

Roy D. Moraga, # 31584
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, Nevada, 89702

Electronically Filed
08/17/2023

Heather S. Linn
CLERK OF THE COURT

In Propria Persona

Electronically Filed
Aug 21 2023 08:45 AM
Elizabeth A. Brown
Clerk of Supreme Court

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

ROY D. MORAGA,

Plaintiff,

Vs.

CASE No. A-18-782168-W

ISIDOR BACA, WARDEN,

DEPT. No. VII

Defendant.

Dkt. No. _____

NOTICE OF APPEAL

Please take notice that Roy D. Moraga, Defendant, and in his proper person, hereby appeals to the Nevada Court of Appeals / Nevada Supreme Court, the judgment(s) in the above-entitled action(s) entered in this Honorable Court on or about the 31 day of July, 2023.

This notice of Appeal is timely filed pursuant to NRAP 4(b).

DATED this 14 day of August, 2023.

RESPECTFULLY SUBMITTED,

Roy D. Moraga
In Propria Persona

RECEIVED
AUG 17 2023
CLERK OF THE COURT

CERTIFICATE OF MAILING

I, Roy D. Moraga, certify under the penalties of perjury, that service was made of this NOTICE OF APPEAL & DESIGNATION OF RECORD ON APPEAL, pursuant to NRCP 5(b), by placing same in the United States mail, postage prepaid and addressed as follows:

Alexander Chen
District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

(Copy to)

Roy D. Moraga #31584
NNCL - P.O. Box 7000
Carson City, NV 89702
Petitioner in Pro Se

DATED this 14 day of August, 20 23

BY: Roy D. Moraga

Appellant, In Proper Person



1 ASTA

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4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

10 ROY D. MORAGA,

11 Plaintiff(s),

12 vs.

13 ISIDOR BACA,

14 Defendant(s),
15

Case No: A-18-782168-W

Dept No: VII

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Roy D. Moraga

20 2. Judge: Danielle Chio

21 3. Appellant(s): Roy D. Moraga

22 Counsel:

23 Roy D. Moraga #31584
24 P.O. Box 7000
Carson City, NV 89702

25 4. Respondent (s): Isidor Baca

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
Las Vegas, NV 89155-2212

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

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

5 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

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

7 8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
8 ***Expires 1 year from date filed*
9 Appellant Filed Application to Proceed in Forma Pauperis: No
Date Application(s) filed: N/A

10 9. Date Commenced in District Court: October 1, 2023

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

12 Type of Judgment or Order Being Appealed: Misc. Order

13 11. Previous Appeal: Yes

14 Supreme Court Docket Number(s): 48282, 44685, 49049, 61734, 64639, 64931, 65701,
15 66826, 72898, 73349, 76345, 78172, 83179

16 12. Child Custody or Visitation: N/A

17 13. Possibility of Settlement: Unknown

18 Dated This 18 day of August 2023.

19 Steven D. Grierson, Clerk of the Court

20
21 /s/ Amanda Hampton

22 Amanda Hampton, Deputy Clerk
23 200 Lewis Ave
24 PO Box 551601
25 Las Vegas, Nevada 89155-1601
(702) 671-0512

26 cc: Roy D. Moraga
27
28

Heaven S. Hemin
CLERK OF THE COURT

Roy J. Moraga # 31584
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, Nevada 89702
Appellant, In Proper Person

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

Roy J. Moraga

Appellant,

Vs.

ISIDOR BACA

Respondent.

CASE No. A-18-782128-W

DEPT. No. VII

Dkt. No. _____

DESIGNATION OF RECORD ON APPEAL

Please take notice that Roy J. Moraga, Appellant, and in his proper person, hereby files this Designation of Record on Appeal in the above entitled action, pursuant to NRAP 10(b); and respectfully herein asks this Honorable Court to designate the record on appeal, to be certified by the Clerk of the District Court and transcribed to the Clerk of the Nevada Court of Appeals / Nevada Supreme Court: All motions, pleadings, judgments and transcripts.

DATED this 14 day of August, 2023.

RESPECTFULLY SUBMITTED,

Roy J. Moraga
Appellant in pro se

CASE SUMMARY

CASE NO. A-18-782168-W

Roy Moraga, Plaintiff(s)
vs.
Isidor Baca, Defendant(s)

§
§
§
§
§
§

Location: **Department 7**
 Judicial Officer: **Chio, Danielle**
 Filed on: **10/01/2018**
 Case Number History:
 Cross-Reference Case Number: **A782168**
 Supreme Court No.: **78172**

CASE INFORMATION

Related Cases
 89C092174 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Statistical Closures
 07/31/2023 Other Manner of Disposition
 01/31/2019 Other Manner of Disposition

Case Status: **07/31/2023 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-18-782168-W
 Court Department 7
 Date Assigned 03/20/2023
 Judicial Officer Chio, Danielle

PARTY INFORMATION

Plaintiff Moraga, Roy D

Lead Attorneys

Pro Se

Defendant Baca, Isidor


Wolfson, Steven B
Retained
 702-671-2700(W)


DATE


EVENTS & ORDERS OF THE COURT


INDEX


EVENTS

10/01/2018  Petition for Writ of Habeas Corpus
 Filed by: Plaintiff Moraga, Roy D
[1] Petition for Writ of Habeas Corpus Actual Innocence Pursuant to NRS 207.01 to NRS 207.012 and the First Amendment Claim

10/01/2018  Motion for Leave to Proceed in Forma Pauperis
 Filed By: Plaintiff Moraga, Roy D
[2] Motion for Leave to Proceed in Forma Pauperis (Confidential)

10/16/2018  Order for Petition for Writ of Habeas Corpus
[3] Order for Petition for Writ of Habeas Corpus

11/06/2018  Motion for Appointment of Attorney
 Filed By: Plaintiff Moraga, Roy D
[4] Motion for Appointment of Counsel Pursuant to NRS 34.750

11/30/2018  Response
[5] State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)

CASE SUMMARY
CASE NO. A-18-782168-W












12/26/2018	 Reply Filed by: Plaintiff Moraga, Roy D <i>[6] Petitioner's Reply and Objection to States Response to Habeas-Corpus</i>
01/31/2019	 Order to Statistically Close Case <i>[7] Civil Order to Statistically Close Case</i>
01/31/2019	 Findings of Fact, Conclusions of Law and Order <i>[8] Findings of Fact, Conclusions of Law and Order</i>
02/05/2019	 Notice of Entry <i>[9] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
02/14/2019	 Notice of Appeal Filed By: Plaintiff Moraga, Roy D <i>[10] Notice of Appeal</i>
02/20/2019	 Case Appeal Statement <i>[11] Case Appeal Statement</i>
04/29/2019	Administrative Reassignment - Judicial Officer Change <i>To Judge Jacqueline M. Bluth</i>
11/06/2019	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>[12] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed</i>
09/07/2021	Case Reassigned to Department 17 <i>From Judge Jacqueline Bluth to Judge Michael Villani</i>
07/18/2022	Administrative Reassignment - Judicial Officer Change <i>Cases Reassigned from Judge Michael Villani to Vacant, DC 17</i>
01/03/2023	Case Reassigned to Department 7 <i>Pursuant to Administrative Order 22-14 - Reassigned to Vacant DC 7</i>
03/20/2023	Administrative Reassignment - Judicial Officer Change <i>Pursuant to Administrative Order 23-03 - Reassigned to Judge Danielle Chio</i>
05/17/2023	 Notice Filed By: Plaintiff Moraga, Roy D <i>[13] Notice</i>
05/17/2023	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Moraga, Roy D <i>[14] Post Conviction</i>
05/17/2023	 Application to Proceed in Forma Pauperis Filed By: Plaintiff Moraga, Roy D <i>[15] Application to Proceed in Forma Pauperis</i>
05/17/2023	 Motion for Appointment of Attorney Filed By: Plaintiff Moraga, Roy D <i>[16] Motion for Appointment of Counsel</i>

CASE SUMMARY
CASE NO. A-18-782168-W

05/23/2023	 Order for Petition for Writ of Habeas Corpus <i>[17] Order for Petition for Writ of Habeas Corpus</i>
06/07/2023	 Clerk's Notice of Hearing <i>[18] Notice of Hearing</i>
06/13/2023	 Opposition <i>[19] State's Opposition to Defendant's Motion to Appoint Counsel</i>
06/13/2023	 Opposition <i>[20] State's Opposition to Defendant's Petition for Writ of Habeas Corpus</i>
07/07/2023	 Motion for Leave to File <i>[21] Motion for Leave to Change the Caption</i>
07/07/2023	 Clerk's Notice of Hearing <i>[22] Notice of Hearing</i>
07/07/2023	 Clerk's Notice of Nonconforming Document <i>[23] Clerk's Notice of Nonconforming Document</i>
07/13/2023	 Miscellaneous Filing <i>[24] Register Of Action</i>
07/18/2023	 Motion for Leave to File <i>[25] Motion for Leave to File First Amended Petition</i>
07/18/2023	 Notice of Motion Filed By: Plaintiff Moraga, Roy D <i>[26] Notice</i>
07/18/2023	 Amended Petition Filed By: Plaintiff Moraga, Roy D <i>[27] First Amended Petition for Factual Innocence Pursuant to NRS 34.930, Newly Discovered Evidence NRS 34.910</i>
07/18/2023	 Clerk's Notice of Hearing <i>[28] Notice of Hearing</i>
07/18/2023	 Clerk's Notice of Nonconforming Document <i>[29] Clerk's Notice of Nonconforming Document</i>
07/31/2023	 Findings of Fact, Conclusions of Law and Order <i>[30] Findings of Fact, Conclusions of Law, and Order</i>
08/03/2023	 Notice of Entry of Findings of Fact, Conclusions of Law <i>[31] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
08/15/2023	 Motion Filed By: Defendant Baca, Isidor <i>[32] Motion for Leave to Change the Caption</i>


CASE SUMMARY

CASE NO. A-18-782168-W

08/15/2023	 Clerk's Notice of Hearing <i>[33] Notice of Hearing</i>
08/17/2023	 Notice of Appeal Filed By: Plaintiff Moraga, Roy D <i>[34] Notice of Appeal</i>
08/17/2023	 Designation of Record on Appeal Filed By: Plaintiff Moraga, Roy D <i>[35] Designation of Record on Appeal</i>
08/17/2023	 Notice of Appeal Filed By: Plaintiff Moraga, Roy D <i>[36] Notice of Appeal</i>
08/17/2023	 Designation of Record on Appeal Filed By: Plaintiff Moraga, Roy D <i>[37] Designation of Record on Appeal</i>
08/17/2023	 Order Filed By: Plaintiff Moraga, Roy D <i>[38] Order Denying Defendant's Motion for Leave to Change the Caption and Motion for Leave to File First Amended Petition</i>
08/18/2023	 Case Appeal Statement <i>Case Appeal Statement</i>
08/18/2023	 Case Appeal Statement <i>Case Appeal Statement</i>
	<u>DISPOSITIONS</u>
11/06/2019	Clerk's Certificate (Judicial Officer: Bluth, Jacqueline M.) Debtors: Roy D Moraga (Plaintiff) Creditors: Isidor Baca (Defendant) Judgment: 11/06/2019, Docketed: 11/13/2019 Comment: Supreme Court No. 78172 Appeal Affirmed
	<u>HEARINGS</u>
01/02/2019	 Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Bixler, James) Denied; Journal Entry Details: <i>Defendant not present. Present on behalf of the State, Deputy District Attorney Brad Turner. Court noted the late reply to the State's opposition. Matter submitted on the pleadings by Mr. Turner. Court stated findings and ORDERED, Defendant's request for appointment of counsel DENIED, Petition For Writ of Habeas Corpus DENIED; State to prepare the order. NDC ;</i>
07/10/2023	 Motion for Appointment of Attorney (8:30 AM) (Judicial Officer: Chio, Danielle) <i>Plaintiff/ Inmate's Motion for Appointment of Counsel</i> Denied; Journal Entry Details: <i>Court noted matter is on for Mr. Moraga's Motion. COURT STATED its FINDINGS, and ORDERED, the Plaintiff/Inmates's Motion for Appointment of counsel DENIED. State to prepare the Order.;</i>
07/24/2023	 Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Chio, Danielle)

CASE SUMMARY

CASE NO. A-18-782168-W

	<p>Denied;</p> <p>Journal Entry Details:</p> <p><i>Defendant not present. COURT NOTED, the Writ was filed regarding newly discovered evidence on the home invasion count, and the Petitioner was not arrested on the sexual assault count. however is currently serving a sentence for that charge, therefore the Petition is claiming to be factually innocent due to newly discovered evidence and ineffective assistance. COURT FINDS, in regards to the factually innocent claim, the claim is time barred as the challenge of a Judgment of Conviction (JOC) has to be within one year of the filing of the JOC or the Remittitur, unless there is good cause for a delay. COURT FURTHER FINDS, in regards to newly discovered evidence, there is no impediment and the petition is untimely, and the Petitioner does not meet the criteria outlined in NRS 34.900-34.999, and therefore, ORDERED, Petition for Writ of Habeas Corpus is DENIED; State to prepare the Findings of Facts and Conclusion of Law. NDC CLERK'S NOTE: A copy of this minute order was mailed to Roy Morgana #31584, NNCC, PO BOX 7000, Carson City, NV 89702./ (ss 7-26-2023);</i></p>
08/07/2023	<p>Motion for Leave (8:30 AM) (Judicial Officer: Chio, Danielle)</p> <p><i>Plaintiff / Inmate's - Motion for Leave to Change the Caption</i></p> <p>Denied; Plaintiff / Inmate's - Motion for Leave to Change the Caption</p>
08/07/2023	<p>Motion for Leave (8:30 AM) (Judicial Officer: Chio, Danielle)</p> <p><i>Plaintiff / Inmate's - Motion for Leave to File First Amended Petition</i></p> <p>Denied; Plaintiff / Inmate's - Motion for Leave to File First Amended Petition</p>
08/07/2023	<p> All Pending Motions (8:30 AM) (Judicial Officer: Chio, Danielle)</p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>PLAINTIFF / INMATE'S - MOTION FOR LEAVE TO CHANGE THE CAPTION . . .</i></p> <p><i>PLAINTIFF / INMATE'S - MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION</i></p> <p><i>COURT NOTED having previously heard, decided, and DENIED the Post-Conviction Petition for Habeas Corpus on 7/31/23. COURT ORDERED, 8/22/23 hearing on Motion for Leave to File First Amended Petition ADVANCED to today and DENIED; and Motion for Leave to Change the Caption DENIED. NDC;</i></p>
09/18/2023	<p>Motion (8:30 AM) (Judicial Officer: Chio, Danielle)</p> <p><i>Plaintiff's - Motion for Leave to Change the Caption</i></p>

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

A-18-782168-W

IV

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

Plaintiff(s) (name/address/phone):

Roy Moraga

Defendant(s) (name/address/phone):

Isidor Baca

Attorney (name/address/phone):

Attorney (name/address/phone):

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

<p style="text-align: center;">Real Property</p> <p>Landlord/Tenant</p> <p><input type="checkbox"/> Unlawful Detainer</p> <p><input type="checkbox"/> Other Landlord/Tenant</p> <p>Title to Property</p> <p><input type="checkbox"/> Judicial Foreclosure</p> <p><input type="checkbox"/> Other Title to Property</p> <p>Other Real Property</p> <p><input type="checkbox"/> Condemnation/Eminent Domain</p> <p><input type="checkbox"/> Other Real Property</p>	<p style="text-align: center;">Negligence</p> <p><input type="checkbox"/> Auto</p> <p><input type="checkbox"/> Premises Liability</p> <p><input type="checkbox"/> Other Negligence</p> <p style="text-align: center;">Malpractice</p> <p><input type="checkbox"/> Medical/Dental</p> <p><input type="checkbox"/> Legal</p> <p><input type="checkbox"/> Accounting</p> <p><input type="checkbox"/> Other Malpractice</p>	<p style="text-align: center;">Torts</p> <p style="text-align: center;">Other Torts</p> <p><input type="checkbox"/> Product Liability</p> <p><input type="checkbox"/> Intentional Misconduct</p> <p><input type="checkbox"/> Employment Tort</p> <p><input type="checkbox"/> Insurance Tort</p> <p><input type="checkbox"/> Other Tort</p>
<p style="text-align: center;">Probate</p> <p>Probate <i>(select case type and estate value)</i></p> <p><input type="checkbox"/> Summary Administration</p> <p><input type="checkbox"/> General Administration</p> <p><input type="checkbox"/> Special Administration</p> <p><input type="checkbox"/> Set Aside</p> <p><input type="checkbox"/> Trust/Conservatorship</p> <p><input type="checkbox"/> Other Probate</p> <p>Estate Value</p> <p><input type="checkbox"/> Over \$200,000</p> <p><input type="checkbox"/> Between \$100,000 and \$200,000</p> <p><input type="checkbox"/> Under \$100,000 or Unknown</p> <p><input type="checkbox"/> Under \$2,500</p>	<p style="text-align: center;">Construction Defect & Contract</p> <p>Construction Defect</p> <p><input type="checkbox"/> Chapter 40</p> <p><input type="checkbox"/> Other Construction Defect</p> <p style="text-align: center;">Contract Case</p> <p><input type="checkbox"/> Uniform Commercial Code</p> <p><input type="checkbox"/> Building and Construction</p> <p><input type="checkbox"/> Insurance Carrier</p> <p><input type="checkbox"/> Commercial Instrument</p> <p><input type="checkbox"/> Collection of Accounts</p> <p><input type="checkbox"/> Employment Contract</p> <p><input type="checkbox"/> Other Contract</p>	<p style="text-align: center;">Judicial Review/Appeal</p> <p>Judicial Review</p> <p><input type="checkbox"/> Foreclosure Mediation Case</p> <p><input type="checkbox"/> Petition to Seal Records</p> <p><input type="checkbox"/> Mental Competency</p> <p style="text-align: center;">Nevada State Agency Appeal</p> <p><input type="checkbox"/> Department of Motor Vehicle</p> <p><input type="checkbox"/> Worker's Compensation</p> <p><input type="checkbox"/> Other Nevada State Agency</p> <p style="text-align: center;">Appeal Other</p> <p><input type="checkbox"/> Appeal from Lower Court</p> <p><input type="checkbox"/> Other Judicial Review/Appeal</p>
<p style="text-align: center;">Civil Writ</p> <p>Civil Writ</p> <p><input checked="" type="checkbox"/> Writ of Habeas Corpus</p> <p><input type="checkbox"/> Writ of Mandamus</p> <p><input type="checkbox"/> Writ of Quo Warrant</p> <p><input type="checkbox"/> Writ of Prohibition</p> <p><input type="checkbox"/> Other Civil Writ</p>		<p style="text-align: center;">Other Civil Filing</p> <p>Other Civil Filing</p> <p><input type="checkbox"/> Compromise of Minor's Claim</p> <p><input type="checkbox"/> Foreign Judgment</p> <p><input type="checkbox"/> Other Civil Matters</p>

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

10-1-2018

Date

Prepared by Clerk

Signature of initiating party or representative

See other side for family-related case filings.



FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #0010539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

DISTRICT COURT
CLARK COUNTY, NEVADA

ROY D MORAGA,
#0938554

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: **A-18-782168-W**
(89C092174)

DEPT NO: **7**

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

DATE OF HEARING: **JULY 10, 2023**
TIME OF HEARING: **8:30 AM**

THIS CAUSE having presented before the Honorable DANIELLE CHIO, District Judge, on the 10TH of July, 2023; Petitioner not present, IN PROPER PERSON; Respondent represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through HALEY JARAMILLO, 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**

2 The Judgment of Conviction in this case was based on a jury trial and was filed on July
3 7, 1990. Remittur issued from his appeal on September 17, 1991. He has since filed multiple
4 petitions for writ of habeas corpus. This is yet another time-barred petition that he has filed.
5 In addition to being time-barred, he raises issues that are not permitted in a petition for writ of
6 habeas corpus (post-conviction).

7 **CONCLUSIONS OF LAW**

8 **I. PETITIONER'S PETITION IS TIME BARRED**

9 A petition challenging a judgment of conviction's validity must be filed within one year
10 of the judgment or within one year of the remittitur, unless there is good cause to excuse delay.
11 NRS 34.726(1). The Nevada Supreme Court has held that NRS 34.726 should be construed by
12 its plain meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528 (2001). The
13 one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of
14 conviction is filed or a remittitur from a timely direct appeal is issued. Dickerson v. State, 114
15 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

16 The one-year time limit for preparing petitions for post-conviction relief under NRS
17 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
18 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
19 evidence presented by the defendant that he purchased postage through the prison and mailed
20 the Notice within the one-year time limit.

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

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

//

1 Id. (quoting Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984)).
2 Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
3 when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
4 has granted no discretion to the district courts regarding whether to apply the statutory
5 procedural bars; the rules *must* be applied.

6 Here, remittitur issue in 1991. Clearly his current petition is time-barred absent a
7 showing of good cause.

8 **I. PETITIONER HAS NOT DEMONSTRATED GOOD CAUSE TO OVERCOME**
9 **THE PRESUMPTIVE DISMISSAL OF HIS PETITION**

10 A showing of good cause and prejudice may overcome procedural bars. “To establish
11 good cause, appellants *must* show that an impediment external to the defense prevented their
12 compliance with the applicable procedural rule. A qualifying impediment might be shown
13 where the factual or legal basis for a claim was not reasonably available at the time of default.”
14 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court
15 continued, “appellants cannot manufacture good cause[.]” Id. at 621, 81 P.3d at 526. To
16 establish prejudice, the defendant must show ““not merely that the errors of [the proceedings]
17 created possibility of prejudice, but that they worked to his actual and substantial disadvantage,
18 in affecting the state proceedings with error of constitutional dimensions.”” Hogan v. Warden,
19 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152,
20 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a “substantial reason;
21 one that affords a legal excuse.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506
22 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Clearly, any
23 delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

24 Petitioner has failed to establish good cause or any reason why this court should
25 consider this untimely petition, therefore his petition is denied.

26 //

27 //

28 //

1 **II. THIS IS NOT A PETITION TO ESTABLISH FACTUAL INNOCENCE**

2 Petitioner partially titles this as a petition to establish factual innocence upon newly
3 discovered evidence, but he does not meet any requirements for filing such a petition. NRS
4 34.900 to NRS 34.990 contain the provisions on a statute to establish factual innocence. NRS
5 34.930 defines the type of evidence that a court would consider “newly discovered.” None of
6 his claims come close to fitting the statute on factual innocence. As such, his claim that this is
7 a factual innocence petition is denied.

8 **III. PETITIONER IS NOT ENTITLED TO COUNSEL**

9 Defendant has previously filed multiple petitions for writ of habeas corpus. His case is
10 incredibly old and he has failed to gain any previous relief. He now asks for an attorney to be
11 appointed for the purpose of filing another petition. Defendant is not entitled to the
12 appointment of counsel for a second petition for writ of habeas corpus. Moreover, at this time
13 there is no pending petition to even appoint him an attorney.

14 In *Coleman v. Thompson*, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566 (1991), the United
15 States Supreme Court ruled that the Sixth Amendment provides no right to counsel in post-
16 conviction proceedings. In *McKague v. Warden*, 112 Nev. 159, 912 P.2d 255 (1996), the
17 Nevada Supreme Court similarly observed that “[t]he Nevada Constitution . . . does not
18 guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada
19 Constitution’s right to counsel provision as being coextensive with the Sixth Amendment to
20 the United States Constitution.”

21 NRS 34.750 provides, in pertinent part:

22 “[a] petition may allege that the Defendant is unable to pay the
23 costs of the proceedings or employ counsel. If the court is satisfied
24 that the allegation of indigency is true and the petition *is not*
25 dismissed summarily, the court may appoint counsel at the time
 the court orders the filing of an answer and a return. In making its
 determination, the court may consider whether:

- 26 (a) The issues are difficult;
27 (b) The Defendant is unable to comprehend the
 proceedings; or
28 (c) Counsel is necessary to proceed with discovery.”
(emphasis added).

1 Under NRS 34.750, it is clear that the court has discretion in determining whether to appoint
2 counsel. *McKague* specifically held that with the exception of cases in which appointment of
3 counsel is mandated by statute, one does not have “[a]ny constitutional or statutory right to
4 counsel at all” in post-conviction proceedings. *Id.* at 164.

5 NRS 34.750 reads as follows:

6 1. A petition may allege that the petitioner is unable to pay the costs
7 of the proceedings or to employ counsel. If the court is satisfied that
8 the allegation of indigency is true and the petition is not dismissed
9 summarily, the court may appoint counsel to represent the petitioner.
In making its determination, the court may consider, among other
things, the severity of the consequences facing the petitioner and
whether:

10 (a) The issues presented are difficult;

11 (b) The petitioner is unable to comprehend the proceedings; or

12 (c) Counsel is necessary to proceed with discovery.

13 In *Renteria-Novoa*, the Nevada Supreme Court further laid out various factors that the
14 courts can consider when deciding if appointment counsel is appropriate. 133 Nev. 75, 391
15 P.3d 760 (2017). The Court there held that it was an abuse of discretion not to appoint an
16 attorney based on the severity of the consequences, the potential need for discovery, and
17 problems that the petitioner had with the English language.

18 Defendant has already had the assistance of counsel in prior petitions. Thus, he is not
19 entitled to the appointment of yet another attorney. Moreover, even if he were permitted a
20 second attorney, there is no pending petition upon which to even consider this motion.
21 Therefore, the request for appointment of an attorney is denied.

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ORDER

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

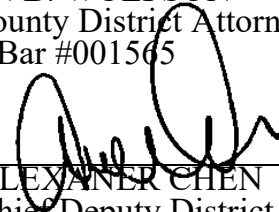
Dated this 31st day of July, 2023



**FBC 1A4 132C 0D43
Danielle Chio
District Court Judge**

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

BY



ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #0010539

hjc/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Roy Moraga, Plaintiff(s)

CASE NO: A-18-782168-W

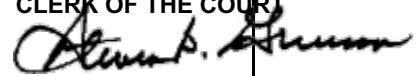
7 vs.

DEPT. NO. Department 7

8 Isidor Baca, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case. The filer has been
13 notified to serve all parties by traditional means.
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NEFF

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ROY D. MORAGA,

Petitioner,

vs.

ISIDOR BACA,

Respondent,

Case No: A-18-782168-W

Dept No: VII

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

PLEASE TAKE NOTICE that on July 31, 2023, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on August 3, 2023.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Cierra Borum

Cierra Borum, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 3 day of August 2023, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

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

☒ The United States mail addressed as follows:

Roy D. Moraga # 31584
P.O. Box 7000
Carson City, NV 89702

/s/ Cierra Borum

Cierra Borum, Deputy Clerk

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #0010539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

DISTRICT COURT
CLARK COUNTY, NEVADA

ROY D MORAGA,
#0938554

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: **A-18-782168-W**
(89C092174)

DEPT NO: **7**

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

DATE OF HEARING: **JULY 10, 2023**
TIME OF HEARING: **8:30 AM**

THIS CAUSE having presented before the Honorable DANIELLE CHIO, District Judge, on the 10TH of July, 2023; Petitioner not present, IN PROPER PERSON; Respondent represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through HALEY JARAMILLO, 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**

2 The Judgment of Conviction in this case was based on a jury trial and was filed on July
3 7, 1990. Remittur issued from his appeal on September 17, 1991. He has since filed multiple
4 petitions for writ of habeas corpus. This is yet another time-barred petition that he has filed.
5 In addition to being time-barred, he raises issues that are not permitted in a petition for writ of
6 habeas corpus (post-conviction).

7 **CONCLUSIONS OF LAW**

8 **I. PETITIONER'S PETITION IS TIME BARRED**

9 A petition challenging a judgment of conviction's validity must be filed within one year
10 of the judgment or within one year of the remittitur, unless there is good cause to excuse delay.
11 NRS 34.726(1). The Nevada Supreme Court has held that NRS 34.726 should be construed by
12 its plain meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528 (2001). The
13 one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of
14 conviction is filed or a remittitur from a timely direct appeal is issued. Dickerson v. State, 114
15 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

16 The one-year time limit for preparing petitions for post-conviction relief under NRS
17 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
18 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
19 evidence presented by the defendant that he purchased postage through the prison and mailed
20 the Notice within the one-year time limit.

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

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

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1 Id. (quoting Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984)).
2 Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
3 when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
4 has granted no discretion to the district courts regarding whether to apply the statutory
5 procedural bars; the rules *must* be applied.

6 Here, remittitur issue in 1991. Clearly his current petition is time-barred absent a
7 showing of good cause.

8 **I. PETITIONER HAS NOT DEMONSTRATED GOOD CAUSE TO OVERCOME**
9 **THE PRESUMPTIVE DISMISSAL OF HIS PETITION**

10 A showing of good cause and prejudice may overcome procedural bars. “To establish
11 good cause, appellants *must* show that an impediment external to the defense prevented their
12 compliance with the applicable procedural rule. A qualifying impediment might be shown
13 where the factual or legal basis for a claim was not reasonably available at the time of default.”
14 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court
15 continued, “appellants cannot manufacture good cause[.]” Id. at 621, 81 P.3d at 526. To
16 establish prejudice, the defendant must show ““not merely that the errors of [the proceedings]
17 created possibility of prejudice, but that they worked to his actual and substantial disadvantage,
18 in affecting the state proceedings with error of constitutional dimensions.”” Hogan v. Warden,
19 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152,
20 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a “substantial reason;
21 one that affords a legal excuse.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506
22 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Clearly, any
23 delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

24 Petitioner has failed to establish good cause or any reason why this court should
25 consider this untimely petition, therefore his petition is denied.

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1 **II. THIS IS NOT A PETITION TO ESTABLISH FACTUAL INNOCENCE**

2 Petitioner partially titles this as a petition to establish factual innocence upon newly
3 discovered evidence, but he does not meet any requirements for filing such a petition. NRS
4 34.900 to NRS 34.990 contain the provisions on a statute to establish factual innocence. NRS
5 34.930 defines the type of evidence that a court would consider “newly discovered.” None of
6 his claims come close to fitting the statute on factual innocence. As such, his claim that this is
7 a factual innocence petition is denied.

8 **III. PETITIONER IS NOT ENTITLED TO COUNSEL**

9 Defendant has previously filed multiple petitions for writ of habeas corpus. His case is
10 incredibly old and he has failed to gain any previous relief. He now asks for an attorney to be
11 appointed for the purpose of filing another petition. Defendant is not entitled to the
12 appointment of counsel for a second petition for writ of habeas corpus. Moreover, at this time
13 there is no pending petition to even appoint him an attorney.

14 In *Coleman v. Thompson*, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566 (1991), the United
15 States Supreme Court ruled that the Sixth Amendment provides no right to counsel in post-
16 conviction proceedings. In *McKague v. Warden*, 112 Nev. 159, 912 P.2d 255 (1996), the
17 Nevada Supreme Court similarly observed that “[t]he Nevada Constitution . . . does not
18 guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada
19 Constitution’s right to counsel provision as being coextensive with the Sixth Amendment to
20 the United States Constitution.”

21 NRS 34.750 provides, in pertinent part:

22 “[a] petition may allege that the Defendant is unable to pay the
23 costs of the proceedings or employ counsel. If the court is satisfied
24 that the allegation of indigency is true and the petition *is not*
25 *dismissed summarily*, the court may appoint counsel at the time
 the court orders the filing of an answer and a return. In making its
 determination, the court may consider whether:

- 26 (a) The issues are difficult;
27 (b) The Defendant is unable to comprehend the
 proceedings; or
28 (c) Counsel is necessary to proceed with discovery.”
(emphasis added).

1 Under NRS 34.750, it is clear that the court has discretion in determining whether to appoint
2 counsel. *McKague* specifically held that with the exception of cases in which appointment of
3 counsel is mandated by statute, one does not have “[a]ny constitutional or statutory right to
4 counsel at all” in post-conviction proceedings. *Id.* at 164.

5 NRS 34.750 reads as follows:

6 1. A petition may allege that the petitioner is unable to pay the costs
7 of the proceedings or to employ counsel. If the court is satisfied that
8 the allegation of indigency is true and the petition is not dismissed
9 summarily, the court may appoint counsel to represent the petitioner.
In making its determination, the court may consider, among other
things, the severity of the consequences facing the petitioner and
whether:

10 (a) The issues presented are difficult;

11 (b) The petitioner is unable to comprehend the proceedings; or

12 (c) Counsel is necessary to proceed with discovery.

13 In *Renteria-Novoa*, the Nevada Supreme Court further laid out various factors that the
14 courts can consider when deciding if appointment counsel is appropriate. 133 Nev. 75, 391
15 P.3d 760 (2017). The Court there held that it was an abuse of discretion not to appoint an
16 attorney based on the severity of the consequences, the potential need for discovery, and
17 problems that the petitioner had with the English language.

18 Defendant has already had the assistance of counsel in prior petitions. Thus, he is not
19 entitled to the appointment of yet another attorney. Moreover, even if he were permitted a
20 second attorney, there is no pending petition upon which to even consider this motion.
21 Therefore, the request for appointment of an attorney is denied.

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ORDER

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

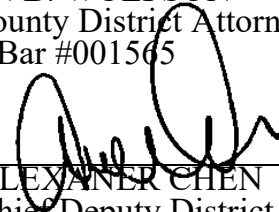
Dated this 31st day of July, 2023



**FBC 1A4 132C 0D43
Danielle Chio
District Court Judge**

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

BY



ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #0010539

hjc/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Roy Moraga, Plaintiff(s)

CASE NO: A-18-782168-W

7 vs.

DEPT. NO. Department 7

8 Isidor Baca, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case. The filer has been
13 notified to serve all parties by traditional means.
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 02, 2019

A-18-782168-W Roy Moraga, Plaintiff(s)
vs.
Isidor Baca, Defendant(s)

**January 02, 2019 8:30 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Bixler, James

COURTROOM: RJC Courtroom 10C

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Defendant not present.

Present on behalf of the State, Deputy District Attorney Brad Turner. Court noted the late reply to the State's opposition. Matter submitted on the pleadings by Mr. Turner. Court stated findings and ORDERED, Defendant's request for appointment of counsel DENIED, Petition For Writ of Habeas Corpus DENIED; State to prepare the order.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 10, 2023

A-18-782168-W Roy Moraga, Plaintiff(s)
vs.
Isidor Baca, Defendant(s)

**July 10, 2023 8:30 AM Motion for Appointment of
Attorney**

HEARD BY: Chio, Danielle

COURTROOM: RJC Courtroom 05B

COURT CLERK: Terinda Mang
Madalyn Riggio

RECORDER: Stacey Ray

REPORTER:

PARTIES

PRESENT: Jaramillo, Haley Ann Attorney

JOURNAL ENTRIES

- Court noted matter is on for Mr. Moraga's Motion. COURT STATED its FINDINGS, and ORDERED, the Plaintiff/Inmates's Motion for Appointment of counsel DENIED. State to prepare the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 24, 2023

A-18-782168-W Roy Moraga, Plaintiff(s)
vs.
Isidor Baca, Defendant(s)

**July 24, 2023 8:30 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Chio, Danielle **COURTROOM:** RJC Courtroom 05B

COURT CLERK: Serenity Sivongsa

RECORDER: Stacey Ray

REPORTER:

PARTIES

PRESENT: Heap, Hilary Attorney

JOURNAL ENTRIES

- Defendant not present.

COURT NOTED, the Writ was filed regarding newly discovered evidence on the home invasion count, and the Petitioner was not arrested on the sexual assault count. however is currently serving a sentence for that charge, therefore the Petition is claiming to be factually innocent due to newly discovered evidence and ineffective assistance. COURT FINDS, in regards to the factually innocent claim, the claim is time barred as the challenge of a Judgment of Conviction (JOC) has to be within one year of the filing of the JOC or the Remittitur, unless there is good cause for a delay. COURT FURTHER FINDS, in regards to newly discovered evidence, there is no impediment and the petition is untimely, and the Petitioner does not meet the criteria outlined in NRS 34.900-34.999, and therefore, ORDERED, Petition for Writ of Habeas Corpus is DENIED; State to prepare the Findings of Facts and Conclusion of Law.

NDC

CLERK'S NOTE: A copy of this minute order was mailed to Roy Morgana #31584, NNCC, PO BOX 7000, Carson City, NV 89702./ (ss 7-26-2023)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

August 07, 2023

A-18-782168-W Roy Moraga, Plaintiff(s)
vs.
Isidor Baca, Defendant(s)

August 07, 2023 8:30 AM All Pending Motions

HEARD BY: Chio, Danielle **COURTROOM:** RJC Courtroom 05B

COURT CLERK: Pharan Burchfield

RECORDER: Stacey Ray

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- PLAINTIFF / INMATE'S - MOTION FOR LEAVE TO CHANGE THE CAPTION . . . PLAINTIFF / INMATE'S - MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION

COURT NOTED having previously heard, decided, and DENIED the Post-Conviction Petition for Habeas Corpus on 7/31/23. COURT ORDERED, 8/22/23 hearing on Motion for Leave to File First Amended Petition ADVANCED to today and DENIED; and Motion for Leave to Change the Caption DENIED.

NDC

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DESIGNATION OF RECORD ON APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES

ROY D. MORAGA,

Plaintiff(s),

vs.

ISIDOR BACA,

Defendant(s),

Case No: A-18-782168-W

Dept No: VII

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 August 2023.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

