ms. Allen's confirmation as post-conviction counsel for the movant, one hundred and seventy-four (174) days elapsed before Ms. Allen scheduled a telephonic conference call at the court's direction to assess [her] client's interests and gain insight into [his] post-conviction submissions.

During the telephonic conference Mr. Polk (the movant) questioned Ms. Allen as to whether [she] would, could or should be (, or had been);

1.) agreeing to the appointment and confirmation as the movant's post-conviction counsel if [she] was overwhelmed by [her] current case load and wanted to withdraw later: To which, Ms. Allen replied, argued and disagreed that "[her] attention will not be divided;

2.) gaining extensions for hearing dates in light of the fact [her] client (the movant) is currently being excessively confined without [his] permission: To which, Ms. Allen replied, argued and disagreed that "[any], and no extension was gained without ([your]) consent;"

3.) ignoring [her] client's (the movant's) calls because [she] thought [her]

1 client is guilty of the offenses charged,
2 irrespective of the purported victim's sworn
3 recantation: To which, Ms. Allen replied,
4 argued and disagreed that "it was not
5 [her] job to determine guilt or innocence;"

6 4.) moving (motioning) the court for
7 an injunction, or otherwise requesting for the
8 movant's immediate unconditional release
9 and discharge from the custody of the
10 Nevada Corrections [Prisons] Department's ("NDOC")
11 collectively avoided and disobeyed duly
12 issued and served provisional writs of habeas
13 corpus pursuant to Nevada Revised Statute
14 (NRS) 34.500 (2): To which, Ms. Allen
15 replied, argued and disagreed that "the issue
16 was moot because ([ya]) never acted on
17 it."

18 5.) moving (motioning) the court for
19 an injunction, or otherwise requesting for the
20 return and repossession of the movant's
21 personal property consisting of legal materials,
22 drafts and exculpatory witness contact
23 information improperly and illegally
24 confiscated, seized and impounded by
25 NDOC employees regarding the instant case:
26 To which, Ms. Allen replied, argued and
27 disagreed that "those matters are not
28 within [her] purview;"

1 6.) seeking to sanction and hold in contempt
2 the Ely State Maximum Security Penitentiary
3 for excessively-illegally detaining the movant,
4 wrongfully appropriating the movant's mail
5 to other inmates or denying the movant
6 medical evaluations and treatment for
7 recurring illnesses in accordance with
8 preexisting court orders and binding
9 precedent: To which, Ms. Allen replied,
10 argued and disagreed that "there is no
11 legal basis for [the movant's] contentions;"

12 7.) seeking to sanction the district attorney's
13 office, namely James Sweetin, for fraudulently
14 and falsely representing to the court (judge)
15 in a pleading that the movant was not
16 on juvenile probation beyond [his] eighteenth
17 (18) birthday, knowing or should having
18 known the falsity thereof, when in truth
19 and in fact juvenile wardship did not
20 terminate over the movant well past [his]
21 nineteenth (19) birthday: To which, Ms.
22 Allen replied, argued and disagreed that
23 "[she's] not doing what (the movant)
24 tells [her];" and

25 8.) violating [her] public oath as
26 an officer of the court and holding [her]
27 professional assistance hostage by failing
28 to fully disclose and fraudulently concealing

1 the aforementioned and enumerated illegalities
2 and wrongs from the court, a judicial
3 functionary or the appropriate authorities: To
4 which, Ms. Allen replied, argued and
5 disagreed that "Now (Lynn) are
6 threatening me with litigation."

7 On the heels of that conversation this
8 amended motion follows.

9
10 MEMORANDUM OF POINTS,
11 AUTHORITIES, ARGUMENTS
12 AND EXHIBITS.

13
14 Due to the sparsity with which the
15 Eighth (8th) Judicial District Court, Clark
16 County, Nevada, deals with a defense
17 attorney's behavior and conduct prior to
18 making a decision on the case-in-chief,
19 the movant located only one (1) case-
20 instance wherein counsel was terminated
21 for his unwillingness to cooperate with
22 his client.

23 In the State of Nevada v. Min S. Chang
24 case number C-11-270415-2, the court
25 terminated the legal representation of
26 Scott L. Coffee on the basis of simply
27 finding a break down in communication
28 and counsel's refusal to pursue valid interests

pg. 7 of 19

1 held by his client having evidentiary
2 and legal support.

3 In the instant case subjudice, and
4 legally indistinguishable for all intents
5 and purposes from the aforementioned
6 case, Betsy Allen, Esq., attorney-at-
7 law has violated numerous American Bar
8 Associations Model Rules of Professional
9 Conduct ("ABA") and Nevada Rules of
10 Professional Conduct ("RPC") in an effort
11 to derail and abridge judicial review
12 and prevent the detection of the unlawful
13 condition of [her] client's (the movant's)
14 confinement.

15 Particularly Ms. Allen, when confronted
16 by Mr. Polk or [his] third-party contactees
17 with either the fact, case law or
18 supporting probative evidence of [his] current
19 illegal detention in excess of duly issued
20 provisional writs of habeas corpus, being
21 inadvertently tortured through the absence
22 of medical-psychiatric care in the face of
23 previously being forcibly medicated, and
24 the illegal impoundment of [his] personal
25 property containing exculpatory witness'
26 contact information, inter alia, Ms. Allen
27 then begins to take on the role of a
28 false executor of the movant's second

1 amended [actual innocence] petition for writ
2 of habeas corpus ad subjiciendum
3 delineating what issues [she] will and
4 won't pursue contained therein, though
5 [she] is not the beneficiary to any relief
6 that could be provided.

7 All of this, while simultaneously
8 maintaining [her] role as post-conviction
9 counsel and agent for the movant, but
10 foregoing [her] obligation to gain [his]
11 consent to omit and not immediately
12 pursue [his] release, discharge or otherwise.

13 Operating in these several roles and conflicting
14 capacities allows Ms. Allen to fraudulently
15 conceal and forego fully disclosing to the
16 court on the open roll record the unlawful
17 conditions of [her] client's confinement, in
18 violation of ABA 3.3, 4.1 and 4.3
19 (fraud), without gaining [his] consent to
20 omit the aforesaid issues contained in
21 the petition, in violation of ABA 1.2
22 (consent).

23 whereby Ms. Allen is laboring under
24 an actual conflict incompatible with
25 [her] employ-appointment.

26 Ms. Allen cannot in good-faith discharge
27 [her] duties properly when some underlying
28 interest has emerged contrary thereto.

REQUESTED RELIEF.

WHEREFORE: the movant prays this court;
TERMINATE Betsy Allen's employ as the
movant's post-conviction attorney, in turn
sanctioning [her] for aiding and abetting
in [his] false imprisonment, illegal
detainments and unlawful condition of
confinement through false appointments
and fraudulently concealment from the
appropriate authorities or judicial functionary
contrary to [her] professional duty and
public oath as an officer of the court,
while CAUSING [her] to reimburse the
State-County for unnecessary expenditure
of public funds and billing costs, overall
APPOINTING another attorney to represent
the movant over any pecuniary or
gratuitous inducement and interest.

Dated this 24th day of Jan. 20 20.

Verification:

151.

Ronald T. Polk

CERTIFICATE OF MAILING

I, Polk, Ronald, do hereby certify this 24th
day of Jan. 20 21 that a true and correct

1 copy of the foregoing motion was deposited
2 with an employee at The Ely State Prison
3 for the purpose of being conveyed by
4 U.S. Postal Service to the following locations:

5 • Regional Justice Center
6 200 Lewis Ave.
7 Las Vegas, NV 89101

• Betsy Allen
P.O. Box 46991
Las Vegas, NV 89114

9 • James Sweeton
10 100 N. Carson St
11 Carson City, NV 89202

Verification:

12 151. DPH
13 Renard T. Polk
14

15 INDEX OF EXHIBITS
16

17 "Affidavit of Renard T. Polk," Exhibit A
18

19 "Various Nevada Revised Statutes," Exhibit B
20
21
22
23
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RENARD POLK'S AFFIDAVIT IN
SUPPORT OF AMENDED MOTION
TO TERMINATE POST-CONVICTION
COUNSEL

State of Nevada }
White Pine County } ss;

I, Renard T. Polk, being duly sworn,
deposes, states and says: that;

1.) I am of sound mind, and of legal age
to disclose the following facts:

2.) That, during a telephonic conference
between the affiant and court appointed
post-conviction counsel, Betsy Allen, Esq.,
attorney-at-law, the affiant requested
that Ms. Allen inform the court on the unlawful
conditions of the affiant's confinement;

3.) To which, Ms. Allen responded that
"[she] is not going to do any theoretical
speculations on the extent of [his] wrongful
confinement;"

4.) Armed with the appended Nevada
Revised Statutes (NRS) to persuade Ms.
Allen about the illegality of [his]
confinement;

5.) Ms. Allen became belligerent
insisting that the affiant was threatening

[her] with litigation;

6.) Even though the affiant was only seeking to bring Ms. Allen up to speed on [his] post-conviction submissions,

7.) Notwithstanding, the affiant related that pursuant to NRS 34.420 (1) "[he] was to be "brought before the judge on the return" consistent with the writs that had previously issued;"

8.) At which time Ms. Allen retorted that the issue was "moot" because the affiant never acted on it;

9.) Whereat the moment the affiant has been seeking forfeiture-penalties from Nevada Corrections [Prison] Department's ("NDOC, NDOP") employees for disobeying the "return" after being served with the writ;

10.) Albeit, Ms. Allen then informed the affiant that if [she] could not come to a general consensus about the issues [she] wanted to pursue, [she] was to place the affiant's motion to terminate [her] services back on the court's calendar;

11.) In as much, no consensus was reached;

12.) Furthermore the affiant sayeth naught.

1d/ Jan. 24, 2021

15/ RPD

34.280. Service of writ.

1. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the order of the court or district judge issuing the writ.

2. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not.

HISTORY:

CPA 1911, §§ 764, 765; RL 1912, §§ 5706, 5707; CL 1929, §§ 9253, 9254.

75.14 of 19

34.470. Answer to return; summary proceeding; attendance of witnesses.

1. The petitioner brought before the judge on the return of the writ may deny or controvert any of the material facts or matters set forth in the return or answer, deny the sufficiency thereof, or allege any fact to show either that the petitioner's imprisonment or detention is unlawful or that the petitioner is entitled to discharge.

2. The judge shall thereupon proceed in a summary way to hear such allegation and proof as may be produced against or in favor of such imprisonment or detention, and to dispose of the case as justice may require.

3. The judge may compel the attendance of witnesses by process of subpoena and attachment and perform all other acts necessary to a full and fair hearing and determination of the case.

HISTORY:

1862, p. 98; CL 1873, §§ 363-365; GS 1885, §§ 3685-3687; CL 1900, §§ 3757-3759; RL 1912, §§ 6240-6242; CL 1929, §§ 11389-11391; 1985, p. 1236.

15-15 of 19

34.670. Damages recoverable for failure to issue or obey writ.

If any judge, after a proper application is made, shall refuse to grant an order for a writ of habeas corpus, or if the officer or person to whom such writ may be directed shall refuse obedience to the command thereof, the judge, officer or person shall forfeit and pay to the person aggrieved a sum not exceeding \$5,000, to be recovered by action in any court of competent jurisdiction.

HISTORY:

1862, p. 98; CL 1873, § 385; GS 1885, § 3707; CL 1900, § 3779; RL 1912, § 6262; CL 1929, § 11411.

34.770. Judicial determination of need for evidentiary hearing: Dismissal of petition or granting of writ.

1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent unless an evidentiary hearing is held.

2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, the judge or justice shall dismiss the petition without a hearing.

3. If the judge or justice determines that an evidentiary hearing is required, the judge or justice shall grant the writ and shall set a date for the hearing.

HISTORY:

1985, p. 1230; 1991, ch. 44, § 17, p. 86.

ps. 17 of 19

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).

200.460. Definition; penalties.

1. False imprisonment is an unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority.
2. A person convicted of false imprisonment shall pay all damages sustained by the person so imprisoned, and, except as otherwise provided in this section, is guilty of a gross misdemeanor.
3. Unless a greater penalty is provided pursuant to subsection 4, if the false imprisonment is committed:

(a) By a prisoner in a penal institution without a deadly weapon; or

(b) By any other person with the use of a deadly weapon, the person convicted of such a false imprisonment is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years.

4. Unless a greater penalty is provided pursuant to subsection 5, if the false imprisonment is committed by using the person so imprisoned as a shield or to avoid arrest, the person convicted of such a false imprisonment is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 15 years.

5. If the false imprisonment is committed by a prisoner who is in lawful custody or confinement with the use of a deadly weapon, the person convicted of such a false imprisonment is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years.

HISTORY:

C&P 1911, § 175; RL 1912, § 6440; CL 1929, § 10122; 1967, p. 472; 1981, p. 614; 1995, ch. 443, § 66, p. 1190; 2003, ch. 36, § 1, p. 387.

NOTES TO DECISIONS

Submission to mere verbal direction of another, unaccompanied by force or threats of any character, does not constitute false imprisonment. *Lerner Shops v. Marin*, 83 Nev. 75, 423 P.2d 398, 1967 Nev. LEXIS 228 (Nev. 1967).

Defense to false imprisonment action.

If one has reasonable grounds to believe that another is stealing his property he may be justified in

detaining such person for a reasonable time in order to investigate; this common law privilege, if properly exercised, is a defense to an action for false imprisonment. *Jacobson v. State*, 89 Nev. 197, 510 P.2d 856, 1973 Nev. LEXIS 470 (Nev. 1973).

A plaintiff in a false arrest/false imprisonment case need not prove lack of probable cause for arrest as part of his prima facie case. *Garton v. Reno*, 102 Nev. 313, 720 P.2d 1227, 1986 Nev. LEXIS 1292 (Nev. 1986).

Failure to make out prima facie case.

Where the plaintiff introduced scant evidence addressing the issue of the "legal cause or justification," and instead his case-in-chief focused on the procedural irregularities of and damages occasioned by his arrest, the plaintiff did not make out a prima facie case of false arrest and false imprisonment; therefore, the district court did not err in involuntarily dismissing the plaintiff's false arrest and false imprisonment causes of action. *Garton v. Reno*, 102 Nev. 313, 720 P.2d 1227, 1986 Nev. LEXIS 1292 (Nev. 1986).

Arrest and detention for nonpayment of casino markers.

Defendant's arrest and detention in Texas for the nonpayment of casino markers lay within the legal bounds of Nevada's bad check statute and did not constitute a false arrest, therefore, defendant's allegations of unauthorized detention allegations were properly dismissed. *Fleegeer v. Bell*, 95 F. Supp. 2d 1126, 2000 U.S. Dist. LEXIS 5091 (D. Nev. 2000), aff'd, 23 Fed. Appx. 741, 2001 U.S. App. LEXIS 25491 (9th Cir. Nev. 2001).

Incidental to robbery.

Defendant's false imprisonment convictions were reversed where he attempted to rob three individuals, he directed them to a room, he did not tie them up, but merely closed the door and attempted to lock them in; therefore, the false imprisonment convictions were part of and incidental to the conviction of attempting to rob the three individuals taken to the back room. *Garcia v. State*, 121 Nev. 327, 113 P.3d 836, 121 Nev. Adv. Rep. 33, 2005 Nev. LEXIS 36 (Nev. 2005).

Evidence sufficient.

Evidence was sufficient to support defendant's conviction of false imprisonment by using a person as a human shield in light of the video surveillance tapes, the testimony of the convenience store employee and a police officer, and the victim's grand jury testimony, showing that when the police arrived at the convenience store, defendant grabbed the victim, made a motion as if he was reaching into his waistband, and started yelling that he was going to kill one of the pursuing officers. *Grey v. State*, 124 Nev. 110, 178 P.3d 154, 124 Nev. Adv. Rep. 11, 2008 Nev. LEXIS 15 (Nev. 2008).

Cited in:

Jensen v. Sheriff, White Pine County, 89 Nev. 123, 508 P.2d 4, 1973 Nev. LEXIS 443 (1973); *Ramirez v. City of Reno*, 825 F. Supp. 681, 1996 U.S. Dist. LEXIS 7042 (D. Nev. 1996).

Research References and Practice Aids

Review of Selected Nevada Legislation, Domestic Relations, 1985 Pac. L.J. Rev. Nev. Legis. 123.

Playing God or Playing Scientist: A Constitutional Analysis of State Laws Banning Embryological

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Procedures, 27 Pac. L.J. 1331 (1996).

Entrapment as precluding justification of arrest or imprisonment. 15 A.L.R.3d 963.

Liability, for false arrest or imprisonment, of private person detaining child. 20 A.L.R.3d 1441.

Attorneys' fees as element of damages in action for false imprisonment or arrest or malicious prosecution. 21 A.L.R.3d 1068.

Liability of attorney acting for client, for false imprisonment or malicious prosecution of third party. 46 A.L.R.4th 249.

Liability for false imprisonment predicated upon institution of or conduct in connection with insanity proceedings. 30 A.L.R.3d 523.

Admissibility of defendant's rules or instructions for dealing with shoplifters, in actions for false imprisonment or malicious prosecutions. 31 A.L.R.3d 705.

Workmen's compensation provision as precluding employee's action against employer for fraud, false imprisonment, defamation, or the like. 46 A.L.R.3d 1279.

Construction and effect, in false imprisonment action, of statute providing for detention of suspected shoplifters. 47 A.L.R.3d 998.

Immunity of prosecuting attorney or similar officer from action for false arrest or imprisonment. 79 A.L.R.3d 882.

Principal's liability for punitive damages because of false arrest or imprisonment, or malicious prosecution, by agent or servant. 93 A.L.R.3d 828.

Liability for negligently causing arrest for prosecution of another. 99 A.L.R.3d 1113.

False imprisonment in connection with confinement in nursing home or hospital. 4 A.L.R.4th 449.

Civil liability for "deprogramming" member of religious sect. 11 A.L.R.4th 228.

Liability of attorney, acting for client, for malicious prosecution. 46 A.L.R.4th 249.

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ELY, NV 89301



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DISTRICT COURT
CLARK COUNTY, NEVADA

RENARD TURMAN POLK,
#1521718

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-18-780833-W

00C166490

DEPT NO: IX

**STATE'S RESPONSE TO PETITIONER'S AMENDED MOTION TO TERMINATE
POST-CONVICTION COUNSEL AND APPOINT AN ALTERNATIVE ATTORNEY
AND/OR FOR SANCTIONS UNDER NEVADA RULES OF CIVIL PROCEDURE
NRCP 11(b)**

DATE OF HEARING: MARCH 8, 2021
TIME OF HEARING: 11:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through KAREN MISHLER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Petitioner's Amended Motion to Terminate Post-Conviction Counsel and Appoint an Alternative Attorney and/or for Sanctions Under Nevada Rules of Civil Procedure NRCP 11(b).

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.

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On April 13, 2000, the State filed an Information charging RENARD TURMAN POLK
4 (hereinafter "Petitioner") as follows: Counts 1 and 2 – Sexual Assault with a Minor under
5 Sixteen Years of Age (Felony – NRS 200.364, 200.366); and Count 3 – First Degree
6 Kidnapping (Felony – NRS 200.310, 200.320). On November 22, 2000, the State filed an
7 Amended Information charging Petitioner with three (3) counts of Sexual Assault with a Minor
8 under Sixteen Years of Age (Felony – NRS 200.364, 200.366). On January 7, 2002, the State
9 filed a Second Amended Information charging Petitioner with three (3) counts of Sexual
10 Assault with a Minor under Fourteen Years of Age (Felony – NRS 200.364, 200.366).

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

15 On March 14, 2002, the Court sentenced Petitioner to the Nevada Department of
16 Corrections (hereinafter "NDOC") as follows: Count 1 – to a maximum of one hundred twenty
17 (120) months and a minimum of forty-eight (48) months as well as a special sentence of
18 lifetime supervision and Count 2 – to a maximum of life with parole eligibility after a minimum
19 of two hundred forty (240) months, consecutive to Count 1. Petitioner received six hundred
20 ninety-one (691) days credit for time served. The Judgment of Conviction was filed on April
21 1, 2002.

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

27 On July 1, 2004, Petitioner filed a Petition for Writ of Habeas Corpus. The State filed
28 a Response on August 31, 2004. On September 8, 2004, the Court denied Petitioner's Petition.

1 The Findings of Fact, Conclusions of Law and Order were filed on September 14, 2004.
2 Petitioner filed a Notice of Appeal on October 8, 2004. The Nevada Supreme Court affirmed
3 the denial of Petitioner's Petition on January 25, 2005. Remittitur issued on February 22, 2005.

4 On December 7, 2007, Petitioner filed a Motion to Vacate, Set Aside or Correct Illegal
5 Sentence of Judgment, Consolidated Writ of Error. The State filed an Opposition on December
6 17, 2007. This Court denied the Motion on December 18, 2007, and filed a written Order on
7 December 31, 2007. Petitioner filed a Notice of Appeal on January 18, 2008. On June 9, 2008,
8 the Nevada Supreme Court affirmed the denial of Petitioner's Motion. Remittitur issued on
9 September 9, 2008.

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

14 On May 19, 2011, Petitioner filed a third Petition for Writ of Habeas Corpus (Post
15 Conviction), which he entitled, Supplemental Petition for Writ of Habeas Corpus (Post-
16 Conviction Relief – NRS 34.735 Petition: Form). The State did not file a response. The Court
17 denied Petitioner's third Petition as untimely on July 26, 2011.

18 On March 26, 2012, Petitioner filed a second Motion to Correct Illegal Sentence. The
19 State filed an Opposition on April 23, 2012. On May 10, 2012, Petitioner filed an Amended
20 Motion to Correct Illegal Sentence. This Court denied the Motion on May 29, 2012, and filed
21 a written Order on June 8, 2012.

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

25 On December 2, 2013, Petitioner filed his fifth Petition for Writ of Habeas Corpus
26 (Post-Conviction). On March 10, 2014, the State filed a Response and Motion to Dismiss
27 Petitioner's Petition and a Countermotion for Determination of Vexatious Litigation and
28 //

1 Request for Order to Show Cause why the Court should not Issue a Pre-Filing
2 Injunction Order.

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

6 On February 27, 2014, Petitioner filed a Motion for Reconsideration. The Court denied
7 the Motion on March 20, 2014.

8 On April 1, 2014, Petitioner filed a Motion to Strike and/or for Sanctions. The State
9 filed its Opposition on April 25, 2014. On April 29, 2014, the Court granted the State's Motion
10 to Dismiss Petitioner's fifth Petition and denied Petitioner's fifth Petition as well as his Motion
11 to Strike. The Court also denied the State's request for vexatious litigation because Petitioner
12 had not yet been warned, and issued a formal warning.

13 On May 19, 2014, Petitioner filed a Motion for Reconsideration (and/or) to Reduce to
14 Writing. On June 4, 2014, the State filed its Opposition. The Court denied the Motion on June
15 10, 2014.

16 On June 2, 2014, Petitioner filed a Notice of Appeal. On September 18, 2014, the
17 Nevada Supreme Court affirmed the Court's order dismissing Petitioner's post-conviction
18 petition for writ of habeas corpus and Remittitur issued December 8, 2014.

19 On September 17, 2015, Petitioner filed a pro per Petition for Writ of Mandamus
20 {and/or} in the Alternative Prohibition. This Court denied the Petition on October 8, 2015. A
21 written Order issued on October 27, 2015. Petitioner filed a Notice of Appeal on November 5,
22 2015. On May 17, 2016, the Nevada Supreme Court affirmed the district court's decision.
23 Remittitur issued September 12, 2016.

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

26 On November 4, 2016, Petitioner filed a Motion to Vacate, Set Aside, or Correct an
27 Illegal Sentence. The State filed its Opposition on November 22, 2016. This Court denied
28 Petitioner's Motion on November 28, 2016. The written Order was filed on December 1, 2016,

1 and Petitioner filed a Notice of Appeal on December 16, 2016. The Nevada Supreme Court
2 affirmed the district court's order, and Remittitur issued on January 4, 2018.

3 On July 7, 2017, Petitioner filed a Motion for Sanctions and Finding of Contempt and
4 a Motion for Leave to File Affidavit and Request for Issuance of Writ of Execution. On July
5 26, 2017, Petitioner filed a Supplemental Motion for Sanctions and Finding of Contempt. This
6 Court denied the motions on August 2, 2017. The written Order was filed August 30, 2016,
7 and Petitioner filed a Notice of Appeal on August 31, 2017. The Nevada Supreme Court
8 dismissed the appeal because no statute or court rule permitted an appeal from the relevant
9 orders. Remittitur issued on December 11, 2017.

10 On September 18, 2018, Petitioner filed a Motion to Alter, Amend, or Modify Sentence.
11 On September 27, 2018 Petitioner filed a Motion to Quash Post-Conviction Order. On October
12 4, 2018, the State filed its Opposition to Petitioner's Motion to Alter, Amend, or Modify
13 Sentence. Also, on October 4, 2018, the State filed its Response to Petitioner's Motion to
14 Quash Post-Conviction Order. On October 10, 2018, the Court denied Petitioner's Motion to
15 Alter, Amend or Modify Sentence. On September 20, 2019, the Nevada Court of Appeals
16 affirmed the denial of this Motion.

17 On July 11, 2018, Petitioner filed an Amended [Actual Innocence] Petition for Writ of
18 Habeas Corpus Ad Subjudicium, Duces Tecum, Testificandum ("Sixth Petition"). On October
19 8, 2018, the State's filed its Response. On October 29, 2018, Petitioner filed a Supplemental
20 (Emergency) Amended (Actual Innocence) Petition for Writ of Habeas Corpus and
21 Testificandum, Dueces Tecum, Ad Subjudicem and a Motion for Leave to File Supplemental
22 (Emergency) Amended (Actual Innocence) Petition for Writ of Habeas AD Testificandum,
23 Deuces Tecum, Ad Subjudicium (Sub-Judiciendum). On November 14, 2018, the Court
24 denied Petitioner's Petition. On December 7, 2018, the Court filed the Findings of Fact,
25 Conclusions of Law and Order denying the Petition.

26 On May 19, 2020, Petitioner filed a Second Amended Petition for Writ of Habeas
27 Corpus. On June 30, 2020, the State filed its Response. On July 8, 2020, Petitioner filed a
28 Motion for Appointment of Counsel. Also on July 8, 2020, Petitioner filed a Supplemental

1 Second Amended (Actual Innocence) Petition for Writ of Habeas Corpus, AD Testificandum,
2 Duces Tecum, AD Subjiciendum. On July 20, 2020, the Court appointed Betsy Allen as post-
3 conviction counsel.

4 On December 8, 2020, Petitioner filed a Supplemental Motion to Terminate Post
5 Conviction Counsel and Appoint an Alternative Counsel and/or Sanctions Under Nevada
6 Rules of Civil Procedure NRCP 11(b) (hereinafter "Motion"). The State filed its Response on
7 January 8, 2021. On January 20, 2021, the Court held a hearing on the matter at which time
8 post-conviction counsel represented that she had last spoken with Petitioner the previous week
9 and had a scheduled meeting with him for the following week. Counsel further requested that
10 the Court delay the hearing so she could speak with Petitioner, and, if he still wished to proceed
11 with the Motion at that point, counsel would re-notice the Motion.

12 On January 21, 2021, Petitioner, through post-conviction counsel, filed a Motion to
13 Withdraw as Counsel. On February 4, 2021, Petitioner filed the instant Amended Motion to
14 Terminate Post-Conviction Counsel and Appoint an Alternate Attorney and/or for Sanctions
15 Under Nevada Rules of Civil Procedure NRCP 11(b) (hereinafter "Amended Motion"). The
16 State's Response follows.

17 ARGUMENT

18 In the Motion Petitioner previously filed on December 8, 2020, Petitioner requested
19 that this Court remove post-conviction counsel because she failed to assist him with the
20 following: (1) Petitioner's personal property was "unlawfully seized, damaged, or
21 intentionally destroyed," (2) Anna Polk, one of the purported victims, attempted to mail an
22 affidavit which was "lost, confiscated, destroyed or given to another prisoner," (3) Petitioner
23 is not receiving medical attention for alleged ongoing and recurring illnesses, (4) Petitioner is
24 entitled to parole pursuant to NRS 213.1235, and (5) Petitioner was placed on an arbitrary
25 classification status. Motion at 2-4. As a result of this alleged failure of assistance, Petitioner
26 requested that the Court appoint him new post-conviction counsel and levy sanctions on Ms.
27 Allen.

28 //

1 In the instant Amended Motion, Petitioner renews his requests for post-conviction
2 counsel's removal, appointment of new post-conviction counsel, and sanctions for the
3 following reasons: (1) post-conviction counsel agreed to her appointment even though she was
4 "overwhelmed by her current case load," (2) post-conviction counsel requested extensions
5 without Petitioner's permission, (3) post-conviction counsel ignored Petitioner's calls because
6 she claimed that "it was not her job to determine guilt or innocence," (4) post-conviction
7 counsel failed to move for Petitioner's immediate release and "disobeyed served provisional
8 writs of habeas corpus," (5) post-conviction counsel failed to request that the prison return
9 Petitioner's personal property, (6) post-conviction counsel failed to sanction and hold in
10 contempt the prison for excessively and illegally detaining Petitioner and mishandling his mail,
11 (7) post-conviction counsel failed to sanction the State for misstating that Petitioner was not
12 on juvenile probation, (8) post-conviction counsel violated her public oath because she failed
13 to disclose and concealed the previously "enumerated illegalities." Amended Motion at 4-10.

14 The State previously responded to Petitioner's request for post-conviction counsel's
15 removal, appointment of new post-conviction counsel, and sanctions in its Response to
16 Petitioner's Supplemental Motion to Terminate Post Conviction Counsel and Appoint an
17 Alternative Counsel and/or Sanctions Under Nevada Rules of Civil Procedure NRCP 11(b)
18 filed on January 8, 2021. The State incorporates, by reference, those arguments herein.

19 Moreover, it bears noting that none of counsel's actions for which he complains appear
20 to warrant sanctions. See Armeni v. Eighth Judicial District Court, 416 P.3d 205, *1 (Nev.
21 2018) (unpublished disposition) (stating "[s]anctions may be justified where defense counsel
22 files a motion, with 'no credible basis,' that demeans the criminal justice system in general
23 and unnecessarily delays the proceedings."). Indeed, many of the actions Petitioner wished
24 counsel had undertaken fall outside the scope of counsel's appointment and also fall outside
25 the scope of the court's authority. Therefore, his request should be denied.

26 //

27 //

28 //

1 CONCLUSION

2 Based on the foregoing, the State respectfully requests that Petitioner's Amended
3 Motion to Terminate Post-Conviction Counsel and Appoint an Alternative Attorney and/or for
4 Sanctions Under Nevada Rules of Civil Procedure NRCP 11(b) be DENIED.

5 DATED this 24th day of February, 2021.

6 Respectfully submitted,

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

10 BY

 #10539 For
11 KAREN MISHLER
12 Chief Deputy District Attorney
13 Nevada Bar #013730

14 CERTIFICATE OF ELECTRONIC FILING

15 I hereby certify that service of State's Response To Petitioner's Amended Motion To
16 Terminate Post-Conviction Counsel And Appoint An Alternative Attorney and/or For
17 Sanctions Under Nevada Rules Of Civil Procedure NRCP 11(B), was made this 24th day of
18 February, 2021, by Electronic Filing to:

19 BETSY ALLEN, ESQ.
20 EMAIL: betsyallenesq.@yahoo.com

21 
22 Secretary for the District Attorney's Office
23
24
25
26
27
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5 Attorney for Petitioner,
6 RENARD POLK

7 EIGHTH JUDICIAL DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 RENARD POLK,

10 Petitioner,

11 vs.

12 TIMOTHY FILSON, et al.,

13 Respondents.

Case No.: A-18-780833-W

Dept. No.: IX

HEARING NOT REQUESTED

14
15 **C. BENJAMIN SCROGGINS, ESQ.'S MOTION TO WITHDRAW AS COUNSEL FOR**
16 **PETITIONER, RENARD POLK**

17 TO: THE EIGHTH JUDICIAL DISTRICT COURT;

18 TO: TIMOTHY FILSON, WILLIAM RUEBAR, and TASHEENA SANDOVAL,
Respondents; and

19 TO: THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE, attorneys for Respondents.

20 C. BENJAMIN SCROGGINS, ESQ., hereby moves this Honorable Court for an Order
21 allowing him to withdraw from this case for Petitioner, RENARD POLK. This Motion is made
22 and based upon the pleadings and papers on file herein, the following Memorandum of Points

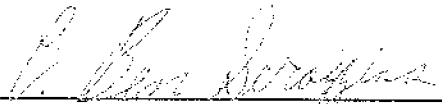
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24 ///

1 and Authorities, the Declaration of C. Benjamin Scroggins, Esq., attached hereto as Exhibit "1,"
2 as well as upon any further evidence or arguments that the Court may request.

3 MADE this 26th day of April, 2021.

4 **THE LAW FIRM OF**
5 **C. BENJAMIN SCROGGINS, ESQ.**

6 
7 **C. BENJAMIN SCROGGINS, ESQ.**
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12 Fax: (702) 442-8660
13 CBS@cbscrogginslaw.com

14 *Attorney for Petitioner,*
15 *RENARD POLK*

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 EDCR 7.40 provides:

18 (a) When a party has appeared by counsel, the party
19 cannot thereafter appear on the party's own behalf in the case
20 without the consent of the court. Counsel who has appeared for any
21 party must represent that party in the case and shall be recognized
22 by the court and by all parties as having control of the case. The
23 court in its discretion may hear a party in open court although the
24 party is represented by counsel.

(b) Counsel in any case may be changed only:

(1) When a new attorney is to be substituted in
place of the attorney withdrawing, by the written consent of both
attorneys and the client, which must be filed with the court and
served upon all parties or their attorneys who have appeared in the
action, or

(2) When no attorney has been retained to
replace the attorney withdrawing, by order of the court, granted
upon written motion, and

(i) If the application is made by the
attorney, the attorney must include in an affidavit the address, or last
known address, at which the client may be served with notice of

1 further proceedings taken in the case in the event the application for
2 withdrawal is granted, and the telephone number, or last known
3 telephone number, at which the client may be reached and the
4 attorney must serve a copy of the application upon the client and all
5 other parties to the action or their attorneys, or

6 (ii) If the application is made by the
7 client, the client must state in the application the address at which
8 the client may be served with notice of all further proceedings in the
9 case in the event the application is granted, and the telephone
10 number, or last known telephone number, at which the client may
11 be reached and must serve a copy of the application upon the client's
12 attorney and all other parties to the action or their attorneys.

13 (c) No application for withdrawal or substitution may be
14 granted if a delay of the trial or of the hearing of any other matter in
15 the case would result.

16 EDCR 7.40 (2000) (Emphasis added).

17 Substantively, an attorney must withdraw from representing a client if:

18 (a) Except as stated in paragraph (c), a lawyer shall not
19 represent a client or, where representation has commenced, shall
20 withdraw from the representation of a client if:

21 (1) The representation will result in violation of
22 the Rules of Professional Conduct or other law;

23 (2) The lawyer's physical or mental condition
24 materially impairs the lawyer's ability to represent the client; or

25 (3) The lawyer is discharged.

26 (b) Except as stated in paragraph (c), a lawyer may
27 withdraw from representing a client if:

28 (1) Withdrawal can be accomplished without
29 material adverse effect on the interests of the client;

30 (2) The client persists in a course of action
31 involving the lawyer's services that the lawyer reasonably believes
32 is criminal or fraudulent;

33 (3) The client has used the lawyer's services to
34 perpetrate a crime or fraud;

35 (4) A client insists upon taking action that the
36 lawyer considers repugnant or with which the lawyer has
37 fundamental disagreement;

38 (5) The client fails substantially to fulfill an
39 obligation to the lawyer regarding the lawyer's services and has
40 been given reasonable warning that the lawyer will withdraw unless
41 the obligation is fulfilled;

42 (6) The representation will result in an
43 unreasonable financial burden on the lawyer or has been rendered

1 unreasonably difficult by the client; or

2 (7) Other good cause for withdrawal exists.

3 (c) A lawyer must comply with applicable law requiring
4 notice to or permission of a tribunal when terminating
5 representation. When ordered to do so by a tribunal, a lawyer shall
6 continue representation notwithstanding good cause for terminating
7 the representation.

8 (d) Upon termination of representation, a lawyer shall
9 take steps to the extent reasonably practicable to protect a client's
10 interests, such as giving reasonable notice to the client, allowing
11 time for employment of other counsel, surrendering papers and
12 property to which the client is entitled and refunding any advance
13 payment of fee or expense that has not been earned or incurred. The
14 lawyer may retain papers relating to the client to the extent permitted
15 by other law.

16 Nev. Rules of Prof'l Conduct r. 1.16 (2006) (Emphasis added).

17 As is set forth in the Declarations of C. Benjamin Scroggins, Esq. the Petitioner has
18 rendered further representation in this case impossible. Petitioner has expressed a distrust of
19 undersigned counsel, which has now extended to counsel's staff, whose only function has been
20 to help Petitioner. Petitioner has made unreasonable demands upon undersigned counsel.
21 Petitioner also directed undersigned counsel to "get off his case."

22 Undersigned counsel has performed within the standard of practice in representing
23 Petitioner, but Petitioner's micro-managing and distrust in undersigned counsel now renders
24 representation impossible. As required by the rules the attached Declaration of C. Benjamin

///

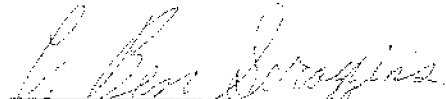
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1 Scroggins, Esq. sets forth the address at which Petitioner can be given notice of any further
2 proceedings.

3 MADE this 26th day of April, 2021.

4 **THE LAW FIRM OF**
5 **C. BENJAMIN SCROGGINS, ESQ.**

6 

7 **C. BENJAMIN SCROGGINS, ESQ.**
8 629 South Casino Center Boulevard
9 Las Vegas, Nevada 89101
10 Tel.: (702) 328-5550
11 Fax: (702) 442-8660
12 CBS@cbscrogginslaw.com

13 *Attorney for Petitioner,*
14 **RENDARD POLK**

15 ///

16 ///

17 ///

1 CERTIFICATE OF SERVICE

2 I hereby certify that I served the foregoing C. BENJAMIN SCROGGINS, ESQ.'S
3 MOTION TO WITHDRAW AS COUNSEL FOR PETITIONER RENARD POLK and the
4 Exhibit attached thereto by electronic means through the Court's electronic filing system to the
5 service addresses provided for the following:

6 TIMOTHY FILSON, TASHEENA SANDOVAL,
7 and WILLIAM RUEBART
8 c/o THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
200 Lewis Avenue
Las Vegas, NV 89101

9 *Respondents*

10 Service was also made by placing a copy of the Motion and Exhibit in the United States
11 mail, postage prepaid, addressed to:

12 Renard T. Polk #72439
13 (Ely State Prison)
P.O. Box 1989
14 Ely, NV 89301

15 CERTIFIED this 26th day of April, 2021.

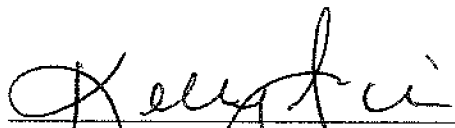
16 
17 An Employee of THE LAW FIRM OF
18 C. BENJAMIN SCROGGINS, ESQ.
19
20
21
22
23
24

Exhibit “1”

Exhibit “1”

1 **DECL**

C. BENJAMIN SCROGGINS, ESQ.

2 Nevada Bar No. 7902

THE LAW FIRM OF

C. BENJAMIN SCROGGINS, ESQ.

3 629 South Casino Center Boulevard

Las Vegas, Nevada 89101

4 Tel.: (702) 328-5550

Fax: (702) 442-8660

Email: cbs@cbscrogginslaw.com

5 *Attorney for Petitioner,*

6 **RENARD POLK**

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 RENARD POLK,

Case No.: A-18-780833-W

10 Petitioner,

Dept. No.: IX

11 vs.

12 TIMOTHY FILSON, et al.,

13 Respondents.

14
15 **DECLARATION OF C. BENJAMIN SCROGGINS, ESQ. IN SUPPORT OF HIS**
16 **MOTION TO WITHDRAW AS COUNSEL FOR PETITIONER, RENARD POLK**

17 Declarant, C. Benjamin Scroggins, Esq., hereby states the following facts:

- 18 1. I am an adult over the age of 18 years old and am competent and qualified to
19 testify as to the facts set forth herein.
- 20 2. I make this Declaration in support of my Motion to Withdraw as Counsel.
- 21 3. All facts set forth herein are true to my own personal knowledge, save as to those
22 matters stated as being upon information and belief, and as to those matters I believe them to be
23 true.
- 24 4. I accepted appointment and confirmed as counsel in this case on March 31, 2021.

1 5. I began collecting information about the case and spoke with the petitioner.

2 6. Petitioner began making demands upon my staff and me that went beyond our
3 obligations.

4 7. Petitioner demanded that I record my conversations with him so that he did not
5 have to repeat himself. Upon inquiry there was no way to record any of my conversations, nor
6 did I think it was appropriate.

7 8. The prison informed my staff that it was against prison policy to allow an inmate
8 to have a recording device.

9 9. Petitioner began demanding that I investigate issues I do not believe are valid, and
10 informed me that he wanted me to represent him as he dictated.

11 10. The address at which Nicolette Larsen may be served with notice of further
12 proceedings taken in the case in the event the application for withdrawal is granted is: Renard T.
13 Polk #72439, (Ely State Prison), P.O. Box 1989, Ely, Nevada 89301

14 I declare under penalty of perjury that the foregoing statements are true and correct.

15 FURTHER YOUR DECLARANT SAYETH NAUGHT.

16 DATED this 26th day of April, 2021.

17
18 
19 C. BENJAMIN SCROGGINS, ESQ.,
20 *Declarant*
21
22
23
24

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
4/26/2021 12:26 PM
Steven D. Grierson
CLERK OF THE COURT



Renard Polk, Plaintiff(s)

vs.

Timothy Filson, Defendant(s)

Case No.: A-18-780833-W

Department 9

NOTICE OF HEARING

Please be advised that the C. Benjamin Scroggins, Esq.'s, Motion to Withdraw as Counsel for Petitioner, Renard Polk in the above-entitled matter is set for hearing as follows:

Date: May 27, 2021

Time: Chambers

Location: Chambers
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Marie Kramer
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Marie Kramer
Deputy Clerk of the Court

Heather S. Hume

CLERK OF THE COURT

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STACEY KOLLINS
Chief Deputy District Attorney
Nevada Bar #005391
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**RENARD POLK,
#1521718**

Plaintiff,

-vs-

THE STATE OF NEVADA,

Respondent.

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

DEPT NO: **IX**

FINDINGS OF FACT, CONCLUSIONS OF

LAW AND ORDER

DATE OF HEARING: **JULY 7, 2021**

TIME OF HEARING: **11:00 AM**

THIS CAUSE having presented before the Honorable ~~CHRISTINA~~ ^{CRISTINA} D. SILVA, District Judge, on the 7th day of July, 2021; Petitioner not present, IN PROPER PERSON; Respondent represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ASHLEY LACHER, Deputy District Attorney; and having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

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

2 **PROCEDURAL HISTORY**

3 On April 13, 2000, the State filed an Information charging RENARD TURMAN POLK
4 (hereinafter "Petitioner") as follows: Counts 1 and 2 – Sexual Assault with a Minor under
5 Sixteen Years of Age (Felony – NRS 200.364, 200.366); and Count 3 – First Degree
6 Kidnapping (Felony – NRS 200.310, 200.320). On November 22, 2000, the State filed an
7 Amended Information charging Petitioner with three (3) counts of Sexual Assault with a Minor
8 under Sixteen Years of Age (Felony – NRS 200.364, 200.366). On January 7, 2002, the State
9 filed a Second Amended Information charging Petitioner with three (3) counts of Sexual
10 Assault with a Minor under Fourteen Years of Age (Felony – NRS 200.364, 200.366).

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

15 On March 14, 2002, the Court sentenced Petitioner to the Nevada Department of
16 Corrections (hereinafter "NDOC") as follows: Count 1 – to a maximum of one hundred twenty
17 (120) months and a minimum of forty-eight (48) months as well as a special sentence of
18 lifetime supervision and Count 2 – to a maximum of life with parole eligibility after a minimum
19 of two hundred forty (240) months, consecutive to Count 1. Petitioner received six hundred
20 ninety-one (691) days credit for time served. The Judgment of Conviction was filed on April
21 1, 2002.

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

27 //

28 //

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

6 On December 7, 2007, Petitioner filed a Motion to Vacate, Set Aside or Correct Illegal
7 Sentence of Judgment, Consolidated Writ of Error. The State filed an Opposition on December
8 17, 2007. This Court denied the Motion on December 18, 2007, and filed a written Order on
9 December 31, 2007. Petitioner filed a Notice of Appeal on January 18, 2008. On June 9, 2008,
10 the Nevada Supreme Court affirmed the denial of Petitioner's Motion. Remittitur issued on
11 September 9, 2008.

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

16 On May 19, 2011, Petitioner filed a third Petition for Writ of Habeas Corpus (Post
17 Conviction), which he entitled, Supplemental Petition for Writ of Habeas Corpus (Post-
18 Conviction Relief – NRS 34.735 Petition: Form). The State did not file a response. The Court
19 denied Petitioner's third Petition as untimely on July 26, 2011.

20 On March 26, 2012, Petitioner filed a second Motion to Correct Illegal Sentence. The
21 State filed an Opposition on April 23, 2012. On May 10, 2012, Petitioner filed an Amended
22 Motion to Correct Illegal Sentence. This Court denied the Motion on May 29, 2012, and filed
23 a written Order on June 8, 2012.

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

27 //

28 //

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

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

9 On February 27, 2014, Petitioner filed a Motion for Reconsideration. The Court denied
10 the Motion on March 20, 2014.

11 On April 1, 2014, Petitioner filed a Motion to Strike and/or for Sanctions. The State
12 filed its Opposition on April 25, 2014. On April 29, 2014, the Court granted the State's Motion
13 to Dismiss Petitioner's fifth Petition and denied Petitioner's fifth Petition as well as his Motion
14 to Strike. The Court also denied the State's request for vexatious litigation because Petitioner
15 had not yet been warned, and issued a formal warning.

16 On May 19, 2014, Petitioner filed a Motion for Reconsideration (and/or) to Reduce to
17 Writing. On June 4, 2014, the State filed its Opposition. The Court denied the Motion on June
18 10, 2014.

19 On June 2, 2014, Petitioner filed a Notice of Appeal. On September 18, 2014, the
20 Nevada Supreme Court affirmed the Court's order dismissing Petitioner's post-conviction
21 petition for writ of habeas corpus and Remittitur issued December 8, 2014.

22 On September 17, 2015, Petitioner filed a pro per Petition for Writ of Mandamus
23 {and/or} in the Alternative Prohibition. This Court denied the Petition on October 8, 2015. A
24 written Order issued on October 27, 2015. Petitioner filed a Notice of Appeal on November 5,
25 2015. On May 17, 2016, the Nevada Supreme Court affirmed the district court's decision.
26 Remittitur issued September 12, 2016.

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

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

6 On July 7, 2017, Petitioner filed a Motion for Sanctions and Finding of Contempt and
7 a Motion for Leave to File Affidavit and Request for Issuance of Writ of Execution. On July
8 26, 2017, Petitioner filed a Supplemental Motion for Sanctions and Finding of Contempt. This
9 Court denied the motions on August 2, 2017. The written Order was filed August 30, 2016,
10 and Petitioner filed a Notice of Appeal on August 31, 2017. The Nevada Supreme Court
11 dismissed the appeal because no statute or court rule permitted an appeal from the relevant
12 orders. Remittitur issued on December 11, 2017.

13 On September 18, 2018, Petitioner filed a Motion to Alter, Amend, or Modify Sentence.
14 On September 27, 2018 Petitioner filed a Motion to Quash Post-Conviction Order. On October
15 4, 2018, the State filed its Opposition to Petitioner's Motion to Alter, Amend, or Modify
16 Sentence. Also, on October 4, 2018, the State filed its Response to Petitioner's Motion to
17 Quash Post-Conviction Order. On October 10, 2018, the Court denied Petitioner's Motion to
18 Alter, Amend or Modify Sentence. On September 20, 2019, the Nevada Court of Appeals
19 affirmed the denial of this Motion.

20 On July 11, 2018, Petitioner filed an Amended [Actual Innocence] Petition for Writ of
21 Habeas Corpus Ad Subjudiceum, Duces Tecum, Testificandum ("Sixth Petition"). On October
22 8, 2018, the State's filed its Response. On October 29, 2018, Petitioner filed a Supplemental
23 (Emergency) Amended (Actual Innocence) Petition for Writ of Habeas Corpus and
24 Testificandum, Deuces Tecum, Ad Subjudicem and a Motion for Leave to File Supplemental
25 (Emergency) Amended (Actual Innocence) Petition for Writ of Habeas AD Testificandum,
26 Deuces Tecum, Ad Subjudiceum (Sub-Judicium). On November 14, 2018, the Court denied
27 Petitioner's Petition. On December 7, 2018, the Court filed the Findings of Fact, Conclusions
28 of Law and Order denying the Petition.

1 On May 19, 2020, Petitioner filed a Second Amended Petition for Writ of Habeas
2 Corpus. On June 30, 2020, the State filed its Response. On July 8, 2020, Petitioner filed a
3 Motion for Appointment of Counsel. Also on July 8, 2020, Petitioner filed a Supplemental
4 Second Amended (Actual Innocence) Petition for Writ of Habeas Corpus, AD Testificandum,
5 Duces Tecum, AD Subjiciendum (hereinafter "Seventh Petition"). On July 20, 2020, the Court
6 appointed Betsy Allen as post-conviction counsel.

7 On December 8, 2020, Petitioner filed a Supplemental Motion to Terminate Post
8 Conviction Counsel and Appoint an Alternative Counsel and/or Sanctions Under Nevada
9 Rules of Civil Procedure NRCP 11(b). The State filed its Response on January 8, 2021. On
10 January 20, 2021, the Court held a hearing on the matter at which time post-conviction counsel
11 represented that she had last spoken with Petitioner the previous week and had a scheduled
12 meeting with him for the following week. Counsel further requested that the Court delay the
13 hearing so she could speak with Petitioner, and, if he still wished to proceed with the Motion
14 at that point, counsel would re-notice the Motion.

15 On January 21, 2021, Petitioner, through post-conviction counsel, filed a Motion to
16 Withdraw as Counsel. On February 4, 2021, Petitioner filed the instant Amended Motion to
17 Terminate Post-Conviction Counsel and Appoint an Alternate Attorney and/or for Sanctions
18 Under Nevada Rules of Civil Procedure NRCP 11(b). The State filed its Response on February
19 24, 2021.

20 On March 3, 2021, the Court appointed counsel for Petitioner. On April 26, 2021,
21 Petitioner's counsel filed a Motion to Withdraw as Counsel. The Court granted the Motion to
22 Withdraw on May 27, 2021.

23 On July 7, 2021, the Court denied Petitioner's Petition and granted the State's Motion
24 to Dismiss Pursuant to Statutory Laches finding as follows.

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1 **ANALYSIS**

2 **I. THIS SEVENTH PETITION IS BARRED ON SEVERAL GROUNDS**

3 **A. This Seventh Petition is Time Barred**

4 Pursuant to NRS 34.726(1):

5 Unless there is good cause shown for delay, a petition that challenges
6 the validity of a judgment or sentence must be filed within 1 year of
7 the entry of the judgment of conviction or, if an appeal has been taken
8 from the judgment, within 1 year after the Supreme Court issues its
9 remittitur. For the purposes of this subsection, good cause for delay
10 exists if the petitioner demonstrates to the satisfaction of the court:

11 (a) That the delay is not the fault of the petitioner; and

12 (b) That dismissal of the petition as untimely will unduly prejudice the
13 petitioner.

14 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its
15 plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). The one-
16 year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction
17 is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084,
18 1087, 967 P.2d 1132, 1133-34 (1998).

19 The one-year time limit for preparing petitions for post-conviction relief under NRS
20 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
21 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
22 evidence presented by the defendant that he purchased postage through the prison and mailed
23 the Notice within the one-year time limit.

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

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

5 Id. (emphasis added).

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

10 Here, Remittitur from the direct appeal issued on September 19, 2003. Thus, the one-
11 year time bar began to run from that date. The instant Seventh Petition was not filed until May
12 19, 2020. This is over sixteen (16) years in excess of the one-year time frame. As in Gonzales,
13 where the petition was filed only two (2) days too late, the procedural time-bar is mandatory
14 as to this Seventh Petition. Absent a showing of good cause for this delay and undue prejudice
15 Petitioner’s Seventh Petition is denied.

16 **B. This Seventh Petition is Barred by the Doctrine of Laches**

17 Certain limitations exist on how long a defendant may wait to assert a post-conviction
18 request for relief. Consideration of the equitable doctrine of laches is necessary in determining
19 whether a defendant has shown ‘manifest injustice’ that would permit a modification of a
20 sentence. Hart, 116 Nev. at 563–64, 1 P.3d at 972. In Hart, the Nevada Supreme Court stated:
21 “Application of the doctrine to an individual case may require consideration of several factors,
22 including: (1) whether there was an inexcusable delay in seeking relief; (2) whether an implied
23 waiver has arisen from the defendant’s knowing acquiescence in existing conditions; and (3)
24 whether circumstances exist that prejudice the State. See Buckholt v. District Court, 94 Nev.
25 631, 633, 584 P.2d 672, 673–74 (1978).” Id.

26 NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
27 exceeding five years [elapses] between the filing of a judgment of conviction, an order
28 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...”

1 The Nevada Supreme Court has observed, “[P]etitions that are filed many years after
2 conviction are an unreasonable burden on the criminal justice system. The necessity for a
3 workable system dictates that there must exist a time when a criminal conviction is final.”
4 Groesbeck v. Warden, 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the
5 statute requires the State plead laches. NRS 34.800(2).

6 Here, Petitioner’s Seventh Petition is barred by the statutory doctrine of laches. As
7 discussed *supra*, it has been over sixteen (16) years since Remittitur issued in Petitioner’s
8 direct appeal—well past the five-year period for the presumption of prejudice. Moreover,
9 Petitioner made no effort to rebut the presumption. Thus, laches bars consideration of this
10 Seventh Petition.

11 **C. The Seventh Petition is Successive**

12 NRS 34.810(2) reads:

13 A second or successive petition *must* be dismissed if the judge or
14 justice determines that it fails to allege new or different grounds for
15 relief and that the prior determination was on the merits or, if new and
16 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.

17 (Emphasis added). Second or successive petitions are petitions that either fail to allege new or
18 different grounds for relief and the grounds have already been decided on the merits or that
19 allege new or different grounds but a judge or justice finds that the petitioner’s failure to assert
20 those grounds in a prior petition would constitute an abuse of the writ. Second or successive
21 petitions will only be decided on the merits if the petitioner can show good cause and prejudice.
22 NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

23 The Nevada Supreme Court has stated: “Without such limitations on the availability of
24 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse
25 postconviction remedies. In addition, meritless, successive and untimely petitions clog the
26 court system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at
27 950. The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly
28 require a careful review of the record, successive petitions may be dismissed based solely on

1 the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In
2 other words, if the claim or allegation was previously available with reasonable diligence, it is
3 an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,
4 497-498 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112
5 P.3d at 1074.

6 This Seventh Petition is undoubtedly successive. Petitioner has already filed six (6)
7 Petitions for Writ of Habeas Corpus in this case—on July 1, 2004, January 27, 2010, May 19,
8 2011, April 9, 2013, December 2, 2013, and July 11, 2018. This Court denied Petitioner’s first
9 habeas petition on the merits on September 8, 2004. The Nevada Supreme Court subsequently
10 affirmed this Court’s denial on the merits January 25, 2005, with the Remittitur issuing on
11 February 22, 2005. Thereafter, this Court has denied Petitioner’s second, third, fourth, fifth,
12 and sixth petitions as time-barred and successive.

13 The State would further not that the instant Seventh Petition is a near carbon copy of
14 Petitioner’s Sixth Petition. The claims, language, and even page numbering is identical to the
15 Petition filed on July 11, 2018. In fact, the only thing new in this Petition is the attached Exhibit
16 A, which Petitioner references on page 15 of his Seventh Petition. However, given that every
17 claim Petitioner brings in this petition has already been brought (and denied) in an earlier
18 Petition, this petition is the very definition of successive. As such, this Petition is denied.

19 **II. PETITIONER CANNOT ESTABLISH GOOD CAUSE TO OVERCOME** 20 **THE PROCEDURAL BARS**

21 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading
22 and proving specific facts that demonstrate good cause for his failure to present his claim in
23 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be
24 unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a) (emphasis added); see Hogan
25 v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep’t of
26 Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court must dismiss a habeas
27 petition if it presents claims that either were or could have been presented in an earlier
28 proceeding, unless the court finds both cause for failing to present the claims earlier or for

1 raising them again and actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646-
2 47, 29 P.3d 498, 523 (2001) (emphasis added).

3 To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate the
4 following: (1) “[t]hat the delay is not the fault of the petitioner” and (2) that the petitioner will
5 be “unduly prejudice[d]” if the petition is dismissed as untimely. NRS 34.726. To meet the
6 first requirement, “a petitioner *must* show that an impediment external to the defense prevented
7 him or her from complying with the state procedural default rules.” Hathaway v. State, 119
8 Nev. 248, 252, 71 P.3d 503, 506 (2003) (emphasis added). “A qualifying impediment might
9 be shown where the factual or legal basis for a claim was not reasonably available *at the time*
10 *of default*.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The
11 Court continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d
12 at 526. To find good cause there must be a “substantial reason; one that affords a legal excuse.”
13 Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105
14 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Examples of good cause include interference by
15 State officials and the previous unavailability of a legal or factual basis. See State v. Huebler,
16 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition
17 must not be the fault of the petitioner. NRS 34.726(1)(a)

18 Further, a petitioner raising good cause to excuse procedural bars must do so within a
19 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
20 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
21 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
22 available to the petitioner during the statutory time period did not constitute good cause to
23 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
24 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
25 453 120 S. Ct. 1587, 1592 (2000).

26 As “good cause” to overcome the mandatory procedural bars to his Seventh Petition,
27 Petitioner alleges “actual innocence” based on so-called “new evidence” from the victims in
28 this case. Seventh Petition at 6–7, 9–10. For the reasons discussed below, this alleged good

1 cause fails. As such, Petitioner cannot establish good cause to overcome the mandatory bars
2 and his Petition is denied.

3 **A. Petitioner's Actual Innocence Claim Fails**

4 A showing of actual innocence can overcome the procedural bars, as it demonstrates a
5 fundamental miscarriage of justice. See Mitchell v. State, 122 Nev. 1269, 1273, 149 P.3d 33,
6 36 (2006). The United States Supreme Court has held that actual innocence "itself a
7 constitutional claim, but instead a gateway through which a habeas petitioner must pass to
8 have his otherwise barred constitutional claim considered on the merits." Schlup v. Delo, 513
9 U.S. 298, 327, 115 S. Ct. 851, 867 (1995). In order for a defendant to obtain a reversal of his
10 conviction based on a claim of actual innocence, he must prove that "'it is more likely than
11 not that no reasonable juror would have convicted him in light of the new evidence' presented
12 in habeas proceedings." Calderon v. Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503
13 (1998) (emphasis added) (quoting Schlup). It is true that "the newly presented evidence may
14 indeed call into question the credibility of the witnesses presented at trial." Schlup, 513 U.S.
15 at 330, 115 S. Ct. at 868. However, this requires "a stronger showing than that needed to
16 establish prejudice." Id. at 327, 115 S. Ct. at 867.

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

20 The only evidence Petitioner brings of his actual innocence is an affidavit, allegedly
21 signed by one of the victims of his sexual assaults, recanting that Petitioner sexually assaulted
22 her. See Seventh Petition, at 52(ii).

23 In recantation cases, the trial court should apply the following standard:

- 24 (1) the court is satisfied that the trial testimony of material witnesses
25 was false;
26 (2) the evidence showing that false testimony was introduced at trial
27 is newly discovered;
28 (3) the evidence could not have been discovered and produced for trial
even with the exercise of reasonable diligence; and

//

1 (4) it is probable that had the false testimony not been admitted, a
2 different result would have occurred at trial.

3 Only if each component is met should the trial court order a new trial.

4 Callier v. Warden, Nev. Women's Corr. Ctr., 111 Nev. 976, 990, 901 P.2d 619, 627–28 (1995).

5 In Callier, this Court held:

6 We also conclude, however, that the general “new trial” standard does
7 not adequately emphasize the need for a finding that the recanting
8 witness’ trial testimony was false. Numerous courts have determined
9 that recantations should be viewed with suspicion and that before
10 granting a new trial, the trial court must be satisfied that the witness’
11 trial testimony was false. See, e.g., United States ex rel. Sostre v.
12 Festa, 513 F.2d 1313, 1318 (2d Cir.) (noting that traditionally,
13 recantation of trial testimony is viewed with suspicion), cert. denied,
14 423 U.S. 841, 46 L. Ed. 2d 60, 96 S. Ct. 72 (1975); State v. Frank, 298
15 N.W.2d 324, 329 (Iowa 1980) (recognizing that a court should look
16 upon witnesses’ recantations with suspicion and concluding that a new
17 trial should not be granted unless the trial court is satisfied that the
18 testimony of a material witness was false or mistaken); State v. White,
19 146 Mont. 226, 405 P.2d 761, 771 (Mont. 1965) (concluding that
20 where it appears that witness’ recantation is motivated by family
21 pressure, recantation is not credible), cert. denied, 384 U.S. 1023, 16
22 L. Ed. 2d 1026, 86 S. Ct. 1955 (1966); State v. Britt, 320 N.C. 705,
23 360 S.E.2d 660, 665 (N.C. 1987) (concluding that in considering
24 witness recantations, the trial court must first be reasonably well
25 satisfied that the testimony of material witnesses was false).

26 Id. at 989–90, 901 P.2d at 627.

27 Here, the factors identified in Callier do not merit a new trial or finding of actual
28 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.

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1 Further, given that Petitioner confessed to the crime, and multiple witnesses testified
2 regarding Petitioner's alleged sexual assaults and attempted sexual assaults, no reasonable jury
3 would have failed to convict Petitioner even if A.P.'s testimony had not been admitted.

4 The State would also note a potential defect in the affidavit Petitioner has attached as
5 Exhibit A. While the attachment claims to be a notarized affidavit, no notarized stamp appears
6 anywhere on the affidavit itself. It is unclear therefore the extent to which the "all-purpose
7 acknowledgment" filed with the affidavit was notarized in connection with said affidavit.

8 As such, Petitioner has failed to establish that he is actually innocent of the crime he
9 was convicted of. Pursuant to Mitchell and Schulp, Petitioner cannot show a fundamental
10 miscarriage of justice, and he cannot overcome the procedural bars. Therefore, his claim is
11 denied.

12 **B. Petitioner Offers No Other Good Cause for Delay in Filing**

13 The only other potential "good cause" are the Petitioner's individual grounds,
14 themselves. However, as discussed supra, each of his claims is procedurally barred as not new.
15 Riker, 121 Nev. at 235, 112 P.3d at 1077 (holding that a claim that is itself procedurally barred
16 cannot constitute good cause); see also Edwards v. Carpenter, 529 U.S. 446, 453 120 S. Ct.
17 1587, 1592 (2000).

18 Further, all of the facts and law necessary to raise Petitioner's Grounds 1 through 7
19 have been available for years. The so-called "actual innocence" claim does not explain why
20 he is bringing repeated claims that this Court has already decided on the merits. Petitioner fails
21 to establish any impediment external to the defense which could have possibly prevented him
22 from complying with NRS Chapter 34's procedural rules. The delay in filing this petition is
23 the fault of Petitioner, and therefore good cause is not established. Thus, this Seventh Petition
24 is dismissed.

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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*, the merits of the grounds raised in this Seventh Petition are not 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

1 14, 2004, at 3. Petitioner cannot establish that, fifteen (15) years later, he would be unduly
2 prejudiced by this Court’s just and proper refusal to re-review these claims.

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

15 **B. Petitioner’s Claim Regarding His Confession is Without Merit**

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

19 NRS 62C.010 does provide that when a juvenile is taken into custody, the officer has
20 to advise the parent or guardian of the child’s custody status. But Petitioner was eighteen
21 (18)—not a minor—when he confessed to police that he raped his little sisters. Order of
22 Affirmance, filed August 25, 2003, at 1–2; see also Criminal Bindover at 16 (showing that
23 Petitioner’s date of birth is October 14, 1980) and Reporter’s Transcript of Jury Trial, Day 2
24 at 265 (showing that Petitioner was interviewed by Detective Moniot on August 14, 1999).
25 Thus, Petitioner had no right to have his parents present during his questioning. Petitioner’s
26 accusation that the questioning detective motioned toward his gun in a threatening manner, or
27 that he did not record certain “portions” of the interview, is a bare and naked accusation
28 insufficient to support post-conviction relief. Seventh Petition at 20–21; see Hargrove, 100

1 Nev. at 502, 686 P.2d at 225. Any other complaints Petitioner has regarding his statement are
2 belied by the record, as Petitioner admits that he received his Miranda warning and signed a
3 card indicating he understood his rights. Seventh Petition at 20; see also Order of Affirmance,
4 filed August 25, 2003, at 1–2.4 Thus, this claim does not establish prejudice and is denied.

5 **C. Petitioner’s Claim Regarding Juvenile Counsel is Without Merit**

6 Petitioner complains that he was denied counsel during some unspecified juvenile
7 proceeding. Seventh Petition at 23–36. Petitioner never indicates how that alleged juvenile
8 proceeding is relevant to this criminal matter. Regardless, Petitioner provides nothing to
9 substantiate his claim, which is denied as a naked assertion under Hargrove, 100 Nev. at 502,
10 686 P.2d at 225. Finally, Petitioner cannot demonstrate prejudice because he received the
11 benefit of counsel in this matter. Thus, this claim does not establish prejudice and is denied.

12 **D. Petitioner’s Claim Regarding His Certification Hearing Is Without Merit**

13 Petitioner complains that he was denied a certification hearing wherein the Juvenile
14 Court could have waived or retained jurisdiction. Seventh Petition at 26–29. As an initial
15 matter, the Nevada Supreme Court already held in affirming the denial of Petitioner’s First
16 Petition that this claim is “outside the scope of a post-conviction petition for a writ of habeas
17 corpus.” Order of Affirmance, filed January 25, 2005, at 10. Further, this claim is suitable only
18 for summary denial under Hargrove because it is belied by the record. 100 Nev. at 502, 686
19 P.2d at 225. Petitioner’s date of birth is October 14, 1980. Criminal Bindover at 16. The
20 Second Amended Information lists only offense dates between October 14, 1998, and March
21 12, 1999. Second Amended Information at 2. As such, Petitioner was over eighteen (18) at the
22 time of the offenses and thus not subject to Juvenile Court jurisdiction. NRS 62A.030(1)(a);
23 NRS 62B.330(1). It does not matter how long the State may have “awaited” charging the
24 crime; Petitioner was not a minor when he committed the crime. Seventh Petition at 26–27.
25 Petitioner offers absolutely no support for his claim that he was under “juvenile wardship”
26 until January 12, 2000. Seventh Petition at 27. In fact, Petitioner undermines his argument
27 when he later asserts that he “was not on juvenile probation at that time” of the instant offense.
28 Seventh Petition at 31. Thus, Petitioner was not entitled to a certification hearing. This claim

1 does not constitute prejudice and is denied.

2 **E. Petitioner's Claim Regarding Double Jeopardy is Without Merit**

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

12 **F. Petitioner's Claim Regarding Ineffective Assistance of Counsel is Without Merit**

13 Petitioner complains of several instances of ineffective assistance of trial and appellate
14 counsel. Seventh Petition at 33–47. As an initial matter, the Nevada Supreme Court held in the
15 appeal from the First Petition that Petitioner's ineffective assistance of counsel claims were
16 properly rejected on the merits. Order of Affirmance, filed January 25, 2005, at 2–10.¹
17 Petitioner asserts several new complaints of ineffective assistance of counsel, each a naked
18 assertion that is summarily denied under Hargrove. 100 Nev. at 502, 686 P.2d at 225. Seventh
19 Petition at 34–35. Some even seem related to the ineffective assistance claims this Court
20 rejected in the First Petition. Further, Petitioner largely ignores the basics of an ineffective
21 assistance of counsel claim: the fact that what defense to present is a virtually unchallengeable
22 strategic decision, Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002); that trial counsel
23 need not undertake futile actions. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103

24
25 ¹ These claims included 1) failure to object to alleged errors at Petitioner's motion for own
26 recognizance release; 2) failure to move to suppress Petitioner's statement; 3) failure to move to
27 disqualify the district court judge; 4) failure to object to the composition of the jury; 5) failure to cross-
28 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
spoiled 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.

(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 and is denied.

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.

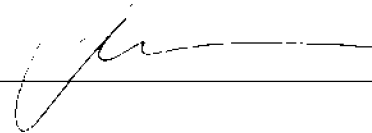
First, Petitioner seems to misunderstand the nature of the direct appeal in his case. Though he claims that the appeal was “dismissed” and only remanded to correct a clerical error, the Nevada Supreme Court in fact affirmed his conviction on the merits. Seventh Petition at 48–49; Order of Affirmance, filed August 25, 2003, at 1–2. It was only remanded 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. 565, 569, 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 is dismissed in its entirety.

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ORDER

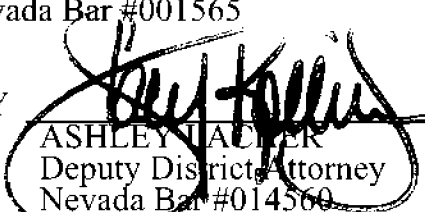
THEREFORE, IT IS HEREBY ORDERED that Petitioner's Second Amended [Actual Innocence] Petition for Writ of Habeas Corpus Ad Subjiciendum Ad Testificandum and Duces Tecum shall be, and it is, hereby denied and the State's Motion to Dismiss Pursuant to Statutory Laches shall be, and it is, hereby granted. Dated this 4th day of August, 2021



EC

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

299 C16 90D8 8EDA
Cristina D. Silva
District Court Judge

BY  for
ASHLEY TACHLER
Deputy District Attorney
Nevada Bar #014560

hjc/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA
4

5
6 Renard Polk, Plaintiff(s)

CASE NO: A-18-780833-W

7 vs.

DEPT. NO. Department 9

8 Timothy Filson, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 8/4/2021

15 Steven Wolfson

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1 NEFF

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

4
5 RENARD POLK,

6 Petitioner,

Case No: A-18-780833-W

Dept No: IX

7 vs.

8 TIMOTHY FILSON,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on August 4, 2021, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed
15 to you. This notice was mailed on August 11, 2021.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Amanda Hampton

18 Amanda Hampton, Deputy Clerk

19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 11 day of August 2021, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:

23 Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

24 ☒ The United States mail addressed as follows:

25 Renard Polk # 72439
26 P.O. Box 650
Indain Springs, NV 89070

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

Heather S. Hume

CLERK OF THE COURT

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STACEY KOLLINS
Chief Deputy District Attorney
Nevada Bar #005391
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**RENARD POLK,
#1521718**

Plaintiff,

-vs-

THE STATE OF NEVADA,

Respondent.

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

DEPT NO: **IX**

FINDINGS OF FACT, CONCLUSIONS OF

LAW AND ORDER

DATE OF HEARING: **JULY 7, 2021**

TIME OF HEARING: **11:00 AM**

THIS CAUSE having presented before the Honorable ~~CHRISTINA~~ ^{CRISTINA} D. SILVA, District Judge, on the 7th day of July, 2021; Petitioner not present, IN PROPER PERSON; Respondent represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ASHLEY LACHER, Deputy District Attorney; and having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

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

2 **PROCEDURAL HISTORY**

3 On April 13, 2000, the State filed an Information charging RENARD TURMAN POLK
4 (hereinafter "Petitioner") as follows: Counts 1 and 2 – Sexual Assault with a Minor under
5 Sixteen Years of Age (Felony – NRS 200.364, 200.366); and Count 3 – First Degree
6 Kidnapping (Felony – NRS 200.310, 200.320). On November 22, 2000, the State filed an
7 Amended Information charging Petitioner with three (3) counts of Sexual Assault with a Minor
8 under Sixteen Years of Age (Felony – NRS 200.364, 200.366). On January 7, 2002, the State
9 filed a Second Amended Information charging Petitioner with three (3) counts of Sexual
10 Assault with a Minor under Fourteen Years of Age (Felony – NRS 200.364, 200.366).

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

15 On March 14, 2002, the Court sentenced Petitioner to the Nevada Department of
16 Corrections (hereinafter "NDOC") as follows: Count 1 – to a maximum of one hundred twenty
17 (120) months and a minimum of forty-eight (48) months as well as a special sentence of
18 lifetime supervision and Count 2 – to a maximum of life with parole eligibility after a minimum
19 of two hundred forty (240) months, consecutive to Count 1. Petitioner received six hundred
20 ninety-one (691) days credit for time served. The Judgment of Conviction was filed on April
21 1, 2002.

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

27 //

28 //

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

6 On December 7, 2007, Petitioner filed a Motion to Vacate, Set Aside or Correct Illegal
7 Sentence of Judgment, Consolidated Writ of Error. The State filed an Opposition on December
8 17, 2007. This Court denied the Motion on December 18, 2007, and filed a written Order on
9 December 31, 2007. Petitioner filed a Notice of Appeal on January 18, 2008. On June 9, 2008,
10 the Nevada Supreme Court affirmed the denial of Petitioner's Motion. Remittitur issued on
11 September 9, 2008.

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

16 On May 19, 2011, Petitioner filed a third Petition for Writ of Habeas Corpus (Post
17 Conviction), which he entitled, Supplemental Petition for Writ of Habeas Corpus (Post-
18 Conviction Relief – NRS 34.735 Petition: Form). The State did not file a response. The Court
19 denied Petitioner's third Petition as untimely on July 26, 2011.

20 On March 26, 2012, Petitioner filed a second Motion to Correct Illegal Sentence. The
21 State filed an Opposition on April 23, 2012. On May 10, 2012, Petitioner filed an Amended
22 Motion to Correct Illegal Sentence. This Court denied the Motion on May 29, 2012, and filed
23 a written Order on June 8, 2012.

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

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

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

9 On February 27, 2014, Petitioner filed a Motion for Reconsideration. The Court denied
10 the Motion on March 20, 2014.

11 On April 1, 2014, Petitioner filed a Motion to Strike and/or for Sanctions. The State
12 filed its Opposition on April 25, 2014. On April 29, 2014, the Court granted the State's Motion
13 to Dismiss Petitioner's fifth Petition and denied Petitioner's fifth Petition as well as his Motion
14 to Strike. The Court also denied the State's request for vexatious litigation because Petitioner
15 had not yet been warned, and issued a formal warning.

16 On May 19, 2014, Petitioner filed a Motion for Reconsideration (and/or) to Reduce to
17 Writing. On June 4, 2014, the State filed its Opposition. The Court denied the Motion on June
18 10, 2014.

19 On June 2, 2014, Petitioner filed a Notice of Appeal. On September 18, 2014, the
20 Nevada Supreme Court affirmed the Court's order dismissing Petitioner's post-conviction
21 petition for writ of habeas corpus and Remittitur issued December 8, 2014.

22 On September 17, 2015, Petitioner filed a pro per Petition for Writ of Mandamus
23 {and/or} in the Alternative Prohibition. This Court denied the Petition on October 8, 2015. A
24 written Order issued on October 27, 2015. Petitioner filed a Notice of Appeal on November 5,
25 2015. On May 17, 2016, the Nevada Supreme Court affirmed the district court's decision.
26 Remittitur issued September 12, 2016.

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

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

6 On July 7, 2017, Petitioner filed a Motion for Sanctions and Finding of Contempt and
7 a Motion for Leave to File Affidavit and Request for Issuance of Writ of Execution. On July
8 26, 2017, Petitioner filed a Supplemental Motion for Sanctions and Finding of Contempt. This
9 Court denied the motions on August 2, 2017. The written Order was filed August 30, 2016,
10 and Petitioner filed a Notice of Appeal on August 31, 2017. The Nevada Supreme Court
11 dismissed the appeal because no statute or court rule permitted an appeal from the relevant
12 orders. Remittitur issued on December 11, 2017.

13 On September 18, 2018, Petitioner filed a Motion to Alter, Amend, or Modify Sentence.
14 On September 27, 2018 Petitioner filed a Motion to Quash Post-Conviction Order. On October
15 4, 2018, the State filed its Opposition to Petitioner's Motion to Alter, Amend, or Modify
16 Sentence. Also, on October 4, 2018, the State filed its Response to Petitioner's Motion to
17 Quash Post-Conviction Order. On October 10, 2018, the Court denied Petitioner's Motion to
18 Alter, Amend or Modify Sentence. On September 20, 2019, the Nevada Court of Appeals
19 affirmed the denial of this Motion.

20 On July 11, 2018, Petitioner filed an Amended [Actual Innocence] Petition for Writ of
21 Habeas Corpus Ad Subjudiceum, Duces Tecum, Testificandum ("Sixth Petition"). On October
22 8, 2018, the State's filed its Response. On October 29, 2018, Petitioner filed a Supplemental
23 (Emergency) Amended (Actual Innocence) Petition for Writ of Habeas Corpus and
24 Testificandum, Deuces Tecum, Ad Subjudicem and a Motion for Leave to File Supplemental
25 (Emergency) Amended (Actual Innocence) Petition for Writ of Habeas AD Testificandum,
26 Deuces Tecum, Ad Subjudiceum (Sub-Judicium). On November 14, 2018, the Court denied
27 Petitioner's Petition. On December 7, 2018, the Court filed the Findings of Fact, Conclusions
28 of Law and Order denying the Petition.

1 On May 19, 2020, Petitioner filed a Second Amended Petition for Writ of Habeas
2 Corpus. On June 30, 2020, the State filed its Response. On July 8, 2020, Petitioner filed a
3 Motion for Appointment of Counsel. Also on July 8, 2020, Petitioner filed a Supplemental
4 Second Amended (Actual Innocence) Petition for Writ of Habeas Corpus, AD Testificandum,
5 Duces Tecum, AD Subjiciendum (hereinafter "Seventh Petition"). On July 20, 2020, the Court
6 appointed Betsy Allen as post-conviction counsel.

7 On December 8, 2020, Petitioner filed a Supplemental Motion to Terminate Post
8 Conviction Counsel and Appoint an Alternative Counsel and/or Sanctions Under Nevada
9 Rules of Civil Procedure NRCP 11(b). The State filed its Response on January 8, 2021. On
10 January 20, 2021, the Court held a hearing on the matter at which time post-conviction counsel
11 represented that she had last spoken with Petitioner the previous week and had a scheduled
12 meeting with him for the following week. Counsel further requested that the Court delay the
13 hearing so she could speak with Petitioner, and, if he still wished to proceed with the Motion
14 at that point, counsel would re-notice the Motion.

15 On January 21, 2021, Petitioner, through post-conviction counsel, filed a Motion to
16 Withdraw as Counsel. On February 4, 2021, Petitioner filed the instant Amended Motion to
17 Terminate Post-Conviction Counsel and Appoint an Alternate Attorney and/or for Sanctions
18 Under Nevada Rules of Civil Procedure NRCP 11(b). The State filed its Response on February
19 24, 2021.

20 On March 3, 2021, the Court appointed counsel for Petitioner. On April 26, 2021,
21 Petitioner's counsel filed a Motion to Withdraw as Counsel. The Court granted the Motion to
22 Withdraw on May 27, 2021.

23 On July 7, 2021, the Court denied Petitioner's Petition and granted the State's Motion
24 to Dismiss Pursuant to Statutory Laches finding as follows.

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1 **ANALYSIS**

2 **I. THIS SEVENTH PETITION IS BARRED ON SEVERAL GROUNDS**

3 **A. This Seventh Petition is Time Barred**

4 Pursuant to NRS 34.726(1):

5 Unless there is good cause shown for delay, a petition that challenges
6 the validity of a judgment or sentence must be filed within 1 year of
7 the entry of the judgment of conviction or, if an appeal has been taken
8 from the judgment, within 1 year after the Supreme Court issues its
9 remittitur. For the purposes of this subsection, good cause for delay
10 exists if the petitioner demonstrates to the satisfaction of the court:

11 (a) That the delay is not the fault of the petitioner; and

12 (b) That dismissal of the petition as untimely will unduly prejudice the
13 petitioner.

14 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its
15 plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). The one-
16 year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction
17 is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084,
18 1087, 967 P.2d 1132, 1133-34 (1998).

19 The one-year time limit for preparing petitions for post-conviction relief under NRS
20 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
21 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
22 evidence presented by the defendant that he purchased postage through the prison and mailed
23 the Notice within the one-year time limit.

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

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

5 Id. (emphasis added).

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

10 Here, Remittitur from the direct appeal issued on September 19, 2003. Thus, the one-
11 year time bar began to run from that date. The instant Seventh Petition was not filed until May
12 19, 2020. This is over sixteen (16) years in excess of the one-year time frame. As in Gonzales,
13 where the petition was filed only two (2) days too late, the procedural time-bar is mandatory
14 as to this Seventh Petition. Absent a showing of good cause for this delay and undue prejudice
15 Petitioner’s Seventh Petition is denied.

16 **B. This Seventh Petition is Barred by the Doctrine of Laches**

17 Certain limitations exist on how long a defendant may wait to assert a post-conviction
18 request for relief. Consideration of the equitable doctrine of laches is necessary in determining
19 whether a defendant has shown ‘manifest injustice’ that would permit a modification of a
20 sentence. Hart, 116 Nev. at 563–64, 1 P.3d at 972. In Hart, the Nevada Supreme Court stated:
21 “Application of the doctrine to an individual case may require consideration of several factors,
22 including: (1) whether there was an inexcusable delay in seeking relief; (2) whether an implied
23 waiver has arisen from the defendant’s knowing acquiescence in existing conditions; and (3)
24 whether circumstances exist that prejudice the State. See Buckholt v. District Court, 94 Nev.
25 631, 633, 584 P.2d 672, 673–74 (1978).” Id.

26 NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
27 exceeding five years [elapses] between the filing of a judgment of conviction, an order
28 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...”

1 The Nevada Supreme Court has observed, “[P]etitions that are filed many years after
2 conviction are an unreasonable burden on the criminal justice system. The necessity for a
3 workable system dictates that there must exist a time when a criminal conviction is final.”
4 Groesbeck v. Warden, 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the
5 statute requires the State plead laches. NRS 34.800(2).

6 Here, Petitioner’s Seventh Petition is barred by the statutory doctrine of laches. As
7 discussed *supra*, it has been over sixteen (16) years since Remittitur issued in Petitioner’s
8 direct appeal—well past the five-year period for the presumption of prejudice. Moreover,
9 Petitioner made no effort to rebut the presumption. Thus, laches bars consideration of this
10 Seventh Petition.

11 **C. The Seventh Petition is Successive**

12 NRS 34.810(2) reads:

13 A second or successive petition *must* be dismissed if the judge or
14 justice determines that it fails to allege new or different grounds for
15 relief and that the prior determination was on the merits or, if new and
16 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.

17 (Emphasis added). Second or successive petitions are petitions that either fail to allege new or
18 different grounds for relief and the grounds have already been decided on the merits or that
19 allege new or different grounds but a judge or justice finds that the petitioner’s failure to assert
20 those grounds in a prior petition would constitute an abuse of the writ. Second or successive
21 petitions will only be decided on the merits if the petitioner can show good cause and prejudice.
22 NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

23 The Nevada Supreme Court has stated: “Without such limitations on the availability of
24 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse
25 postconviction remedies. In addition, meritless, successive and untimely petitions clog the
26 court system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at
27 950. The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly
28 require a careful review of the record, successive petitions may be dismissed based solely on

1 the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In
2 other words, if the claim or allegation was previously available with reasonable diligence, it is
3 an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,
4 497-498 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112
5 P.3d at 1074.

6 This Seventh Petition is undoubtedly successive. Petitioner has already filed six (6)
7 Petitions for Writ of Habeas Corpus in this case—on July 1, 2004, January 27, 2010, May 19,
8 2011, April 9, 2013, December 2, 2013, and July 11, 2018. This Court denied Petitioner’s first
9 habeas petition on the merits on September 8, 2004. The Nevada Supreme Court subsequently
10 affirmed this Court’s denial on the merits January 25, 2005, with the Remittitur issuing on
11 February 22, 2005. Thereafter, this Court has denied Petitioner’s second, third, fourth, fifth,
12 and sixth petitions as time-barred and successive.

13 The State would further not that the instant Seventh Petition is a near carbon copy of
14 Petitioner’s Sixth Petition. The claims, language, and even page numbering is identical to the
15 Petition filed on July 11, 2018. In fact, the only thing new in this Petition is the attached Exhibit
16 A, which Petitioner references on page 15 of his Seventh Petition. However, given that every
17 claim Petitioner brings in this petition has already been brought (and denied) in an earlier
18 Petition, this petition is the very definition of successive. As such, this Petition is denied.

19 **II. PETITIONER CANNOT ESTABLISH GOOD CAUSE TO OVERCOME** 20 **THE PROCEDURAL BARS**

21 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading
22 and proving specific facts that demonstrate good cause for his failure to present his claim in
23 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be
24 unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a) (emphasis added); see Hogan
25 v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep’t of
26 Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court must dismiss a habeas
27 petition if it presents claims that either were or could have been presented in an earlier
28 proceeding, unless the court finds both cause for failing to present the claims earlier or for

1 raising them again and actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646-
2 47, 29 P.3d 498, 523 (2001) (emphasis added).

3 To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate the
4 following: (1) “[t]hat the delay is not the fault of the petitioner” and (2) that the petitioner will
5 be “unduly prejudice[d]” if the petition is dismissed as untimely. NRS 34.726. To meet the
6 first requirement, “a petitioner *must* show that an impediment external to the defense prevented
7 him or her from complying with the state procedural default rules.” Hathaway v. State, 119
8 Nev. 248, 252, 71 P.3d 503, 506 (2003) (emphasis added). “A qualifying impediment might
9 be shown where the factual or legal basis for a claim was not reasonably available *at the time*
10 *of default*.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The
11 Court continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d
12 at 526. To find good cause there must be a “substantial reason; one that affords a legal excuse.”
13 Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105
14 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Examples of good cause include interference by
15 State officials and the previous unavailability of a legal or factual basis. See State v. Huebler,
16 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition
17 must not be the fault of the petitioner. NRS 34.726(1)(a)

18 Further, a petitioner raising good cause to excuse procedural bars must do so within a
19 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
20 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
21 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
22 available to the petitioner during the statutory time period did not constitute good cause to
23 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
24 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
25 453 120 S. Ct. 1587, 1592 (2000).

26 As “good cause” to overcome the mandatory procedural bars to his Seventh Petition,
27 Petitioner alleges “actual innocence” based on so-called “new evidence” from the victims in
28 this case. Seventh Petition at 6–7, 9–10. For the reasons discussed below, this alleged good

1 cause fails. As such, Petitioner cannot establish good cause to overcome the mandatory bars
2 and his Petition is denied.

3 **A. Petitioner's Actual Innocence Claim Fails**

4 A showing of actual innocence can overcome the procedural bars, as it demonstrates a
5 fundamental miscarriage of justice. See Mitchell v. State, 122 Nev. 1269, 1273, 149 P.3d 33,
6 36 (2006). The United States Supreme Court has held that actual innocence "itself a
7 constitutional claim, but instead a gateway through which a habeas petitioner must pass to
8 have his otherwise barred constitutional claim considered on the merits." Schlup v. Delo, 513
9 U.S. 298, 327, 115 S. Ct. 851, 867 (1995). In order for a defendant to obtain a reversal of his
10 conviction based on a claim of actual innocence, he must prove that "'it is more likely than
11 not that no reasonable juror would have convicted him in light of the new evidence' presented
12 in habeas proceedings." Calderon v. Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503
13 (1998) (emphasis added) (quoting Schlup). It is true that "the newly presented evidence may
14 indeed call into question the credibility of the witnesses presented at trial." Schlup, 513 U.S.
15 at 330, 115 S. Ct. at 868. However, this requires "a stronger showing than that needed to
16 establish prejudice." Id. at 327, 115 S. Ct. at 867.

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

20 The only evidence Petitioner brings of his actual innocence is an affidavit, allegedly
21 signed by one of the victims of his sexual assaults, recanting that Petitioner sexually assaulted
22 her. See Seventh Petition, at 52(ii).

23 In recantation cases, the trial court should apply the following standard:

24 (1) the court is satisfied that the trial testimony of material witnesses
25 was false;

26 (2) the evidence showing that false testimony was introduced at trial
is newly discovered;

27 (3) the evidence could not have been discovered and produced for trial
28 even with the exercise of reasonable diligence; and

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(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.

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1 Further, given that Petitioner confessed to the crime, and multiple witnesses testified
2 regarding Petitioner's alleged sexual assaults and attempted sexual assaults, no reasonable jury
3 would have failed to convict Petitioner even if A.P.'s testimony had not been admitted.

4 The State would also note a potential defect in the affidavit Petitioner has attached as
5 Exhibit A. While the attachment claims to be a notarized affidavit, no notarized stamp appears
6 anywhere on the affidavit itself. It is unclear therefore the extent to which the "all-purpose
7 acknowledgment" filed with the affidavit was notarized in connection with said affidavit.

8 As such, Petitioner has failed to establish that he is actually innocent of the crime he
9 was convicted of. Pursuant to Mitchell and Schulp, Petitioner cannot show a fundamental
10 miscarriage of justice, and he cannot overcome the procedural bars. Therefore, his claim is
11 denied.

12 **B. Petitioner Offers No Other Good Cause for Delay in Filing**

13 The only other potential "good cause" are the Petitioner's individual grounds,
14 themselves. However, as discussed supra, each of his claims is procedurally barred as not new.
15 Riker, 121 Nev. at 235, 112 P.3d at 1077 (holding that a claim that is itself procedurally barred
16 cannot constitute good cause); see also Edwards v. Carpenter, 529 U.S. 446, 453 120 S. Ct.
17 1587, 1592 (2000).

18 Further, all of the facts and law necessary to raise Petitioner's Grounds 1 through 7
19 have been available for years. The so-called "actual innocence" claim does not explain why
20 he is bringing repeated claims that this Court has already decided on the merits. Petitioner fails
21 to establish any impediment external to the defense which could have possibly prevented him
22 from complying with NRS Chapter 34's procedural rules. The delay in filing this petition is
23 the fault of Petitioner, and therefore good cause is not established. Thus, this Seventh Petition
24 is dismissed.

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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*, the merits of the grounds raised in this Seventh Petition are not 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

1 14, 2004, at 3. Petitioner cannot establish that, fifteen (15) years later, he would be unduly
2 prejudiced by this Court's just and proper refusal to re-review these claims.

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

15 **B. Petitioner's Claim Regarding His Confession is Without Merit**

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

19 NRS 62C.010 does provide that when a juvenile is taken into custody, the officer has
20 to advise the parent or guardian of the child's custody status. But Petitioner was eighteen
21 (18)—not a minor—when he confessed to police that he raped his little sisters. Order of
22 Affirmance, filed August 25, 2003, at 1–2; see also Criminal Bindover at 16 (showing that
23 Petitioner's date of birth is October 14, 1980) and Reporter's Transcript of Jury Trial, Day 2
24 at 265 (showing that Petitioner was interviewed by Detective Moniot on August 14, 1999).
25 Thus, Petitioner had no right to have his parents present during his questioning. Petitioner's
26 accusation that the questioning detective motioned toward his gun in a threatening manner, or
27 that he did not record certain "portions" of the interview, is a bare and naked accusation
28 insufficient to support post-conviction relief. Seventh Petition at 20–21; see Hargrove, 100

1 Nev. at 502, 686 P.2d at 225. Any other complaints Petitioner has regarding his statement are
2 belied by the record, as Petitioner admits that he received his Miranda warning and signed a
3 card indicating he understood his rights. Seventh Petition at 20; see also Order of Affirmance,
4 filed August 25, 2003, at 1–2.4 Thus, this claim does not establish prejudice and is denied.

5 **C. Petitioner’s Claim Regarding Juvenile Counsel is Without Merit**

6 Petitioner complains that he was denied counsel during some unspecified juvenile
7 proceeding. Seventh Petition at 23–36. Petitioner never indicates how that alleged juvenile
8 proceeding is relevant to this criminal matter. Regardless, Petitioner provides nothing to
9 substantiate his claim, which is denied as a naked assertion under Hargrove, 100 Nev. at 502,
10 686 P.2d at 225. Finally, Petitioner cannot demonstrate prejudice because he received the
11 benefit of counsel in this matter. Thus, this claim does not establish prejudice and is denied.

12 **D. Petitioner’s Claim Regarding His Certification Hearing Is Without Merit**

13 Petitioner complains that he was denied a certification hearing wherein the Juvenile
14 Court could have waived or retained jurisdiction. Seventh Petition at 26–29. As an initial
15 matter, the Nevada Supreme Court already held in affirming the denial of Petitioner’s First
16 Petition that this claim is “outside the scope of a post-conviction petition for a writ of habeas
17 corpus.” Order of Affirmance, filed January 25, 2005, at 10. Further, this claim is suitable only
18 for summary denial under Hargrove because it is belied by the record. 100 Nev. at 502, 686
19 P.2d at 225. Petitioner’s date of birth is October 14, 1980. Criminal Bindover at 16. The
20 Second Amended Information lists only offense dates between October 14, 1998, and March
21 12, 1999. Second Amended Information at 2. As such, Petitioner was over eighteen (18) at the
22 time of the offenses and thus not subject to Juvenile Court jurisdiction. NRS 62A.030(1)(a);
23 NRS 62B.330(1). It does not matter how long the State may have “awaited” charging the
24 crime; Petitioner was not a minor when he committed the crime. Seventh Petition at 26–27.
25 Petitioner offers absolutely no support for his claim that he was under “juvenile wardship”
26 until January 12, 2000. Seventh Petition at 27. In fact, Petitioner undermines his argument
27 when he later asserts that he “was not on juvenile probation at that time” of the instant offense.
28 Seventh Petition at 31. Thus, Petitioner was not entitled to a certification hearing. This claim

1 does not constitute prejudice and is denied.

2 **E. Petitioner's Claim Regarding Double Jeopardy is Without Merit**

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

12 **F. Petitioner's Claim Regarding Ineffective Assistance of Counsel is Without Merit**

13 Petitioner complains of several instances of ineffective assistance of trial and appellate
14 counsel. Seventh Petition at 33–47. As an initial matter, the Nevada Supreme Court held in the
15 appeal from the First Petition that Petitioner's ineffective assistance of counsel claims were
16 properly rejected on the merits. Order of Affirmance, filed January 25, 2005, at 2–10.¹
17 Petitioner asserts several new complaints of ineffective assistance of counsel, each a naked
18 assertion that is summarily denied under Hargrove. 100 Nev. at 502, 686 P.2d at 225. Seventh
19 Petition at 34–35. Some even seem related to the ineffective assistance claims this Court
20 rejected in the First Petition. Further, Petitioner largely ignores the basics of an ineffective
21 assistance of counsel claim: the fact that what defense to present is a virtually unchallengeable
22 strategic decision, Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002); that trial counsel
23 need not undertake futile actions. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103

24
25 ¹ These claims included 1) failure to object to alleged errors at Petitioner's motion for own
26 recognizance release; 2) failure to move to suppress Petitioner's statement; 3) failure to move to
27 disqualify the district court judge; 4) failure to object to the composition of the jury; 5) failure to cross-
28 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
spoiled 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.

(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 and is denied.

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.

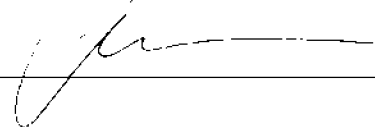
First, Petitioner seems to misunderstand the nature of the direct appeal in his case. Though he claims that the appeal was "dismissed" and only remanded to correct a clerical error, the Nevada Supreme Court in fact affirmed his conviction on the merits. Seventh Petition at 48–49; Order of Affirmance, filed August 25, 2003, at 1–2. It was only remanded 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. 565, 569, 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 is dismissed in its entirety.

//

ORDER

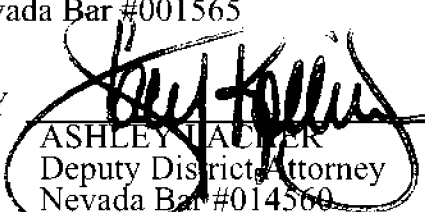
THEREFORE, IT IS HEREBY ORDERED that Petitioner's Second Amended [Actual Innocence] Petition for Writ of Habeas Corpus Ad Subjiciendum Ad Testificandum and Duces Tecum shall be, and it is, hereby denied and the State's Motion to Dismiss Pursuant to Statutory Laches shall be, and it is, hereby granted. Dated this 4th day of August, 2021



EC

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

299 C16 90D8 8EDA
Cristina D. Silva
District Court Judge

BY  for
ASHLEY TACHLER
Deputy District Attorney
Nevada Bar #014560

hjc/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Renard Polk, Plaintiff(s)

CASE NO: A-18-780833-W

7 vs.

DEPT. NO. Department 9

8 Timothy Filson, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 8/4/2021

15 Steven Wolfson

motions@clarkcountynv.gov

16 C. Scroggins

cbs@cbscrogginslaw.com

17 dept lawclerk

dept23lc@clarkcountynv.gov

18 Firm Administrator

PL@cbscrogginslaw.com

19 BETSY ESQ.

betsyallenesq@yahoo.com

20 Kelly Jarvi

kelly@cbscrogginslaw.com

Heather S. Lemin
CLERK OF THE COURT

August 17, 2021

To: The Justice Court Clerk

From: Renard T. Polk #72439
1009 Nevada Hwy, Ste. 130
Boulder City, NV 89005

In Re: Notice of Address
Change.

Greetings Clerk:

Please be advised that the correspondent's
address has changed from Ely State
Prison, P.O. Box 1989, Ely, Nevada 89301, but
the address listed above.

Make the noted changes in cases A-19-804008-
A and A-18-780833-W.

Thanks

161. *R Polk*

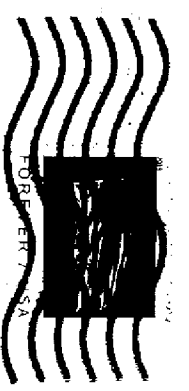
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AUG 24 2021
CLERK OF THE COURT

Renard T. Polk #72434
1009 Nevada Hwy, Ste. 130
Boulder City, NV 89005

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LVJC Ops

LAS VEGAS NV 890
18 AUG 2021 PM 5 L

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AUG 24 2021



CLERK OF THE COURT
Regional Justice Center
Las Vegas Justice Court, 2nd Flr
Las Vegas, NV 89155



DISTRICT COURT
CLARK COUNTY, NEVADA

* * * *

RENARD POLK, PLAINTIFF(S)	Case No.: A-18-780833-W
VS.	DEPARTMENT 20
TIMOTHY FILSON, DEFENDANT(S)	

NOTICE OF DEPARTMENT REASSIGNMENT

NOTICE IS HEREBY GIVEN that the above-entitled action has been randomly reassigned to Judge Eric Johnson.

- ☐ This reassignment follows the filing of a Peremptory Challenge of Judge .
- ☐ This reassignment is due to the recusal of Judge . See minutes in file.
- ☒ This reassignment is due to: ATTORNEY JUDGE CONFLICT

ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE RESET BY THE NEW DEPARTMENT. PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE FILINGS.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Mary Anderson

Mary Anderson,
Deputy Clerk of the Court

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CERTIFICATE OF SERVICE

I hereby certify that this 16th day of September, 2021

☒ The foregoing Notice of Department Reassignment was electronically served to all registered parties for case number A-18-780833-W.

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Electronically Filed
2/18/2022 9:23 AM
Steven D. Grierson
CLERK OF THE COURT



Renard Polk, Plaintiff(s)

vs.

Timothy Filson, Defendant(s)

Case No.: A-18-780833-W

Department 20

NOTICE OF HEARING

Please be advised that the Plaintiff's Motion to Arrest of Judgment in the above-entitled matter is set for hearing as follows:

Date: March 22, 2022

Time: 9:30 AM

Location: RJC Courtroom 12A
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

Heather S. Smith
CLERK OF THE COURT

Renard T. Polk
General Delivery
Las Vegas, NV 89030
In Pro Se
(702) 630-1867

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Renard T. Polk,

CASE NO: A-18-780833-W
00C16490

Movant,

-vs-

DEPT NO: ~~JX~~ **XX**

The State of Nevada, ex rel,
Nevada Parole Board, et al,
Nevada Division of Parole and Probation, et al,
Officer Justinn Toranzo, et al,
Marysol Rezanov, LCSW, et al.

HEARING REQUESTED

Respondent(s).

**APPLICATION TO ENLARGE TIME TO FILE MOTION IN ARREST OF
JUDGMENT.**

COMES, Now, the applicant, RENARD POLK, and hereby seeks to enlarge the time period
to file a motion in arrest of judgment in the above cited case.

This application is made in good faith pursuant to **Nevada Revised Statute (NRS) 178.467**, et
seq.

This application is not made with the intent to harass the party-opponents or otherwise, but is
solely made as a result of excusable neglect instigated by the respondents, et al.

In that; Because the respondents, among others, (i.e., the applicant's trial, direct appeal,

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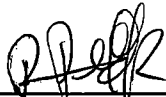
FEB 15 2022

CLERK OF THE COURT

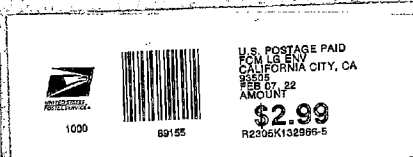
post-conviction and civil rights counsel), fraudulently concealed, refused, failed or forewent to alert the judiciary or any other appropriate authority in their capacity as officers of court the following fatal jurisdictional defects were occluded from judicial review.

Furthermore, due to the legal notion that fatal jurisdictional defects cannot be amended, or mitigated, especially those involving fraud or active concealment, these matters can be brought to the attention of the court beyond any time period allotted on any vehicle initiating proceedings thereon, and cannot be foreclosed. **Moore v. City of Las Vegas 92 P.2d 402 (Nev. 2004).**

Respectfully submitted this 8th day of Feb. 2022:

/s./ 
Renard T. Polk

Renard T. Polk
General Delivery
Las Vegas, NV 89030



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FEB 15 2022
CLERK OF THE COURT

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


CLERK OF THE COURT

Renard T. Polk
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Las Vegas, NV 89030
In Pro Se
(702) 630-1867

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Renard T. Polk,

CASE NO: A-18-780833-W
00C16490

Movant,

-vs-

DEPT NO: ~~IX~~ XX

The State of Nevada, ex rel,
Nevada Parole Board, et al,
Nevada Division of Parole and Probation, et al,
Officer Justin Toranzo, et al,
Marysol Rezanov, LCSW, et al.

HEARING REQUESTED

Respondent(s).

MOTION IN ARREST OF JUDGMENT.

COMES, NOW, the movant, RENARD POLK, hereinafter referred to as "Mr. (Polk)," unless otherwise specified, acting in pro se and hereby submit for filing this motion in arrest of judgment pursuant to Nevada Revised Statute (NRS) 176.525 and Nevada Rules of Civil Procedure (NRCP) 12(h) and 59(e).

This motion is made in good faith and based in part on all papers, pleadings, exhibits and documents on file herein, appended hereto, as well as, on any hearing and oral argument allocated on the instant submission.

PROCEDURAL HISTORY.

Still considered a minor by virtue of court order until his twenty-first (21st) birthday as a result of

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CLERK OF THE COURT

manufactured and fabricated juvenile probationary terms, the movant was falsely accused of the offenses prosecuted under case number 00C16490, which were alleged to have occurred from January 1995 until 1999.

As acknowledged by the district attorney's office, the false allegations in the original criminal complaint fraudulently detailed events that supposedly began in the year of 1995, which would have made the movant fifteen (15) years of age starting from that date.

The district attorney's office admitted they amended the complaint to omit the bogus charges to reflect they wanted to charge the movant beyond his eighteenth (18th) birthday to avoid jurisdictional shortfalls, even though the movant had already been in juvenile custody for the related purported conduct.

For the district attorney's office to now argue in their response to the movant's petition, filed on May 5, 2020, that the movant had offered no proof he was actually under juvenile wardship would be disingenuous, as the "Order To Terminate Juvenile Wardship" appended hereto as **Exhibit A**, clearly demonstrates juvenile wardship did not end until well past his twentieth (20th) birthday.

Consequently, the movant was still considered a minor by operation of law even after his eighteenth (18th) birthday.

If this were untrue then there would have been no reason to issue a termination of wardship order, nor the impetus for amendment.

Equally fatal to the jurisdictional prefecture of the adult court, during direct appeal proceedings the Nevada Supreme Court issued a mandate to the lower Eighth Judicial District Court to amend the judgment of conviction to reflect that the movant had went to trial, as opposed to

being committed on the basis of a guilty plea agreement, and that he was to be resentence pursuant thereto.

To date the Eighth Judicial District Court has still refused, failed or forewent to comply with that mandate. Through this extremely detrimental collateral consequence the movant has had to attend parole board hearings under the false pretense of [him] having pleaded guilty.

Notwithstanding, starting from July 7, 2004 the Eighth Judicial District Court began issuing a series of Habeas Corpus Writs tentatively granting relief and scheduling the movant's return for hearings thereon to test the validity of his detention.

Irrespectively, the movant was obstructed from attending those hearings. Nine in total.

In absence of the movant, and contrary to [their] own order the judges in each instance proceeded to make factual determinations ex parte, rather than scheduling a continuance thereon to exact compliance.

Likewise, after having appointed the assistance of counsel on post-conviction processes judge, Christina Silva, commanded newly appointed counsel to file a petition clarifying the movant's handwritten submission.

Albeit, once counsel was informed as to the nature of the movant's grounds, especially those involving the instant fatal jurisdictional and structural defects, they then sought to withdraw themselves from the case.

Which ultimately had the adverse impact of causing the movant to remain in custody beyond jurisdictional grant.

Aiding in this endeavor, the previously mentioned judge allowed the attorneys involved to withdraw, and to date has not appointed another in furtherance of its previous order, even

though there has been no compliance with her order to clarify the handwritten submission.

Overall; in the face of the fact that the movant did not consent to Benjamin C. Scroggins' withdrawal, due to the adverse impact it would have on the proceedings and the movant's standing at the time.

Lastly, having informed all defense attorneys ever appointed to the criminal case being Challenged, concerning the wrongfulness of the movant's imprisonment, each attorney forewent to disclose the illegalities to any appropriate authority.

STATEMENT OF FACTS.

That, initially the allegations pursuant to the challenged case were originally filed in the juvenile justice system in order to evince the petitioner had violated the conditions of a manufactured juvenile probationary term.

Possibly dissatisfied over the amount of time that Mr. Polk could receive, and in order to conceal the illegalities occurring at the time were the movant able to secure his status as a delinquent in juvenile system, the district attorney's office for Clark County dismissed the initial charges before the juvenile court and awaited juvenile wardship to terminate before refiling the same charges in the adult court system. Even though the challenged false criminal accusations had been collaterally used to demonstrate the movant was no longer suitable to be treated as a minor child.

With the initial charges dismissed and soon thereafter refiled the movant was adjudged to have violated juvenile probation and sentenced to thirty (30) days in county detention.

That while the petitioner was in custody the district attorney's office never executed the arrest warrants issued on the refiled charges but instead permitted the petitioner to be released. Notwithstanding, another bench warrant was obtained without any additional evidence or change in the State and County's case-in-chief.

MEMORANDUM OF POINTS AUTHORITIES, ARGUMENTS AND EXHIBITS.

Previously Nevada Revised Statute (NRS) 62.080, now promulgated as NRS 62B.390, juvenile certification proceedings are mandatory irrespective of whether the minor is certified for adult proceedings or not, in order to assess any underlying factors that may affect the case.

Noncompliance with this legislative fiat renders any proceeding prefaced thereon an absolute nullity, because it is mandatory and cannot be bypassed or cured.

As already conceded by the district attorney's office in [their] response to the movant's petition, certification proceedings should have taken place.

However; [they] argue that the movant was not considered a minor in the eyes of the law. Although this position is undercut by the fact that a termination of wardship order had to be filed and issued in order to divest the juvenile court of jurisdiction over the movant. Ergo, Mr . Polk was still considered a child minor at the alleged occurrence of the challenged offenses.

Pursuant to NRS 34.500, which states in pertinent part, a court must discharge the adversely affected party from custody when, as here; " (1) the jurisdiction of the court has been exceeded,"or "(2) the process is defective in some matter of substance required by law, rendering it void."

It should go without saying that the original complaint filed in the adult court system was fatally defective absent juvenile certification proceedings, giving the adult court no jurisdiction over the presumptive minor at the time of the false allegations. **Washoe County v. Otto 282 P.3d 719**

(Nev. 2012)

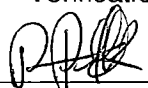
Therefore; any conviction involving the prosecuted offenses is null and void, requiring the movant to be discharged from custody forthwith.

CONCLUSION.

WHEREFORE: the movant requests that a hearing be allocated in order to adduce evidence consistent with the violation alleged and determine the legality of Mr. Polk's custodial status, or having demonstrated through sufficient documentary evidence herein order the movant's immediate discharge from the custody of the Nevada Parole and Probation Division.

Dated this 8th day of Feb. 2022.

Verification:

/s./ 
Renard T. Polk

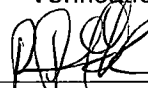
CERTIFICATE OF MAILING.

I, Polk, R, certify that service was made this 8th day of Feb. 2022 by

depositing a true and correct copy of the foregoing for mailing to the following addresses:

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

Verification:

/s./ 
Renard T. Polk

INDEX OF EXHIBITS.

Exhibit A: "Termination of Juvenile Wardship Order."

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION - JUVENILE
CLARK COUNTY, NEVADA

JAN 14 1 31 PM '00

In the matter of:

RENARD TURMAN POLK,

Date of Birth: October 14, 1980,

Minor, 19 Years of Age.

CASE NO. J58683

DEPT NO.

EX PARTE TERMINATION OF WARDSHIP ORDER

Based on the information presented in the Termination of Wardship Report
and good cause being shown;

IT IS HEREBY ORDERED that the Wardship of Renard Turman Polk is
terminated.

Dated this 13 day of January, 2000.

JUVENILE HEARING MASTER
FERNANDO GUZMAN

DISTRICT JUDGE - JUVENILE
ROBERT E. GASTON

Submitted by:

Steve Barber
STEVE BARBER

Juvenile Probation Officer II
601 North Pecos Road
Las Vegas, Nevada 89101

DATE: 1-10-2000

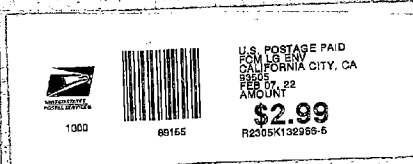
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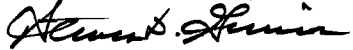
Renard T. Polk
General Delivery

Las Vegas, NV 89030



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General Delivery
Las Vegas, NV 89030
In Pro Se
(702) 630-1867

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Renard T. Polk,

Movant,

CASE NO: A-18-780833-W
00C16490

-vs-

DEPT NO: IX

The State of Nevada, ex rel,
Nevada Parole Board, et al,
Nevada Division of Parole and Probation, et al,
Officer Justin Toranzo, et al,
Marysol Rezanov, LCSW, et al.

HEARING REQUESTED

Respondent(s).

MOTION IN ARREST OF JUDGMENT.

COMES, NOW, the movant, RENARD POLK, hereinafter referred to as "Mr. (Polk)," unless otherwise specified, acting in pro se and hereby submit for filing this motion in arrest of judgment pursuant to Nevada Revised Statute (NRS) 176.525 and Nevada Rules of Civil Procedure (NRCP) 12(h) and 59(e).

This motion is made in good faith and based in part on all papers, pleadings, exhibits and documents on file herein, appended hereto, as well as, on any hearing and oral argument allocated on the instant submission.

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Still considered a minor by virtue of court order until his twenty-first (21st) birthday as a result of

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manufactured and fabricated juvenile probationary terms, the movant was falsely accused of the offenses prosecuted under case number 00C16490, which were alleged to have occurred from January 1995 until 1999.

As acknowledged by the district attorney's office, the false allegations in the original criminal complaint fraudulently detailed events that supposedly began in the year of 1995, which would have made the movant fifteen (15) years of age starting from that date.

The district attorney's office admitted they amended the complaint to omit the bogus charges to reflect they wanted to charge the movant beyond his eighteenth (18th) birthday to avoid jurisdictional shortfalls, even though the movant had already been in juvenile custody for the related purported conduct.

For the district attorney's office to now argue in their response to the movant's petition, filed on May 5, 2020, that the movant had offered no proof he was actually under juvenile wardship would be disingenuous, as the "Order To Terminate Juvenile Wardship" appended hereto as **Exhibit A**, clearly demonstrates juvenile wardship did not end until well past his twentieth (20th) birthday.

Consequently, the movant was still considered a minor by operation of law even after his eighteenth (18th) birthday.

If this were untrue then there would have been no reason to issue a termination of wardship order, nor the impetus for amendment.

Equally fatal to the jurisdictional prefecture of the adult court, during direct appeal proceedings the Nevada Supreme Court issued a mandate to the lower Eighth Judicial District Court to amend the judgment of conviction to reflect that the movant had went to trial, as opposed to

being committed on the basis of a guilty plea agreement, and that he was to be resentence pursuant thereto.

To date the Eighth Judicial District Court has still refused, failed or forewent to comply with that mandate. Through this extremely detrimental collateral consequence the movant has had to attend parole board hearings under the false pretense of [him] having pleaded guilty.

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Irrespectively, the movant was obstructed from attending those hearings. Nine in total.

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Likewise, after having appointed the assistance of counsel on post-conviction processes judge, Christina Silva, commanded newly appointed counsel to file a petition clarifying the movant's handwritten submission.

Albeit, once counsel was informed as to the nature of the movant's grounds, especially those involving the instant fatal jurisdictional and structural defects, they then sought to withdraw themselves from the case.

Which ultimately had the adverse impact of causing the movant to remain in custody beyond jurisdictional grant.

Aiding in this endeavor, the previously mentioned judge allowed the attorneys involved to withdraw, and to date has not appointed another in furtherance of its previous order, even

though there has been no compliance with her order to clarify the handwritten submission.

Overall; in the face of the fact that the movant did not consent to Benjamin C. Scroggins' withdrawal, due to the adverse impact it would have on the proceedings and the movant's standing at the time.

Lastly, having informed all defense attorneys ever appointed to the criminal case being Challenged, concerning the wrongfulness of the movant's imprisonment, each attorney forewent to disclose the illegalities to any appropriate authority.

STATEMENT OF FACTS.

That, initially the allegations pursuant to the challenged case were originally filed in the juvenile justice system in order to evince the petitioner had violated the conditions of a manufactured juvenile probationary term.

Possibly dissatisfied over the amount of time that Mr. Polk could receive, and in order to conceal the illegalities occurring at the time were the movant able to secure his status as a delinquent in juvenile system, the district attorney's office for Clark County dismissed the initial charges before the juvenile court and awaited juvenile wardship to terminate before refiling the same charges in the adult court system. Even though the challenged false criminal accusations had been collaterally used to demonstrate the movant was no longer suitable to be treated as a minor child.

With the initial charges dismissed and soon thereafter refiled the movant was adjudged to have violated juvenile probation and sentenced to thirty (30) days in county detention.

That while the petitioner was in custody the district attorney's office never executed the arrest warrants issued on the refiled charges but instead permitted the petitioner to be released. Notwithstanding, another bench warrant was obtained without any additional evidence or change in the State and County's case-in-chief.

MEMORANDUM OF POINTS AUTHORITIES, ARGUMENTS AND EXHIBITS.

Previously Nevada Revised Statute (NRS) 62.080, now promulgated as NRS 62B.390, juvenile certification proceedings are mandatory irrespective of whether the minor is certified for adult proceedings or not, in order to assess any underlying factors that may affect the case.

Noncompliance with this legislative fiat renders any proceeding prefaced thereon an absolute nullity, because it is mandatory and cannot be bypassed or cured.

As already conceded by the district attorney's office in [their] response to the movant's petition, certification proceedings should have taken place.

However; [they] argue that the movant was not considered a minor in the eyes of the law. Although this position is undercut by the fact that a termination of wardship order had to be filed and issued in order to divest the juvenile court of jurisdiction over the movant. Ergo, Mr . Polk was still considered a child minor at the alleged occurrence of the challenged offenses.

Pursuant to NRS 34.500, which states in pertinent part, a court must discharge the adversely affected party from custody when, as here; " (1) the jurisdiction of the court has been exceeded," or "(2) the process is defective in some matter of substance required by law, rendering it void."

It should go without saying that the original complaint filed in the adult court system was fatally defective absent juvenile certification proceedings, giving the adult court no jurisdiction over the presumptive minor at the time of the false allegations. **Washoe County v. Otto 282 P.3d 719**

(Nev. 2012)

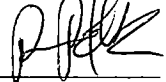
Therefore; any conviction involving the prosecuted offenses is null and void, requiring the movant to be discharged from custody forthwith.

CONCLUSION.

WHEREFORE: the movant requests that a hearing be allocated in order to adduce evidence consistent with the violation alleged and determine the legality of Mr. Polk's custodial status, or having demonstrated through sufficient documentary evidence herein order the movant's immediate discharge from the custody of the Nevada Parole and Probation Division.

Dated this 16th day of Feb. 2022.

Verification:

/s./ 
Renard T. Polk

CERTIFICATE OF MAILING.

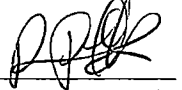
I, Polk, R, certify that service was made this 16th day of Feb. 2022, by

depositing a true and correct copy of the foregoing for mailing to the following addresses:

- Regional Justice Center
200 Lewis Ave.
Clerks' Office
Las Vegas, NV 89155

- District Attorneys' Office
200 Carson St.
Carson City, NV 89107

Verification:

/s./ 
Renard T. Polk

INDEX OF EXHIBITS.

Exhibit A: "Termination of Juvenile Wardship Order."

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION - JUVENILE
CLARK COUNTY, NEVADA

JAN 14 1 31 PM '00

In the matter of:

RENARD TURMAN POLK,

Date of Birth: October 14, 1980,

Minor, 19 Years of Age.

CASE NO. J58683

DEPT NO.

EX PARTE TERMINATION OF WARDSHIP ORDER

Based on the information presented in the Termination of Wardship Report
and good cause being shown;

IT IS HEREBY ORDERED that the Wardship of Renard Turman Polk is
terminated.

Dated this 13 day of January, 2000.

JUVENILE HEARING MASTER
FERNANDO GOZMAN

DISTRICT JUDGE JUVENILE
ROBERT E. GASTON

Submitted by:

Steve Barber
STEVE BARBER

Juvenile Probation Officer II
601 North Pecos Road
Las Vegas, Nevada 89101

DATE: 1-10-2000

RECEIVED

JAN 12 2000

COUNTY CLERK

Renard T. Polk

9601 Grove Ave.

California City, CA 93505

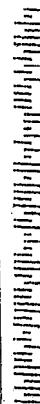


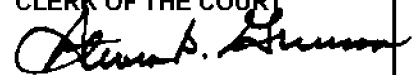
Regional Justice Center

Clerks Office

200 Lewis Ave.

Las Vegas, NV 89155





OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar # 6528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

RENARD POLK,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

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

DEPT NO: XX

**STATE'S OPPOSITION TO PETITIONER'S MOTION IN ARREST OF
JUDGMENT**

DATE OF HEARING: MARCH 22, 2022
TIME OF HEARING: 9:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JONATHAN VANBOSKERCK, Chief Deputy District Attorney, and hereby submits the State's Opposition to the Petitioner's Motion in Arrest of Judgment.

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

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1
2 **POINTS AND AUTHORITIES**

3 **STATEMENT OF THE CASE**

4 On April 13, 2000, the State filed an Information charging Renard Polk ("Petitioner")
5 as follows: Counts 1 and 2 – Sexual Assault with a Minor under Sixteen Years of Age (Felony
6 – NRS 200.364, 200.366); and Count 3 – First Degree Kidnapping (Felony – NRS 200.310,
7 200.320). On November 22, 2000, the State filed an Amended Information charging Petitioner
8 with three (3) counts of Sexual Assault with a Minor under Sixteen Years of Age (Felony –
9 NRS 200.364, 200.366). On January 27, 2002, the State filed a Second Amended Information
10 charging Petitioner with three (3) counts of Sexual Assault with a Minor under Fourteen Years
11 of Age (Felony – NRS 200.364, 200.366).

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

16 On March 14, 2002, this Court sentenced Petitioner to the Nevada Department of
17 Corrections as follows: Count 1 – to a maximum of one hundred twenty (120) months and a
18 minimum of forty-eight (48) months and a special sentence of lifetime supervision; and Count
19 2 – to a maximum of life with minimum parole eligibility of two hundred forty (240) months,
20 consecutive to Count 1. Petitioner received six hundred ninety-one (691) days credit for time
21 served. The Judgment of Conviction was filed on April 1, 2002.

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

27 On July 1, 2004, Petitioner filed a Petition for Writ of Habeas Corpus. The State filed
28 a Response on August 31, 2004. This Court denied Petitioner's Petition on September 8, 2004.

1 The Findings of Fact, Conclusions of Law and Order were filed on September 14, 2004.
2 Petitioner filed a Notice of Appeal on October 8, 2004. The Nevada Supreme Court affirmed
3 the denial of Petitioner's Petition on January 25, 2005. Remittitur issued on February 22, 2005.

4 On December 7, 2007, Petitioner filed a Motion to Vacate, Set Aside or Correct Illegal
5 Sentence of Judgment, Consolidated Writ of Error. The State filed an Opposition on December
6 17, 2007. This Court denied the Motion on December 18, 2007, and filed a written Order on
7 December 31, 2007. Petitioner filed a Notice of Appeal on January 18, 2008. On June 9, 2008,
8 the Nevada Supreme Court affirmed the denial of Petitioner's Motion. Remittitur issued on
9 September 9, 2008.

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

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

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

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

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

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

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

8 On September 17, 2015, Petitioner filed a pro per Petition for Writ of Mandamus
9 {and/or} in the Alternative Prohibition. This Court denied the Petition on October 8, 2015; a
10 written Order issued on October 27, 2015. Petitioner filed a Notice of Appeal on November 5,
11 2015. The Nevada Supreme Court affirmed the district court's decision. Remittitur issued
12 September 16, 2016.

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

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

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

25 On September 18, 2018, Petitioner filed a Motion to Alter, Amend, or Modify Sentence.
26 On September 27, 2018 Petitioner filed a Motion to Quash Post-Conviction Order. On October
27 4, 2018, the State filed its Opposition to Petitioner's Motion to Alter, Amend, or Modify
28 Sentence. Also on October 4, 2018, the State filed its Response to Petitioner's Motion to Quash

1 Post-Conviction Order. On October 10, 2018, the Court denied Petitioner's Motion to Alter,
2 Amend or Modify Sentence. On September 20, 2019 the Nevada Court of Appeals affirmed
3 the denial of this Motion.

4 On July 11, 2018, Petitioner filed an Amended [Actual Innocence] Petition for Writ of
5 Habeas Corpus Ad Subjudicium, Duces Tecum, Testificandum ("Sixth Petition"). On October
6 8, 2018, the State's filed its Response. On October 29, 2018, Petitioner filed a Supplemental
7 (Emergency) Amended (Actual Innocence) Petition for Writ of Habeas Corpus and
8 Testificandum, Duces Tecum, Ad Subjudicem. On November 14, 2018, the Court denied
9 Petitioner's Petition. On December 7, 2018, the Court filed the Findings of Fact, Conclusions
10 of Law and Order denying the Petition.

11 On May 19, 2020, Petitioner filed a Second Amended Petition for Writ of Habeas
12 Corpus. On June 30, 2020, the State filed its Response. On August 4, 2021, this Court filed its
13 Findings of Fact, Conclusions of Law and Order denying the Petition.

14 On February 18, 2022, Petitioner filed the instant Motion in Arrest of Judgment. The
15 State's Opposition follows.

16 ARGUMENT

17 **I. PETITIONER'S CLAIM IS BARRED BY RES JUDICATA**

18 Petitioner argues that "the original complaint filed in the adult court system was fatally
19 defective absent juvenile certification proceedings." Motion at 5. This claim is suitable only
20 for summary denial under Hargrove because it is belied by the record. 100 Nev. 498, 502, 686
21 P.2d 222, 225 (1984). Petitioner's date of birth is October 14, 1980. Criminal Bindover at 16.
22 The Seconded Amended Information lists only offense dates between October 14, 1998, and
23 March 12, 1999. Seconded Amended Information at 2. As such, Petitioner was over eighteen
24 (18) at the time of the offenses and thus not subject to Juvenile Court jurisdiction. NRS
25 62A.030(1)(a); NRS 62B.330(1).

26 Further, Petitioner's claim is barred by the doctrine of res judicata. The doctrine of res
27 judicata precludes a party from re-litigating an issue which has been finally determined by a
28 court of competent jurisdiction. Exec. Mgmt. v. Ticor Titles Ins. Co., 114 Nev. 823, 834, 963

1 P.2d 465, 473 (1998) (citing Univ. of Nev. v. Tarkanian, 110 Nev. 581, 598, 879 P.2d 1180,
2 1191 (1994)); see also Sealfon v. United States, 332 U.S. 575, 578, 68 S. Ct. 237, 239 (1948)
3 (recognizing the doctrine's availability in criminal proceedings). "The doctrine is intended to
4 prevent multiple litigation causing vexation and expense to the parties and wasted judicial
5 resources." Id.

6 This Court already denied Petitioner's same claim in his prior Petition:

7 It does not matter how long the State may have "awaited" charging
8 the crime; Petitioner was not a minor when he committed the
9 crime. Petitioner offers absolutely no support for his claim that he
10 was under "juvenile wardship" until January 12, 2000. In fact,
11 Petitioner undermines his argument when he later asserts that he
12 "was not on juvenile probation at that time" of the instant offense.
Thus, Petitioner was not entitled to a certification hearing. This
claim does not constitute prejudice and is denied.

13 Findings of Fact, Conclusions of Law and Order Filed on August 4, 2021 at 17-18 (citations
14 omitted). Petitioner has done nothing but re-argue an already denied claim. As such, the
15 doctrine of res judicata bars his claim. Accordingly, this Court should deny Petitioner's
16 motion.

17 CONCLUSION

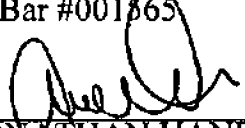
18 For the reasons set forth above, this Court should DENY Petitioner's Motion.

19 DATED this 15th day of March, 2022.

20 Respectfully submitted,

21 STEVEN B. WOLFSON
22 Clark County District Attorney
23 Nevada Bar #001865

24 BY


25 JONATHAN VANBOSKERCK
26 Chief Deputy District Attorney
27 Nevada Bar #6528

#10539 for

28 ///

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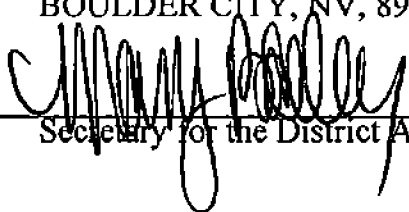
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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 15th day of March, 2022, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

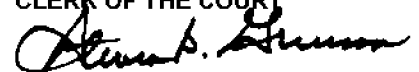
RENARD POLK
1009 NEVADA HIGHWAY
SUITE 130
BOULDER CITY, NV, 89005

BY



Secretary for the District Attorney's Office

C166490/JV/ee/mlb/SVU



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

RENARD T. POLK
Appellant,

vs.

Case No. A-18-780833-W


THE STATE OF NEVADA, ex rel.,
NEVADA DEPARTMENT OF PUBLIC SAFETY, et al.,
Respondent(s).

NOTICE OF APPEAL.

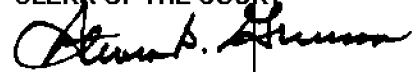
TO: THE STATE OF NEVADA, HONORABLE JON ERICSON, AND DEPUTY
DISTRICT ATTORNEY, STEVEN WATERS;

NOTICE is hereby given that the movant, Renard T. Polk, does hereby appeal
the judgement, decree and order denying [his] Motion In Arrest Of Judgement
entered on March 22, 2022.

Respectfully submitted this 23rd day of March 2022.

/s./ 

RENARD T. POLK
General Delivery
Las Vegas, NV. 89030



ASTA

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

RENARD T. POLK,

Plaintiff(s),

vs.

TIMOTHY FILSON; WILLIAM RUEBERT;
TASHEENA SANDOVAL,

Defendant(s),

Case No: A-18-780833-W

Dept No: XX

CASE APPEAL STATEMENT

1. Appellant(s): Renard T. Polk

2. Judge: Eric Johnson

3. Appellant(s): Renard T. Polk

Counsel:

Renard T. Polk
General Delivery
Las Vegas, NV 89030

4. Respondent (s): Timothy Filson; William Ruebert; Tasheena Sandoval

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.

Las Vegas, NV 89155-2212

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: Yes

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
***Expires 1 year from date filed*

Appellant Filed Application to Proceed in Forma Pauperis: No
Date Application(s) filed: N/A

9. Date Commenced in District Court: August 30, 2018

10. Brief Description of the Nature of the Action: Civil Writ

Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 5 day of April 2022.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Renard T. Polk



OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar # 6528
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: XX

**STATE'S OPPOSITION TO DEFENDANT'S MOTION IN ARREST OF
JUDGMENT AND APPLICATION TO ENLARGE TIME TO FILE MOTION IN
ARREST OF JUDGMENT**

DATE OF HEARING: April 26, 2022
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JONATHAN VANBOSKERCK, Chief Deputy District Attorney, and hereby submits the State's Opposition to the Defendant's Motion in Arrest of Judgment and Application to Enlarge Time to File Motion in Arrest of Judgment.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On April 13, 2000, the State filed an Information charging Renard Polk ("Defendant")
4 as follows: Counts 1 and 2 – Sexual Assault with a Minor under Sixteen Years of Age (Felony
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13 Fourteen; Count 2 – guilty of Sexual Assault with a Minor under Fourteen; and Count 3 – not
14 guilty.

15 On March 14, 2002, this Court sentenced Defendant to the Nevada Department of
16 Corrections as follows: Count 1 – to a maximum of one hundred twenty (120) months and a
17 minimum of forty-eight (48) months and a special sentence of lifetime supervision; and Count
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16 Illegal Sentence. The State filed its Opposition on November 22, 2016. This Court denied
17 Defendant's Motion on November 28, 2016. The written Order was filed December 1, 2016,
18 and Defendant filed a Notice of Appeal on December 16, 2016. The Nevada Supreme Court
19 affirmed the district court's order; remittitur issued January 4, 2018.

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

25 On September 18, 2018, Defendant filed a Motion to Alter, Amend, or Modify
26 Sentence. On September 27, 2018, Defendant filed a Motion to Quash Post-Conviction Order.
27 On October 4, 2018, the State filed its Opposition to Defendant's Motion to Alter, Amend, or
28 Modify Sentence. Also on October 4, 2018, the State filed its Response to Defendant's Motion

1 to Quash Post-Conviction Order. On October 10, 2018, the Court denied Defendant's Motion
2 to Alter, Amend or Modify Sentence. On September 20, 2019 the Nevada Court of Appeals
3 affirmed the denial of this Motion.

4 On July 11, 2018, Defendant filed an Amended [Actual Innocence] Petition for Writ of
5 Habeas Corpus Ad Subjudiceum, Duces Tecum, Testificandum ("Sixth Petition"). On October
6 8, 2018, the State's filed its Response. On October 29, 2018, Defendant filed a Supplemental
7 (Emergency) Amended (Actual Innocence) Petition for Writ of Habeas Corpus and
8 Testificandum, Dueces Tecum, Ad Subjudicem. On November 14, 2018, the Court denied
9 Defendant's Petition. On December 7, 2018, the Court filed the Findings of Fact, Conclusions
10 of Law and Order denying the Petition.

11 On May 19, 2020, Defendant filed a Second Amended Petition for Writ of Habeas
12 Corpus. On June 30, 2020, the State filed its Response. On August 4, 2021, this Court filed its
13 Findings of Fact, Conclusions of Law and Order denying the Petition.

14 On February 18, 2022, Defendant filed a Motion in Arrest of Judgment. On March 15, 2022,
15 the State filed its Opposition. On March 22, 2022, this Court denied Defendant's Motion
16 adopting the Findings of Fact, Conclusions of Law, and Order filed on August 4, 2021.

17 On March 23, 2022, Defendant filed a Notice of Appeal.

18 On April 2, 2022, Defendant filed the instant Motion in Arrest of Judgment and
19 Application to Enlarge Time to File Motion in Arrest of Judgment.

20 21 ARGUMENT

22 **DEFENDANT'S CLAIM IS BARRED BY RES JUDICATA**

23 Defendant argues that "the original complaint filed in the adult court system was fatally
24 defective absent juvenile certification proceedings." Motion at 5. This claim is suitable only
25 for summary denial under Hargrove because it is belied by the record. 100 Nev. 498, 502, 686
26 P.2d 222, 225 (1984). Defendant's date of birth is October 14, 1980. Criminal Bindover at 16.
27 The Seconded Amended Information lists only offense dates between October 14, 1998, and
28 March 12, 1999. Seconded Amended Information at 2. As such, Defendant was over eighteen

1 (18) at the time of the offenses and thus not subject to Juvenile Court jurisdiction. NRS
2 62A.030(1)(a); NRS 62B.330(1).

3 Further, Defendant's claim is barred by the doctrine of res judicata, as this is
4 Defendant's third attempt to raise this claim. The doctrine of res judicata precludes a party
5 from re-litigating an issue which has been finally determined by a court of competent
6 jurisdiction. Exec. Mgmt. v. Ticor Titles Ins. Co., 114 Nev. 823, 834, 963 P.2d 465, 473 (1998)
7 (citing Univ. of Nev. v. Tarkanian, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994)); see also
8 Sealfon v. United States, 332 U.S. 575, 578, 68 S. Ct. 237, 239 (1948) (recognizing the
9 doctrine's availability in criminal proceedings). "The doctrine is intended to prevent multiple
10 litigation causing vexation and expense to the parties and wasted judicial resources." Id.

11 This Court already denied Defendant's same claim in his prior Petition:

12 It does not matter how long the State may have "awaited" charging
13 the crime; Petitioner was not a minor when he committed the
14 crime. Petitioner offers absolutely no support for his claim that he
15 was under "juvenile wardship" until January 12, 2000. In fact,
16 Petitioner undermines his argument when he later asserts that he
17 "was not on juvenile probation at that time" of the instant offense.
18 Thus, Petitioner was not entitled to a certification hearing. This
19 claim does not constitute prejudice and is denied.

20 Findings of Fact, Conclusions of Law and Order Filed on August 4, 2021, at 17-18 (citations
21 omitted). On February 18, 2022, Defendant reraised this claim. This Court once again denied
22 Defendant's Motion:

23 COURT FINDS this claim was previously denied by Judge Silva,
24 ADOPTED Judge Silva's Findings of Fact, Conclusions of Law,
25 and Order signed august 4, 2021 and ORDERED, Plaintiff's
26 Motion DENIED.

27 Minute Order from March 22, 2022, in A-18-780833-W, at 1. Defendant has done nothing but
28 re-argue a twice-denied claim. As such, the doctrine of res judicata bars his claim.
Accordingly, this Court should deny Defendant's motion.

///

1 Defendant also requests that this Court grant him additional time to file a motion in
2 arrest of judgment. On April 2, 2022, Defendant already filed his motion in arrest of judgment.
3 As such, no additional time is needed. Regardless, Defendant's motion lacks merit and is
4 procedurally barred given that it has already been denied on two separate occasions.
5 Accordingly, this Court should deny Defendant's request as additional time is unnecessary.

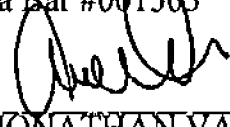
6 **CONCLUSION**

7 For the reasons set forth above, this Court should DENY Defendant's Motion in Arrest
8 of Judgment and Application to Enlarge Time to File Motion in Arrest of Judgment.

9 DATED this 7th day of April, 2022.

10 Respectfully submitted,

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

14 BY  #10539 FOR
15 JONATHAN VANBOSKERCK
16 Chief Deputy District Attorney
17 Nevada Bar #6528

18 **CERTIFICATE OF MAILING**

19 I hereby certify that service of the above and foregoing was made this 7th day of
20 April, 2022, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

21 RENARD POLK
22 1009 Nevada Highway
23 Suite 130
24 Boulder City, NV, 89005

25 BY 
26 Secretary for the District Attorney's Office

27
28 C166490/JV/ee/mlb/SVU

Heather S. Hume

CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STACEY KOLLINS
Chief Deputy District Attorney
Nevada Bar #005391
200 Lewis Avenue
Las Vegas, NV 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-18-78083-W
00C166490**

DEPT NO: **XX**

ORDER DENYING DEFENDANT'S MOTION IN ARREST OF JUDGMENT

DATE OF HEARING: **MARCH 22, 2022**
TIME OF HEARING: **9:30 A.M.**

THIS MATTER having presented before the above entitled Court on the 22nd day of MARCH, 2022; Defendant not present, IN PROPER PERSON; Plaintiff represented by STEVEN B. WOLFSON, District Attorney, through STEVEN WATERS, Chief Deputy District Attorney; and without argument, based on the pleadings, and with good cause appearing,

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1 COURT FINDS this claim was previously denied by JUDGE SILVA, ADOPTED
2 Judge Silva's Findings of Fact, Conclusions of Law and Order signed august 4, 2021, and
3 **ORDERED**, Plaintiff's Motion DENIED. Dated this 7th day of April, 2022

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5 
6

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

F19 506 5953 360E
Eric Johnson
District Court Judge

10 BY


11 STEVEN WATERS
12 Chief Deputy District Attorney
13 Nevada Bar #006162
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28 hjc/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Renard Polk, Plaintiff(s)

CASE NO: A-18-780833-W

7 vs.

DEPT. NO. Department 20

8 Timothy Filson, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 4/7/2022

15 Steven Wolfson

motions@clarkcountyda.com

16 dept lawclerk

dept23lc@clarkcountynv.gov

17 BETSY ESQ.

betsyallenesq@yahoo.com

18 Law Firm of C. Benjamin Scroggins, Chtd.

info@cbscrogginslaw.com

19 C. Scroggins, Esq.

cbs@cbscrogginslaw.com

20 Kelly Jarvi

kelly@cbscrogginslaw.com

IN THE SUPREME COURT OF THE STATE OF NEVADA

RENARD TRUMAN POLK,
Appellant,
vs.
TIMOTHY FILSON; WILLIAM RUEBART; AND
TASHEENA SANDOVAL,
Respondents.

Supreme Court No. 84502
District Court Case No. A780833; ~~0100490~~

FILED

MAY 16 2022

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDERS this appeal DISMISSED."

Judgment, as quoted above, entered this 18th day of April, 2022.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
May 13, 2022.

Elizabeth A. Brown, Supreme Court Clerk

By: Andrew Lococo
Deputy Clerk

A-18-780833-W
CCJD
NV Supreme Court Clerks Certificate/Judgm
4992235



IN THE SUPREME COURT OF THE STATE OF NEVADA

RENARD TRUMAN POLK,
Appellant,
vs.
TIMOTHY FILSON; WILLIAM
RUEBART; AND TASHEENA
SANDOVAL,
Respondents.

No. 84502

FILED

APR 18 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a district court minute order denying a postconviction motion in arrest of judgment. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Because no statute or court rule permits an appeal from an order denying a postconviction motion in arrest of judgment, this court lacks jurisdiction to consider this appeal. *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990) (explaining that court has jurisdiction only when statute or court rule provides for appeal). Accordingly, this court

ORDERS this appeal DISMISSED.

Silver, J.
Silver

Cadish, J.
Cadish

Pickering, J.
Pickering

cc: Hon. Eric Johnson, District Judge
Renard Truman Polk
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

RENARD TRUMAN POLK,
Appellant,
vs.
TIMOTHY FILSON; WILLIAM RUEBART; AND
TASHEENA SANDOVAL,
Respondents.

Supreme Court No. 84502
District Court Case No. A780833; ~~C-166496~~

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: May 13, 2022

Elizabeth A. Brown, Clerk of Court

By: Andrew Lococo
Deputy Clerk

cc (without enclosures):
Renard Truman Polk
Clark County District Attorney \ Alexander G. Chen
Hon. Eric Johnson, District Judge

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on MAY 16 2022.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS
MAY 16 2022

CLERK OF THE COURT

Heather L. Hume
CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ROBERT STEPHENS
Chief Deputy District Attorney
Nevada Bar #011286
200 Lewis Avenue
Las Vegas, NV 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: XX

**ORDER DENYING DEFENDANT'S MOTION IN ARREST OF JUDGMENT AND
APPLICATION TO ENLARGE TIME TO FILE MOTION IN ARREST OF
JUDGMENT**

DATE OF HEARING: April 26, 2022
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above-entitled Court on the
26th day of April, 2022, the Defendant not being present, IN PROPER PERSON, the Plaintiff
being represented by STEVEN B. WOLFSON, District Attorney, through ROBERT
STEPHENS, Chief Deputy District Attorney, without argument, based on the pleadings and
good cause appearing therefor,

///

///

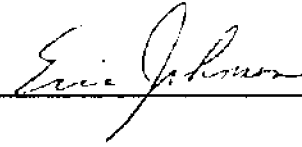
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1 IT IS HEREBY ORDERED that the Defendant's Motion, shall be, and it is DENIED.

Dated this 27th day of June, 2022

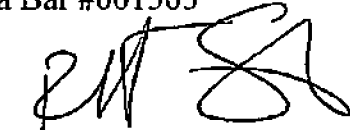
2 DATED this _____ day of June, 2022.

3 
4

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

96B CA5 56BA CBA6
Eric Johnson
District Court Judge

8 BY



9 ROBERT STEPHENS
10 Chief Deputy District Attorney
11 Nevada Bar #011286
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28 99F04726X/mlb/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Renard Polk, Plaintiff(s)

CASE NO: A-18-780833-W

7 vs.

DEPT. NO. Department 20

8 Timothy Filson, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/27/2022

15 Steven Wolfson

motions@clarkcountyda.com

16 dept lawclerk

dept23lc@clarkcountynv.gov

17 BETSY ESQ.

betsyallenesq@yahoo.com

18 Law Firm of C. Benjamin Scroggins, Chtd.

info@cbscrogginslaw.com

19 C. Scroggins, Esq.

cbs@cbscrogginslaw.com

20 Kelly Jarvi

kelly@cbscrogginslaw.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus**COURT MINUTES****October 29, 2018**

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

October 29, 2018	3:00 AM	Motion to Quash	Consolidated Motion to Quash "Post- Conviction" Order (and/or), in the Alternative, Notice of Intent to Appear by Communications Equipment or Transportation (Production) of Prisoner
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HEARD BY: Smith, Douglas E.**COURTROOM:** Chambers**COURT CLERK:** Carol Donahoo**RECORDER:****REPORTER:**

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Deft.'s Consolidated Motion to Quash "Post-Conviction" Order (and/or), in the Alternative, Notice of Intent to Appear by Communications Equipment or Transportation (Production) of Prisoner, which he filed pro se, came before the Court on the October 29, 2018, Chamber Calendar. Having reviewed the Motion and the State's Response thereto, the Court determines that this Motion should have been filed with the underlying Criminal case number. Therefore, COURT ORDERED, this Motion and the Response shall be TRANSFERRED to the underlying Criminal case (C166490).

PRINT DATE: 05/18/2023

Page 1 of 18

Minutes Date: October 29, 2018

CLERK'S NOTE: A copy of this minute order was mailed to Renard Polk #72439, Ely State Prison, P.O. Box 1989, Ely, Nevada, 89301.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus**COURT MINUTES****November 14, 2018**

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

November 14, 2018	8:00 AM	Petition for Writ of Habeas Corpus	Deft.'s Petition for Writ of Habeas Corpus
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HEARD BY: Bonaventure, Joseph T. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Brianna Lamanna, Dep DA, present on behalf of the State; Deft. Polk is incarcerated in the Nevada Department of Corrections (NDC) and not present.

This is the set for hearing on the Deft.'s Petition for Writ of Habeas Corpus, which he filed pro se. The Court noted that this is the Deft.'s Sixth Petition and it is barred for the following reasons: It is time barred pursuant to NRS 34.726. There is a one-year time limit unless good cause is shown and in this case, there is no good cause; It is barred by the Doctrine of Laches. The Petition was filed more than five years after the Judgment of Conviction and, therefore, a rebuttal presumption of prejudice has been created towards the State. In this case, fifteen years have passed; and the Petition is successive. The Deft. has filed five Petitions in the past with many of the same claims. The only new and difference grounds raised here are Lack of Counsel for Juvenile proceedings and Lack of Counsel for the Second Direct Appeal, both could have been raised earlier.

The Deft.'s "Actual Innocence" claim fails and contains only bare and naked allegations supported by

PRINT DATE: 05/18/2023

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Minutes Date: October 29, 2018

claims that could have been made earlier. Deft.'s claim regarding confession is without merit because he was 18 years old when he was questioned, he was not a minor. Deft.'s Claim for ineffective assistance of counsel was rejected in the first Petition and is without merit as are his remaining claims. COURT ORDERED, the Petition is DENIED.

The Court noted that Deft.'s Petition was filed on July 11, 2018, in A777370 but the State's Response was filed in C166490. Therefore, COURT ORDERED, the Petition should be TRANSFERRED to the Criminal Case.

State to prepare the Order.

CLERK'S NOTE: A copy of this minute order was mailed to Renard Polk #72439, Ely State Prison, P.O. Box 1989, Ely, Nevada, 89301.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 20, 2020

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

July 20, 2020 1:45 PM Confirmation of Counsel

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

COURT CLERK: Kathryn Hansen-McDowell

RECORDER: Gina Villani

REPORTER:

PARTIES

PRESENT: Allen, Betsy Attorney
Scarborough, Michael J. Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Ms. Allen present appeared via BlueJeans video conferencing. Pltf. not present.

This was the time set for confirmation of counsel for the Pltf. Ms. Allen advised she could confirm as counsel and requested a status check in 30 days allowing her time to obtain the case for review. COURT ORDERED, Ms. Allen CONFIRMED as counsel and status check SET.

NDC

8/17/20 1:45 PM STATUS CHECK: CASE REVIEW

CLERK'S NOTE: The above minute order has been distributed to: Renald Polk, #72439, Ely State Prison, PO Box 1989, Ely, NV 89301. 8/7/20//km

CLERK'S NOTE: Corrected data entry error, added attorneys to parties present section. 8/13/20km

PRINT DATE: 05/18/2023

Page 5 of 18

Minutes Date: October 29, 2018

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 22, 2020

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

July 22, 2020	1:45 PM	Petition for Writ of Habeas Corpus
----------------------	----------------	---

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

COURT CLERK: Kathryn Hansen-McDowell

RECORDER: Gina Villani

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Court noted it issued an order on 3/20/20 for the State to respond; however, a Second Supplemental Petition was filed on 7/8/20 which had not been served. Court advised the State would need time to respond to this Petition. COURT ORDERED, response due 9/2/20 , reply to response due 10/21/20 , and Hearing SET 11/18/20.

11/18/20 8:30 AM HEARING: SECOND PETITION OF WRIT OF HABEAS CORPUS

CLERK'S NOTE: After hearing, verified briefing schedule dates placed in minute order per Court, 8/3/20 km

PRINT DATE: 05/18/2023

Page 7 of 18

Minutes Date: October 29, 2018

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

August 17, 2020

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

August 17, 2020 1:45 PM Status Check

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

COURT CLERK: Kathryn Hansen-McDowell

RECORDER: Gina Villani

REPORTER:

PARTIES

PRESENT: Allen, Betsy Attorney
Sweetin, James R Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Ms. Allen and Mr. Sweetin present appeared via BlueJeans video conferencing.

Court inquired as to the status of the case. Ms. Allen stated she was assigned to review the file and was still in that process and requested additional time. Mr. Sweetin advised an eighth petition had been filed by Mr. Polk and there had been no response filed; requested to vacate the hearing scheduled for 11/18/20 and set a status check. Colloquy regarding the multiple petitions filed and the time needed to review the case. COURT ORDERED, the current briefing schedule and the hearing scheduled for 11/18/20 VACATED. COURT FURTHER ORDERED, the deadline to file any petitions was 2/19/21, the response would be due by 4/16/21, the reply would be due by 5/28/21 and hearing SET. COURT ADVISED, for the next petition filed it wanted clarity of all the previous petitions, filings and supplements.

6/23/21 8:30 AM HEARING: PETITION FOR WRIT OF HABEAS CORPUS

PRINT DATE: 05/18/2023

Page 8 of 18

Minutes Date: October 29, 2018

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 20, 2021

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

January 20, 2021	11:00 AM	Motion	Plaintiff's Supplemental Motion to Terminate Post Conviction Counsel and Appoint an Alternative Attorney and/or for Sanctions Under Nevada Rules Civil Procedure NRPC 11 (b)
-------------------------	-----------------	---------------	---

HEARD BY: Silva, Cristina D.

COURTROOM: RJC Courtroom 11B

COURT CLERK: Kory Schlitz

RECORDER: Gina Villani

REPORTER:

PARTIES

PRESENT: Allen, Betsy Attorney

JOURNAL ENTRIES

- Deputy District Attorney Dena Rinetti present on behalf of the State; Defendant not present and in custody in the Nevada Department of Corrections.

Upon Court's inquiry, Ms. Allen stated she spoke with the Defendant last week, and has a scheduled meeting with him next week, adding it is very difficult to communicate with the Defendant as he is located in Ely. Ms. Allen requested the Court delay this hearing until after she speaks with the Defendant, and suggested the matter be taken off calendar, adding after she speaks with the

PRINT DATE: 05/18/2023

Page 9 of 18

Minutes Date: October 29, 2018

Defendant if he still wants to proceed she will re-notice this Motion. COURT ORDERED, matter OFF CALENDAR; and DIRECTED Ms. Allen to place this matter back on calendar prior to the middle of March incase new counsel needs to be appointed so the Petition can proceed in June.

NDC

6/23/2021 11:00 A.M. PETITION FOR WRIT OF HABEAS CORPUS

February 24, 2021

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

JOURNAL ENTRIES

419

CLERK'S NOTE: A copy of this Minute Order has been e-mailed to the Office of Appointed Counsels.
(2-25-2021 ks)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus**COURT MINUTES****March 03, 2021**

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

March 03, 2021	11:00 AM	Status Check: Confirmation of Counsel	Status Check: Confirmation of Counsel: Ben Scroggins
-----------------------	-----------------	--	---

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

COURT CLERK: Kory Schlitz

RECORDER: Gina Villani

REPORTER:

PARTIES

PRESENT: Scroggins, C. Benjamin Attorney

JOURNAL ENTRIES

- Defendant not present and in custody in the Nevada Department of Corrections; Deputy District Jake Villani present on behalf of the State.

Upon Court's inquiry, Mr. Scroggins stated he can accept the appointment of counsel, and requested to speak with the Defendant prior to setting a briefing schedule. COURT ORDERED, matter SET for status check on the out of custody calendar, as the Defendant is housed in NDOC.

NDC

3/31/2021 12:30 P.M. STATUS CHECK: SET BRIEFING SCHEDULE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus**COURT MINUTES****March 31, 2021**

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

March 31, 2021 12:30 AM Status Check Status Check: Set Briefing Schedule

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

COURT CLERK: Kory Schlitz

RECORDER: Gina Villani

REPORTER:

PARTIES

PRESENT: Scarborough, Michael J. Attorney
Scroggins, C. Benjamin Attorney

JOURNAL ENTRIES

- Defendant not present.

Mr. Scroggins informed the Court he was able to speak with the Defendant's former counsel, on this case, and he is trying to arrange a conference with the Defendant and requested thirty days to file an opening brief. COURT ORDERED, briefing schedule SET as follows: Defendant's Opening Brief shall be filed on or before April 30, 2021; State's Opposition shall be filed on or before May 28, 2021; Defendant's Reply shall be filed on or before June 18, 2021; matter SET for hearing. COURT FURTHER ORDERED, Defendant's presence can be waived at the future hearing date.

NDC

7/7/2021 11:00 A.M. PETITION FOR WRIT OF HABEAS CORPUS

PRINT DATE: 05/18/2023

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Minutes Date: October 29, 2018

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus**COURT MINUTES****May 27, 2021**

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

May 27, 2021	3:00 AM	Motion to Withdraw as Counsel	C. Benjamin Scroggins, Esq.'s, Motion to Withdraw as Counsel for Petitioner, Renard Polk
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HEARD BY: Silva, Cristina D.**COURTROOM:** Chambers**COURT CLERK:** Kory Schlitz**RECORDER:****REPORTER:**

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Pending before the Court is C. Benjamin Scroggins , Esq., Motion to Withdraw as Counsel for Petitioner, Renard Polk. Having reviewed the Motion and there being no opposition; COURT ORDERED, the Motion GRANTED.

CLERK S NOTE: Counsel are to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the registered service recipients via Odyssey eFileNV E-Service (6-2-2021 ks).

PRINT DATE: 05/18/2023

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Minutes Date: October 29, 2018

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 07, 2021

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

July 07, 2021	11:00 AM	Petition for Writ of Habeas Corpus
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HEARD BY: Silva, Cristina D.

COURTROOM: RJC Courtroom 11B

COURT CLERK: Kory Schlitz

RECORDER: Gina Villani

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Defendant not present and in custody in the Nevada Department of Corrections; Deputy District Attorney Ashley Lacher present on behalf of the State.

COURT STATED the initial Petition was filed in July 2020, and in August of 2020, counsel was appointed on behalf of Defendant, and ultimately the Court was advised this was the seventh Petition, adding in March 2021 Mr. Scroggins was confirmed as counsel of record, and then withdrew in May 2021. COURT FURTHER STATED the Defendant is Pro Per, and the Court will issue its rulings on the Petition, as the Court agrees with the State that the doctrine of laches does apply to this case, as it is sixteen years old and the Defendant has failed in the Petition to overcome procedural bars that would allow the Court to consider the Petition on the merits; and the Court also points out there are blanket allegations regarding certain judges who have heard this case over the years, and there is no evidence to support to allegations set forth in the Petition, and ORDERED, Petition DENIED.

NDC

PRINT DATE: 05/18/2023

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Minutes Date: October 29, 2018

CLERK'S NOTE: A copy of this Minute Order has been mailed to Renard Polk #72439, PO BOX 1989, Ely, Nevada 89301. (7-8-2021 ks)

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus

COURT MINUTES

March 22, 2022

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

March 22, 2022 **9:30 AM** **Motion**

HEARD BY: Johnson, Eric **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Kathryn Hansen-McDowell

RECORDER: Angie Calvillo

REPORTER:

PARTIES

PRESENT: Waters, Steven L Attorney

JOURNAL ENTRIES

- COURT FINDS this claim was previously denied by Judge Silva, ADOPTED Judge Silva's Findings of Fact, Conclusions of Law and Order signed august 4, 2021 and ORDERED, Plaintiff's Motion DENIED.

CLERK'S NOTE: The above minute order has been distributed to: Renard T. Polk, General Delivery,
Las Vegas NV 89030. 4/6/22khn

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated May 5, 2023, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises two volumes with pages numbered 1 through 426.

RENARD T. POLK,

Plaintiff(s),

vs.

TIMOTHY FILSON; WILLIAM RUEBERT;
TASHEENA SANDOVAL,

Defendant(s),

Case No: A-18-780833-C
Related Case 00C166490
Dept. No: XX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 18 day of May 2023.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk