

Electronically Filed  
10/09/2023

*Andrew J. Linn*  
CLERK OF THE COURT

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Electronically Filed  
Oct 12 2023 09:24 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

*Daisy Lynne Meadows*,  
PLAINTIFF,

VS.

*State of Nevada*

DEFENDANT.

CASE NO. *A-23-873087-W*

*XV*

NOTICE OF APPEAL

Notice is hereby given that *Daisy Lynne Meadows*, In Pro se, Plaintiff, in the above named captioned case, hereby appeals to the United States Court Of Appeals for the Ninth Circuit from the final judgment in \_\_\_\_\_ on *Sept 7<sup>th</sup>*,

*2023*, which was received by Plaintiff on *September 10<sup>th</sup>*.

Plaintiff respectfully request on this *20<sup>th</sup>* day of *September*, *2023*, that this Honorable Court enter this Notice of Appeal, by Rules of the Court.

*[Signature]*

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CLERK OF THE COURT

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BASED ON YOUR PRESENT KNOWLEDGE:

1. Does this appeal involve a question of first impression?  Yes  No
  
2. Will the determination of this appeal turn on the interpretation or application of a particular case or statute?  Yes  No  
If yes, provide:  
Case name/statute \_\_\_\_\_  
Citation: \_\_\_\_\_  
Docket number, if unreported: \_\_\_\_\_
  
3. Is there any case now pending or about to be filed in this court or any other court or administrative agency which:
  - a) Arises from substantially the same case or controversy as this appeal?  
 Yes  No
  
  - b) Involves an issue that is substantially the same, similar or related to an issue in this appeal?  
 Yes  No
 Case name: \_\_\_\_\_  
Citation: \_\_\_\_\_  
Court or agency: \_\_\_\_\_  
Docket number, if unreported: \_\_\_\_\_
  
4. Will this appeal involve a conflict of law within the Ninth Circuit?  
 Yes  No  
Among circuits?  Yes  No  
If yes, explain briefly:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:

- Possibility of settlement;
- Likelihood of a motion to expedite the appeal;
- Multiple parties on either side for whom joint briefing is possible;
- Likelihood of motions to intervene on appeal;
- Likelihood of motions to file amicus briefs;
- Likelihood of motions to stay appeal pending resolution of a related case. Identify case name, docket number and court or agency:  
\_\_\_\_\_  
\_\_\_\_\_
- Other procedural complexities:  
\_\_\_\_\_  
\_\_\_\_\_

COUNSEL FOR APPELLANT(S):  
NAME: \_\_\_\_\_  
FIRM: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
TELEPHONE: (\_\_\_\_) \_\_\_\_\_

I CERTIFY THAT A COPY OF THIS CIVIL APPEALS DOCKETING STATEMENT WAS SUBMITTED TO THE CLERK OF THE DISTRICT COURT OR THE CLERK OF THE U.S. COURT OF APPEALS, AND THAT IT WAS SERVED ON EACH PARTY/COUNSEL SHOWN ON THE ATTACHED SERVICE LIST.

\_\_\_\_\_  
SIGNATURE DATE

REMEMBER TO ATTACH COPIES OF ORDER/JUDGMENT APPEALED FROM AND SERVICE LIST WITH TELEPHONE NUMBERS

UNITED STATES COURT OF APPEALS  
 FOR THE NINTH CIRCUIT  
 CIVIL APPEALS DOCKETING STATEMENT

INTERNAL USE ONLY

PLEASE TYPE OR PRINT. ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE IN FULL	DISTRICT: _____ JUDGE: _____			
	DATE COMPLAINT FILED: _____	DISTRICT COURT DOCKET NUMBER: _____		
	DATE NOTICE OF APPEAL FILED: _____	IS THIS A CROSS APPEAL? <input type="checkbox"/> YES <input type="checkbox"/> NO		
	HAS THIS MATTER BEEN BEFORE THIS COURT PREVIOUSLY? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, STATE WHEN: _____			
CASE NAME: _____		CITATION: _____ DOCKET NUMBER: _____		
CHECK AS MANY AS APPLY				
JURISDICTION		DISTRICT COURT DISPOSITION		
1. FEDERAL	2. APPELLATE	1. STAGE OF PROCEEDING	2. TYPE OF JUDGMENT/ ORDER APPEALED	3. RELIEF
<input type="checkbox"/> FEDERAL QUESTION <input type="checkbox"/> DIVERSITY <input type="checkbox"/> OTHER SPECIFY	<input type="checkbox"/> FINAL DECISION OF DISTRICT COURT  <input type="checkbox"/> INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT  <input type="checkbox"/> INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY)  <input type="checkbox"/> OTHER (SPECIFY)	<input type="checkbox"/> PRE-TRIAL  <input type="checkbox"/> DURING TRIAL  <input type="checkbox"/> AFTER TRIAL	<input type="checkbox"/> DEFAULT JUDGMENT  <input type="checkbox"/> JUDGMENT/COURT DECISION  <input type="checkbox"/> DISMISSAL/JURISDICTION  <input type="checkbox"/> JUDGMENT/JURY VERDICT  <input type="checkbox"/> DISMISSAL/MERITS  <input type="checkbox"/> SUMMARY JUDGMENT  <input type="checkbox"/> JUDGMENT NOV  <input type="checkbox"/> DECLARATORY JUDGMENT  <input type="checkbox"/> DIRECTED VERDICT  <input type="checkbox"/> OTHER (SPECIFY)	<input type="checkbox"/> DAMAGES: AMOUNT SOUGHT \$ _____  AMOUNT <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED \$ _____  <input type="checkbox"/> INJUNCTIONS <input type="checkbox"/> PRELIMINARY OR <input type="checkbox"/> PERMANENT <input type="checkbox"/> GRANTED OR <input type="checkbox"/> DENIED

BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW:

ISSUES PROPOSED TO BE RAISED ON APPEAL

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CERTIFICATE OF SERVICE

I, Daisy Lynne Meadows, hereby certify that I am the petitioner in this matter and I am representing myself in propria persona.

On this 27<sup>th</sup> day of September, 2023, I served copies of the Notice of Appeal

in case number: A-23-873087-W and placed said motion(s) in U.S. First Class Mail, postage pre-paid:

Address:  
Sent to: Clerk of the Court  
200 Lewis Ave  
Las Vegas, NV  
89155

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the petitioner in the above-entitled action, and he, the defendant has read the above CERTIFICATE OF SERVICE and that the information contained therein is true and correct. 28 U.S.C. §1746, 18 U.S.C. §1621.

Executed at HDSB  
on this 27<sup>th</sup> day of September, 2023.

[Signature]  
DOP#

PETITIONER -- In Proper Person

**TRANSCRIPT ORDER**

*Read Instructions on Back:*

1. NAME		2. PHONE NUMBER		3. DATE	
4. FIRM NAME					
5. MAILING ADDRESS			6. CITY		7. STATE
8. ZIP CODE					
9. CASE NUMBER		10. JUDGE		DATES OF PROCEEDINGS	
				11.	12.
13. CASE NAME			LOCATION OF PROCEEDINGS		
			14.		
			15. STATE		
16. ORDER FOR					
<input type="checkbox"/> APPEAL		<input type="checkbox"/> CRIMINAL		<input type="checkbox"/> CRIMINAL JUSTICE ACT	
<input type="checkbox"/> NON-APPEAL		<input type="checkbox"/> CIVIL		<input type="checkbox"/> IN FORMA PAUPERIS	
				<input type="checkbox"/> BANKRUPTCY	
				<input type="checkbox"/> OTHER (Specify)	

17. TRANSCRIPT REQUESTED (Specify portion(s) and date(s) of proceeding(s) for which transcript is requested)

PORTIONS	DATE(S)	PORTION(S)	DATE(S)
<input type="checkbox"/> VOIR DIRE		<input type="checkbox"/> TESTIMONY (Specify	
<input type="checkbox"/> OPENING STATEMENT (Plaintiff)			
<input type="checkbox"/> OPENING STATEMENT (Defendant)			
<input type="checkbox"/> CLOSING ARGUMENT (Plaintiff)		<input type="checkbox"/> PRE-TRIAL PROCEEDING	
<input type="checkbox"/> CLOSING ARGUMENT (Defendant)			
<input type="checkbox"/> OPINION OF COURT			
<input type="checkbox"/> JURY INSTRUCTIONS		<input type="checkbox"/> OTHER (Specify)	
<input type="checkbox"/> SENTENCING			
<input type="checkbox"/> BAIL HEARING			

18. ORDER

CATEGORY	ORIGINAL + 1 (original to Court, copy to ordering party)	FIRST COPY	# OF ADDITIONAL COPIES	DELIVERY INSTRUCTIONS (check all that apply)	ESTIMATED COSTS
30 DAYS	<input type="checkbox"/>	<input type="checkbox"/>			
14 DAYS	<input type="checkbox"/>	<input type="checkbox"/>		PAPER COPY <input type="checkbox"/>	
7 DAYS	<input type="checkbox"/>	<input type="checkbox"/>		E-MAIL <input type="checkbox"/>	
DAILY	<input type="checkbox"/>	<input type="checkbox"/>		DISK <input type="checkbox"/>	
HOURLY	<input type="checkbox"/>	<input type="checkbox"/>		PDF FORMAT <input type="checkbox"/>	
REALTIME	<input type="checkbox"/>	<input type="checkbox"/>		ASCII FORMAT <input type="checkbox"/>	

**CERTIFICATION (19. & 20.)**  
By signing below, I certify that I will pay all charges  
(deposit plus additional).

19. SIGNATURE

20. DATE

E-MAIL ADDRESS

**NOTE: IF ORDERING BOTH PAPER AND ELECTRONIC COPIES, THERE WILL BE AN ADDITIONAL CHARGE.**

TRANSCRIPT TO BE PREPARED BY

ESTIMATE TOTAL

0.00

ORDER RECEIVED

DATE

BY

PROCESSED BY

PHONE NUMBER

DEPOSIT PAID

DEPOSIT PAID

TRANSCRIPT ORDERED

TOTAL CHARGES

0.00

TRANSCRIPT RECEIVED

LESS DEPOSIT

0.00

ORDERING PARTY NOTIFIED  
TO PICK UP TRANSCRIPT

TOTAL REFUNDED

PARTY RECEIVED TRANSCRIPT

TOTAL DUE

0.00

CIRCUIT RULE 33-1

**CIVIL APPEALS DOCKETING STATEMENT;  
PREBRIEFING SETTLEMENT CONFERENCES;  
PREBRIEFING CASE MANAGEMENT CONFERENCES**

(a) Civil Appeals Docketing Statement: Except as provided in section (b) below, absent exigent circumstances, the appellant/petitioner in each civil case shall complete and submit to the district court upon the filing of the notice of appeal, or to this court upon the filing of a petition for review, an original and one copy of the Civil Appeals Docketing Statement on the form provided as Form 6 in the Appendix of Forms Within 7 days of service of the Civil Appeals Docketing Statement, appellee/respondent may file a response with this court. Parties shall serve copies of the Civil Appeals Docketing Statement and any response on all parties to the proceedings below. Appellant/petition shall attach to all copies of the Civil Appeals Docketing Statement a copy of the order from which the appeal is taken. Failure to comply with the rules may result in dismissal of an appeal or petition in accordance with Cir. R. 42-1.

(b) Cases in which Civil Appeals Docketing Statement not Required. The requirement for filing a Civil Appeals Docketing Statement shall not apply to : (1) appeals or petitions in which the appellant/petitioner is proceeding without the assistance of counsel or in which the appellant is incarcerated; (2) appeals from actions filed under 28 USC § 2241,2254, 2255; (3) appeals permitted by the court under 28 USC § 1292(b); (4) petitions for a writ under 28 USC § 1651; (5) petitions for review of Board of Immigration Appeals decision under 8 USC § 1105(a); and (6) petitions for review and applications for enforcement of National Labor Relations Board decisions under 29 USC § 160(e).

**\*\*\*NOTE: IF A CIVIL APPEALS DOCKETING STATEMENT WAS NOT FILED WITH THE NOTICE OF APPEAL, APPELLANTS ARE DIRECTED TO FILE THE STATEMENT WITH THE COURT OF APPEALS.**

Advisory letter to Give Notice of a  
Class Action Lawsuit being Filed  
Against the NDOC on behalf of Victims of  
Sexual abuse and Retaliation.

This Action has been Filed as a 1983 civil Rights  
Complaint In the United States District Court  
District of Nevada under the Following  
Case Name: Meadows et al, v. Lombardo et al,  
Case Number: 2:23 - CV - 00755 - RFB - VCF

This Class Action lawsuit was Filed with the  
Intent to Provide Access to the Court to victims  
of Sexual victimization who may not be able to File  
on their own or are Scared afraid and living in  
Silence and to Protect the most vulnerable inmates  
while Pursuing Justice and Closure Resolution For the  
victims, To Stop Prison officials Retaliatory efforts and  
address abuse of Power Position and Authority as well  
as those with Grievances Against PREA policy and  
how PREA is used against victims instead of to help  
Protect and Prevent abuse. How legitimate Reports of  
Rape and abuse are denied and or Covered up.

There are hundreds of Sexual abuse victims throughout  
the NDOC who are living in Silence. Everyone deserves  
Justice and nobody ever deserves to be Sexually abused.  
The victims living in Silence know that help from the NDOC  
desert Exist and will likely only make their situation  
worse by Reporting to Prison officials who are notorious  
For Retaliating, Punishing, and Subjecting victims to

Further additional abuse For Reporting, Those Filing Permissive Joinder of Parties to Join this class action lawsuit could be in Danger and Risk of Serious Bodily Injury For Reporting, A Request Motion to the Court to exclude Plaintiff victims From the Grievance Exhaustion Process as Required by the PLRA has been Filed.

This Case Was Filed by Mrs Daisy Lynne Meadows #1027585 at High Desert State Prison, P.O. Box 650 Indian Springs, NV 89070 and can be contacted via that address. Below is a list of other lawsuits Filed by Plaintiff.

1. Trust v. Cox et al. 3:14-CV-00611-MMD-WGC
2. Meadows v. Atencio, et al. 1:18-CV-00265-BLW-REB - Idaho
3. DOJ Case Meadows v. Nevada Dep't of Corr. (22-OCR-0088) Federal
4. Meadows v. State of Nevada et al. 2:23-CV-00214-JAD-VCF
5. Frost v. Cooke et al. 3:22-CV-00320-ART-CLB
6. Trust v. Childers et al. 3:22-CV-00383-MMD-CLB
7. Mendoza et al. v. Daniels et al. 3:22-CV-00369 ART-CSD
8. Trust v. Nevada Board of Prison Commissioners et al. 3:22-CV-00214-ART-CSD
9. Mendoza v. Daniels et al. 3:22-CV-00205-ART-CLB
10. Meadows v. Williams et al. 2:23-CV-00986-RFB-EJY



MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES  
BUREAU OF VITAL RECORDS  
**AFFIDAVIT FOR CORRECTION OF A BIRTH, DEATH,  
OR FETAL DEATH RECORD**

STATE FILE NUMBER

**STEP 1 - REVIEW INSTRUCTIONS**

PRINT or TYPE all information identifying the certificate and the item(s) to be corrected. Once an item is amended, it cannot be amended again unless by a certified court order. This form **must** be:

1. The original and fully completed affidavit (not a copy) and free of erasures, write-overs, and/or white-out;
2. Accompanied by documentary evidence that supports the indicated correction(s);
3. Signed in the presence of a notary public by an individual legally authorized, per 19 CSR 10-10, to make the correction;
4. Mailed to: DHSS - Bureau of Vital Records, 930 Wildwood Dr., Jefferson City, MO 65109

Affidavits that do not meet these requirements will be rejected. Some items are related and correcting one item may require the correction of other related items. Some corrections are classified as major deficiencies, per 19 CSR 10-10, and cannot be corrected by an Affidavit for Correction. Such deficiencies require a certified court order to correct.

For more information on how to correct a vital record, see reverse for instructions, visit: <http://www.health.mo.gov/vitalrecords>, or call 573-751-6387.

**STEP 2 - IDENTIFYING VITAL RECORD TO CORRECT**

SELECT ONE: <input checked="" type="checkbox"/> BIRTH <input type="checkbox"/> DEATH <input type="checkbox"/> FETAL DEATH	FULL NAME ON RECORD FIRST Roy	MIDDLE James	LAST Trost	DATE OF BIRTH OR DEATH MONTH DAY YEAR 1 13 1988	SELECT ONE: <input type="checkbox"/> FEMALE <input checked="" type="checkbox"/> MALE <input type="checkbox"/> UNKNOWN
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**STEP 3 - ITEM(S) TO CORRECT (IF ITEM IS/SHOULD BE BLANK, PRINT/TYPE "BLANK")**

ITEM NO. OR ITEM NAME	INSTEAD OF	SHOULD READ
Full Name on Record First	Roy	Daisy
Middle	James	Lynne
Last	Trost	Meadows
Select one	Male	Female

**STEP 4 - AFFIANT INFORMATION (SIGNED IN PRESENCE OF NOTARY)**

AFFIANT'S FULL NAME FIRST Daisy	MIDDLE Lynne	LAST Meadows	RELATIONSHIP TO REGISTRANT Registrant
AFFIANT'S MAILING ADDRESS NUMBER AND STREET AND/OR P.O. BOX 1027535 HDSP, Po Box 650		CITY Indian Springs	STATE NV ZIP 89070
AFFIANT'S SIGNATURE (MUST BE SIGNED IN THE PRESENCE OF NOTARY) <i>Daisy Meadows</i>			
DATE (MM/DD/YYYY) 07-10-23			DATE (MM/DD/YYYY) 07-10-23 JFM

NOTARY PUBLIC EMBOSSEER SEAL	STATE Nevada	COUNTY Clark
SUBSCRIBED AND SWORN BEFORE ME, THIS 10 DAY OF July 20 23		USE RUBBER STAMP IN CLEAR AREA BELOW
NOTARY PUBLIC SIGNATURE <i>Heather Baca Cook</i>	MY COMMISSION EXPIRES April 9, 2026	
NOTARY PUBLIC NAME (TYPED OR PRINTED) Heather Baca Cook		

**FOR STATE USE ONLY**

DATE PROCESSED	<input type="checkbox"/> APPROVED <input type="checkbox"/> REJECTED	IF APPROVED, DOCUMENT(S) PROVIDED
IF REJECTED, REASON(S) FOR REJECTION/INSTRUCTIONS TO RESOLVE		PROCESSED BY
DATE PROCESSED	<input type="checkbox"/> APPROVED <input type="checkbox"/> REJECTED	IF APPROVED, DOCUMENT(S) PROVIDED
IF REJECTED, REASON(S) FOR REJECTION/INSTRUCTIONS TO RESOLVE		PROCESSED BY

Case No. CV8207054

Dept. No. 2

**FILED**

2023 JUN 15 P 2:58

NICHOLE STEFNEY  
WHITE PINE COUNTY CLERK

IN THE Seventh JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
BY: [Signature] DEPUTY  
IN AND FOR THE COUNTY OF White Pine

\* \* \* \* \*

In the Matter of the )  
Application of )  
Mrs Trast aka Daisy Lynne )  
Meadows 10275857 )  
Petitioner, )  
For Change of Name. )

ORDER CHANGING NAME

The Petition of Roy Trast, seeking  
an order from the Court changing ~~his~~<sup>her</sup> name to Daisy Lynne  
Meadows in place of ~~his~~<sup>her</sup> present name, and proof  
having been made to the satisfaction of the Court that notice  
thereof was given as required by law, and no objections having  
been filed by any person, and the Court being satisfied that  
there is no reasonable objection to Petitioner assuming the name  
proposed,

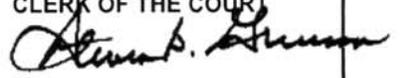
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the name of  
Petitioner Roy Trast is hereby changed to  
Daisy Lynne Meadows. IT IS SO ORDERED.

Dated this 15<sup>th</sup> day of JUNE, 2023.

[Signature]  
District Court Judge

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1 **OPPS**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JONATHAN E. VANBOSKERCK  
6 Chief Deputy District Attorney  
7 Nevada Bar #006528  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 ROY JAMES TROST,  
13 #2679137

14 Defendant.

CASE NO: 08C247731

DEPT NO: XV

15 **STATE'S OPPOSITION TO DEFENDANT'S PRO PER**  
16 **MOTION TO WITHDRAW GUILTY PLEA AGREEMENT**

17 DATE OF HEARING: MAY 23, 2023  
18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
20 District Attorney, through JONATHAN E. VANBOSKERCK, Chief Deputy District  
21 Attorney, and moves this Honorable Court for an order denying the Defendant's Pro Per  
22 Motion filed in the above-entitled matter.

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

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1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On May 22, 2008, Roy J. Trost (Defendant) was charged by way of Criminal Complaint  
4 with: Count 1 – Sexual Assault With a Minor Under Sixteen Years of Age, Count 2 – Burglary  
5 With Use of a Deadly Weapon, Count 3 and 4 – Coercion With Use of a Deadly Weapon,  
6 Counts 5 and 6 – First Degree Kidnapping With Use of a Deadly Weapon, Counts 7 and 8 –  
7 Sexual Assault With Use of a Deadly Weapon, Count 9 – Sexual Assault, Count 10 and 11 –  
8 Open and Gross Lewdness, and Count 12 and 13 – Robbery With Use of a Deadly Weapon.

9 On July 31, 2008, the State filed an Amended Criminal Complaint, charging Defendant  
10 with Count 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual Assault With  
11 Use of a Deadly Weapon, Count 3 – Battery With Use of a Deadly Weapon With Intent to  
12 Commit Sexual Assault With Substantial Bodily Harm, Count 4 – Sexual Assault With a  
13 Minor Under Sixteen Years of Age, Count 5 – Burglary With Use of a Deadly Weapon, Count  
14 6 – Coercion With Use of a Deadly Weapon, Count 7 – Coercion With Use of a Deadly  
15 Weapon, Count 8 – First Degree Kidnapping With Use of a Deadly Weapon, Count 9 – First  
16 Degree Kidnapping With Use of a Deadly Weapon, Count 10 – Sexual Assault With a Deadly  
17 Weapon, Count 11 – Sexual Assault With a Deadly Weapon, Count 12 – Sexual Assault With  
18 a Deadly Weapon, Count 13 – Open and Gross Lewdness With Use of a Deadly Weapon,  
19 Count 14 – Open and Gross Lewdness With Use of a Deadly Weapon, Count 15 – Robbery  
20 With Use of a Deadly Weapon, and Count 16 – Robbery With Use of a Deadly Weapon.

21 On September 11, 2008, the State charged Defendant by way of Information with Count  
22 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual Assault, Count 3 – First  
23 Degree Kidnapping, Count 4 – Sexual Assault With a Minor Under Sixteen Years of Age,  
24 Count 5 – Sexual Assault, and Count 6 – First Degree Kidnapping.

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1           On September 23, 2008, pursuant to negotiations, Defendant pled guilty to the charges  
2 as contained in the Information filed September 11, 2008. The Guilty Plea Agreement (GPA),  
3 in which both parties stipulated the Counts 1-3 will run consecutively to each other and Counts  
4 4-6 will run consecutively to each other but both parties retain the right to argue whether the  
5 two sets of counts would run concurrently or consecutively, was filed in open Court the same  
6 day.

7           On November 7, 2008, Defendant was sentenced as to Count 1 – Life with the  
8 possibility of parole after one hundred twenty (120) months, plus an equal and consecutive  
9 term of Life with the possibility of parole after one hundred twenty (120) months; as to Count  
10 2 – Life with the possibility of parole after one hundred twenty (120) months, Count 2 to run  
11 consecutive to Count 1; as to Count 3 – Life with the possibility of parole after sixty (60)  
12 months, Count 6 to run consecutive to Count 5. Defendant was further ordered to a special  
13 sentence of lifetime supervision and register as a sex offender upon any release from custody.  
14 Defendant was also given one hundred sixty-three (163) days credit for time served. The  
15 Judgement of Conviction was filed on November 25, 2008.

16           On December 9, 2008, at the State's request, the Court modified Defendant's sentence  
17 as to Count 4, making the sentence Life with the possibility of parole after two hundred forty  
18 (240) months, instead of three hundred (300) months.

19           On November 10, 2009, Defendant filed the instant Petition for Writ of Habeas Corpus  
20 (Post-Conviction), Motion for appointment of counsel, and request for evidentiary hearing.  
21 The State filed its response on January 11, 2010. The Court denied Defendant's Petition for  
22 Writ of Habeas Corpus on January 19, 2010. On March 25, 2010, the Court filed a Finding of  
23 Fact, Conclusions of Law and Order denying Defendant's Petition for Writ of Habeas Corpus.

24           On April 6, 2011, Defendant filed a Pro Per Motion to Withdraw Counsel. The matter  
25 was heard and granted on April 19, 2011.

26           On May 1, 2023, Defendant filed a Motion for Appointment of Attorney and a Motion  
27 to Withdraw Plea.

28       ///

1 ARGUMENT

2 I. HARRIS REMAINS THE EXCLUSIVE REMEDY TO CHALLENGE A  
3 GUILTY PLEA AFTER SENTENCING

4 Defendant offers various complaints that are not properly raised in a Motion to withdraw  
5 a guilty plea. Defendant alleges that his plea was involuntary because his counsel did not  
6 request a psychological evaluation and he was in no condition to enter a plea. Such a claim is  
7 beyond the scope of a Motion to withdraw a guilty plea since a post-conviction Petition for a  
8 Writ of Habeas Corpus is the exclusive remedy to challenge the validity of a guilty plea after  
9 sentencing. Harris v. State, 130 Nev.437, 466, 329 P.3d 619, 628 (2014); NRS 34.724(2)(b).  
10 As such the Motion must be denied.

11 Harris remains the exclusive remedy for challenging a guilty plea after sentencing. Id.  
12 at 466, 329 P.3d. at 628. “Pursuant to NRS 34.724(2)(b), a post-conviction Petition for a Writ  
13 of Habeas Corpus comprehends and takes the place of all other common-law, statutory, or  
14 other remedies which have been available for challenging the validity of the conviction or  
15 sentence, and must be used exclusively in place of them.” Id. at 443, 329 P.3d. at 626 (internal  
16 quotations omitted).

17 Excepted from this exclusivity are remedies that are “incident to the proceedings in the  
18 trial Court.” Id. (citing NRS 34.724(2)(a)). However, the Harris Court clearly stated, “that a  
19 Motion is ‘incident to the proceedings in the trial Court’ when it is filed prior to sentencing.”  
20 Id., 130 Nev. at 437, 329 P.3d at 627. “Thus, a Motion to withdraw the guilty plea filed after  
21 sentencing is not ‘incident to the proceedings in the trial Court.’” Id.

22 Because Defendant filed his Motion on May 1, 2023, almost fifteen years after being  
23 sentenced, the Motion is not incident to the proceedings in the trial Court, as defined by the  
24 Nevada Supreme Court. Thus, Defendant’s Motion is not cognizable as a freestanding claim  
25 for relief. Therefore, Defendant’s only potential avenue for relief is a Petition for Writ of  
26 Habeas Corpus.

27 ///

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1     **II.   THE COURT SHOULD NOT CONSTRUE THE MOTION AS**  
2     **A HABEAS PETITITON**

3           NRS 34.735 directs Defendants to file Petitions in a manner substantially consistent  
4 with the form provided by that statute. Defendant has failed to comply with the statute's  
5 directive. He has failed to include in his Motion the date of the judgment of conviction, whether  
6 or not he is currently serving a sentence under this case number or any other, whether he  
7 appealed from the judgment of conviction – and if not, why not – whether he has previously  
8 filed any Petitions, applications, or Motions with respect to the judgment in this case, or  
9 whether any Petition or appeal with respect to this judgment of conviction is pending in any  
10 Court. Additionally, Defendant has filed a previous Habeas Petition. Treating this pleading as  
11 a Habeas Petition would require consideration of the procedural bars, something Defendant  
12 has neglected. State v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112 P.3d  
13 1070, 1076 (2005) (District Courts have a duty to consider whether post-conviction claims are  
14 procedurally barred).

15           Defendant's filing is not substantially consistent with the form provided by NRS  
16 34.735. Therefore, this Court should decline to treat the Motion as a Habeas Petition. Should  
17 this Court opt to treat Defendant's Motion as a Petition and desires a response from the State,  
18 the Court should issue an order directing response and give the State 45 days to response as  
19 required by NRS 34.7745(1).

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**CONCLUSION**

Based on the foregoing reasons, Defendant's Motion to Withdraw Guilty Plea Agreement should be DENIED.

DATED this 22<sup>nd</sup> day of May, 2023.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #10539

BY /s/ Jonathan Vanboskerck  
JONATHAN VANBOSKERCK  
Deputy District Attorney  
Nevada Bar #006528

**CERTIFICATE OF MAILING**

I hereby certify that service of the above and foregoing was made this 22<sup>nd</sup> day of May, 2023, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

ROY JAMES TROST, BAC# 1027585  
HIGH DESERT STATE PRISON  
P. O. BOX 650  
INDIAN SPRINGS, NV 89070

BY /s/ E. Goddard  
Secretary - District Attorney's Office

*Thomas J. Smith*  
CLERK OF THE COURT

1 PPOW

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

5 Roy James Trost,

6 Petitioner,

7 vs.

8 State of Nevada,

9 Respondent,

Case No: A-23-873087-W  
Department 15

**ORDER FOR PETITION FOR  
WRIT OF HABEAS CORPUS**

10  
11 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on  
12 June 28, 2023. The Court has reviewed the Petition and has determined that a response would assist the  
13 Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good  
14 cause appearing therefore,

15 **IT IS HEREBY ORDERED** that Respondent shall, within 45 days after the date of this Order,  
16 answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS  
17 34.360 to 34.830, inclusive.

18 **IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this Court's

19 August 29, 2023 at 8:30 am

20 Calendar on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at the hour of

21 \_\_\_\_\_ o'clock for further proceedings.

22  
23 Dated this 28th day of June, 2023

24 *Joe Hardy*

25 District Court Judge

26 **CFE BDC BEE6 6945**  
27 **Joe Hardy**  
28 **District Court Judge**

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DISTRICT COURT  
CLARK COUNTY, NEVADA

Roy Trost, Plaintiff(s)

CASE NO: A-23-873087-W

vs.

DEPT. NO. Department 15

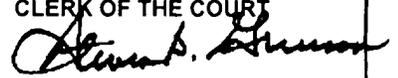
State of Nevada, Defendant(s)

**AUTOMATED CERTIFICATE OF SERVICE**

Electronic service was attempted through the Eighth Judicial District Court's electronic filing system, but there were no registered users on the case.

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 6/29/2023

Roy Trost	#1027585
	HDSP
	P.O. Box 650
	Indian Springs, NV, 89070



1 RSPN  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JONATHAN VANBOSKERCK  
6 Chief Deputy District Attorney  
7 Nevada Bar #6528  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

12 -vs-

13 ROY JAMES TROST,  
14 #2679137

Defendant.

CASE NO: 08C247731

DEPT NO: XV

15 STATE'S RESPONSE TO DEFENDANT'S PRO PER  
16 MOTION TO APPOINT COUNSEL

17 DATE OF HEARING: MAY 23, 2023  
18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
20 District Attorney, through JONATHAN VANBOSKERCK, Chief Deputy District Attorney,  
21 and hereby submits the attached Points and Authorities in Response to Defendant's Pro Per  
22 Motion to Appoint Counsel.

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

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1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On May 22, 2008, Roy J. Trost (Defendant) was charged by way of Criminal Complaint  
4 with: Count 1 – Sexual Assault With a Minor Under Sixteen Years of Age, Count 2 – Burglary  
5 With Use of a Deadly Weapon, Count 3 and 4 – Coercion With Use of a Deadly Weapon,  
6 Counts 5 and 6 – First Degree Kidnapping With Use of a Deadly Weapon, Counts 7 and 8 –  
7 Sexual Assault With Use of a Deadly Weapon, Count 9 – Sexual Assault, Count 10 and 11 –  
8 Open and Gross Lewdness, and Count 12 and 13 – Robbery With Use of a Deadly Weapon.

9 On July 31, 2008, the State filed an Amended Criminal Complaint, charging Defendant  
10 with Count 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual Assault With  
11 Use of a Deadly Weapon, Count 3 – Battery With Use of a Deadly Weapon With Intent to  
12 Commit Sexual Assault With Substantial Bodily Harm, Count 4 – Sexual Assault With a  
13 Minor Under Sixteen Years of Age, Count 5 – Burglary With Use of a Deadly Weapon, Count  
14 6 – Coercion With Use of a Deadly Weapon, Count 7 – Coercion With Use of a Deadly  
15 Weapon, Count 8 – First Degree Kidnapping With Use of a Deadly Weapon, Count 9 – First  
16 Degree Kidnapping With Use of a Deadly Weapon, Count 10 – Sexual Assault With a Deadly  
17 Weapon, Count 11 – Sexual Assault With a Deadly Weapon, Count 12 – Sexual Assault With  
18 a Deadly Weapon, Count 13 – Open and Gross Lewdness With Use of a Deadly Weapon,  
19 Count 14 – Open and Gross Lewdness With Use of a Deadly Weapon, Count 15 – Robbery  
20 With Use of a Deadly Weapon, and Count 16 – Robbery With Use of a Deadly Weapon.

21 On September 11, 2008, the State charged Defendant by way of Information with Count  
22 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual Assault, Count 3 – First  
23 Degree Kidnapping, Count 4 – Sexual Assault With a Minor Under Sixteen Years of Age,  
24 Count 5 – Sexual Assault, and Count 6 – First Degree Kidnapping.

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1 On September 23, 2008, pursuant to negotiations, Defendant pled guilty to the charges  
2 as contained in the Information filed September 11, 2008. The Guilty Plea Agreement (GPA),  
3 in which both parties stipulated the Counts 1-3 will run consecutively to each other and Counts  
4 4-6 will run consecutively to each other but both parties retain the right to argue whether the  
5 two sets of counts would run concurrently or consecutively, was filed in open Court the same  
6 day.

7 On November 7, 2008, Defendant was sentenced as to Count 1 – Life with the  
8 possibility of parole after one hundred twenty (120) months, plus an equal and consecutive  
9 term of Life with the possibility of parole after one hundred twenty (120) months; as to Count  
10 2 – Life with the possibility of parole after one hundred twenty (120) months, Count 2 to run  
11 consecutive to Count 1; as to Count 3 – Life with the possibility of parole after sixty (60)  
12 months, Count 6 to run consecutive to Count 5. Defendant was further ordered to a special  
13 sentence of lifetime supervision and register as a sex offender upon any release from custody.  
14 Defendant was also given one hundred sixty-three (163) days credit for time served. The  
15 Judgement of Conviction was filed on November 25, 2008.

16 On December 9, 2008, at the State's request, the Court modified Defendant's sentence  
17 as to Count 4, making the sentence Life with the possibility of parole after two hundred forty  
18 (240) months, instead of three hundred (300) months.

19 On November 10, 2009, Defendant filed the instant Petition for Writ of Habeas Corpus  
20 (Post-Conviction), Motion for Appointment of Counsel, and request for evidentiary hearing.  
21 The State filed its response on January 11, 2010. The Court denied Defendant's Petition for  
22 Writ of Habeas Corpus on January 19, 2010. On March 25, 2010, the Court filed a Finding of  
23 Fact, Conclusions of Law and Order denying Defendant's Petition.

24 On April 6, 2011, Defendant filed a Pro Per Motion to Withdraw Counsel. The matter  
25 was heard and granted on April 19, 2011.

26 On May 1, 2023, Defendant filed a Motion for Appointment of Attorney and a Motion  
27 to Withdraw Plea.

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1 ARGUMENT

2 Defendant requests this Court appoint counsel on his behalf. Motion for Appointment  
3 of Counsel 2-3. Under the U.S. Constitution, the Sixth Amendment provides no right to  
4 counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct.  
5 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the  
6 Nevada Supreme Court similarly observed “[t]he Nevada Constitution...does not guarantee a  
7 right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right  
8 to counsel provision as being coextensive with the Sixth Amendment to the United States  
9 Constitution.” McKague held that with the exception of NRS 34.820(1)(a) (entitling appointed  
10 counsel when Petitioner is under a sentence of death), one does not have “any constitutional  
11 or statutory right to counsel at all” in post-conviction proceedings. Id. at 164, 912 P.2d at 258.

12 The Nevada Legislature has given Courts the *discretion* to appoint post-conviction  
13 counsel so long as “the Court is satisfied that the allegation of indigency is true and the Petition  
14 is not dismissed summarily.” NRS 34.750. This statute states in relevant part:

15 A Petition may allege that the Petitioner is unable to pay the costs of the  
16 proceedings or to employ counsel. If the Court is satisfied that the allegation of  
17 indigency is true and the Petition is not dismissed summarily, the Court may  
18 appoint counsel to represent the Petitioner. In making its determination, the  
19 Court may consider, among other things, the severity of the consequences facing  
20 the Petitioner and whether:

- 21 (a) The issues presented are difficult;  
22 (b) The Petitioner is unable to comprehend the proceedings; or  
23 (c) Counsel is necessary to proceed with discovery.

24 NRS 34.750(1). As contemplated by the statute, the Court may consider appointing counsel if  
25 the Defendant is indigent and if the Petition is not summarily dismissed. A Petition can be  
26 summarily dismissed where the Petitioner’s claims are conclusory, without specific factual  
27 allegations, or are belied by the record.

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1 Defendant cites no authority for appointment of counsel in a post-conviction setting to  
2 assist with a Motion to withdraw plea. Motion for Appointment of Counsel 1-3. As such the  
3 Court lacks authority to appoint counsel and the Motion should be denied. Should the Court  
4 construe the Motion to withdraw plea as a Habeas Petition the request for counsel should still  
5 be denied because the factors of NRS 34.750(1)(a)-(c) do not warrant appointment of counsel.

6 Defendant complains that his plea was involuntary because his counsel did not request  
7 a psychological evaluation and he was in no condition to enter a plea. Motion to Withdraw  
8 Plea 2-3. However, Defendant has failed to demonstrate how this issue is difficult. Moreover,  
9 Counsel is not necessary to proceed with discovery. Defendant argues “[Defendant], by reason  
10 of her incarceration, cannot investigate, take depositions, or otherwise discover evidentiary  
11 materials on his own accord.” Motion for Appointment of Counsel 1. However, Defendant has  
12 failed to explain what such discovery would be necessary for the Motion to Withdraw.

13 Defendant is able to comprehend the proceedings. Defendant argues that “the  
14 substantive issues and procedural matters in this case are too complex for [Defendant’s]  
15 comprehension and abilities. *Id.* However, in the Motion to Withdraw Defendant states that  
16 he knows now from the legal research he has conducted that he should not have signed the  
17 plea for his case. Motion to Withdraw 3. Because Defendant is able to conduct legal research,  
18 he should be able to comprehend the proceedings. Moreover, Defendant provides reasoning  
19 as to why he believes he is innocent as to counts one (1) and four (4) further showing that he  
20 has the ability to comprehend the proceedings.

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**CONCLUSION**

Based on the arguments as set forth above, the State respectfully requests that the Court DENY Defendant's Motion for the Appointment of Counsel.

DATED this 22<sup>nd</sup> day May, 2023.

Respectfully submitted,

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

BY /s/ Jonathan Vanboskerck  
JONATHAN VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #6528

**CERTIFICATE OF MAILING**

I hereby certify that service of the above and foregoing was made this 22<sup>nd</sup> day of May, 2023, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

ROY JAMES TROST, BAC# 1027585  
HIGH DESERT STATE PRISON  
P. O. BOX 650  
INDIAN SPRINGS, NV 89070

BY /s/ E. Goddard  
Secretary - District Attorney's Office

1 **RSPN**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JONATHAN E. VANBOSKERCK  
6 Chief Deputy District Attorney  
7 Nevada Bar #006528  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

12 -vs-

13 **ROY JAMES TROST,**  
14 **aka Daisey Meadows,**  
15 **#2679137**

16 Defendant.

CASE NO: **A-23-873087-W**  
**08C247731**

DEPT NO: **XV**

17 **STATE'S RESPONSE TO DEFENDANT'S PETITION FOR**  
18 **WRIT OF HABEAS CORPUS (POST-CONVICTION)**

19 **DATE OF HEARING: AUGUST 29, 2023**  
20 **TIME OF HEARING: 8:30 AM**

21 The State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney,  
22 through JONATHAN E. VANBOSKERCK, Chief Deputy District Attorney, hereby submits  
23 the attached Points and Authorities in this State's Response to Defendant's Petition For Writ  
24 Of Habeas Corpus (Post-Conviction).

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On May 22, 2008, Roy J. Trost ("Petitioner") was charged by way of Criminal  
4 Complaint with: Count 1 – Sexual Assault With a Minor Under Sixteen Years of Age, Count  
5 2 – Burglary With Use of a Deadly Weapon, Count 3 and 4 – Coercion With Use of a Deadly  
6 Weapon, Counts 5 and 6 – First Degree Kidnapping With Use of a Deadly Weapon, Counts 7  
7 and 8 – Sexual Assault With Use of a Deadly Weapon, Count 9 – Sexual Assault, Count 10  
8 and 11 – Open and Gross Lewdness, and Count 12 and 13 – Robbery With Use of a Deadly  
9 Weapon.

10 On July 31, 2008, the State filed an Amended Criminal Complaint, charging Petitioner  
11 with Count 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual Assault With  
12 Use of a Deadly Weapon, Count 3 – Battery With Use of a Deadly Weapon With Intent to  
13 Commit Sexual Assault With Substantial Bodily Harm, Count 4 – Sexual Assault With a  
14 Minor Under Sixteen Years of Age, Count 5 – Burglary With Use of a Deadly Weapon, Count  
15 6 – Coercion With Use of a Deadly Weapon, Count 7 – Coercion With Use of a Deadly  
16 Weapon, Count 8 – First Degree Kidnapping With Use of a Deadly Weapon, Count 9 – First  
17 Degree Kidnapping With Use of a Deadly Weapon, Count 10 – Sexual Assault With a Deadly  
18 Weapon, Count 11 – Sexual Assault With a Deadly Weapon, Count 12 – Sexual Assault With  
19 a Deadly Weapon, Count 13 – Open and Gross Lewdness With Use of a Deadly Weapon,  
20 Count 14 – Open and Gross Lewdness With Use of a Deadly Weapon, Count 15 – Robbery  
21 With Use of a Deadly Weapon, and Count 16 – Robbery With Use of a Deadly Weapon.

22 On September 11, 2008, the State charged Petitioner by way of Information with Count  
23 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual Assault, Count 3 – First  
24 Degree Kidnapping, Count 4 – Sexual Assault With a Minor Under Sixteen Years of Age,  
25 Count 5 – Sexual Assault, and Count 6 – First Degree Kidnapping.

26 On September 23, 2008, pursuant to negotiations, Petitioner pled guilty to the charges  
27 as contained in the Information filed September 11, 2008. The Guilty Plea Agreement (GPA),  
28 in which both parties stipulated that Counts 1-3 will run consecutively to each other and

1 Counts 4-6 will run consecutively to each other but both parties retain the right to argue  
2 whether the two sets of counts would run concurrently or consecutively, was filed in open  
3 court the same day.

4 On November 7, 2008, Petitioner was sentenced as to Count 1 – Life with the possibility  
5 of parole after one hundred twenty (120) months, plus an equal and consecutive term of Life  
6 with the possibility of parole after one hundred twenty (120) months; as to Count 2 – Life with  
7 the possibility of parole after one hundred twenty (120) months, Count 2 to run consecutive to  
8 Count 1; as to Count 3 – Life with the possibility of parole after sixty (60) months, Count 6 to  
9 run consecutive to Count 5. Petitioner was further ordered to a special sentence of lifetime  
10 supervision and register as a sex offender upon any release from custody. Petitioner was also  
11 given one hundred sixty-three (163) days credit for time served. The Judgement of Conviction  
12 (“JOC”) was filed on November 25, 2008.

13 On December 9, 2008, at the State’s request, the Court modified Petitioner’s sentence  
14 as to Count 4, making the sentence Life with the possibility of parole after two hundred forty  
15 (240) months, instead of three hundred (300) months.

16 On November 10, 2009, Petitioner filed a Petition for Writ of Habeas Corpus (Post-  
17 Conviction), Motion for Appointment of Counsel, and Request for Evidentiary Hearing. The  
18 State filed its response on January 11, 2010. The Court denied Petitioner’s Petition for Writ of  
19 Habeas Corpus on January 19, 2010. On March 25, 2010, the Court filed a Finding of Fact,  
20 Conclusions of Law and Order denying Petitioner’s Petition for Writ of Habeas Corpus.

21 On April 6, 2011, Petitioner filed a Pro Per Motion to Withdraw Counsel. The matter  
22 was heard and granted on April 19, 2011.

23 On May 1, 2023, Petitioner filed a Motion for Appointment of Attorney and a Motion  
24 to Withdraw Plea. On May 22, 2023, the State filed its Response to Petitioner’s Motion for  
25 Appointment of Attorney and an Opposition to Petitioner’s Motion to Withdraw Plea. On May  
26 23, 2023, the court denied Petitioner’s Motion for Appointment of Attorney and Motion to  
27 Withdraw Plea. On May 31, 2023, the court filed a Finding of Facts, Conclusion of Law and  
28 Order for Petitioner’s Motion for Appointment of Attorney and Motion to Withdraw Plea.

1 On June 28, 2023, Petitioner filed a Petition for Writ of Habeas Corpus (“Petition”).  
2 On July 6, 2023, Petitioner filed a Motion to Change Gender Sex/Marker in Judgement of  
3 Conviction. On July 27, 2023, the district court granted this motion.

4 **ARGUMENT**

5 **I. PETITIONER’S CLAIMS ARE PROCEDURALLY BARRED.**

6 **A. Application Of The Procedural Bars Are Mandatory**

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

10 The district courts have *a duty* to consider whether post-conviction claims are  
11 procedurally barred. State v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112  
12 P.3d 1070, 1076 (2005). Riker held that the procedural bars “cannot be ignored when properly  
13 raised by the State.” Id. at 233, 112 P.3d at 1075. Accord, State v. Huebler, 128 Nev. 192, 197,  
14 275 P.3d 91, 94-95, footnote 2 (2012), cert. denied, 568 U.S. 1147, 133 S.Ct. 988 (2013)  
15 (“under the current statutory scheme the time bar in NRS 34.726 is *mandatory, not*  
16 *discretionary*” (emphasis added)).

17 Even “a stipulation by the parties cannot empower a court to disregard the mandatory  
18 procedural default rules.” State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003);  
19 accord, Sullivan v. State, 120 Nev. 537, 540, footnote 6, 96 P.3d 761, 763-64, footnote 6  
20 (2004) (concluding that a petition was improperly treated as timely and that a stipulation to  
21 the petition’s timeliness was invalid). The Sullivan Court “expressly conclude[d] that the  
22 district court should have denied [a] petition” because it was procedurally barred. Sullivan,  
23 120 Nev. at 542, 96 P.3d at 765.

24 The district courts have zero discretion in applying the procedural bars because to allow  
25 otherwise would undermine the finality of convictions. In holding that “[a]pplication of the  
26 statutory procedural default rules to post-conviction habeas petitions is mandatory,” the Riker  
27 Court noted:

28 //

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.

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

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

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

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

#### 12 **B. Claims Must Be Dismissed For Being Successive**

13 Petitioner's Petition is procedurally barred because it is successive. NRS 34.810(2)  
14 reads:

15 A second or successive petition *must* be dismissed if the judge or  
16 justice determines that it fails to allege new or different grounds for  
17 relief and that the prior determination was on the merits or, if new and  
18 different grounds are alleged, the judge or justice finds that the failure  
19 of the petitioner to assert those grounds in a prior petition constituted  
20 an abuse of the writ.

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

27 The Nevada Supreme Court has stated: "Without such limitations on the availability of  
28 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-  
conviction remedies. In addition, meritless, successive and untimely petitions clog the court  
system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.  
The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require

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

6 Petitioner’s first claim is largely illegible. Although the Petition is illegible it seems as  
7 though Petitioner is claiming that his counsel was ineffective for failure to request a  
8 psychological evaluation for him and for failure to challenge the evidence supporting the  
9 conviction.<sup>1</sup> Petition 6-7. On November 10, 2009, Petitioner filed a Petition for Writ of Habeas  
10 Corpus in which he argued that his counsel was ineffective. Petition for Writ of Habeas Corpus  
11 November 10, 2009, p 7-8. However, unlike Petitioner’s instant Petition he did not argue  
12 ineffective assistance of counsel for his failure to request a psychological evaluation for  
13 Petitioner or due to ineffectiveness related to challenging the evidence supporting his  
14 conviction. On March 22, 2010, this court denied Petitioner’s Petition for ineffective  
15 assistance of counsel which was filed in 2009. Findings of Fact, Conclusion of Law and Order  
16 7-10. Petitioner could have raised his current claims for ineffective assistance of counsel in  
17 his prior Petition but did not. As such, Petitioner’s claim for ineffective assistance of counsel  
18 is an abuse of the writ. Thus, it should be denied.

19 **C. Time Barred Under NRS 34.726(1)**

20 Petitioner’s Petition is time barred with no good cause shown for delay. Pursuant to  
21 NRS 34.726(1):

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

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

27 (b) That dismissal of the petition as untimely will unduly prejudice  
28 the petitioner.

<sup>1</sup> Because Petitioner’s writing is so illegible it is difficult to say with certainty whether this is exactly what Petitioner is arguing.

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

6 The one-year time limit for preparing petitions for post-conviction relief under NRS  
7 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),  
8 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite  
9 evidence presented by the defendant that he purchased postage through the prison and mailed  
10 the Notice within the one-year time limit.

11 Petitioner's claims are time barred pursuant to NRS 34.726(1). Petitioner's JOC was  
12 filed on November 25, 2008, and Petitioner never filed a direct appeal. The instant Petition  
13 was filed on June 28, 2023. As such, more than one year has elapsed since entry of Petitioner's  
14 JOC. Thus, Petitioner's claim is barred under NRS 34.726(1) and should be dismissed.

15 **D. The State Affirmatively Pleads Laches**

16 NRS 34.800(2) creates a rebuttable presumption of prejudice to the State if "[a] period  
17 exceeding 5 years [elapses] between the filing of a judgment of conviction, an order imposing  
18 a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the  
19 filing of a petition challenging the validity of a judgment of conviction." The Nevada Supreme  
20 Court observed in Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984), how  
21 "petitions that are filed many years after conviction are an unreasonable burden on the criminal  
22 justice system" and that "[t]he necessity for a workable system dictates that there must exist a  
23 time when a criminal conviction is final." To invoke NRS 34.800(2)'s presumption of  
24 prejudice, the statute requires that the State specifically plead laches.

25 Petitioner's JOC was filed on November 25, 2008, and no direct appeal was filed.  
26 Petitioner filed the instant Petition on June 28, 2023. Therefore, more than five years have  
27 elapsed since Petitioner's JOC was filed and the filing of Petitioner's instant Petition.  
28 Accordingly, the State affirmatively pleads laches in this case. In order to overcome the

1 presumption of prejudice to the State, Petitioner has the heavy burden of proving a  
2 fundamental miscarriage of justice. See Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540,  
3 545 (2001); Mitchell v. State, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006). To overcome  
4 the presumption of prejudice to the State in responding to the petition, the petitioner must  
5 show that “the petition is based upon grounds of which the petitioner could not have had  
6 knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the  
7 State occurred.” Chappell v. State, 137 Nev. 780, 803, 501 P.3d 935, 960 (2021), cert. denied,  
8 214 L. Ed. 2d 184, 143 S. Ct. 377 (2022). All of Petitioner’s claims could have been raised in  
9 a previous proceeding. Accordingly, this Court should dismiss this petition pursuant to NRS  
10 34.800(2).

## 11 **II. PETITIONER FAILS TO DEMONSTRATE GOOD CAUSE TO OVERCOME** 12 **THE PROCEDURAL BARS**

13 Under NRS 34.726, to overcome the procedural bars, a petitioner must demonstrate:  
14 for the purposes of this subsection, good cause for delay exists if the petitioner demonstrates  
15 to the satisfaction of the court: (a) That the delay is not the fault of the petitioner; and (b) That  
16 dismissal of the petition as untimely will unduly prejudice the petitioner. To overcome  
17 procedural bars under NRS 34.810, a petitioner must demonstrate: (1) good cause for delay in  
18 filing his petition or for bringing new claims or repeating claims in a successive petition; and  
19 (2) undue or actual prejudice. NRS 34.810(3).

20 “To establish good cause, petitioners must show that an impediment external to the  
21 defense prevented their compliance with the applicable procedural rule. A qualifying  
22 impediment might be shown where the factual or legal basis for a claim was not reasonably  
23 available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003),  
24 rehearing denied, 120 Nev. 307, 91 P.3d 35 cert. denied, 543 U.S. 947, 125 S.Ct. 358 (2004);  
25 see also, Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003) (“In order to  
26 demonstrate good cause, a petitioner must show that an impediment external to the defense  
27 prevented him or her from complying with the state procedural default rules”); Pellegrini, 117  
28 Nev. at 887, 34 P.3d at 537 (neither ineffective assistance of counsel, nor a physician’s

1 declaration in support of a habeas petition were sufficient “good cause” to overcome a  
2 procedural default, whereas a finding by the Supreme Court that a defendant was suffering  
3 from Multiple Personality Disorder was). An external impediment could be “that the factual  
4 or legal basis for a claim was not reasonably available to counsel, or that ‘some interference  
5 by officials’ made compliance impracticable.” *Id.* (quoting *Murray v. Carrier*, 477 U.S. 478,  
6 488, 106 S.Ct. 2639, 2645 (1986)); *see also*, *Gonzalez*, 118 Nev. at 595, 53 P.3d at 904 (citing  
7 *Harris v. Warden*, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)).

8 The Nevada Supreme Court has held that, “appellants cannot attempt to manufacture  
9 good cause[.]” *Clem*, 119 Nev. at 621, 81 P.3d at 526. To find good cause there must be a  
10 “substantial reason; one that affords a legal excuse.” *Hathaway*, 119 Nev. at 251, 71 P.3d at  
11 506; (quoting, *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), superseded by  
12 statute as recognized by, *Huebler*, 128 Nev. at 197, 275 P.3d at 95, footnote 2). Excuses such  
13 as the lack of assistance of counsel when preparing a petition as well as the failure of trial  
14 counsel to forward a copy of the file to a petitioner have been found not to constitute good  
15 cause. *Phelps v. Dir. Nev. Dep’t of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988),  
16 superseded by statute as recognized by, *Nika v. State*, 120 Nev. 600, 607, 97 P.3d 1140, 1145  
17 (2004); *Hood v. State*, 111 Nev. 335, 890 P.2d 797 (1995).

18 Petitioner fails to address good cause. His failure to do so should be treated as an  
19 admission that he cannot demonstrate good cause. District Court Rules (DCR) Rule 13(2);  
20 Eighth Judicial District Court Rules (EDCR) Rule 3.20(b); *Polk v. State*, 126 Nev. 180, 184–  
21 186, 233 P.3d 357, 360– 361 (2010). Further, he should be precluded from doing so in any  
22 reply as allowing him to do so would deny the State of any opportunity to address his  
23 arguments. *See, Righetti v. Eighth Judicial District Court*, 133 Nev. 42, 47, 388 P.3d 643, 648  
24 (2017) (declining to adopt a rule that “rewards and thus incentivizes less than forthright  
25 advocacy”). Regardless, Petitioner cannot demonstrate good cause because all facts and law  
26 necessary to raise this complaint were available at the appropriate time. Also, Petitioner does  
27 not attempt to establish an impediment external to the defense. Therefore, this Court should  
28 find that Petitioner fails to establish good cause.

1 **III. INSUFFICIENT PREJUDICE TO IGNORE PETITIONER'S PROCEDURAL**  
2 **DEFAULT**

3 Even if Petitioner was able to establish good cause, both good cause and actual  
4 prejudice are required to avoid procedural default and Petitioner cannot demonstrate prejudice.  
5 To overcome the procedural bars, a petition must: (1) demonstrate good cause for delay in  
6 filing his petition or for bringing new claims or repeating claims in a successive petition; and  
7 (2) demonstrated undue or actual prejudice. NRS 34.726(1); NRS 34.810(3).6. Prejudice exists  
8 where "errors in the proceedings underlying the judgment worked to the petition's actual and  
9 substantial disadvantage." Harris v. State, 133 Nev. 683, 691, 407 P.3d 348, 355 (Nev. App.  
10 2017); State v. Huebler, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012) cert. denied, 571 U.S. \_\_,  
11 133 S.Ct. 988 (2013). To demonstrate the prejudice required to overcome the procedural bars,  
12 a defendant must show "not merely that the errors of [the proceeding] created possibility of  
13 prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state  
14 proceedings with error of constitutional dimensions." Hogan, 109 Nev. at 960, 860 P.2d at 716  
15 (internal quotation omitted), Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545. Further,  
16 a finding of prejudice sufficient to disregard the procedural bars must be based upon prejudice  
17 sufficient to support a finding of ineffective assistance of counsel. Crump v. Warden, 113 Nev.  
18 293, 304-05, 934 P.2d 247, 254 (1997) (error which rises to the level of ineffective assistance  
19 of counsel establishes cause and prejudice under NRS 34.810(1)(b)).

20 All of Petitioner's claims are naked assertions suitable only for summary denial.  
21 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) ("Bare" and "naked"  
22 allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled  
23 by the record). To the extent Petitioner alleges ineffective assistance of counsel for failure to  
24 request a psychological evaluation for Petitioner, the claim fails due to Petitioner's failure to  
25 demonstrate what such an evaluation would have shown. Molina v. State, 120 Nev. 185,  
26 192, 87 P.3d 533, 538 (2004) (A defendant who contends his attorney was ineffective  
27 because he did not adequately investigate must show how a better investigation would have  
28 rendered a more favorable outcome probable). To the extent Petitioner alleges

1 ineffectiveness related to challenging the evidence supporting the conviction, he cannot  
2 demonstrate prejudice since he personally opted to admit the charges. See, Woods v.  
3 State, 114 Nev. 468, 477, 958 P.2d 91, 97 (1998); Reuben C. v. State, 99 Nev. 845, 845-  
4 46, 673 P.2d 493, 493 (1983); Powell v. Sheriff, 85 Nev. 684, 687, 462 P.2d 756, 758  
5 (1969).

6 Petitioner argues that his due process rights were violated on the premise that he  
7 was tortured for being tried as a male when he currently identifies as a female. Petition  
8 8. This claim is a naked assertion pursuant to Hargrove and is not supported by citation  
9 to authority or cogent argument and is thus suitable only for summary denial. Maresca  
10 v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (an arguing party must support his  
11 arguments with relevant authority and cogent argument; “issues not so presented need  
12 not be addressed”). Thus, Petitioners claims should be denied.

### 13 CONCLUSION

14 Based on the foregoing reasons, Petitioner’s Petition for Writ of Habeas Corpus should  
15 be DENIED.

16 DATED this 3rd day of August, 2023.

17 Respectfully submitted,

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

20  
21 BY /s/ Jonathan E. VanBoskerck  
22 JONATHAN E. VANBOSKERCK  
23 Chief Deputy District Attorney  
24 Nevada Bar #006528  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 3rd day of  
AUGUST 2023, to:

ROY TROST, aka Daisy Meadows,  
BAC#1027585  
HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070

BY /s/ Howard Conrad  
Secretary for the District Attorney's Office  
Special Victims Unit

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A-23-873087-W  
Dept. 15

FILED  
JUN 28 2023

*[Signature]*  
CLERK OF COURT

Case No  
Dept. No.

IN THE 8<sup>th</sup> JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR THE COUNTY OF Clark

Mrs. Roy James Trust FKA Daisy Meadows  
Petitioner,

v.

PETITION FOR WRIT  
OF HABEAS CORPUS  
(POSTCONVICTION)

The State of Nevada  
Respondent.

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert State Prison
2. Name and location of court which entered the judgment of conviction under attack: District Court, Clark County, NV
3. Date of judgment of conviction: 11-17-08
4. Case number: 08C247731
5. (a) Length of sentence: 65 years to life Equals life without

RECEIVED

JUN 26 2023

CLERK OF THE COURT

*[Handwritten initials]*

1 (b) If sentence is death, state any date upon which execution is scheduled:....

2 6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

3 Yes ..... No

4 If "yes," list crime, case number and sentence being served at this time: .....

5 .....

6 .....

7 7. Nature of offense involved in conviction being challenged: *sex assault, sex assault*

8 *use of a deadly weapon, kidnapping*

9 8. What was your plea? (check one)

10 (a) Not guilty .....

11  (b) Guilty .....

12 (c) Guilty but mentally ill .....

13 (d) Nolo contendere .....

14 9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a  
15 plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was  
16 negotiated, give details: .....

17 .....

18 10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

19 (a) Jury .....

20 (b) Judge without a jury .....

21 11. Did you testify at the trial? Yes ..... No .....

22 12. Did you appeal from the judgment of conviction? Yes  No .....

23 13. If you did appeal, answer the following:

24 (a) Name of court: *District Court, Clark County, NV*

25 (b) Case number or citation: *08C 247731*

26 (c) Result: *Denied*

27 (d) Date of result: *1-11-10*

28 (Attach copy of order or decision, if available.)

1 14. If you did not appeal, explain briefly why you did not: .....

2 .....  
3 .....  
4 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any  
5 petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ..... No .....

6 16. If your answer to No. 15 was "yes," give the following information:

7 (a) (1) Name of court: .....

8 (2) Nature of proceeding: .....

9 .....  
10 (3) Grounds raised: .....

11 .....  
12 .....  
13 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ..... No .....

14 (5) Result: .....

15 (6) Date of result: .....

16 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:  
17 .....

18 (b) As to any second petition, application or motion, give the same information:

19 (1) Name of court: .....

20 (2) Nature of proceeding: .....

21 (3) Grounds raised: .....

22 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ..... No .....

23 (5) Result: .....

24 (6) Date of result: .....

25 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:  
26 .....

27 (c) As to any third or subsequent additional applications or motions, give the same information as above, list  
28 them on a separate sheet and attach.

1 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any  
2 petition, application or motion?

3 (1) First petition, application or motion? Yes ..... No .....

4 Citation or date of decision: .....

5 (2) Second petition, application or motion? Yes ..... No .....

6 Citation or date of decision: .....

7 (3) Third or subsequent petitions, applications or motions? Yes ..... No .....

8 Citation or date of decision: .....

9 (e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you  
10 did not. (You must relate specific facts in response to this question. Your response may be included on paper which  
11 is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in  
12 length.).....

13 .....

14 17. Has any ground being raised in this petition been previously presented to this or any other court by way of  
15 petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

16 (a) Which of the grounds is the same: .....

17 .....

18 (b) The proceedings in which these grounds were raised: .....

19 .....

20 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this  
21 question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your  
22 response may not exceed five handwritten or typewritten pages in length.) .....

23 .....

24 18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached,  
25 were not previously presented in any other court, state or federal, list briefly what grounds were not so presented,  
26 and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your  
27 response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not  
28 exceed five handwritten or typewritten pages in length.) .....

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19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes  No

If yes, state what court and the case number: *Motion to withdraw plea Dist Court*  
*Clark County, IN* *08C247731*

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: *Jeffrey S. Maningo*

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes  No

If yes, specify where and when it is to be served, if you know:

25. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

1 (a) Ground ONE: Denied Rights under sixth and Fourteenth Amendments  
2 as I did not receive Due Process of Law or Effective  
3 Assistance of Counsel.  
4

5 Supporting FACTS (Tell your story briefly without citing cases or law): I was pushed through  
6 the courts with a psych eval which is was unreviewed  
7 by my defense mental state from being charged was that  
8 when I was from p.p. the judge was to say the least, Counsel  
9 was not present to review the evidence in the state

10 AS well as an admission of making a false statement  
11 against me in Court 4. After which I was advised  
12 my best hope was to my partner, the wife of the state  
13 victim, I was advised of Court 4. The judge, of the  
14 accusation itself = humiliated I was numb during the  
15 court appearances. my wife my to use Counsel was All  
16 this and let the state sensation of my case + helped  
17 the state put on things for the conviction while being  
18 my Counsel to help me get representation of the  
19 lawyer station. Court 1 the alleged victim claims being a  
20 Chicago detective officer for the state. Impossible as I was  
21 I did not have the lawyer when she was for me but  
22 pimp tried to mug me and I fought back resulting in  
23 the murder. There was a severe assault - I was advised to  
24 that time I was also not take I could fight the cases  
25 separately and appropriately. Based on years ~~COOPER~~ from  
26 Minnesota I was NOT aware I was signing my life  
27 away to a will no better than he has been jury  
28 and lost at trial on all counts. A judge's decision as



1 (c) Ground <sup>TWO</sup> THREE: Torture a sentence of torture  
2 by Rape is against law  
3  
4

5 Supporting FACTS (Tell your story briefly without citing cases or law.):

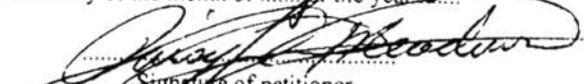
6 I was tried as a male Convicted  
7 as Male Sentenced at Male, I am a Female  
8 Rape victim being accused and Forced to  
9 take a Rape Case and my Punishment is  
10 Rape in Male Prison.

11 The Courts obvious, oblivion to  
12 this Fact is Ground Enough.

13  
14 I did not File For 15 years because  
15 I couldn't hurt so much But this is  
16 the Truth.  
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1 WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

2 EXECUTED at NDSE on the 25<sup>th</sup> day of the month of May the year 2023

3   
4 Signature of petitioner

5 Address

Ms. Daisy L. Meadows 1027585  
High Desert State Prison  
P.O. Box 650  
Indian Springs, NV 89070

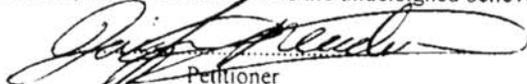
6 Signature of attorney (if any)

7 Attorney for petitioner

8 Address

9 VERIFICATION

10 Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

11   
12 Petitioner

13 Attorney for petitioner

14 CERTIFICATE OF SERVICE BY MAIL

15 I, Ms. Daisy Meadows, hereby certify, pursuant to N.R.C.P. 5(b), that on this 25<sup>th</sup> day of the month of May of  
16 the year 2023, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS  
17 addressed to:

18 Respondent prison or jail official

19 Address

20 Attorney General  
Heroes Memorial Building  
Capitol Complex  
Carson City, Nevada 89710

Steven D. Grierson  
Clerk of the Court  
200 Lewis Ave 3rd Floor  
Las Vegas, NV 89155

23 District Attorney of County of Conviction

24 Address

25 Signature of Petitioner

1 Mrs Daisy Lynne Meadows # 1027588  
2 High Desert State Prison  
3 P.O. Box 650  
4 Indian Springs, NV 89026  
5 Petitioner In Pro Se

FILED  
MAY 01 2023  
CLERK OF COURT

May 23, 2023  
8:30 AM

*BB*

.....

9 The State of Nevada,  
10 Petitioner,  
11 -vs- Roy James Trust  
12 FNA Mrs. Daisy Lynne Meadows  
13 Respondents.

Case No. C247731

**NOTION FOR  
APPOINTMENT OF COUNSEL**

15 COMES NOW Petitioner, Mrs Daisy Lynne Meadows <sup>of the Trust</sup> in pro se, and moves  
16 this Court for an order appointing <sup>her</sup> counsel in and for the instant § 2254  
17 habeas corpus proceeding.

18 This motion is made and based upon 18 U.S.C. § 3006A(g), 28 U.S.C.  
19 § 1915(e)(1), 28 U.S.C. § 2254(h); all papers, pleadings and documents on file  
20 herein; and the following points and authorities.

**POINTS AND AUTHORITIES**

**I. STATEMENT OF FACTS**

23 Petitioner is unable to afford counsel. See Application to Proceed In  
24 Forma Pauperis on file herein.

25 The substantive issues and procedural matters in this case are too complex  
26 for Petitioner's comprehension and abilities.

27 Petitioner, by reason of <sup>her</sup> his incarceration, cannot investigate, take  
28 depositions, or otherwise discover evidentiary materials on his own accord.

1 Petitioner's sentence structure is 10k life x 3; 5k life x 2; 20k life x 1.

2 There     are     are not additional facts attached hereto on additional  
3 page(s) to be incorporated herein.

4 Counsel could not only assist Petitioner with a much better presentation  
5 of the substantive and procedural issues before this Court, e.g., merits of the  
6 claims, AEDPA's § 2254(d) test, exhaustion, etc., but counsel would likewise  
7 make much easier this Court's task of discerning the issues and adjudicating  
8 them as upon a competent counsel's ability to present same to the Court.

9 The ends of justice would best be served in this case via the appointment  
10 of counsel, as Petitioner's sentence structure, in conjunction with the  
11 complexities of the legal issues herein, plead for such an appointment.

## 12 II. ARGUMENT FOR APPOINTMENT

13 Appointment of counsel in § 2254 cases is authorized within 18 U.S.C.  
14 § 3006A(g) and 28 U.S.C. §§ 1915(e)(1); 2254(h). This Court may appoint  
15 counsel where the "interests of justice" so require. Jeffers v. Lewis, 68 F.3d  
16 295, 297-98 (9th Cir. 1995). This interest is best served when indigent  
17 petitioners who are unable to "adequately present their cases" are appointed  
18 counsel to do so for them. Id.

19 Although appointment is usually within this Court's sound discretion, a  
20 handy formula for this Court's consideration is a balancing of the complexities  
21 of the issues with a consideration of the severity of the petitioner's penalty.  
22 Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir.), cert. denied, 481 U.S. 1023  
23 (1987). Ultimately, however, absent a due process implication, this Court has  
24 discretion to appoint counsel when it feels that it promotes justice in doing  
25 so. Id. See Brown v. United States, 623 F.2d 54, 61 (9th Cir. 1980)(court  
26 must appoint counsel where the complexities of the case are such that denial of  
27 counsel would amount to denial of due process); Hawkins v. Bennett, 423 F.2d  
28 948 (8th Cir. 1970)(counsel must be appointed where petitioner is a person of

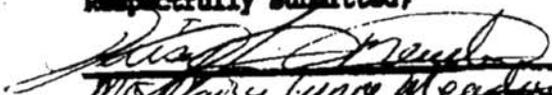
1 such limited education as to be incapable of presenting his claims fairly).  
2 Petitioner submits that the facts above, in conjunction with these legal  
3 principles, compel appointment of counsel. Indeed, the complexities of the  
4 issues in relation to Petitioner's sentence, implicate the need of counsel to  
5 promote not only justice, but fairness, as well. Jeffers, 68 F.3d at 297-98.

6 **III. CONCLUSION**

7 For the reasons set forth above, this Court should appoint counsel to  
8 represent Petitioner in and for all further proceedings in this § 2254 habeas  
9 corpus action.

10 Dated this 18<sup>th</sup> day of April, 20024.

11 Respectfully submitted,

12   
13 Misty Wade Meadmont  
14 TRUST, NV 1927588 HDSP  
15 P.O. Box 650 Indian Springs  
NV 89020  
Petitioner In Pro Se

16 ///  
17 ///  
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19 ///  
20 ///

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**CERTIFICATE OF SERVICE**

I do certify that I mailed a true and correct copy of the foregoing Motion For appointment of Counsel to the below address(es) on this 18 day of April, 20013, by placing same into the hands of prison staff for posting in the U.S. Mail, pursuant to FRCP 5(b):

Mrs. Daisy Lynne Meadows Trust  
1027585 W.H.D.S.U  
P.O. Box 650  
Tahoe Springs NV; Nevada 89070

Counsel for \_\_\_\_\_

check for additional addresses below

[Signature] \*1027585

[Signature] In Pro Se

**ADDRESS(ES) Continued from Above: (If applicable)**

Clerk of the Court  
1001 Louis Ave  
Tas Vegas, NV  
89165, Nevada 89155

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\_\_\_\_\_, Nevada 89\_\_\_\_

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MAY 01 2023  
*[Signature]*  
CLERK OF COURT

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IN THE 8<sup>th</sup> JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,  
Plaintiff

CASE NO. C247731  
DEPT. NO. XXI

v. Roy James Trost  
FNA Mrs. Daisy Lynne Meacham  
Defendant.

May 23, 2023  
8:30 AM

MOTION TO WITHDRAW PLEA

COMES NOW, Defendant, Mrs. Daisy Lynne Meacham, proceeding in proper person, and moves this Honorable Court for an Order granting her permission to withdrawal her Plea Agreement in the the case number C247731, on the date of 9/13/08 in the month of 9 in the year 2008 where defendant was then represented by J.S. Maningo, D.D. as counsel. This Motion is based on all papers and pleadings on file with the Clerk of the Court which are hereby incorporated by this reference, and Points and Authorities herein and attached Affidavit of Defendant.

Dated this 18 day of April, 2023

Respectfully submitted,

*[Signature]*  
Defendant in Proper Person

RECEIVED  
APR 27 2023  
CLERK OF THE COURT

MEMORANDUM OF POINTS AND AUTHORITIES

NRS. 176.165 PROVIDES:

A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed, or imposition of sentence is suspended. To correct manifest injustice, the court, after sentencing, may set aside the judgment of conviction and permit the defendant to withdraw <sup>her</sup> his or plea.

Failure to adequately inform a defendant of the full consequences of his/her plea creates manifest injustice which could be corrected by setting aside the conviction and allowing him/her to withdraw the guilty plea. Meyer v. State, 603 P.2d 1066 (Nev. 1979), and Little v. Warden, 34 P.3d 540 (Nev.2001).

Defendant herein alleges that his/her plea is in error and must withdraw the plea pursuant to the following facts: State made me out to be a "sexual Predator" to sensationalize my case and counsel urged me to sign plea on all counts. Counsel did not order a psych evaluation and I was in an obvious state of mind not anywhere near normal. Any seasoned lawyer such as Attorney Maringo should have recognized my obvious mental state by my actions, and state of mental anguish. From being charged with such crimes as count 4, I am innocent of count 4, the gravity of the accusation itself so traumatic I was numb to court proceedings, yet counsel knew I was innocent, the alleged victim failed a lie detector test, and friend of the alleged victim who was in the same bed stated in the police report that it didn't happen. Alleged victim's mother and I resumed our relationship after the alleged victim admitted to lying. Counsel knew these facts as well as the accusations of count 1 being false statements. In count one the alleged victim states she "was a college student raped on the CV strip sidewalk" impossible. I engaged w/ the prostitute, alleged victim, behind the Peppermill casino and was jumped by her and her pimp w/ my pants down in an attempt to Rob me there

1 was no "sexual assault" and Counsel knew this, yet had me sign  
2 the plea. No seasoned Attorney would advise a defendant ("client")  
3 to take a life sentence knowing there were circumstances like these  
4 involved. I was never informed by my counsel I'd be literally  
5 signing my life away. A psyche evaluation would have at bare  
6 minimum exposed counsel, and myself, to a Reality check. Counts  
7 1+4 should've been taken to trial or at least been subject to the  
8 Rules of discovery and a plan of action for trial been at least  
9 discussed. Counsel did none of this. Counsel's duty, per his obligation  
10 as a Defense lawyer for the state of NV was responsible to do  
11 his due diligence for my specific circumstances. I am guilty  
12 of counts 2+5, and 3+6, with extenuating circumstances.  
13 I don't even remember most of the court proceedings but I do  
14 know now from other legal research I was not supposed to sign  
15 a plea for cases I could obviously have fought, and had plenty  
16 of reasons to do so, considering I didn't do it and since there was  
17 zero evidence against me for count 4 and only false statements  
18 for count 1. Counsel knew this and should have never instructed  
19 me to sign a plea on these counts and took advantage  
20 of my mental state to help the prosecution. I wasn't  
21 even told that my cases could be addressed separately. I  
22 pray that this honorable court grant my motion so I may  
23 at the very least address these charges that I in fact  
24 am actually innocent of in the way promised every  
25 defendant by our constitution and our judicial  
26 system.

Therefore, pursuant to the facts and the law stated herein, Defendant requests that his guilty plea be withdrawn.

Dated this 18 day of April, 2023.

Respectfully Submitted,



CERTIFICATE OF SERVICE BY MAILING

I, Mr. Daryl Lynn Meadows, hereby certify, pursuant to NRCP 5(b), that on this 18 day of April, 2023, I mailed a true and correct copy of the foregoing Motion to Withdraw Plea, by depositing it in the High Desert State Prison legal mail service provided through the Law Library, with First class Postage prepaid, and addressed to the following:

Attorney General  
100 North Carson St.  
Carson City, NV  
89710

Warden Brian Williams  
ADSP 130, Box 650  
Indian Springs, NV  
89010

D.A. Steve P. Wolfson  
200 Lewis Ave.  
Cas Vegas, NV  
89155

Clerk of the Court  
200 Lewis Ave  
Cas Vegas, NV  
89155

CC: File

Dated this 18<sup>th</sup> day of April, 2023

BY:   
Mr. Daryl Lynn Meadows  
Rdy Trust

RECEIVED  
JUL 11 2022  
WPC CLERK'S OFFICE

Case No. CV2207054

Dept. No. 2

FILED

2023 JUN 15 P 2:58

NICHOLE STEPHEY  
WHITE PINE COUNTY CLERK

IN THE Seventh JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
BY: [Signature] DEPUTY  
IN AND FOR THE COUNTY OF White Pine

\* \* \* \* \*

In the Matter of the )  
Application of )  
Mrs Trust aka Daisy Lynne )  
Meadows 10275857 )  
Petitioner, )  
For Change of Name. )

ORDER CHANGING NAME

The Petition of Roy Trust, seeking  
an order from the Court changing ~~his~~<sup>her</sup> name to Daisy Lynne  
Meadows in place of ~~his~~<sup>her</sup> present name, and proof  
having been made to the satisfaction of the Court that notice  
thereof was given as required by law, and no objections having  
been filed by any person, and the Court being satisfied that  
there is no reasonable objection to Petitioner assuming the name  
proposed,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the name of  
Petitioner Roy Trust is hereby changed to  
Daisy Lynne Meadows. IT IS SO ORDERED.

Dated this 15<sup>th</sup> day of JUNE, 2023.

[Signature]  
District Court Judge

Daisy Lynne Meadows  
Harley Quinn 1027585  
High Desert State Prison  
P.O. Box 650  
Indian Springs, NV  
Confidential 89070

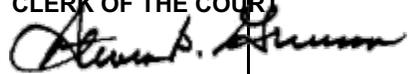
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CLERK OF THE COURT

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Confidential  
Legal Mail



Clerk of the Court  
200 Lewis Ave  
Las Vegas, NV  
89155



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

10

MRS. ROY JAMES TROST, fka, DAISY  
MEADOWS,

Case No: A-23-873087-W

11

Plaintiff(s),

Dept No: XV

12

vs.

13

14

STATE OF NEVADA,

15

Defendant(s),

16

17

18 **CASE APPEAL STATEMENT**

19

1. Appellant(s): Daisy Lynne Meadows

20

2. Judge: Joe Hardy

21

3. Appellant(s): Daisy Lynne Meadows

22

Counsel:

23

Daisy Lynne Meadows #1027585

24

P.O. Box 650

25

Indian Springs, NV 89070

26

4. Respondent (s): State of Nevada

27

Counsel:

28

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: No
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: June 28, 2023
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 10 day of October 2023.

Steven D. Grierson, Clerk of the Court

/s/ Cierra Borum

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

cc: Daisy Lynne Meadows

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**  
**CASE NO. A-23-873087-W**

**Roy Trost, Plaintiff(s)**  
**vs.**  
**State of Nevada, Defendant(s)**

§  
§  
§  
§  
§

Location: **Department 15**  
 Judicial Officer: **Hardy, Joe**  
 Filed on: **06/28/2023**  
 Cross-Reference Case Number: **A873087**

CASE INFORMATION

**Related Cases**  
 08C247731 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**  
 Case Status: **06/28/2023 Open**

DATE

CASE ASSIGNMENT

**Current Case Assignment**

Case Number	A-23-873087-W
Court	Department 15
Date Assigned	06/28/2023
Judicial Officer	Hardy, Joe

PARTY INFORMATION

**Plaintiff**

**Trost, Roy James**

*Lead Attorneys*

**Pro Se**

**Defendant**

**State of Nevada**

**Holthus, Kennedy**  
*Retained*  
 702-671-2674(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

**EVENTS**

- |            |  |
|------------|--|
| 06/28/2023 |  Inmate Filed - Petition for Writ of Habeas Corpus<br>Party: Plaintiff Trost, Roy James<br><i>[1] Post Conviction</i>                               |
| 06/28/2023 |  Order for Petition for Writ of Habeas Corpus<br><i>[2] Order for Petition for Writ of Habeas Corpus</i>  |
| 08/03/2023 |  Response<br>Filed by: Defendant State of Nevada<br><i>[3] State's Response to Defendant's Petition for Writ Of Habeas Corpus (Post-Conviction)</i> |
| 08/16/2023 |  Motion for Leave to File<br><i>[4] Motion for Leave to File Amended Petition</i>   |
| 08/16/2023 |  Clerk's Notice of Nonconforming Document<br><i>[5] Clerk's Notice of Nonconforming Document</i>  |
| 09/05/2023 |  Findings of Fact, Conclusions of Law and Order<br><i>[6] Findings of Fact, Conclusions of Law and Order</i>  |
| 09/07/2023 |  Notice of Entry of Findings of Fact, Conclusions of Law  |

**CASE SUMMARY**  
**CASE NO. A-23-873087-W**

[7] Notice of Entry of Findings of Fact, Conclusions of Law and Order

10/05/2023

 Inmate Filed - Petition for Writ of Habeas Corpus  
Party: Plaintiff Trost, Roy James  
[8] Amended Petition for Writ of Habeas Corpus Post Conviction

10/05/2023

 Order for Petition for Writ of Habeas Corpus  
[9] Order for Petition for Writ of Habeas Corpus

10/09/2023

 Response  
[10] State's Response to Petition for Writ of Habeas Corpus (PostConviction) and Motion to Dismiss Pursuant to Laches

10/09/2023

 Notice of Appeal  
Filed By: Plaintiff Trost, Roy James  
[11] Notice of Appeal

10/10/2023

 Case Appeal Statement  
Case Appeal Statement

**HEARINGS**

08/29/2023

 **Petition for Writ of Habeas Corpus (8:30 AM)** (Judicial Officer: Hardy, Joe)  
Denied;  
Journal Entry Details:  
*Having reviewed the Petition filed and the State's Response, COURT ORDERED, Petition, DENIED for all the reasons in the State's Response. COURT FURTHER ORDERED, State to prepare the Order; matter SET for Status Check in Chambers. 09/19/23 3:00 AM STATUS CHECK: STATE'S ORDER (CHAMBERS);*

09/19/2023

**CANCELED Status Check (3:00 AM)** (Judicial Officer: Hardy, Joe)  
*Vacated*  
**STATUS CHECK: STATE'S ORDER**

12/05/2023

**Petition for Writ of Habeas Corpus (8:30 AM)** (Judicial Officer: Hardy, Joe)

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. \_\_\_\_\_  
(Assigned by Clerk's Office)

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

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

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

**June 28, 2023**

**PREPARED BY CLERK**

Date

Signature of initiating party or representative

*See other side for family-related case filings.*

**FOF**

1 STEVEN B. WOLFSON  
Clark County District Attorney  
2 Nevada Bar #001565  
JONATHAN E. VANBOSKERCK  
3 Chief Deputy District Attorney  
Nevada Bar #006528  
4 200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
5 (702) 671-2500  
Attorney for Plaintiff  
6

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

8 ROY JAMES TROST,  
9 #2679137

10 Petitioner,

CASE NO: **A-23-873087-W**

11 -vs-

08C247731

12 THE STATE OF NEVADA,

DEPT NO: **XV**

13 Respondent.  
14

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

15 DATE OF HEARING: **AUGUST 29, 2023**

16 TIME OF HEARING: **8:30 AM**

17 THIS CAUSE having come on for hearing before the Honorable Judge Joe Hardy,  
18 District Judge, on the 29<sup>th</sup> day of August, 2023, the Petitioner not being present,  
19 PROCEEDING IN PROPER PERSON, the Respondent being represented by STEVEN B.  
20 WOLFSON, Clark County District Attorney, by and through KENNEDY HOLTHUS, Deputy  
21 District Attorney, and the Court having considered the matter, including briefs, transcripts,  
22 and documents on file herein, now therefore, the Court makes the following findings of fact  
23 and conclusions of law.

24 //

25 //

26 //

27 //

28 //

1 **PRODECURAL HISTORY**

2 On May 22, 2008, Roy J. Trost (“Petitioner”) was charged by way of Criminal  
3 Complaint with: Count 1 – Sexual Assault With a Minor Under Sixteen Years of Age, Count  
4 2 – Burglary With Use of a Deadly Weapon, Count 3 and 4 – Coercion With Use of a Deadly  
5 Weapon, Counts 5 and 6 – First Degree Kidnapping With Use of a Deadly Weapon, Counts 7  
6 and 8 – Sexual Assault With Use of a Deadly Weapon, Count 9 – Sexual Assault, Count 10  
7 and 11 – Open and Gross Lewdness, and Count 12 and 13 – Robbery With Use of a Deadly  
8 Weapon.

9 On July 31, 2008, the State filed an Amended Criminal Complaint, charging Petitioner  
10 with Count 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual Assault With  
11 Use of a Deadly Weapon, Count 3 – Battery With Use of a Deadly Weapon With Intent to  
12 Commit Sexual Assault With Substantial Bodily Harm, Count 4 – Sexual Assault With a  
13 Minor Under Sixteen Years of Age, Count 5 – Burglary With Use of a Deadly Weapon, Count  
14 6 – Coercion With Use of a Deadly Weapon, Count 7 – Coercion With Use of a Deadly  
15 Weapon, Count 8 – First Degree Kidnapping With Use of a Deadly Weapon, Count 9 – First  
16 Degree Kidnapping With Use of a Deadly Weapon, Count 10 – Sexual Assault With a Deadly  
17 Weapon, Count 11 – Sexual Assault With a Deadly Weapon, Count 12 – Sexual Assault With  
18 a Deadly Weapon, Count 13 – Open and Gross Lewdness With Use of a Deadly Weapon,  
19 Count 14 – Open and Gross Lewdness With Use of a Deadly Weapon, Count 15 – Robbery  
20 With Use of a Deadly Weapon, and Count 16 – Robbery With Use of a Deadly Weapon.

21 On September 11, 2008, the State charged Petitioner by way of Information with Count  
22 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual Assault, Count 3 – First  
23 Degree Kidnapping, Count 4 – Sexual Assault With a Minor Under Sixteen Years of Age,  
24 Count 5 – Sexual Assault, and Count 6 – First Degree Kidnapping.

25 On September 23, 2008, pursuant to negotiations, Petitioner pled guilty to the charges  
26 as contained in the Information filed September 11, 2008. The Guilty Plea Agreement (GPA),  
27 in which both parties stipulated that Counts 1-3 will run consecutively to each other and Counts  
28 4-6 will run consecutively to each other but both parties retain the right to argue whether the

1 two sets of counts would run concurrently or consecutively, was filed in open court the same  
2 day.

3 On November 7, 2008, Petitioner was sentenced as to Count 1 – Life with the possibility  
4 of parole after one hundred twenty (120) months, plus an equal and consecutive term of Life  
5 with the possibility of parole after one hundred twenty (120) months; as to Count 2 – Life with  
6 the possibility of parole after one hundred twenty (120) months, Count 2 to run consecutive to  
7 Count 1; as to Count 3 – Life with the possibility of parole after sixty (60) months, Count 6 to  
8 run consecutive to Count 5. Petitioner was further ordered to a special sentence of lifetime  
9 supervision and register as a sex offender upon any release from custody. Petitioner was also  
10 given one hundred sixty-three (163) days credit for time served. The Judgement of Conviction  
11 (“JOC”) was filed on November 25, 2008.

12 On December 9, 2008, at the State’s request, the Court modified Petitioner’s sentence  
13 as to Count 4, making the sentence Life with the possibility of parole after two hundred forty  
14 (240) months, instead of three hundred (300) months.

15 On November 10, 2009, Petitioner filed a Petition for Writ of Habeas Corpus (Post-  
16 Conviction), Motion for Appointment of Counsel, and Request for Evidentiary Hearing. The  
17 State filed its response on January 11, 2010. The Court denied Petitioner’s Petition for Writ of  
18 Habeas Corpus on January 19, 2010. On March 25, 2010, the Court filed a Finding of Fact,  
19 Conclusions of Law and Order denying Petitioner’s Petition for Writ of Habeas Corpus.

20 On April 6, 2011, Petitioner filed a Pro Per Motion to Withdraw Counsel. The matter  
21 was heard and granted on April 19, 2011.

22 On May 1, 2023, Petitioner filed a Motion for Appointment of Attorney and a Motion  
23 to Withdraw Plea. On May 22, 2023, the State filed its Response to Petitioner’s Motion for  
24 Appointment of Attorney and an Opposition to Petitioner’s Motion to Withdraw Plea. On May  
25 23, 2023, the court denied Petitioner’s Motion for Appointment of Attorney and Motion to  
26 Withdraw Plea. On May 31, 2023, the court filed a Finding of Facts, Conclusion of Law and  
27 Order for Petitioner’s Motion for Appointment of Attorney and Motion to Withdraw Plea.

28 //

1 On June 28, 2023, Petitioner filed a Petition for Writ of Habeas Corpus (“Petition”).  
2 Respondent filed an opposition on August 3, 2023. On August 16, 2023, Petitioner filed a  
3 Motion for Leave to File Amended Petition. On August 29, 2023, this Court held a hearing  
4 and denied habeas relief.

5 On July 6, 2023, Petitioner filed a Motion to Change Gender Sex/Marker in Judgement  
6 of Conviction. On July 27, 2023, the district court granted this motion.

## 7 ANALYSIS

### 8 **I. PETITIONER’S CLAIMS ARE PROCEDURALLY BARRED**

#### 9 **A. Application Of The Procedural Bars Are Mandatory**

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

13 The district courts have *a duty* to consider whether post-conviction claims are  
14 procedurally barred. State v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112  
15 P.3d 1070, 1076 (2005). Riker held that the procedural bars “cannot be ignored when properly  
16 raised by the State.” Id. at 233, 112 P.3d at 1075. Accord, State v. Huebler, 128 Nev. 192, 197,  
17 275 P.3d 91, 94-95, footnote 2 (2012), cert. denied, 568 U.S. 1147, 133 S.Ct. 988 (2013)  
18 (“under the current statutory scheme the time bar in NRS 34.726 is *mandatory, not*  
19 *discretionary*” (emphasis added)).

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

27 The district courts have zero discretion in applying the procedural bars because to allow  
28 otherwise would undermine the finality of convictions. In holding that “[a]pplication of the

1 statutory procedural default rules to post-conviction habeas petitions is mandatory,” the Riker  
2 Court noted:

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

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

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

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

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

16 **B. Claims Must Be Dismissed For Being Successive**

17 Petitioner’s Petition is procedurally barred because it is successive. NRS 34.810(2)  
18 reads:

19 A second or successive petition *must* be dismissed if the judge or  
20 justice determines that it fails to allege new or different grounds for  
relief and that the prior determination was on the merits or, if new and  
21 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.

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

28 //

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

11 Petitioner’s first claim is largely illegible. Although the Petition is illegible it seems as  
12 though Petitioner is claiming that his counsel was ineffective for failure to request a  
13 psychological evaluation for him and for failure to challenge the evidence supporting the  
14 conviction.<sup>1</sup> Petition 6-7. On November 10, 2009, Petitioner filed a Petition for Writ of Habeas  
15 Corpus in which he argued that his counsel was ineffective. Petition for Writ of Habeas Corpus  
16 November 10, 2009, p 7-8. However, unlike Petitioner’s instant Petition he did not argue  
17 ineffective assistance of counsel for his failure to request a psychological evaluation for  
18 Petitioner or due to ineffectiveness related to challenging the evidence supporting his  
19 conviction. On March 22, 2010, this court denied Petitioner’s Petition for ineffective assistance  
20 of counsel which was filed in 2009. Findings of Fact, Conclusion of Law and Order 7-10.  
21 Petitioner could have raised his current claims for ineffective assistance of counsel in his prior  
22 Petition but did not. As such, Petitioner’s claim for ineffective assistance of counsel is an abuse  
23 of the writ. Thus, it should be denied.

### 24 **C. Time Barred Under NRS 34.726(1)**

25  
26 Petitioner’s Petition is time barred with no good cause shown for delay. Pursuant to  
27 NRS 34.726(1):

28  

---

<sup>1</sup> Because Petitioner’s writing is so illegible it is difficult to say with certainty whether this is exactly what Petitioner is arguing.

1 Unless there is good cause shown for delay, a petition that challenges  
2 the validity of a judgment or sentence must be filed within 1 year of  
3 the entry of the judgment of conviction or, if an appeal has been taken  
4 from the judgment, within 1 year after the Supreme Court issues its  
5 remittitur. For the purposes of this subsection, good cause for delay  
6 exists if the petitioner demonstrates to the satisfaction of the court:  
7 (a) That the delay is not the fault of the petitioner; and  
8 (b) That dismissal of the petition as untimely will unduly prejudice  
9 the petitioner.

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

11 The one-year time limit for preparing petitions for post-conviction relief under NRS  
12 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),  
13 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite  
14 evidence presented by the defendant that he purchased postage through the prison and mailed  
15 the Notice within the one-year time limit.

16 Petitioner's claims are time barred pursuant to NRS 34.726(1). Petitioner's JOC was  
17 filed on November 25, 2008, and Petitioner never filed a direct appeal. The instant Petition  
18 was filed on June 28, 2023. As such, more than one year has elapsed since entry of Petitioner's  
19 JOC. Thus, Petitioner's claim is barred under NRS 34.726(1) and should be dismissed.

#### 20 **D. The State Affirmatively Pled Laches**

21  
22 NRS 34.800(2) creates a rebuttable presumption of prejudice to the State if "[a] period  
23 exceeding 5 years [elapses] between the filing of a judgment of conviction, an order imposing  
24 a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the  
25 filing of a petition challenging the validity of a judgment of conviction." The Nevada Supreme  
26 Court observed in Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984), how  
27 "petitions that are filed many years after conviction are an unreasonable burden on the criminal  
28 justice system" and that "[t]he necessity for a workable system dictates that there must exist a

1 time when a criminal conviction is final.” To invoke NRS 34.800(2)’s presumption of  
2 prejudice, the statute requires that the State specifically plead laches.

3 Petitioner’s JOC was filed on November 25, 2008, and no direct appeal was filed.  
4 Petitioner filed the instant Petition on June 28, 2023. Therefore, more than five years have  
5 elapsed since Petitioner’s JOC was filed and the filing of Petitioner’s instant Petition.  
6 Accordingly, the State affirmatively pled laches. To overcome the presumption of prejudice  
7 to the State, Petitioner has the heavy burden of proving a fundamental miscarriage of justice.  
8 See Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545 (2001); Mitchell v. State, 122 Nev.  
9 1269, 1273-74, 149 P.3d 33, 36 (2006). To overcome the presumption of prejudice to the State  
10 in responding to the petition, the petitioner must show that “the petition is based upon grounds  
11 of which the petitioner could not have had knowledge by the exercise of reasonable diligence  
12 before the circumstances prejudicial to the State occurred.” “Chappell v. State, 137 Nev. 780,  
13 803, 501 P.3d 935, 960 (2021), cert. denied, 214 L. Ed. 2d 184, 143 S. Ct. 377 (2022). All of  
14 Petitioner’s claims could have been raised in a previous proceeding. Accordingly, this Court  
15 should dismiss this petition pursuant to NRS 34.800(2).

16 **II. PETITIONER FAILS TO DEMONSTRATE GOOD CAUSE TO**  
17 **OVERCOME THE PROCEDURAL BARS**

18 Under NRS 34.726, to overcome the procedural bars, a petitioner must demonstrate:  
19 for the purposes of this subsection, good cause for delay exists if the petitioner demonstrates  
20 to the satisfaction of the court: (a) That the delay is not the fault of the petitioner; and (b) That  
21 dismissal of the petition as untimely will unduly prejudice the petitioner. To overcome  
22 procedural bars under NRS 34.810, a petitioner must demonstrate: (1) good cause for delay in  
23 filing his petition or for bringing new claims or repeating claims in a successive petition; and  
24 (2) undue or actual prejudice. NRS 34.810(3).

25 //

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1           “To establish good cause, petitioners must show that an impediment external to the  
2 defense prevented their compliance with the applicable procedural rule. A qualifying  
3 impediment might be shown where the factual or legal basis for a claim was not reasonably  
4 available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003),  
5 rehearing denied, 120 Nev. 307, 91 P.3d 35 cert. denied, 543 U.S. 947, 125 S.Ct. 358 (2004);  
6 see also, Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003) (“In order to  
7 demonstrate good cause, a petitioner must show that an impediment external to the defense  
8 prevented him or her from complying with the state procedural default rules”); Pellegrini, 117  
9 Nev. at 887, 34 P.3d at 537 (neither ineffective assistance of counsel, nor a physician’s  
10 declaration in support of a habeas petition were sufficient “good cause” to overcome a  
11 procedural default, whereas a finding by the Supreme Court that a defendant was suffering  
12 from Multiple Personality Disorder was). An external impediment could be “that the factual  
13 or legal basis for a claim was not reasonably available to counsel, or that ‘some interference  
14 by officials’ made compliance impracticable.” Id. (quoting Murray v. Carrier, 477 U.S. 478,  
15 488, 106 S.Ct. 2639, 2645 (1986)); see also, Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing  
16 Harris v. Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)).

17           The Nevada Supreme Court has held that, “appellants cannot attempt to manufacture  
18 good cause[.]” Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there must be a  
19 “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71 P.3d at  
20 506; (quoting, Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), superseded by  
21 statute as recognized by, Huebler, 128 Nev. at 197, 275 P.3d at 95, footnote 2). Excuses such  
22 as the lack of assistance of counsel when preparing a petition as well as the failure of trial  
23 counsel to forward a copy of the file to a petitioner have been found not to constitute good  
24 cause. Phelps v. Dir. Nev. Dep’t of Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988),  
25 superseded by statute as recognized by, Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145  
26 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

27 //

28 //

1           Petitioner fails to address good cause. His failure to do so should be treated as an  
2 admission that he cannot demonstrate good cause. Polk v. State, 126 Nev. 180, 184–186, 233  
3 P.3d 357, 360– 361 (2010). Further, he should be precluded from doing so in any reply as  
4 allowing him to do so would deny the State of any opportunity to address his arguments. See,  
5 Righetti v. Eighth Judicial District Court, 133 Nev. 42, 47, 388 P.3d 643, 648 (2017) (declining  
6 to adopt a rule that “rewards and thus incentivizes less than forthright advocacy”). Regardless,  
7 Petitioner cannot demonstrate good cause because all facts and law necessary to raise this  
8 complaint were available at the appropriate time. Also, Petitioner does not attempt to establish  
9 an impediment external to the defense. Therefore, this Court should find that Petitioner fails  
10 to establish good cause.

11           **III.           INSUFFICIENT PREJUDICE TO IGNORE PETITIONER’S**  
12                           **PROCEDURAL DEFAULT**

13           Even if Petitioner was able to establish good cause, both good cause and actual  
14 prejudice are required to avoid procedural default and Petitioner cannot demonstrate prejudice.  
15 To overcome the procedural bars, a petition must: (1) demonstrate good cause for delay in  
16 filing his petition or for bringing new claims or repeating claims in a successive petition; and  
17 (2) demonstrated undue or actual prejudice. NRS 34.726(1); NRS 34.810(3).6. Prejudice exists  
18 where “errors in the proceedings underlying the judgment worked to the petition’s actual and  
19 substantial disadvantage.” Harris v. State, 133 Nev. 683, 691, 407 P.3d 348, 355 (Nev. App.  
20 2017); State v. Huebler, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012) cert. denied, 571 U.S. \_\_\_,  
21 133 S.Ct. 988 (2013). To demonstrate the prejudice required to overcome the procedural bars,  
22 a defendant must show “not merely that the errors of [the proceeding] created possibility of  
23 prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state  
24 proceedings with error of constitutional dimensions.” Hogan, 109 Nev. at 960, 860 P.2d at 716  
25 (internal quotation omitted), Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545. Further,  
26 a finding of prejudice sufficient to disregard the procedural bars must be based upon prejudice  
27 sufficient to support a finding of ineffective assistance of counsel. Crump v. Warden, 113 Nev.

28 //

1 293, 304-05, 934 P.2d 247, 254 (1997) (error which rises to the level of ineffective assistance  
2 of counsel establishes cause and prejudice under NRS 34.810(1)(b)).

3 All of Petitioner’s claims are naked assertions suitable only for summary denial.  
4 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (“Bare” and “naked”  
5 allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled  
6 by the record). To the extent Petitioner alleges ineffective assistance of counsel for failure to  
7 request a psychological evaluation for Petitioner, the claim fails due to Petitioner’s failure to  
8 demonstrate what such an evaluation would have shown. Molina v. State, 120 Nev. 185,  
9 192, 87 P.3d 533, 538 (2004) (A defendant who contends his attorney was ineffective  
10 because he did not adequately investigate must show how a better investigation would have  
11 rendered a more favorable outcome probable). To the extent Petitioner alleges  
12 ineffectiveness related to challenging the evidence supporting the conviction, he cannot  
13 demonstrate prejudice since he personally opted to admit the charges. See, Woods v.  
14 State, 114 Nev. 468, 477, 958 P.2d 91, 97 (1998); Reuben C. v. State, 99 Nev. 845, 845-  
15 46, 673 P.2d 493, 493 (1983); Powell v. Sheriff, 85 Nev. 684, 687, 462 P.2d 756, 758  
16 (1969).

17 Petitioner argues that his due process rights were violated on the premise that he  
18 was tortured for being tried as a male when he currently identifies as a female. Petition  
19 8. This claim is a naked assertion pursuant to Hargrove and is not supported by citation  
20 to authority or cogent argument and is thus suitable only for summary denial. Maresca  
21 v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (an arguing party must support his  
22 arguments with relevant authority and cogent argument; “issues not so presented need  
23 not be addressed”). Thus, Petitioners claims should be denied.

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**ORDER**

THEREFORE, IT IS HEREBY ORDERED that Petitioner’s August 29th, 2023,  
habeas petition shall be, and it is, hereby denied.

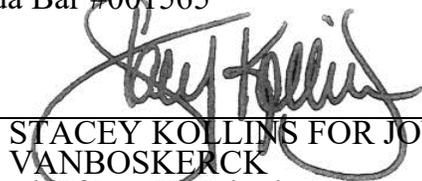
Dated this 5th day of September, 2023



**63F B8C 8509 E640**  
**Joe Hardy**  
**District Court Judge**

STEVEN B. WOLFSON  
DISTRICT ATTORNEY  
Nevada Bar #001565

BY



STACEY KOLLINS FOR JONATHAN E.  
VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528

sar/SVU

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Roy Trost, Plaintiff(s)

CASE NO: A-23-873087-W

7 vs.

DEPT. NO. Department 15

8 State of Nevada, 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.

14

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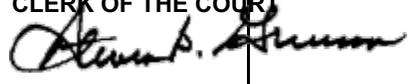
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1 NEFF

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

4  
5 ROY JAMES TROST,

Petitioner,

Case No: A-23-873087-W

Dept No: XV

6  
7 vs.

8 STATE OF NEVADA,

Respondent,

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

9  
10  
11 **PLEASE TAKE NOTICE** that on September 5, 2023, the court entered a decision or order in this matter,  
12 a 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 September 7, 2023.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Cierra Borum

Cierra Borum, Deputy Clerk

17  
18  
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 7 day of September 2023, I served a copy of this Notice of Entry on the  
21 following:

22  By e-mail:  
Clark County District Attorney's Office  
Attorney General's Office – Appellate Division-

23  
24  The United States mail addressed as follows:  
25 Roy Trost # 1027585  
26 P.O. Box 650  
Indian Springs, NV 89070

27 /s/ Cierra Borum

28 Cierra Borum, Deputy Clerk

1 **FOF**

2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JONATHAN E. VANBOSKERCK  
6 Chief Deputy District Attorney  
7 Nevada Bar #006528  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 ROY JAMES TROST,  
10 #2679137

11 Petitioner,

CASE NO: **A-23-873087-W**

12 -vs-

08C247731

13 THE STATE OF NEVADA,

DEPT NO: **XV**

14 Respondent.

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

16 DATE OF HEARING: **AUGUST 29, 2023**

17 TIME OF HEARING: **8:30 AM**

18 THIS CAUSE having come on for hearing before the Honorable Judge Joe Hardy,  
19 District Judge, on the 29<sup>th</sup> day of August, 2023, the Petitioner not being present,  
20 PROCEEDING IN PROPER PERSON, the Respondent being represented by STEVEN B.  
21 WOLFSON, Clark County District Attorney, by and through KENNEDY HOLTHUS, Deputy  
22 District Attorney, and the Court having considered the matter, including briefs, transcripts,  
23 and documents on file herein, now therefore, the Court makes the following findings of fact  
24 and conclusions of law.

25 //

26 //

27 //

28 //

1 **PRODECURAL HISTORY**

2 On May 22, 2008, Roy J. Trost (“Petitioner”) was charged by way of Criminal  
3 Complaint with: Count 1 – Sexual Assault With a Minor Under Sixteen Years of Age, Count  
4 2 – Burglary With Use of a Deadly Weapon, Count 3 and 4 – Coercion With Use of a Deadly  
5 Weapon, Counts 5 and 6 – First Degree Kidnapping With Use of a Deadly Weapon, Counts 7  
6 and 8 – Sexual Assault With Use of a Deadly Weapon, Count 9 – Sexual Assault, Count 10  
7 and 11 – Open and Gross Lewdness, and Count 12 and 13 – Robbery With Use of a Deadly  
8 Weapon.

9 On July 31, 2008, the State filed an Amended Criminal Complaint, charging Petitioner  
10 with Count 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual Assault With  
11 Use of a Deadly Weapon, Count 3 – Battery With Use of a Deadly Weapon With Intent to  
12 Commit Sexual Assault With Substantial Bodily Harm, Count 4 – Sexual Assault With a  
13 Minor Under Sixteen Years of Age, Count 5 – Burglary With Use of a Deadly Weapon, Count  
14 6 – Coercion With Use of a Deadly Weapon, Count 7 – Coercion With Use of a Deadly  
15 Weapon, Count 8 – First Degree Kidnapping With Use of a Deadly Weapon, Count 9 – First  
16 Degree Kidnapping With Use of a Deadly Weapon, Count 10 – Sexual Assault With a Deadly  
17 Weapon, Count 11 – Sexual Assault With a Deadly Weapon, Count 12 – Sexual Assault With  
18 a Deadly Weapon, Count 13 – Open and Gross Lewdness With Use of a Deadly Weapon,  
19 Count 14 – Open and Gross Lewdness With Use of a Deadly Weapon, Count 15 – Robbery  
20 With Use of a Deadly Weapon, and Count 16 – Robbery With Use of a Deadly Weapon.

21 On September 11, 2008, the State charged Petitioner by way of Information with Count  
22 1 – Sexual Assault With Use of a Deadly Weapon, Count 2 – Sexual Assault, Count 3 – First  
23 Degree Kidnapping, Count 4 – Sexual Assault With a Minor Under Sixteen Years of Age,  
24 Count 5 – Sexual Assault, and Count 6 – First Degree Kidnapping.

25 On September 23, 2008, pursuant to negotiations, Petitioner pled guilty to the charges  
26 as contained in the Information filed September 11, 2008. The Guilty Plea Agreement (GPA),  
27 in which both parties stipulated that Counts 1-3 will run consecutively to each other and Counts  
28 4-6 will run consecutively to each other but both parties retain the right to argue whether the

1 two sets of counts would run concurrently or consecutively, was filed in open court the same  
2 day.

3 On November 7, 2008, Petitioner was sentenced as to Count 1 – Life with the possibility  
4 of parole after one hundred twenty (120) months, plus an equal and consecutive term of Life  
5 with the possibility of parole after one hundred twenty (120) months; as to Count 2 – Life with  
6 the possibility of parole after one hundred twenty (120) months, Count 2 to run consecutive to  
7 Count 1; as to Count 3 – Life with the possibility of parole after sixty (60) months, Count 6 to  
8 run consecutive to Count 5. Petitioner was further ordered to a special sentence of lifetime  
9 supervision and register as a sex offender upon any release from custody. Petitioner was also  
10 given one hundred sixty-three (163) days credit for time served. The Judgement of Conviction  
11 (“JOC”) was filed on November 25, 2008.

12 On December 9, 2008, at the State’s request, the Court modified Petitioner’s sentence  
13 as to Count 4, making the sentence Life with the possibility of parole after two hundred forty  
14 (240) months, instead of three hundred (300) months.

15 On November 10, 2009, Petitioner filed a Petition for Writ of Habeas Corpus (Post-  
16 Conviction), Motion for Appointment of Counsel, and Request for Evidentiary Hearing. The  
17 State filed its response on January 11, 2010. The Court denied Petitioner’s Petition for Writ of  
18 Habeas Corpus on January 19, 2010. On March 25, 2010, the Court filed a Finding of Fact,  
19 Conclusions of Law and Order denying Petitioner’s Petition for Writ of Habeas Corpus.

20 On April 6, 2011, Petitioner filed a Pro Per Motion to Withdraw Counsel. The matter  
21 was heard and granted on April 19, 2011.

22 On May 1, 2023, Petitioner filed a Motion for Appointment of Attorney and a Motion  
23 to Withdraw Plea. On May 22, 2023, the State filed its Response to Petitioner’s Motion for  
24 Appointment of Attorney and an Opposition to Petitioner’s Motion to Withdraw Plea. On May  
25 23, 2023, the court denied Petitioner’s Motion for Appointment of Attorney and Motion to  
26 Withdraw Plea. On May 31, 2023, the court filed a Finding of Facts, Conclusion of Law and  
27 Order for Petitioner’s Motion for Appointment of Attorney and Motion to Withdraw Plea.

28 //

1 On June 28, 2023, Petitioner filed a Petition for Writ of Habeas Corpus (“Petition”).  
2 Respondent filed an opposition on August 3, 2023. On August 16, 2023, Petitioner filed a  
3 Motion for Leave to File Amended Petition. On August 29, 2023, this Court held a hearing  
4 and denied habeas relief.

5 On July 6, 2023, Petitioner filed a Motion to Change Gender Sex/Marker in Judgement  
6 of Conviction. On July 27, 2023, the district court granted this motion.

## 7 ANALYSIS

### 8 **I. PETITIONER’S CLAIMS ARE PROCEDURALLY BARRED**

#### 9 **A. Application Of The Procedural Bars Are Mandatory**

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

13 The district courts have *a duty* to consider whether post-conviction claims are  
14 procedurally barred. State v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112  
15 P.3d 1070, 1076 (2005). Riker held that the procedural bars “cannot be ignored when properly  
16 raised by the State.” Id. at 233, 112 P.3d at 1075. Accord, State v. Huebler, 128 Nev. 192, 197,  
17 275 P.3d 91, 94-95, footnote 2 (2012), cert. denied, 568 U.S. 1147, 133 S.Ct. 988 (2013)  
18 (“under the current statutory scheme the time bar in NRS 34.726 is *mandatory, not*  
19 *discretionary*” (emphasis added)).

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

27 The district courts have zero discretion in applying the procedural bars because to allow  
28 otherwise would undermine the finality of convictions. In holding that “[a]pplication of the

1 statutory procedural default rules to post-conviction habeas petitions is mandatory,” the Riker  
2 Court noted:

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

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

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

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

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

16 **B. Claims Must Be Dismissed For Being Successive**

17 Petitioner’s Petition is procedurally barred because it is successive. NRS 34.810(2)  
18 reads:

19 A second or successive petition *must* be dismissed if the judge or  
20 justice determines that it fails to allege new or different grounds for  
21 relief and that the prior determination was on the merits or, if new and  
different grounds are alleged, the judge or justice finds that the failure  
of the petitioner to assert those grounds in a prior petition constituted  
an abuse of the writ.

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

28 //

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

11 Petitioner’s first claim is largely illegible. Although the Petition is illegible it seems as  
12 though Petitioner is claiming that his counsel was ineffective for failure to request a  
13 psychological evaluation for him and for failure to challenge the evidence supporting the  
14 conviction.<sup>1</sup> Petition 6-7. On November 10, 2009, Petitioner filed a Petition for Writ of Habeas  
15 Corpus in which he argued that his counsel was ineffective. Petition for Writ of Habeas Corpus  
16 November 10, 2009, p 7-8. However, unlike Petitioner’s instant Petition he did not argue  
17 ineffective assistance of counsel for his failure to request a psychological evaluation for  
18 Petitioner or due to ineffectiveness related to challenging the evidence supporting his  
19 conviction. On March 22, 2010, this court denied Petitioner’s Petition for ineffective assistance  
20 of counsel which was filed in 2009. Findings of Fact, Conclusion of Law and Order 7-10.  
21 Petitioner could have raised his current claims for ineffective assistance of counsel in his prior  
22 Petition but did not. As such, Petitioner’s claim for ineffective assistance of counsel is an abuse  
23 of the writ. Thus, it should be denied.

### 24 C. Time Barred Under NRS 34.726(1)

25  
26 Petitioner’s Petition is time barred with no good cause shown for delay. Pursuant to  
27 NRS 34.726(1):

28  

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1 Because Petitioner’s writing is so illegible it is difficult to say with certainty whether this is exactly what Petitioner is arguing.

1 Unless there is good cause shown for delay, a petition that challenges  
2 the validity of a judgment or sentence must be filed within 1 year of  
3 the entry of the judgment of conviction or, if an appeal has been taken  
4 from the judgment, within 1 year after the Supreme Court issues its  
5 remittitur. For the purposes of this subsection, good cause for delay  
6 exists if the petitioner demonstrates to the satisfaction of the court:  
7 (a) That the delay is not the fault of the petitioner; and  
8 (b) That dismissal of the petition as untimely will unduly prejudice  
9 the petitioner.

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

11 The one-year time limit for preparing petitions for post-conviction relief under NRS  
12 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),  
13 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite  
14 evidence presented by the defendant that he purchased postage through the prison and mailed  
15 the Notice within the one-year time limit.

16 Petitioner's claims are time barred pursuant to NRS 34.726(1). Petitioner's JOC was  
17 filed on November 25, 2008, and Petitioner never filed a direct appeal. The instant Petition  
18 was filed on June 28, 2023. As such, more than one year has elapsed since entry of Petitioner's  
19 JOC. Thus, Petitioner's claim is barred under NRS 34.726(1) and should be dismissed.

#### 20 **D. The State Affirmatively Pled Laches**

21  
22 NRS 34.800(2) creates a rebuttable presumption of prejudice to the State if "[a] period  
23 exceeding 5 years [elapses] between the filing of a judgment of conviction, an order imposing  
24 a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the  
25 filing of a petition challenging the validity of a judgment of conviction." The Nevada Supreme  
26 Court observed in Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984), how  
27 "petitions that are filed many years after conviction are an unreasonable burden on the criminal  
28 justice system" and that "[t]he necessity for a workable system dictates that there must exist a

1 time when a criminal conviction is final.” To invoke NRS 34.800(2)’s presumption of  
2 prejudice, the statute requires that the State specifically plead laches.

3 Petitioner’s JOC was filed on November 25, 2008, and no direct appeal was filed.  
4 Petitioner filed the instant Petition on June 28, 2023. Therefore, more than five years have  
5 elapsed since Petitioner’s JOC was filed and the filing of Petitioner’s instant Petition.  
6 Accordingly, the State affirmatively pled laches. To overcome the presumption of prejudice  
7 to the State, Petitioner has the heavy burden of proving a fundamental miscarriage of justice.  
8 See Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545 (2001); Mitchell v. State, 122 Nev.  
9 1269, 1273-74, 149 P.3d 33, 36 (2006). To overcome the presumption of prejudice to the State  
10 in responding to the petition, the petitioner must show that “the petition is based upon grounds  
11 of which the petitioner could not have had knowledge by the exercise of reasonable diligence  
12 before the circumstances prejudicial to the State occurred.” “Chappell v. State, 137 Nev. 780,  
13 803, 501 P.3d 935, 960 (2021), cert. denied, 214 L. Ed. 2d 184, 143 S. Ct. 377 (2022). All of  
14 Petitioner’s claims could have been raised in a previous proceeding. Accordingly, this Court  
15 should dismiss this petition pursuant to NRS 34.800(2).

16 **II. PETITIONER FAILS TO DEMONSTRATE GOOD CAUSE TO**  
17 **OVERCOME THE PROCEDURAL BARS**

18 Under NRS 34.726, to overcome the procedural bars, a petitioner must demonstrate:  
19 for the purposes of this subsection, good cause for delay exists if the petitioner demonstrates  
20 to the satisfaction of the court: (a) That the delay is not the fault of the petitioner; and (b) That  
21 dismissal of the petition as untimely will unduly prejudice the petitioner. To overcome  
22 procedural bars under NRS 34.810, a petitioner must demonstrate: (1) good cause for delay in  
23 filing his petition or for bringing new claims or repeating claims in a successive petition; and  
24 (2) undue or actual prejudice. NRS 34.810(3).

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1           “To establish good cause, petitioners must show that an impediment external to the  
2 defense prevented their compliance with the applicable procedural rule. A qualifying  
3 impediment might be shown where the factual or legal basis for a claim was not reasonably  
4 available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003),  
5 rehearing denied, 120 Nev. 307, 91 P.3d 35 cert. denied, 543 U.S. 947, 125 S.Ct. 358 (2004);  
6 see also, Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003) (“In order to  
7 demonstrate good cause, a petitioner must show that an impediment external to the defense  
8 prevented him or her from complying with the state procedural default rules”); Pellegrini, 117  
9 Nev. at 887, 34 P.3d at 537 (neither ineffective assistance of counsel, nor a physician’s  
10 declaration in support of a habeas petition were sufficient “good cause” to overcome a  
11 procedural default, whereas a finding by the Supreme Court that a defendant was suffering  
12 from Multiple Personality Disorder was). An external impediment could be “that the factual  
13 or legal basis for a claim was not reasonably available to counsel, or that ‘some interference  
14 by officials’ made compliance impracticable.” Id. (quoting Murray v. Carrier, 477 U.S. 478,  
15 488, 106 S.Ct. 2639, 2645 (1986)); see also, Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing  
16 Harris v. Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)).

17           The Nevada Supreme Court has held that, “appellants cannot attempt to manufacture  
18 good cause[.]” Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there must be a  
19 “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71 P.3d at  
20 506; (quoting, Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), superseded by  
21 statute as recognized by, Huebler, 128 Nev. at 197, 275 P.3d at 95, footnote 2). Excuses such  
22 as the lack of assistance of counsel when preparing a petition as well as the failure of trial  
23 counsel to forward a copy of the file to a petitioner have been found not to constitute good  
24 cause. Phelps v. Dir. Nev. Dep’t of Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988),  
25 superseded by statute as recognized by, Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145  
26 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

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1           Petitioner fails to address good cause. His failure to do so should be treated as an  
2 admission that he cannot demonstrate good cause. Polk v. State, 126 Nev. 180, 184–186, 233  
3 P.3d 357, 360– 361 (2010). Further, he should be precluded from doing so in any reply as  
4 allowing him to do so would deny the State of any opportunity to address his arguments. See,  
5 Righetti v. Eighth Judicial District Court, 133 Nev. 42, 47, 388 P.3d 643, 648 (2017) (declining  
6 to adopt a rule that “rewards and thus incentivizes less than forthright advocacy”). Regardless,  
7 Petitioner cannot demonstrate good cause because all facts and law necessary to raise this  
8 complaint were available at the appropriate time. Also, Petitioner does not attempt to establish  
9 an impediment external to the defense. Therefore, this Court should find that Petitioner fails  
10 to establish good cause.

11           **III.           INSUFFICIENT PREJUDICE TO IGNORE PETITIONER’S**  
12                           **PROCEDURAL DEFAULT**

13           Even if Petitioner was able to establish good cause, both good cause and actual  
14 prejudice are required to avoid procedural default and Petitioner cannot demonstrate prejudice.  
15 To overcome the procedural bars, a petition must: (1) demonstrate good cause for delay in  
16 filing his petition or for bringing new claims or repeating claims in a successive petition; and  
17 (2) demonstrated undue or actual prejudice. NRS 34.726(1); NRS 34.810(3).6. Prejudice exists  
18 where “errors in the proceedings underlying the judgment worked to the petition’s actual and  
19 substantial disadvantage.” Harris v. State, 133 Nev. 683, 691, 407 P.3d 348, 355 (Nev. App.  
20 2017); State v. Huebler, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012) cert. denied, 571 U.S. \_\_\_,  
21 133 S.Ct. 988 (2013). To demonstrate the prejudice required to overcome the procedural bars,  
22 a defendant must show “not merely that the errors of [the proceeding] created possibility of  
23 prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state  
24 proceedings with error of constitutional dimensions.” Hogan, 109 Nev. at 960, 860 P.2d at 716  
25 (internal quotation omitted), Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545. Further,  
26 a finding of prejudice sufficient to disregard the procedural bars must be based upon prejudice  
27 sufficient to support a finding of ineffective assistance of counsel. Crump v. Warden, 113 Nev.

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1 293, 304-05, 934 P.2d 247, 254 (1997) (error which rises to the level of ineffective assistance  
2 of counsel establishes cause and prejudice under NRS 34.810(1)(b)).

3 All of Petitioner’s claims are naked assertions suitable only for summary denial.  
4 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (“Bare” and “naked”  
5 allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled  
6 by the record). To the extent Petitioner alleges ineffective assistance of counsel for failure to  
7 request a psychological evaluation for Petitioner, the claim fails due to Petitioner’s failure to  
8 demonstrate what such an evaluation would have shown. Molina v. State, 120 Nev. 185,  
9 192, 87 P.3d 533, 538 (2004) (A defendant who contends his attorney was ineffective  
10 because he did not adequately investigate must show how a better investigation would have  
11 rendered a more favorable outcome probable). To the extent Petitioner alleges  
12 ineffectiveness related to challenging the evidence supporting the conviction, he cannot  
13 demonstrate prejudice since he personally opted to admit the charges. See, Woods v.  
14 State, 114 Nev. 468, 477, 958 P.2d 91, 97 (1998); Reuben C. v. State, 99 Nev. 845, 845-  
15 46, 673 P.2d 493, 493 (1983); Powell v. Sheriff, 85 Nev. 684, 687, 462 P.2d 756, 758  
16 (1969).

17 Petitioner argues that his due process rights were violated on the premise that he  
18 was tortured for being tried as a male when he currently identifies as a female. Petition  
19 8. This claim is a naked assertion pursuant to Hargrove and is not supported by citation  
20 to authority or cogent argument and is thus suitable only for summary denial. Maresca  
21 v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (an arguing party must support his  
22 arguments with relevant authority and cogent argument; “issues not so presented need  
23 not be addressed”). Thus, Petitioners claims should be denied.

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**ORDER**

THEREFORE, IT IS HEREBY ORDERED that Petitioner’s August 29th, 2023,  
habeas petition shall be, and it is, hereby denied.

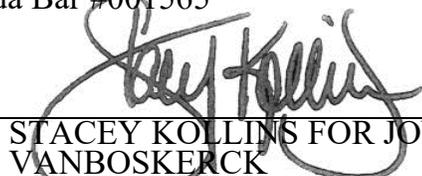
Dated this 5th day of September, 2023



63F B8C 8509 E640  
Joe Hardy  
District Court Judge

STEVEN B. WOLFSON  
DISTRICT ATTORNEY  
Nevada Bar #001565

BY



STACEY KOLLINS FOR JONATHAN E.  
VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528

sar/SVU

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Roy Trost, Plaintiff(s)

CASE NO: A-23-873087-W

7 vs.

DEPT. NO. Department 15

8 State of Nevada, 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**

**August 29, 2023**

---

A-23-873087-W      Roy Trost, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

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**August 29, 2023      8:30 AM      Petition for Writ of Habeas  
Corpus**

**HEARD BY:** Hardy, Joe

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Nancy Maldonado

**RECORDER:** Matt Yarbrough

**REPORTER:**

**PARTIES**

**PRESENT:**      Holthus, Kennedy      Attorney

**JOURNAL ENTRIES**

- Having reviewed the Petition filed and the State's Response, COURT ORDERED, Petition, DENIED for all the reasons in the State's Response. COURT FURTHER ORDERED, State to prepare the Order; matter SET for Status Check in Chambers.

09/19/23 3:00 AM STATUS CHECK: STATE'S ORDER (CHAMBERS)

# Certification of Copy

State of Nevada }  
County of Clark } SS:

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

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

MRS. ROY JAMES TROST, fka, DAISY MEADOWS,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

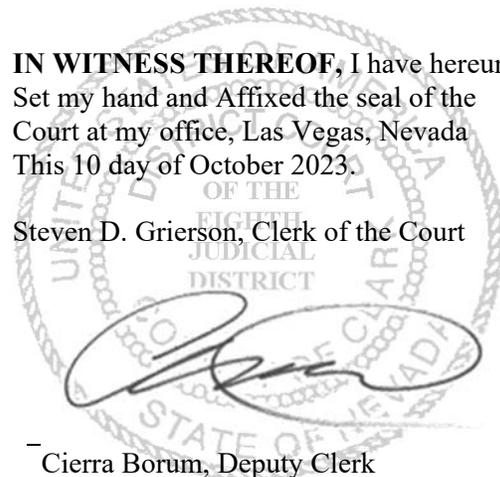
Case No: A-23-873087-W

Dept No: XV

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 10 day of October 2023.

Steven D. Grierson, Clerk of the Court



—  
Cierra Borum, Deputy Clerk