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Attorneys for Petitioner

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

Robert Ybarra, Jr, Petitioner, v. Terry Royal[1], Respondents.	Case No. HC-2410004 Dept. No. 1 **Amended Notice of Appeal** DEATH PENALTY CASE

[1] Because Mr. Ybarra has been transferred to Ely State Prison, Warden Terry Royal is "automatically substituted as a party." Nev. R. Civ. Pro. 25(d).

Notice is hereby given that Robert Ybarra, Jr., hereby appeals to the Nevada Supreme Court from the Order Denying Petition for Writ of Habeas Corpus. The Order was filed on December 17, 2024. The Corrected Notice of Entry of Order was filed on December 18, 2024.

Dated this 16th day of January, 2025.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Randolph M. Fiedler
Assistant Federal Public Defender

/s/Hannah D. Nelson
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 16, 2025, I electronically delivered a true and correct copy of the foregoing Amended Notice of Appeal addressed to:

Aaron Ford
Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701
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/s/ Celina Moore
An Employee of the Federal Public Defender, District of Nevada

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Attorneys for Petitioner

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

Robert Ybarra, Jr., Petitioner, v. Terry Royal[1], Respondents.	Case No. HC-2410004 Dept. No. 1 **Case Appeal Statement** DEATH PENALTY CASE

[1] Because Mr. Ybarra has been transferred to Ely State Prison, Warden Terry Royal is "automatically substituted as a party." Nev. R. Civ. Pro. 25(d).

1. **Name of appellant filing this case appeal statement:**

Robert Ybarra, Jr.

2. **Identify the judge issuing the decision, judgment, or order appealed from:**

Hon. Steve Dobrescu

3. **Identify each appellant and the name and address of counsel for each appellant:**

Robert Ybarra, Jr.,
Appellant

Rene Valladares
Federal Public Defender

Randolph M. Fiedler
Assistant Federal Public Defender
411 E. Bonneville Ave., Suite 250
Las Vegas, Nevada 89101

Counsel for Appellant Robert Ybarra, Jr.

4. **Identify each respondent and the name and address of appellate counsel, if known, for each respondent:**

Terry Royal
Respondent

Melissa A. Brown
White Pine County District Attorney
1786 Great Basin Blvd., Suite 4
Ely, Nevada 89301

Aaron Ford
Attorney General

Jeffrey Conner
Chief Deputy Solicitor General
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701
jconner@ag.nv.gov

Counsel for Respondent

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

All attorneys are licensed to practice law in Nevada.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

The United States District Court for the District of Nevada appointed counsel for Ybarra on July 28, 2000. *See Ybarra v. Gittere*, No. 3:00-cv-00233-GMN-VPC, Docket No. 7. Pursuant to our appointment in federal court, undersigned counsel remained Ybarra's appointed counsel for these state proceedings.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Appellant is represented by appointed counsel, the Federal Public Defender for the District of Nevada.

8. Indicate whether appellant was granted leave to proceed in forma pauperis and the date of entry of the district court order granting such leave:

The United States District Court granted Ybarra leave to proceed in forma pauperis on June 19, 2000. *See Ybarra v. Gittere*, No. 3:00-cv-00233-GMN-VPC, Docket No. 5.

9. Indicate the date the proceedings commenced in the district court (e.g., the date complaint, indictment, information, or petition was filed):

The Petition for Writ of Habeas Corpus (Post-Conviction) was filed on October 10, 2024.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

Ybarra filed the instant petition for post-conviction relief on October 10, 2024. The district court denied this petition on December 17, 2024.

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

Ybarra v. State, No. 13590
Ybarra v. State, No. 17462
Ybarra v. Director, Nevada State Prison, No, 19705
Ybarra v. Warden, Nevada State Prison, E.K. McDaniel, No. 32762
Ybarra v. Warden, Nevada State Prison, E.K. McDaniel, No. 43981
Ybarra v. State, No. 52167
Ybarra v. Filson, No. 72942

12. Indicate whether this appeal involves child custody, the guardianship of a minor, parenting time, or visitation:

This appeal does not involve child custody, the guardianship of a minor, parenting time, or visitation.

///

///

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13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

This is not a civil case.

Dated this 16th day of January, 2025.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Randolph M. Fiedler
Assistant Federal Public Defender

/s/ Hannah D. Nelson
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 16, 2025, I electronically delivered a true and correct copy of the foregoing Case Appeal Statement addressed to:

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Office of the Attorney General
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Carson City, Nevada 89701
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Counsel for Respondent Jeremy Bean

/s/ Celina Moore
An Employee of the Federal Public Defender, District of Nevada

Case #: HC2410004

Judge: DOBRESCU, STEVE L

Date Filed: 10/10/2024 **Department:** Dept. 1

Case Type: SPEC PROC/HABEAS CORPUS

Title/Caption: YBARRA, ROBERT JR #16258 vs. BEAN, JEREMY

	Attorney(s)
Plaintiff	
YBARRA, ROBERT JR #16258	VALLADARES, RENE L,
Respondant	
BEAN, JEREMY	No *Attorney 1* Listed

Filings:

Date	Filing
10/10/2024	CASE FILED 10/10/2024 CASE NUMBER HC2410004
10/10/2024	JUDGE FAIRMAN, GARY D: ASSIGNED
10/10/2024	PETITION FOR WRIT OF HABEAS CORPUS (POSTCONVICTION)
10/10/2024	PLAINTIFF'S ATTORNEY: VALLADARES, RENE L, ASSIGNED
10/11/2024	EXHIBIT LIST IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POSTCONVICTION)
11/12/2024	MOTION TO DISQUALIFY UNDER NRS 1.235(1)
11/12/2024	EXHIBIT LIST IN SUPPORT OF MOTION TO DISQUALIFY
11/18/2024	ORDER TRANSFERRING CASE TO DEPARTMENT 1
11/18/2024	CERTIFICATE OF SERVICE
11/19/2024	JUDGE DOBRESCU, STEVE L: ASSIGNED
11/21/2024	NOTICE OF DEPARTMENT REASSIGNMENT
11/21/2024	CERTIFICATE OF MAILING
12/17/2024	ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS
12/17/2024	CERTIFICATE OF SERVICE
12/18/2024	NOTICE OF ENTRY OF ORDER
12/18/2024	NOTICE OF ENTRY OF ORDER
12/18/2024	CERTIFICATE OF MAILING
12/18/2024	CORRECTED NOTICE OF ENTRY OF ORDER
12/18/2024	CERTIFICATE OF MAILING
12/18/2024	CERTIFICATE OF MAILING
12/18/2024	NOTICE OF APPEAL
12/18/2024	CASE APPEAL STATEMENT
12/27/2024	RECEIPT FOR DOCUMENTS
01/16/2025	AMENDED NOTICE OF APPEAL
01/16/2025	CASE APPEAL STATEMENT
01/17/2025	LEFT SIDE DOCUMENTS - SUPREME COURT OF NEVADA NOTICE OF ELECTRONIC FILING

Case No. HC-2410004

Dept. No. 1

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

*****

ROBERT YBARRA, JR.,

Petitioner,

-vs-

JEREMY BEAN,

Respondent.

_____/

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

Pending before the court is Ybarra's Petition for Writ of Habeas Corpus (Post Conviction) filed October 10, 2024.

FACTUAL HISTORY

On September 29, 1979, sixteen (16) year old Nancy Griffith and her friend, Johnna Cordova, met Robert Ybarra at a gas station/convenience store in Ely, Nevada. Ybarra invited the two girls to ride around with him in his truck. The girls agreed and got into Ybarra's truck. A short while later, Johnna was dropped off and Nancy remained in the vehicle with Ybarra. The two girls planned to meet later in the evening, but Johnna never saw Nancy again.

The next morning two (2) fishermen were traveling on Thirty Mile Road, a gravel

road approximately thirty (30) miles from Ely, on their way to fish at Ruby Lake. They noticed a woman's purse and signs of a struggle on the road. Farther up the road they discovered the charred living remains of Nancy Griffith lying by the side of the road. Most of her body was horribly burned, her hair was burned off, her eyes were swollen shut and her face was unrecognizable. There was a deep gash in her left shoulder, and she was wearing only socks.

The fisherman covered Nancy with their shirts, drove to Ely and returned with a deputy sheriff. The deputy knew Nancy but was unable to recognize her. Nancy said she was kidnapped, beaten, raped and set on fire by a man in a red truck. She said the man worked north of where she was found. Nancy also told an Emergency Medical Technician that she had been kicked.

Nancy was rushed to the hospital in Ely and then airlifted to a burn unit in Salt Lake City, Utah. She died there shortly after her arrival.

An autopsy on September 30, 1979, revealed that semen was present in her vagina which indicated that she had sexual intercourse within the previous two or three days. She had suffered trauma to the genital area and a severe blow to the head. Nancy's death was caused by burns which seared her respiratory passages and charred eighty percent (80%) of her body surface. The burn pattern on her body indicated that she had been doused with a flammable liquid and lit on fire while she was still conscious and either sitting or standing.

Although Nancy had been beaten, raped, set on fire and left for dead, she managed to crawl a quarter mile to where she was found. Pieces of charred flesh fell off her and

marked the trail to the burn site. Investigators found the skin from one of her hands complete with fingernails. At the burn site, investigators found evidence of a struggle, a gas can and shards of a broken mirror.

Robert Ybarra worked at a drill site further up Thirty Mile Road and he and a co-worker were driving back to Ely on September 29, 1979, when they came upon the investigation. Deputies questioned the men and both voluntarily left boot prints for the officers.

Investigators quickly matched Ybarra's boot print to the prints at the burn site. Nancy's blood and hair from her head were found imbedded in his boots. His truck tires matched those at the scene. The mirror shards contained both Nancy and Ybarra's fingerprints, and the mirror was from Ybarra's trailer. Ybarra's fingerprints were found on the gas can, and Nancy's fingerprints were found on a beer can in Ybarra's trailer. Prior to meeting Nancy, Ybarra had told others that he was going to have sex that night and was not going to pay for it.

The fact that Ybarra drove Nancy Griffith to a remote area outside of Ely, beat her, raped her and then while she was still alive poured gas on her and lit her on fire has never been questioned.

PROCEDURAL HISTORY

On October 6, 1979, Ybarra was charged with first-degree murder, first-degree kidnapping, battery with intent to commit sexual assault and sexual assault. A preliminary hearing was held on October 30, 1979. A jury trial began on March 31, 1980, and Ybarra moved for a change of venue. The motion was denied and Ybarra appealed to the

Nevada Supreme Court, which affirmed the lower court's ruling on October 8, 1980.

On September 22, 1980, a hearing was held to consider Ybarra's competence to stand trial. After the hearing, Ybarra was transferred to a state mental facility until he regained sufficient ability to consult with his attorney and assist in his defense. Ybarra was returned to Ely in the spring of 1981 after several doctors had given their opinion that Ybarra was competent to stand trial. The trial resumed on June 9, 1981. The jury found Ybarra guilty on all counts, and after a separate penalty hearing imposed the death sentence. Ybarra appealed his conviction and sentence and on March 3, 1984, the Nevada Supreme Court affirmed the conviction and sentence.[1] A petition for rehearing was denied and a petition for writ of certiorari was denied by the United States Supreme Court on February 25, 1985.

On March 19, 1985, Ybarra filed a petition seeking post-conviction relief. A supplemental petition was filed in June 1985 and a hearing was held on September 16-17, 1985. On July 9, 1986, this Court, the Honorable Merlyn H. Hoyt, presiding, denied post-conviction relief. The Nevada Supreme Court affirmed on January 17, 1987.[2]

On March 10, 1988, Ybarra filed a Petition for Writ of Habeas Corpus in the First Judicial District Court of the State of Nevada. The petition was dismissed on December 30, 1988, and the Nevada Supreme court affirmed the dismissal on June 29, 1989. Ybarra then filed a federal habeas petition on August 14, 1989. A statement of additional claims

1 Ybarra v. State, 100 Nev. 167, 679 P.2d 797 (1984).
2 Ybarra v. State, 103 Nev. 8, 731 P.2d 353 (1987).

was filed on May 14, 1990, and a second statement of additional claims was filed on December 14, 1990. The Federal Court dismissed the petition without prejudice on March 31, 1993.

Ybarra filed a petition for writ of habeas corpus in the above-entitled court on April 26, 1993, and a supplemental petition on February 5, 1995. Respondents filed a motion to dismiss on October 17, 1997. On June 29, 1998, the court entered a comprehensive order which denied Ybarra any relief. Ybarra appealed and the Nevada Supreme Court dismissed the appeal on July 6, 1999.

Ybarra filed yet another petition on March 6, 2003. Respondents filed a motion to dismiss on October 6, 2003.

The court granted the motion to dismiss on July 20, 2004. Ybarra appealed and on November 28, 2005, the Nevada Supreme Court entered an order affirming in part, reversing in part and remanding. The high court affirmed the dismissal of all claims except one: the claim that Ybarra was mentally retarded. The court found that the issue of mental retardation had not been decided and pursuant to NRS 175.554, Ybarra should have the opportunity to litigate the matter.

Ybarra then filed a Motion to Strike Death Penalty based on a claim of mental retardation which was opposed by the State. On April 29-30, 2008, a hearing was held on the motion. Ybarra was present and represented by Michael Pescetta, Esq. and Michael Charleton, Esq. Respondents were represented by Richard Sears, Esq., White Pine County District Attorney. The court received exhibits in excess of three thousand (3,000) pages and testimony from psychologists David Schmidt and Ted Young, and from

psychiatrist Mitchell Young.

On June 26, 2008, this Court entered an order denying the motion to strike the death penalty. The court found and concluded that Ybarra had failed to demonstrate that he was of subaverage intellectual function or that he had adaptive deficits which were manifested during his developmental period. Ybarra appealed on March 3, 2011; the Nevada Supreme court affirmed in a published opinion. Ybarra then sought relief in the Federal system, and after 12 years of litigation the Federal Court denied relief. The U.S. Supreme Court denied cert. in May 2024.

On September 13, 2024 in Case No. CR-0001511 State of Nevada v. Robert Ybarra, this Court entered an order inquiring whether any grounds existed which might preclude the issuance of a warrant of execution. In response, Ybarra filed the instant Petition for Writ of Habeas Corpus. The court has reviewed the file and finds additional briefing or argument is not necessary.

DISCUSSION

Ybarra's 146-page petition raised seven claims with numerous subparts. Along with the petition Ybarra filed 33 exhibits which contain in excess of 2,700 pages.

This petition was filed on October 10, 2024, over forty years after the remittitur issued on appeal from the judgment of conviction.[3] The petition is untimely pursuant to NRS 34.726(1). This petition is also the sixth petition Ybarra has filed in state court. The petition is successive to the extent it raises claims previously litigated and constitutes an

3 Ybarra v. State, 100 Nev. 167, 679 P.2d 797 (1984).

abuse of the writ to the extent it raises new claims. See NRS 34.810(2).

Therefore, the petition is procedurally barred absent a demonstration of good cause and actual prejudice under NRS 34.726(1) and NRS 34.810(4), or a showing that the procedural bars should be excused to prevent a fundamental miscarriage of justice.[4] Ybarra has the burden of pleading and proving "specific facts" showing good cause and actual prejudice. NRS 34.810(3). The application of procedural bars is mandatory.[5]

CLAIM ONE

Robert Ybarra is intellectually disabled and
Is ineligible for the death penalty

Ybarra's claim that he is intellectually disabled has been previously raised and litigated in this Court. An extensive evidentiary hearing was conducted, and this Court entered an order denying relief on June 26, 2008. The order specifically found that Ybarra had not established that he is mentally retarded (this phrase has now been changed to "intellectually disabled").

To avoid the procedural bars applicable to this claim, Ybarra argues there is a new legal basis and difference factual context to reconsider the issue. As for the new law, Ybarra cites Hall v. Florida, 572 U.S. 701 (2014) and Moore v. Texas, 581 U.S. 1 (2017).

In Hall the court invalidated a Florida law that set a strict IQ cutoff score of 70 and did not allow a consideration of standard measurement of error at the time. Hall offers no support to Petitioner, and assuming arguendo Hall does provide some support, there is no

4 Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).
5 State v. Haberstoh, 119 Nev. 173, 69 P.3d 676 (2003).

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

explanation as to why Ybarra did not raise this claim in his 2017 petition brought in this Court.

In Moore the court reversed a lower court ruling that ignored then current clinical standards and followed a set of factors ("the Briseno Factors") that was invented by the Texas Court of Criminal Appeals. Nothing in Moore supports Ybarra. Further, Moore is specifically not retroactive. See Shoop v. Hill, 586 U.S. 45, 139 S.Ct. 504 (2019).

Finally, even if Hall or Moore had some applicability, Petitioner misstates the impact of those cases. On page 43 of his petition, he argues that these cases "show that adherence to the clinical guidelines of intellectual disability are not optional, but constitutionally mandated." Line 10-11. He echo's the same erroneous point at line 13-14 on page 53: "the Eighth Amendment requires strict adherence to the clinical guidelines." Neither case stands for that proposition. Rather, they both are rooted in and support the proposition of Atkins v. Virginia, 536 U.S. 304 (2002), that adjudications of intellectual disability shall be "informed" by the medical community's diagnostic framework. In fact, the Moore court specifically noted that "Hall indicated that being informed by the medical community does not demand adherence to everything stated in the latest medical guide." Moore, 581 U.S. @12.

Assuming arguendo, Ybarra's argument has some merit, the 9TH Circuit has made clear that in 2008 (when this issue was decided) it was not apparent that states were required to strictly adhere to clinical standards. See Pizzuto v. Yordy, 947 F.3d 510, 2019 U.S. App. Lexis 38787 (9TH Cir. 2019). Simply put, Ybarra does not get to apply new clinical standards to an issue that was decided over 15 years ago.

Ybarra also claims a new factual basis exists as a result of twenty years of new testing since the hearing on this matter. This argument provides no basis to change the law of the case or re-litigate the matter. The law in existence at the time was applied to the evidence presented. See Shoop, Infra.

Overall, Ybarra has not shown good cause to re-litigate this claim, nor has he shown actual prejudice to himself. The matter has been litigated and spent the last twelve years in the quagmire of the Ninth Circuit. No fundamental miscarriage of justice will occur because this claim is procedurally barred.

CLAIM TWO

Robert Ybarra has severe mental illness and is ineligible for the death penalty

In claim two Ybarra alleges that he is severely mentally ill and asks the court to find that he is ineligible for the death penalty because under the Nevada constitution his execution would be cruel and unusual punishment.

Ybarra acknowledges that this claim has not previously been presented but argues a fundamental miscarriage of justice will occur if the procedural bar is applied. This argument is without merit. Although not previously raised in this case, the issue has been presented to the Nevada Supreme Court. In rejecting the same claim and applying a procedural bar, the Nevada Supreme Court noted in Chappell v. State, 137 Nev. 780, 501 P.3d 935 (2021) that "neither this court nor the United States Supreme Court [have] suggested that the severely mentally ill are ineligible for the death penalty. 137 Nev. @ 801.

Ybarra's failure to raise this claim in a previous petition is an abuse of the writ. He

has not shown cause for the failure to raise the issue, nor can he show actual prejudice since neither Nevada law nor Federal law support his argument.

CLAIM THREE

Nevada's death penalty statute is unconstitutional because Robert Ybarra cannot raise his own incompetency to be executed

In claim three, Ybarra argues that Nevada's death penalty statutes are unconstitutional because he cannot raise the issue of his incompetency to be executed. This claim has not been previously presented.

The scope of a post-conviction petition for writ of habeas corpus' in Nevada is limited. NRS 34.720. Ybarra's petition must request "relief from a judgment of conviction or sentence" or challenge "the computation of time" he has served.

In light of McConnell v. State, 125 Nev. 243, 212 P.3d 307 (2009), this Court finds claim three is not cognizable in a post-conviction habeas petition. In McConnell, the Nevada Supreme Court held that a challenge to Nevada's lethal injection protocol was not cognizable, because the claim does not "challenge the death sentence itself but seeks to invalidate a particular procedure for carrying out the sentence." 125 Nev. @248.

Similarly, Ybarra's claim three does not implicate the validity of his death sentence, but rather seeks a ruling that a particular statutory scheme is invalid because it does not allow a defendant to raise the issue of his competency to be executed.

Secondly, even if cognizable, Ybarra has not shown good cause for his failure to raise the issue in previous petitions. His argument that such a claim is not ripe until execution is imminent ignores the fact that on August 6, 2004, this Court issued a death

warrant, and the statutes in question contained the same language then as today.

Finally, to the extent the claim implies he has no mechanism to raise the incompetency issue, the claim is belied by the fact that he raises the issue of incompetency in Claim Four of this petition.

CLAIM FOUR

Robert Ybarra is incompetent to be executed

A version of this claim has been previously presented, but Ybarra argues the claim was not ripe because his execution was not imminent. To be clear, this issue was raised in his 2003 petition filed in this Court. This Court granted a motion to dismiss on July 20, 2004, denying all relief. (Robert Ybarra Jr. v. E.K. McDaniel, Case No. HC-0303002).

On August 6, 2004, this Court entered a warrant for the execution of Ybarra to occur that month pursuant to the statute. Ybarra filed a notice of appeal in HC-0303002 on September 7, 2004.

In claim 20 of his opening brief on appeal, it is written

> "Further, Mr. Ybarra is incompetent to be executed, 1 AA 50, and his current condition indicates that he will remain incompetent at the time the execution is carried out." (Opening brief filed March 25, 2005, p. 66, Nevada Supreme Court case No. 43981).

The Nevada Supreme court issued its order on November 28, 2005, and specifically found at page 10

> "Ybarra also claims he is incompetent to be executed. We conclude the record before us belies this claim."

In Ford v. Wainwright, 477 U.S. 399, 106 S.Ct. 2595 (1986), the Supreme court held

that "the Eighth Amendment prohibits the state from inflicting the death penalty upon a prisoner who is insane."[6] Ford allows a state to "presume" that a prisoner is competent to be executed and to require a "substantial threshold showing" of incompetence before he is entitled to be heard on the merits of his claim.[7] The petitioner's burden in this regard is a "high" one. Ford, 477 U.S. @ 417.

The existence of a mental illness is not determinative of whether a prisoner is competent to be executed, rather the focus is whether a prisoner's concept of reality is so impaired that he cannot grasp the executions meaning and purpose or the link between his crime and its punishment.[8]

Here, Ybarra has not made a sufficient showing to trigger the hearing process. The evidence presented in his petition simply does not make a substantial showing of incompetence. In support of this claim Ybarra only offers the declaration of Dr. Price, who after reviewing the records opines that there "is good reason to believe that the Defendant, Robert Ybarra, is insane." Exhibit 18. The fact that Ybarra may or may not suffer from dementia, delusions or other mental illness, in and of itself does not show he lacks a rational understanding of the State's rationale for his execution.

CLAIM FIVE

The deprivation of the opportunity to seek clemency and Nevada's vague clemency regulations violate Robert Ybarra's due process rights

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6 477 U.S. @409-410.

7 477 U.S. @426 (Powell, J. concurring). Because there was no majority opinion in Ford, Justice Powell's concurrence controls. Panetti v. Quarterman, 551 U.S. 930, 949 (2007).

8 Madison v. Alabama, 139 S.Ct. 718, 723, quoting Panetti, 551 U.S. @958-960.

In this claim, Petitioner argues that Nevada's clemency statutes and regulations are unconstitutional and violate his due process and equal protection rights. This claim has not been previously raised, and it is raised more than one year after Petitioner's conviction was affirmed. In order to avoid this procedural bar petitioner must show good cause, meaning (1) the delay is not the fault of the petitioner and (2) dismissal of the petition would unduly prejudice the petitioner. NRS 34.726.

Ybarra's argument that the claim was not ripe because "the Board of Pardons Commissioners does not consider applications while litigation is pending" (petition, p. 124, line 15-16) is without merit and does not show good cause for several reasons.

First, NAC 213.055(2) specifically allows a member of the Pardons Board to select an application for consideration by the Board irrespective of pending litigation. Ybarra has not previously sought clemency so his argument on this point is pure speculation.

Second, contrary to his argument, there are no limits on the availability of clemency for death row inmates who committed a capital offense prior to July 1, 1995. See NRS 213.085(1); Leonard v. Gittere, 2021 Nev. Unpub. Lexis 259, 137 Nev. 933 (2021).

Third, in Nevada, a prisoner has no due process right to clemency. Niergarth v. State, 105 Nev. 26, referring to Severance v. Armstrong, 96 Nev. 836, 620 P.2d 369 (1980).

Finally, and most importantly, this claim is not cognizable in a post-conviction habeas proceeding. Ybarra's argument about the clemency rules do not in any way effect the validity of his death sentence. See generally McConnell v. State, 125 Nev. 243, 212 P.3d 307 (2009) (challenge to execution protocol not cognizable because it doesn't implicate the validity of the death sentence).

CLAIM SIX

Robert Ybarra's execution will result in cruel and unusual punishment

Ybarra alleges that the Nevada Department of Corrections (NDOC) is not prepared or able to perform an execution within the timeframes to be set. A similar claim has been previously raised. This claim is not cognizable in a habeas proceeding because it challenges the method in which the execution will occur, not a challenge to the validity of the judgment or sentence. See McConnell v. State, 125 Nev. 243, 2009 Nev. LEXIS 31 (2009).

CLAIM SEVEN

Vagueness of the capital sentencing scheme

Ybarra's final argument is that Nevada's capital sentencing scheme is unconstitutionally vague. The argument is based on three Nevada Supreme Court cases dating from 2015 to 2019, which according to Ybarra remove the weighing of aggravators against mitigation as part of a death-eligibility determination. He argues this change has upset over 35 years of Nevada capital case law. This claim has not been previously raised by Petitioner.

Ybarra is not entitled to relief on this claim.

This argument does not implicate the validity of his conviction or sentence. Thus, this claim is not cognizable in a habeas petition. Indeed, his complaint is that the Nevada Supreme Court is changing the law that has been followed for over 30 years. Ybarra's conviction was over 40 years ago and followed the law he favors. To be clear, even if the change in law is as he alleges, the new law is not being applied to his conviction or

sentence and has no impact on his case.

CONCLUSION

As noted throughout this order, Ybarra's claims are untimely, successive and provide no basis for relief. He has not shown good cause to relitigate previously raised claims or to raise new claims. He has shown no actual prejudice to him if his claims are procedurally barred, and he has failed to show a fundamental miscarriage of justice will occur if his claims are barred.

A fundamental miscarriage of justice can be demonstrated by a showing that a defendant is "actually innocent of the crime or ineligible for the death penalty.[9]

Here, Ybarra has not even alleged he is innocent of the crime, and rightfully so. His guilt has been established in Nevada case law for over 35 years.[10]

Other claims are not cognizable in a post-conviction habeas petition or belied by the record, and even if cognizable, the claims fail to establish a basis for relief.

Finally, assuming arguendo, his "incompetent to be executed" claim is properly presented, he has failed to present specific facts showing he is even entitled to further process on this claim.

To again quote the Honorable Merlyn H. Hoyt in his 1986 order denying Ybarra's post-conviction habeas petition

> "The facts of this case are unchangeable and forever fixed in time; no amount of desire, preparation or expertise by

9 Leslie v. Warden, 118 Nev. Adv. Op. 78, 59 P.3d 440, 445 (2002); citing Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001).

10 Ybarra v. State, 103 Nev. 8, 16 (1987) (evidence of Ybarra's guilt is "overwhelming and the death penalty is particularly appropriate.")

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

> others could ever change them. The twelve (12) jurors heard and considered all of the evidence presented by both sides at both the trial and penalty hearing phase of the case. They applied the law to the facts and made their determination as our system of Justice requires."

Robert Ybarra committed this horrible crime over forty-five (45) years ago. Despite overwhelming evidence of guilt, he has continued to delay his fate and abuse the legal system. Justice cries out for finality in this case.

Based on the foregoing, the court finds and concludes as follows:

1. Ybarra has failed to allege or show good cause for his attempt to relitigate previously raised claims, or for the failure to previously raise new claims.
2. Ybarra has failed to show actual prejudice if his claims are barred.
3. Ybarra has failed to show a miscarriage of justice will occur if his claims are procedurally barred.
4. Ybarra has raised claims that are not cognizable in a post-conviction habeas petition.
5. Ybarra has raised claims that are belied by the record.
6. Ybarra has not made a threshold showing that he is incompetent to be executed.
7. Ybarra is entitled to no relief or further proceedings as a result of this petition.

Good cause appearing,

IT IS HEREBY ORDERED that Petitioner's Petition for Writ of Habeas Corpus filed on October 10, 2024, is **DISMISSED.**

DATED this 17 day of December, 2024.

DISTRICT JUDGE

FILED

2024 DEC 18 P 1:38

NICHOLE STERCY
WHITE PINE COUNTY CLERK
BY: _____ DEPUTY

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WHITE PINE

ROBERT YBARRA, JR., Petitioner, vs. JEREMY BEAN, Respondent.	Case No. HC2410004 Dept. No. Dept. 1

CORRECTED
Notice of Entry of Order

PLEASE TAKE NOTICE that on the December 18, 2024, the Court entered a decision or Order in this matter, a true and correct copy of which is attached to this notice.

If you wish to appeal this Order or Judgment, you must file a Notice of Appeal with the Clerk of the above-captioned Court within thirty-three (33) days after this notice is mailed to you. This notice was mailed on December 18, 2024.

Dated this 18th day of December, 2024.

_____
Deputy Clerk

Case No. HC-2410004

Dept. No. 1

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

*****

ROBERT YBARRA, JR.,

Petitioner,

-vs-

JEREMY BEAN,

Respondent.

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

Pending before the court is Ybarra's Petition for Writ of Habeas Corpus (Post Conviction) filed October 10, 2024.

FACTUAL HISTORY

On September 29, 1979, sixteen (16) year old Nancy Griffith and her friend, Johnna Cordova, met Robert Ybarra at a gas station/convenience store in Ely, Nevada. Ybarra invited the two girls to ride around with him in his truck. The girls agreed and got into Ybarra's truck. A short while later, Johnna was dropped off and Nancy remained in the vehicle with Ybarra. The two girls planned to meet later in the evening, but Johnna never saw Nancy again.

The next morning two (2) fishermen were traveling on Thirty Mile Road, a gravel

road approximately thirty (30) miles from Ely, on their way to fish at Ruby Lake. They noticed a woman's purse and signs of a struggle on the road. Farther up the road they discovered the charred living remains of Nancy Griffith lying by the side of the road. Most of her body was horribly burned, her hair was burned off, her eyes were swollen shut and her face was unrecognizable. There was a deep gash in her left shoulder, and she was wearing only socks.

The fisherman covered Nancy with their shirts, drove to Ely and returned with a deputy sheriff. The deputy knew Nancy but was unable to recognize her. Nancy said she was kidnapped, beaten, raped and set on fire by a man in a red truck. She said the man worked north of where she was found. Nancy also told an Emergency Medical Technician that she had been kicked.

Nancy was rushed to the hospital in Ely and then airlifted to a burn unit in Salt Lake City, Utah. She died there shortly after her arrival.

An autopsy on September 30, 1979, revealed that semen was present in her vagina which indicated that she had sexual intercourse within the previous two or three days. She had suffered trauma to the genital area and a severe blow to the head. Nancy's death was caused by burns which seared her respiratory passages and charred eighty percent (80%) of her body surface. The burn pattern on her body indicated that she had been doused with a flammable liquid and lit on fire while she was still conscious and either sitting or standing.

Although Nancy had been beaten, raped, set on fire and left for dead, she managed to crawl a quarter mile to where she was found. Pieces of charred flesh fell off her and

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DEPARTMENT I
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA

marked the trail to the burn site. Investigators found the skin from one of her hands complete with fingernails. At the burn site, investigators found evidence of a struggle, a gas can and shards of a broken mirror.

Robert Ybarra worked at a drill site further up Thirty Mile Road and he and a co-worker were driving back to Ely on September 29, 1979, when they came upon the investigation. Deputies questioned the men and both voluntarily left boot prints for the officers.

Investigators quickly matched Ybarra's boot print to the prints at the burn site. Nancy's blood and hair from her head were found imbedded in his boots. His truck tires matched those at the scene. The mirror shards contained both Nancy and Ybarra's fingerprints, and the mirror was from Ybarra's trailer. Ybarra's fingerprints were found on the gas can, and Nancy's fingerprints were found on a beer can in Ybarra's trailer. Prior to meeting Nancy, Ybarra had told others that he was going to have sex that night and was not going to pay for it.

The fact that Ybarra drove Nancy Griffith to a remote area outside of Ely, beat her, raped her and then while she was still alive poured gas on her and lit her on fire has never been questioned.

PROCEDURAL HISTORY

On October 6, 1979, Ybarra was charged with first-degree murder, first-degree kidnapping, battery with intent to commit sexual assault and sexual assault. A preliminary hearing was held on October 30, 1979. A jury trial began on March 31, 1980, and Ybarra moved for a change of venue. The motion was denied and Ybarra appealed to the

Nevada Supreme Court, which affirmed the lower court's ruling on October 8, 1980.

On September 22, 1980, a hearing was held to consider Ybarra's competence to stand trial. After the hearing, Ybarra was transferred to a state mental facility until he regained sufficient ability to consult with his attorney and assist in his defense. Ybarra was returned to Ely in the spring of 1981 after several doctors had given their opinion that Ybarra was competent to stand trial. The trial resumed on June 9, 1981. The jury found Ybarra guilty on all counts, and after a separate penalty hearing imposed the death sentence. Ybarra appealed his conviction and sentence and on March 3, 1984, the Nevada Supreme Court affirmed the conviction and sentence.[1] A petition for rehearing was denied and a petition for writ of certiorari was denied by the United States Supreme Court on February 25, 1985.

On March 19, 1985, Ybarra filed a petition seeking post-conviction relief. A supplemental petition was filed in June 1985 and a hearing was held on September 16-17, 1985. On July 9, 1986, this Court, the Honorable Merlyn H. Hoyt, presiding, denied post-conviction relief. The Nevada Supreme Court affirmed on January 17, 1987.[2]

On March 10, 1988, Ybarra filed a Petition for Writ of Habeas Corpus in the First Judicial District Court of the State of Nevada. The petition was dismissed on December 30, 1988, and the Nevada Supreme court affirmed the dismissal on June 29, 1989. Ybarra then filed a federal habeas petition on August 14, 1989. A statement of additional claims

1 Ybarra v. State, 100 Nev. 167, 679 P.2d 797 (1984).
2 Ybarra v. State, 103 Nev. 8, 731 P.2d 353 (1987).

was filed on May 14, 1990, and a second statement of additional claims was filed on December 14, 1990. The Federal Court dismissed the petition without prejudice on March 31, 1993.

Ybarra filed a petition for writ of habeas corpus in the above-entitled court on April 26, 1993, and a supplemental petition on February 5, 1995. Respondents filed a motion to dismiss on October 17, 1997. On June 29, 1998, the court entered a comprehensive order which denied Ybarra any relief. Ybarra appealed and the Nevada Supreme Court dismissed the appeal on July 6, 1999.

Ybarra filed yet another petition on March 6, 2003. Respondents filed a motion to dismiss on October 6, 2003.

The court granted the motion to dismiss on July 20, 2004. Ybarra appealed and on November 28, 2005, the Nevada Supreme Court entered an order affirming in part, reversing in part and remanding. The high court affirmed the dismissal of all claims except one: the claim that Ybarra was mentally retarded. The court found that the issue of mental retardation had not been decided and pursuant to NRS 175.554, Ybarra should have the opportunity to litigate the matter.

Ybarra then filed a Motion to Strike Death Penalty based on a claim of mental retardation which was opposed by the State. On April 29-30, 2008, a hearing was held on the motion. Ybarra was present and represented by Michael Pescetta, Esq. and Michael Charleton, Esq. Respondents were represented by Richard Sears, Esq., White Pine County District Attorney. The court received exhibits in excess of three thousand (3,000) pages and testimony from psychologists David Schmidt and Ted Young, and from

psychiatrist Mitchell Young.

On June 26, 2008, this Court entered an order denying the motion to strike the death penalty. The court found and concluded that Ybarra had failed to demonstrate that he was of subaverage intellectual function or that he had adaptive deficits which were manifested during his developmental period. Ybarra appealed on March 3, 2011; the Nevada Supreme court affirmed in a published opinion. Ybarra then sought relief in the Federal system, and after 12 years of litigation the Federal Court denied relief. The U.S. Supreme Court denied cert. in May 2024.

On September 13, 2024 in Case No. CR-0001511 State of Nevada v. Robert Ybarra, this Court entered an order inquiring whether any grounds existed which might preclude the issuance of a warrant of execution. In response, Ybarra filed the instant Petition for Writ of Habeas Corpus. The court has reviewed the file and finds additional briefing or argument is not necessary.

DISCUSSION

Ybarra's 146-page petition raised seven claims with numerous subparts. Along with the petition Ybarra filed 33 exhibits which contain in excess of 2,700 pages.

This petition was filed on October 10, 2024, over forty years after the remittitur issued on appeal from the judgment of conviction.[3] The petition is untimely pursuant to NRS 34.726(1). This petition is also the sixth petition Ybarra has filed in state court. The petition is successive to the extent it raises claims previously litigated and constitutes an

3 Ybarra v. State, 100 Nev. 167, 679 P.2d 797 (1984).

abuse of the writ to the extent it raises new claims. See NRS 34.810(2).

Therefore, the petition is procedurally barred absent a demonstration of good cause and actual prejudice under NRS 34.726(1) and NRS 34.810(4), or a showing that the procedural bars should be excused to prevent a fundamental miscarriage of justice.[4] Ybarra has the burden of pleading and proving "specific facts" showing good cause and actual prejudice. NRS 34.810(3). The application of procedural bars is mandatory.[5]

CLAIM ONE

Robert Ybarra is Intellectually disabled and
Is Ineligible for the death penalty

Ybarra's claim that he is intellectually disabled has been previously raised and litigated in this Court. An extensive evidentiary hearing was conducted, and this Court entered an order denying relief on June 26, 2008. The order specifically found that Ybarra had not established that he is mentally retarded (this phrase has now been changed to "intellectually disabled").

To avoid the procedural bars applicable to this claim, Ybarra argues there is a new legal basis and difference factual context to reconsider the issue. As for the new law, Ybarra cites Hall v. Florida, 572 U.S. 701 (2014) and Moore v. Texas, 581 U.S. 1 (2017).

In Hall the court invalidated a Florida law that set a strict IQ cutoff score of 70 and did not allow a consideration of standard measurement of error at the time. Hall offers no support to Petitioner, and assuming arguendo Hall does provide some support, there is no

4 Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).
5 State v. Haberstoh, 119 Nev. 173, 69 P.3d 676 (2003).

explanation as to why Ybarra did not raise this claim in his 2017 petition brought in this Court.

In Moore the court reversed a lower court ruling that ignored then current clinical standards and followed a set of factors ("the Briseno Factors") that was invented by the Texas Court of Criminal Appeals. Nothing in Moore supports Ybarra. Further, Moore is specifically not retroactive. See Shoop v. Hill, 586 U.S. 45, 139 S.Ct. 504 (2019).

Finally, even if Hall or Moore had some applicability, Petitioner misstates the impact of those cases. On page 43 of his petition, he argues that these cases "show that adherence to the clinical guidelines of intellectual disability are not optional, but constitutionally mandated." Line 10-11. He echo's the same erroneous point at line 13-14 on page 53: "the Eighth Amendment requires strict adherence to the clinical guidelines." Neither case stands for that proposition. Rather, they both are rooted in and support the proposition of Atkins v. Virginia, 536 U.S. 304 (2002), that adjudications of intellectual disability shall be "informed" by the medical community's diagnostic framework. In fact, the Moore court specifically noted that "Hall indicated that being informed by the medical community does not demand adherence to everything stated in the latest medical guide." Moore, 581 U.S. @12.

Assuming arguendo, Ybarra's argument has some merit, the 9TH Circuit has made clear that in 2008 (when this issue was decided) it was not apparent that states were required to strictly adhere to clinical standards. See Pizzuto v. Yordy, 947 F.3d 510, 2019 U.S. App. Lexis 38787 (9TH Cir. 2019). Simply put, Ybarra does not get to apply new clinical standards to an issue that was decided over 15 years ago.

Ybarra also claims a new factual basis exists as a result of twenty years of new testing since the hearing on this matter. This argument provides no basis to change the law of the case or re-litigate the matter. The law in existence at the time was applied to the evidence presented. See Shoop, Infra.

Overall, Ybarra has not shown good cause to re-litigate this claim, nor has he shown actual prejudice to himself. The matter has been litigated and spent the last twelve years in the quagmire of the Ninth Circuit. No fundamental miscarriage of justice will occur because this claim is procedurally barred.

CLAIM TWO

Robert Ybarra has severe mental illness and is ineligible for the death penalty

In claim two Ybarra alleges that he is severely mentally ill and asks the court to find that he is ineligible for the death penalty because under the Nevada constitution his execution would be cruel and unusual punishment.

Ybarra acknowledges that this claim has not previously been presented but argues a fundamental miscarriage of justice will occur if the procedural bar is applied. This argument is without merit. Although not previously raised in this case, the issue has been presented to the Nevada Supreme Court. In rejecting the same claim and applying a procedural bar, the Nevada Supreme Court noted in Chappell v. State, 137 Nev. 780, 501 P.3d 935 (2021) that "neither this court nor the United States Supreme Court [have] suggested that the severely mentally ill are ineligible for the death penalty. 137 Nev. @ 801.

Ybarra's failure to raise this claim in a previous petition is an abuse of the writ. He

has not shown cause for the failure to raise the issue, nor can he show actual prejudice since neither Nevada law nor Federal law support his argument.

CLAIM THREE

Nevada's death penalty statute is unconstitutional because Robert Ybarra cannot raise his own incompetency to be executed

In claim three, Ybarra argues that Nevada's death penalty statutes are unconstitutional because he cannot raise the issue of his incompetency to be executed. This claim has not been previously presented.

The scope of a post-conviction petition for writ of habeas corpus' in Nevada is limited. NRS 34.720. Ybarra's petition must request "relief from a judgment of conviction or sentence" or challenge "the computation of time" he has served.

In light of McConnell v. State, 125 Nev. 243, 212 P.3d 307 (2009), this Court finds claim three is not cognizable in a post-conviction habeas petition. In McConnell, the Nevada Supreme Court held that a challenge to Nevada's lethal injection protocol was not cognizable, because the claim does not "challenge the death sentence itself but seeks to invalidate a particular procedure for carrying out the sentence." 125 Nev. @248.

Similarly, Ybarra's claim three does not implicate the validity of his death sentence, but rather seeks a ruling that a particular statutory scheme is invalid because it does not allow a defendant to raise the issue of his competency to be executed.

Secondly, even if cognizable, Ybarra has not shown good cause for his failure to raise the issue in previous petitions. His argument that such a claim is not ripe until execution is imminent ignores the fact that on August 6, 2004, this Court issued a death

warrant, and the statutes in question contained the same language then as today.

Finally, to the extent the claim implies he has no mechanism to raise the incompetency issue, the claim is belied by the fact that he raises the issue of incompetency in Claim Four of this petition.

CLAIM FOUR

Robert Ybarra is incompetent to be executed

A version of this claim has been previously presented, but Ybarra argues the claim was not ripe because his execution was not imminent. To be clear, this issue was raised in his 2003 petition filed in this Court. This Court granted a motion to dismiss on July 20, 2004, denying all relief. (Robert Ybarra Jr. v. E.K. McDaniel, Case No. HC-0303002).

On August 6, 2004, this Court entered a warrant for the execution of Ybarra to occur that month pursuant to the statute. Ybarra filed a notice of appeal in HC-0303002 on September 7, 2004.

In claim 20 of his opening brief on appeal, it is written

> "Further, Mr. Ybarra is incompetent to be executed, 1 AA 50, and his current condition indicates that he will remain incompetent at the time the execution is carried out." (Opening brief filed March 25, 2005, p. 66, Nevada Supreme Court case No. 43981).

The Nevada Supreme court issued its order on November 28, 2005, and specifically found at page 10

> "Ybarra also claims he is incompetent to be executed. We conclude the record before us belies this claim."

In Ford v. Wainwright, 477 U.S. 399, 106 S.Ct. 2595 (1986), the Supreme court held

that "the Eighth Amendment prohibits the state from inflicting the death penalty upon a prisoner who is insane."[6] Ford allows a state to "presume" that a prisoner is competent to be executed and to require a "substantial threshold showing" of incompetence before he is entitled to be heard on the merits of his claim.[7] The petitioner's burden in this regard is a "high" one. Ford, 477 U.S. @ 417.

The existence of a mental illness is not determinative of whether a prisoner is competent to be executed, rather the focus is whether a prisoner's concept of reality is so impaired that he cannot grasp the executions meaning and purpose or the link between his crime and its punishment.[8]

Here, Ybarra has not made a sufficient showing to trigger the hearing process. The evidence presented in his petition simply does not make a substantial showing of incompetence. In support of this claim Ybarra only offers the declaration of Dr. Price, who after reviewing the records opines that there "is good reason to believe that the Defendant, Robert Ybarra, is insane." Exhibit 18. The fact that Ybarra may or may not suffer from dementia, delusions or other mental illness, in and of itself does not show he lacks a rational understanding of the State's rationale for his execution.

CLAIM FIVE

The deprivation of the opportunity to seek clemency and Nevada's vague clemency regulations violate Robert Ybarra's due process rights

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6 477 U.S. @409-410.

7 477 U.S. @426 (Powell, J. concurring). Because there was no majority opinion in Ford, Justice Powell's concurrence controls. Panetti v. Quarterman, 551 U.S. 930, 949 (2007).

8 Madison v. Alabama, 139 S.Ct. 718, 723, quoting Panetti, 551 U.S. @958-960.

In this claim, Petitioner argues that Nevada's clemency statutes and regulations are unconstitutional and violate his due process and equal protection rights. This claim has not been previously raised, and it is raised more than one year after Petitioner's conviction was affirmed. In order to avoid this procedural bar petitioner must show good cause, meaning (1) the delay is not the fault of the petitioner and (2) dismissal of the petition would unduly prejudice the petitioner. NRS 34.726.

Ybarra's argument that the claim was not ripe because "the Board of Pardons Commissioners does not consider applications while litigation is pending" (petition, p. 124, line 15-16) is without merit and does not show good cause for several reasons.

First, NAC 213.055(2) specifically allows a member of the Pardons Board to select an application for consideration by the Board irrespective of pending litigation. Ybarra has not previously sought clemency so his argument on this point is pure speculation.

Second, contrary to his argument, there are no limits on the availability of clemency for death row inmates who committed a capital offense prior to July 1, 1995. See NRS 213.085(1); Leonard v. Gittere, 2021 Nev. Unpub. Lexis 259, 137 Nev. 933 (2021).

Third, in Nevada, a prisoner has no due process right to clemency. Niergarth v. State, 105 Nev. 26, referring to Severance v. Armstrong, 96 Nev. 836, 620 P.2d 369 (1980).

Finally, and most importantly, this claim is not cognizable in a post-conviction habeas proceeding. Ybarra's argument about the clemency rules do not in any way effect the validity of his death sentence. See generally McConnell v. State, 125 Nev. 243, 212 P.3d 307 (2009) (challenge to execution protocol not cognizable because it doesn't implicate the validity of the death sentence).

CLAIM SIX

Robert Ybarra's execution will result in cruel and unusual punishment

Ybarra alleges that the Nevada Department of Corrections (NDOC) is not prepared or able to perform an execution within the timeframes to be set. A similar claim has been previously raised. This claim is not cognizable in a habeas proceeding because it challenges the method in which the execution will occur, not a challenge to the validity of the judgment or sentence. See McConnell v. State, 125 Nev. 243, 2009 Nev. LEXIS 31 (2009).

CLAIM SEVEN

Vagueness of the capital sentencing scheme

Ybarra's final argument is that Nevada's capital sentencing scheme is unconstitutionally vague. The argument is based on three Nevada Supreme Court cases dating from 2015 to 2019, which according to Ybarra remove the weighing of aggravators against mitigation as part of a death-eligibility determination. He argues this change has upset over 35 years of Nevada capital case law. This claim has not been previously raised by Petitioner.

Ybarra is not entitled to relief on this claim.

This argument does not implicate the validity of his conviction or sentence. Thus, this claim is not cognizable in a habeas petition. Indeed, his complaint is that the Nevada Supreme Court is changing the law that has been followed for over 30 years. Ybarra's conviction was over 40 years ago and followed the law he favors. To be clear, even if the change in law is as he alleges, the new law is not being applied to his conviction or

sentence and has no impact on his case.

CONCLUSION

As noted throughout this order, Ybarra's claims are untimely, successive and provide no basis for relief. He has not shown good cause to relitigate previously raised claims or to raise new claims. He has shown no actual prejudice to him if his claims are procedurally barred, and he has failed to show a fundamental miscarriage of justice will occur if his claims are barred.

A fundamental miscarriage of justice can be demonstrated by a showing that a defendant is "actually innocent of the crime or ineligible for the death penalty.[9]

Here, Ybarra has not even alleged he is innocent of the crime, and rightfully so. His guilt has been established in Nevada case law for over 35 years.[10]

Other claims are not cognizable in a post-conviction habeas petition or belied by the record, and even if cognizable, the claims fail to establish a basis for relief.

Finally, assuming arguendo, his "incompetent to be executed" claim is properly presented, he has failed to present specific facts showing he is even entitled to further process on this claim.

To again quote the Honorable Merlyn H. Hoyt in his 1986 order denying Ybarra's post-conviction habeas petition

> "The facts of this case are unchangeable and forever fixed in time; no amount of desire, preparation or expertise by

---

9 Leslie v. Warden, 118 Nev. Adv. Op. 78, 59 P.3d 440, 445 (2002); citing Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001).

10 Ybarra v. State, 103 Nev. 8, 16 (1987) (evidence of Ybarra's guilt is "overwhelming and the death penalty is particularly appropriate.")

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

others could ever change them. The twelve (12) jurors heard and considered all of the evidence presented by both sides at both the trial and penalty hearing phase of the case. They applied the law to the facts and made their determination as our system of Justice requires."

Robert Ybarra committed this horrible crime over forty-five (45) years ago. Despite overwhelming evidence of guilt, he has continued to delay his fate and abuse the legal system. Justice cries out for finality in this case.

Based on the foregoing, the court finds and concludes as follows:

1. Ybarra has failed to allege or show good cause for his attempt to relitigate previously raised claims, or for the failure to previously raise new claims.
2. Ybarra has failed to show actual prejudice if his claims are barred.
3. Ybarra has failed to show a miscarriage of justice will occur if his claims are procedurally barred.
4. Ybarra has raised claims that are not cognizable in a post-conviction habeas petition.
5. Ybarra has raised claims that are belied by the record.
6. Ybarra has not made a threshold showing that he is incompetent to be executed.
7. Ybarra is entitled to no relief or further proceedings as a result of this petition.

Good cause appearing,

IT IS HEREBY ORDERED that Petitioner's Petition for Writ of Habeas Corpus filed on October 10, 2024, is **DISMISSED.**

DATED this 17 day of December, 2024.

DISTRICT JUDGE

Case No. HC2410004

FILED
2024 DEC 18 A 12:31
NICHOLE STEPHENS
WHITE PINE COUNTY CLERK
BY: _____ DEPUTY

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WHITE PINE

ROBERT YBARRA, JR.,

Petitioner,

vs.

JEREMY BEAN,

Respondent.

CERTIFICATE OF MAILING

The undersigned being an employee of the White Pine County Clerk's Office hereby certifies that on the 18th day of December, 2024, I personally deposited for mailing at Ely, Nevada, a true and correct copy of the following:

date stamped copy of CORRECTED NOTICE OF ENTRY OF ORDER

Addressed to:

ROBERT YBARRA JR., #16258
HDSP PO BOX 650
INDIAN SPRINGS, NV 89070
RENE L, VALLADARES, ESQ.
ASST. FEDERAL PUBLIC DEFENDER
411 E. BONNEVILLE AVE., STE. 250
LAS VEGAS, NV 89101
AARON FORD, ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
100 N. CARSON STREET
CARSON CITY, NV 89701-4717

JEREMY BEAN
HDSP PO BOX 650
INDIAN SPRINGS, NV 89070
MELISSA A. BROWN, ESQ.
WPC DISTRICT ATTORNEY
1786 GREAT BASIN BLVD.
ELY, NV 89301

In the following manner:

[X] regular mail
[ ] certified mail
[ ] priority mail
[ ] via facsimile
[X] other placed in agency box

DEPUTY CLERK
HH

OFFICE OF
COUNTY CLERK and EX-OFFICIO CLERK
OF THE SEVENTH JUDICIAL DISTRICT COURT
IN AND FOR
WHITE PINE COUNTY, NEVADA

STATE OF NEVADA, }ss.
COUNTY OF WHITE PINE,

I, Nichole Stephey, and ex-officio Clerk of the Seventh Judicial District Court of the State of Nevada, County of White Pine, do hereby certify that the above and foregoing is a full, correct and true copy of the original *AMENDED NOTICE OF APPEAL, CASE APPEAL STATEMENT, DISTRICT COURT CASE SUMMARY, ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS, CORRECTED NOTICE OF ENTRY OF ORDER, CERTIFICATE OF MAILING* which now remains of record in my office at Ely, County of White Pine and State of Nevada, aforesaid.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court, at my office in the City of Ely, this 17 day of January, 2025.

County Clerk and Ex-Officio Clerk of
Said Court

Deputy Clerk

Nichole Stephey
County Clerk
Registrar of Voters
wpclerk@whitepinecountynv.gov

WHITE PINE COUNTY
NEVADA

1786 Great Basin Boulevard, Suite 3
Ely, Nevada 89301
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WHITE PINE COUNTY CLERK

January 17, 2025

THE HONORABLE ELIZABETH BROWN
Clerk of the Supreme Court
Capitol Complex
201 S. Carson Street
Carson City, NV 89701

RE: HC - 2410004

ROBERT YBARRA, JR.
Appellant/Petitioner,
vs.

TERRY ROYAL
Respondent.

Dear Ms. Brown,

Please note the contents of this appeal:

- Amended Notice of Appeal, Case Appeal Statement, District Court Case Summary, Order Denying Petition for Writ of Habeas Corpus, Corrected Notice of Entry of Order, Certificate of Mailing, Certification of Documents
-

Please note that there were no deficiencies in this appeal.

Please contact me if you have any questions or concerns. Thank you and have a nice day.

Sincerely,
Nichole Stephey
White Pine County Clerk

By: Samantha Craine
Deputy Clerk