

JOEL BURKETT 16111
P.O. Box 650
INDIAN SPRINGS, NEV
89070

21

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

MAY 27 1 36 PM '03

Shirley S. Paquin
CLERK

No. 41504

FILED

CASE NO: C52190

DEPT NO: XI

MAY 30 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *A. Alvarado*
DEPUTY CLERK

JOEL BURKETT
PETITIONER
VS.

THE STATE OF NEVADA
RESPONDANT,

NOTICE OF APPEAL

COMES NOW, PETITIONER JOEL BURKETT
PRO SE IN THE ABOVE ENTITLED MATTER
AND DOES HEREBY GIVE NOTICE THAT
HE DOES INTEND TO SEEK APPEAL
TO THE NEVADA SUPREME COURT,
FOR THE DENIAL OF THE ABOVE
PETITION FOR WRIT OF HABEAS CORPUS
ON MAY 14TH 2003, LIKEWISE,
IN DENYING PETITIONERS INEFFECTIVE
ASSISTANCE OF POST-CONVICTION COUNSEL
SUCCESSIVE, AND THE COURTS
FINDING THAT PETITIONER HAS FAILED

RECEIVED

MAY 27 2003

CLERK

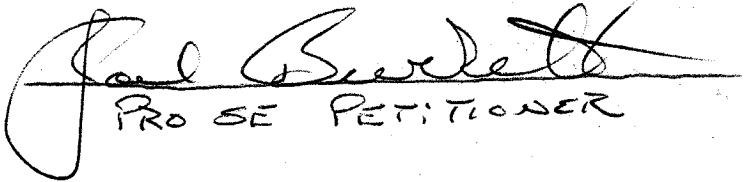
RECEIVED

MAY 30 2003

JANETTE M. BLOOM

TO SHOW GOOD CAUSE.

DATED THIS 22 DAY OF MAY, 2003


PRO SE PETITIONER

1 ASTA

FILED

2 District Court
3 Clark, County, Nevada

2003 MAY 27 PM 2: 01

Shirley C. Loring
CLERK

5 Case No. C52190

6 Department XI

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

10 JOEL BURKETT,)

11 Defendant(s),)

13
14 **CASE APPEAL STATEMENT**

15 1. Appellant(s): JOEL BURKETT

16 2. Judge: MICHAEL L. DOUGLAS

17 3. All Parties, District Court:

18 Plaintiff, THE STATE OF NEVADA

19 Defendant(s), JOEL BURKETT

20 4. All Parties, Appeal:

21 Appellant(s), JOEL BURKETT

22 Respondent, THE STATE OF NEVADA

23 5. Appellate Counsel: Proper Person, JOEL BURKETT, #16111

24 PO BOX 650, INDIAN SPRINGS, NEVADA 89070, Appellant

25 THE STATE OF NEVADA, David Roger, District Attorney, 200 South Third
26 Street, Las Vegas, Nevada 89155 (702) 455-4711, Counsel for Respondent
27

1 6. District Court, APPOINTED

2 7. On Appeal, N/A

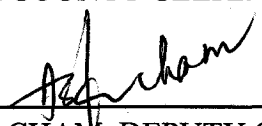
3 8. Forma Pauperis: GRANTED

4 9. Date Commenced in District Court: 01/16/1981

5
6 DATED this 27 day of May, 2003.

7
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9
10
11 SHIRLEY B. PARRAGUIRRE
12 CLARK COUNTY CLERK

13
14 By


15 ASTOR CHAM, DEPUTY CLERK
16 200 South Third Street
17 PO Box 551601
18 Las Vegas, Nevada 89155-1601
19 (702) 455-4409
20
21
22
23
24
25
26
27
28

DATE: 05/27/03
CASE NO. 81-C-052190-C

I N D E X

TIME 1:48 PM
JUDGE: Douglas, Michael L

STATE OF NEVADA

[] vs Burkett, Joel

[]

001 D1 Joel Burkett
P O Box 650
Indian Springs, NV 89070

Pro Se

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0001	01/16/81	COMP/CRIMINAL COMPLAINT		001			
0002	01/19/81	INFO/INFORMATION		001		01/19/81	
0003	01/20/81	ARRN/INITIAL ARRAIGNMENT		001		01/20/81	
0004	04/23/81	JURY/TRIAL BY JURY		001		04/29/81	
0005	04/29/81	SENT/SENTENCING		001		06/02/81	
0006	02/02/94	CASO/CASE (RE)ACTIVATED ON					
0007	02/02/94	PET /PROPER PERSON PETITION FOR WRIT OF HABEAS CORPUS		001	GP	02/28/94	
0008	02/02/94	PET /PROPER PERSON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS		001	GR	02/28/94	
0009	02/02/94	CASO/CASE (RE)ACTIVATED ON					
0010	02/02/94	BREF/BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS					
0011	02/02/94	CERT/ FINANCIAL CERTIFICATE					
0012	03/01/94	MOT /ALL PENDING MOTIONS (2-28-94)		001		02/28/94	
0013	02/28/94	ORDR/ORDER AND AMENDED JUDGMENT OF CONVICTION (JURY TRIAL)		001			
0014	06/10/94	NOTC/JUDICIAL NOTICE TO THE COURT		001			
0015	06/30/94	ASSG/REASSIGNMENT OF JUDGE CHRISTENSEN TO JUDGE MAUPIN					
0016	06/30/94	PET /PROPER PERSON MOTION FOR ENLARGEMENT OF TIME		001	DN	08/03/94	
0017	07/19/94	RSPN/PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR ENLARGEMENT OF TIME		001			
0018	08/12/94	ORDR/ORDER		001			
0019	09/06/94	NOTC/NOTICE OF APPEAL AND DESIGNATION OF RECORDS		001	AP		
0020	10/21/94	MOT /DEFENDANT'S PRO PER MOTION TO CORRECT RECORD		001	OC	11/16/94	
0021	04/07/95	NOTC/NOTICE TRIAL TRANS - ON SHELVES FILE ROOM		001			
0022	01/03/97	ASSG/Reassign Case From Judge MAUPIN TO Judge GIBBONS					
0023	06/28/97	ASSG/Reassign Case From Judge GIBBONS to Judge PAVLIKOWSKI					
0024	06/07/99	NOTC/NOTICE		001			
0025	06/07/99	CRTF/FINANCIAL CERTIFICATE		001			
0027	06/07/99	AFFD/AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS		001			
0028	06/07/99	NCA /ARGUMENT IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS		001			
0029	06/07/99	PET /DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS		001	DN	08/12/99	
0030	06/07/99	MOT /DEFT'S PRO PER MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS		001	GR	08/12/99	
0031	06/09/99	ORDR/ORDER RE PETITION FOR WRIT OF HABEAS CORPUS		001			

(Continued to page 2)

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0032	08/04/99	ANSW/ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION	001			
0033	08/11/99	OPPS/OPPOSITION	001			
0034	08/13/99	MOT /ALL PENDING MOTIONS 8/12/99	001		08/12/99	
0035	08/18/99	JUDG/FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER	001		08/18/99	
0036	08/19/99	NOTC/NOTICE OF ENTRY OF ORDER	001		08/19/99	
0037	08/31/99	NOAS/NOTICE OF APPEAL	001	AP		
0038	08/31/99	STAT/CASE APPEAL STATEMENT	001			
0039	09/23/99	ASSG/Reassign Case From Judge Pavlikowski TO Judge Gibbons				
0040	01/21/81	STAT/SUPPLEMENTAL STATEMENT FOR WRIT OF HABEAS CORPUS, DATED 1/14/81	001		02/05/81	
0041	01/23/81	REQT/MOTION TO DISMISS PRO PER PETITION FOR WRIT OF HABEAS CORPUS	001			
0042	01/26/81	PTAT/POINTS AND AUTHORITIES IN SUPPORT OF WRIT OF HABEAS CORPUS	001			
0043	02/10/81	ORDR/ORDER	001			
0044	03/09/81	TRAN/REPORTER'S TRANSCRIPT OF JAN 9, 1981 PRELIMINARY HEARING	001		01/09/81	
0045	03/10/81	REQT/NOTICE OF MOTION AND MOTION FOR CONTINUANCE	001		03/12/81	
0046	03/10/81	SUBT/SUBSTITUTION OF ATTORNEY	001			
0047	04/20/81	NOTC/NOTICE OF MOTION	001			
0048	04/20/81	REQT/MOTION TO COMPEL BLOOD SAMPLE FROM RAYMOND HAIRE AKA JOEL BURKETT, DEFT	001			
0049	04/23/81	ORDR/ORDER	001			
0050	04/24/81	SUBP/SUBPOENA				
0051	04/28/81	ORDR/ORDER	001			
0052	04/29/81	JURY/JURY				
0053	04/30/81	INFO/MOTION AND NOTICE OF MOTION TO ENDORSE NAMES OF INFORMATION			04/30/81	
0054	05/04/81	SUBP/SUBPOENA				
0055	05/04/81	SUBP/SUBPOENA DUCES TECUM				
0056	05/04/81	VER /VERDICT COUNT I	001		05/04/81	
0057	05/04/81	VER /VERDICT COUNT II	001		05/04/81	
0058	05/04/81	VER /VERDICT COUNT III	001		05/04/81	
0059	05/04/81	VER /VERDICT COUNT IV	001		05/04/81	
0060	05/04/81	INST/INSTRUCTIONS TO THE JURY	001			
0061	05/14/81	ORDR/ORDER				
0062	06/15/81	PTAT/POINTS AND AUTHORITIES, NOTICE OF MOTION AND MOTION TO WITHDRAW AS ATT. OF RECORD				
0063	06/19/81	NOAS/NOTICE OF APPEAL	001			
0064	06/22/81	ORDR/ORDER	001			
0065	06/24/81	CERT/CERTIFICATE OF MAILING				
0066	07/02/81	TRAN/REPORTER'S TRANSCRIPT OF APRIL 23, 1981			04/23/81	
0067	07/23/81	TRAN/REPORTER'S TRANSCRIPT OF FEB 5, 1981			02/05/81	
0068	07/24/81	TRAN/REPORTER'S TRANSCRIPT OF JAN 20, 1981			01/20/81	
0069	07/28/81	TRAN/REPORTER'S TRANSCRIPT OF JUNE 2, 1981			06/02/81	
0070	07/29/81	JUDG/JUDGMENT OF CONVICTION			07/28/81	
0071	07/30/81	REQT/MOTION FOR ORDER EXTENDING TIME FOR FILING DESIGNATION OF RECORD ON APPEAL	001			

(Continued to page 3)

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0072	08/20/81	NOAS/DESIGNATION OF RECORD ON APPEAL				
0073	08/20/81	ORDR/ORDER FOR TRANSCRIPT				
0074	09/23/81	TRAN/REPORTER'S TRANSCRIPT OF JUNE 18, 1981			06/18/81	
0075	05/11/83	NSCO/NEVADA SUPREME COURT JUDGMENT / ORDERED APPEAL DISMISSED			05/10/83	
0076	08/20/87	PET /PETITION	001			
0077	08/20/87	ORDR/ORDER				
0078	08/20/87	CERT/CERTIFICATE OF DESTRUCTION				
0079	09/01/87	ROP /RECEIPT				
0080	07/10/01	CSCL/CASE CLOSED	001		07/10/01	
0081	08/21/01	JMNT/REMITTITUR JUDGMENT AFFIRMED	0001		08/22/01	
0082	11/19/01	ARGU/ARGUMENT IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS	001			
0083	11/19/01	REQT/MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS	001			
0084	11/19/01	CRTF/FINANCIAL CERTIFICATE	001			
0085	11/19/01	AFFD/AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS	001			
0086	11/19/01	PET /PETITION FOR WRIT OF HABEAS CORPUS - POST CONVICTION	001			
0087	12/03/01	ASSG/REASSIGNMENT OF JUDGE Gibbons TO JUDGE Douglas				
0088	12/03/01	CASO/CASE (RE)ACTIVATED ON				
0089	11/30/01	PET /DEFT'S PRO PER PTN FOR WRIT OF HABEAS CORPUS	001	DN	01/24/02	
0090	11/30/01	MOT /DEFT'S PRO PER MOTION FOR TO PROCEED IN FORMA PAUPERIS	001	GR	01/24/02	
0091	11/30/01	ORDR/ORDER RE PETITION FOR WRIT OF HABEAS CORPUS	001			
0092	12/24/01	MOT /DEFT'S PRO PER MTN TO APPEAR/14	AL	DN	01/24/02	
0093	01/23/02	RSPN/STATES RESPONSE TO DEFENDANTS PROPER PERSON PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION	001			Y
0094	01/23/02	NOTC/NOTICE	001			
0095	01/28/02	MOT /ALL PENDING MOTIONS 01/24/02	001		01/24/01	
0096	02/13/02	CASO/CASE (RE)ACTIVATED ON				
0097	02/13/02	MOT /DEFT'S PRO PER MTN FOR LEAVE TO AMEND PTN FOR WRIT HABEAS CORPUS/16	001	DN	02/26/02	
0098	02/13/02	NOTC/NOTICE	001			
0099	02/13/02	ARGU/SUPPLEMENTAL ARGUMENT IN SUPPORT OF AMENDED PETITION FOR WRIT OF HABEAS CORPUS	001			Y
0100	02/14/02	JUDG/FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER	001		01/24/02	
0101	02/19/02	NOED/NOTICE OF ENTRY OF DECISION AND ORDER	001			
0102	02/19/02	RSPN/STATES RESPONSE TO DEFENDANTS PROPER PERSON SUPPLEMENTAL ARGUMENT IN SUPPORT OF AMENDED PETITION FOR WRIT OF HABEAS CORPUS - POST CONVICTION	001			Y
0103	02/27/02	MOT /DEFT'S PRO PER MTN FOR DOCUMENTS/17	001	DN	03/12/02	
0104	03/07/02	ORDR/ORDER DENYING DEFENDANTS PROPER PERSON MOTION FOR LEAVE OF THE COURT TO AMEND PETITION FOR WRIT OF HABEAS CORPUS	001		03/07/02	Y

(Continued to page 4)

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0105	03/15/02	ORDR/ORDER	DENYING DEFENDANTS MOTION FOR DOCUMENTS	001		03/12/02	
0106	03/20/02	NOAS/NOTICE	OF APPEAL	001	AP	03/20/02	
0107	03/21/02	STAT/CASE	APPEAL STATEMENT	001			
0108	03/26/02	STAT/CASE	APPEAL STATEMENT	001			
0109	03/25/02	NOAS/NOTICE	OF APPEAL	001	AP	03/25/02	
0110	08/06/02	CASO/CASE	(RE)ACTIVATED ON APPEAL	001			
0111	09/23/02	APCL/APPEAL	TO SUPREME COURT: CLOSED			04/04/95	
0112	02/10/03	APCL/APPEAL	TO SUPREME COURT: CLOSED 39400		GR	02/06/03	
0113	02/19/03	PET /PETITION	FOR WRIT OF HABEAS CORPUS - POST CONVICTION	001			
0114	02/19/03	REQT/MOTION	FOR LEAVE TO AMEND THE PETITION FOR WRIT OF HABEAS CORPUS	001			
0115	02/19/03	REQT/MOTION	FOR DOCUMENTS	001			
0116	02/28/03	CASO/CASE	(RE)ACTIVATED ON				
0117	02/28/03	MOT /DEFT'S	MTN FOR DOCUMENTS	001	MT	05/01/03	
0118	02/28/03	MOT /DEFT'S	MTN FOR LEAVE TO AMENDED PTN FOR WRIT OF HABEAS CORPUS	001	MT	05/01/03	
0119	02/28/03	PET /DEFT'S	PTN FOR WRIT OF HABEAS CORPUS /20 (VH 3/20/03)	001	VC	04/15/03	
0120	02/28/03	PPOW/ORDER	FOR PETITION FOR A WRIT OF HABEAS CORPUS	001	SC	04/15/03	
0121	03/07/03	JMNT/CLERK'S	CERTIFICATE REVERSED/REMANDED	S		03/10/03	
0122	03/07/03	CCJR/NEVADA	SUPREME COURT CLERKS CERTIFICATE/ JUDGMENT - REVERSED AND REMANDED	001		03/07/03	
0123	03/18/03	MOT /ALL	PENDING MOTIONS (3/18/03)	001		03/18/03	
0124	03/20/03	PET /DEFT'S	PTN FOR WRIT OF HABEAS CORPUS	001	MT	05/01/03	
0125	03/19/03	RSPN/STATES	RESPONSE TO DEFENDANTS MOTION FOR DOCUMENTS	001			
0126	03/24/03	OTTE/ORDER	TO TRANSPORT PRISONER	001		04/24/03	
0128	03/20/03	MOT /ALL	PENDING MOTIONS (3/20/03)	001		03/20/03	
0129	04/03/03	ANSW/ANSWER	TO PETITION FOR WRIT OF HABEAS CORPUS	001			
0130	04/11/03	MOT /STATE'S	MTN TO DISMISS DEFT'S PTN FOR WRIT OF HABEAS CORPUS/24	001	GR	05/01/03	
0131	04/14/03	MOT /DEFT'S	PRO PER MTN TO STRIKE /25	001	MT	05/01/03	
0132	04/14/03	RPLY/PETITIONERS	REPLY	001			
0133	04/22/03	OPPS/STATES	OPPOSITION TO DEFENDANTS MOTION FOR LEAVE TO AMEND THE PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR DOCUMENTS	001			Y
0134	04/22/03	OPPS/OPPOSITION	TO RESPONDANTS MOTION TO DISMISS	001			
0135	04/24/03	MOT /ALL	PENDING MOTIONS (4/24/03)	001		04/24/03	
0136	05/01/03	MOT /ALL	PENDING MOTIONS (5/1/03)	001		05/01/03	
0137	05/14/03	ORDR/ORDER		001		05/14/03	
0138	05/14/03	NOTC/NOTICE		001			
0139	05/14/03	RPLY/PETITIONERS	REPLY TO STATES OPPOSITION TO AMEND AND MOTION FOR DOCUMENTS	001			
0140	05/15/03	JUDG/FINDINGS	OF FACTS, CONCLUSIONS OF LAW AND ORDER	001	HG	05/15/03	
0141	05/16/03	NOTC/NOTICE	OF ENTRY OF ORDER	001		05/14/03	

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1 **ORDR**

2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **GEORGE W. MCFETRIDGE, JR.**
6 **Deputy District Attorney**
7 **Nevada Bar #007442**
8 **200 South Third Street**
9 **Las Vegas, Nevada 89155-2211**
10 **(702) 455-4711**
11 **Attorney for Plaintiff**

MAY 15 3 54 PM '03

Shirley B. Purgina
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 **THE STATE OF NEVADA,**

9 **Plaintiff,**

10 **-vs-**

11 **RAYMOND HAIRE, aka Joel Burkett,**
12 **#609533**

13 **Defendant.**

CASE NO: C52190

DEPT NO: XI

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: 05/01/03
TIME OF HEARING: 9:00 A.M.

18 **THIS CAUSE** having come on for hearing before the Honorable MICHAEL
19 **DOUGLES**, District Judge, on the 1st day of May, 2003, the Petitioner not being present, In
20 **Forma Pauperis**, the Respondent being represented by **DAVID ROGER**, District Attorney,
21 **by and through GEORGE W. MCFETRIDGE, JR.**, Deputy District Attorney, and the Court
22 **having considered the matter**, including briefs, transcripts, arguments of counsel, and
23 **documents on file herein**, now therefore, the Court makes the following findings of fact and
conclusions of law:

FINDINGS OF FACT

1. On January 19, 1981, Joel Burkett, hereinafter Defendant, was charged by
Information with: Count I - Robbery & Use of Deadly Weapon in Commission of a
Crime (Felony - NRS 200.380, 193.165); Count II - First Degree Kidnapping & Use

COUNTY CLERK

MAY 15 2003

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- 1 of Deadly Weapon in Commission of a Crime (Felony - NRS 200.310, 193.165);
2 Count III - Sexual Assault (Felony - NRS 200.364, 200.366); and Count IV - Sexual
3 Assault (Felony - NRS 200.364, 200.366).
- 4 2. Defendant was convicted by a jury on May 4, 1981. The original Judgment of
5 Conviction was filed on July 29, 1981, however, an Amended Judgment of
6 Conviction was filed on February 28, 1994 (pursuant to an order on Defendant's first
7 Petition for Writ of Habeas Corpus), sentencing Defendant: as to Count I, fifteen (15)
8 years for Robbery and an additional fifteen (15) years for Use of a Deadly Weapon in
9 Commission of a Crime, to be served consecutively; as to Count II, Life with
10 Possibility of Parole and an additional term of Life with Possibility of Parole for Use
11 of a Deadly Weapon in Commission of a Crime, to be served consecutively, Count II
12 to be served consecutive to Count I; as to Count III, Life with Possibility of Parole; as
13 to Count IV, Life with the Possibility of Parole, Count IV to be served consecutive to
14 Count III; Counts III and IV to be served concurrent to the sentences imposed in
15 Counts II.
- 16 3. Defendant appealed his judgment of conviction and the Supreme Court of Nevada
17 filed an order dismissing Defendant's appeal on April 21, 1983. Remittitur was filed
18 on May 16, 1983. Defendant then filed his first petition for writ of habeas corpus on
19 February 2, 1994, which was granted in part and denied in part on February 28, 1994
20 "to correct an error between the oral pronouncement of Judgment and the written and
21 filed Judgment of Conviction."
- 22 4. On October 6, 1995, Defendant was transferred from prison in Nevada to a New
23 Mexico prison pursuant to the Interstate Compact Agreement. This transfer was at
24 the request of the Nevada warden after indications that Defendant had been plotting
25 to take the assistant warden of operations hostage.
- 26 5. Defendant filed his second petition for writ of habeas corpus on June 7, 1999.
27 Defendant's second petition was denied on August 12, 1999.
28

- 1 6. On September 19, 2000, Defendant was transferred from New Mexico back to
2 Nevada, as a result of gang activity in New Mexico. Since the same assistant warden
3 of operations was still at the Nevada prison, Defendant was again transferred
4 pursuant to the Interstate Compact Agreement to a prison in Montana.
- 5 7. Defendant filed a third petition for writ of habeas corpus on November 19, 2001.
- 6 8. Meanwhile, on January 16, 2002, Defendant was transferred back to Nevada as a
7 result of him being classified as a management problem.
- 8 9. On February 14, 2002, Defendant's third petition was denied. Soon thereafter,
9 Defendant filed an appeal to the Nevada Supreme Court challenging the district
10 court's order denying the (third) petition he filed on November 19, 2001.
- 11 10. On February 6, 2003, the Nevada Supreme Court filed an order of reversal and
12 remand. In this order the Nevada Supreme Court's remand was limited for further
13 proceedings on the issue of whether Defendant was denied any rights or protections
14 relating to certification available to Nevada prisoners. As this court previously
15 agreed, this issue will be addressed by the Nevada Attorney General in a separate
16 response while the office of the District Attorney will address the two motions
17 referenced above.
- 18 11. Defendant's Motion to Amend amounts to a successive petition for writ of habeas
19 corpus.
- 20 12. No good cause has been proven to excuse the procedural bars against filing
21 successive petitions.
- 22 13. Defendant has not set forth sufficient grounds in his Motion for Documents to entitle
23 him to another set of free transcripts.

24 CONCLUSIONS OF LAW

- 25 1. NRS 34.810(2) provides as follows: "A second or successive petition must be
26 dismissed if the judge or justice determines that it fails to allege new or different
27 grounds for relief and that the prior determination was on the merits or, if new and
28

- 1 different grounds are alleged, the judge or justice finds that the failure of the
2 petitioner to assert those grounds in a prior petition constituted an abuse of the writ.”
- 3 2. As the Nevada Supreme Court noted in Evans v. State, 117 Nev. 609, 29 P.3d 498
4 (2001) “[a] court must dismiss a habeas petition if it presents claims that either were
5 or could have been presented in an earlier proceeding, unless the court finds both
6 cause for failing to present the claims earlier or for raising them again and actual
7 prejudice to the petitioner.” The Court went on to hold that “post-conviction habeas
8 claims that are independent of ineffective assistance claims and that could have been
9 raised on direct appeal are waived.” Evans, id.
- 10 3. The Nevada Supreme Court has also stated “Unlike initial petitions which certainly
11 require a careful review of the record, successive petitions may be dismissed based
12 solely on the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123,
13 129 (1995).
- 14 4. In order to be entitled to transcripts at the State's expense, a defendant must set forth
15 the grounds upon which the petition is based. Peterson v. Warden, 87 Nev. 134, 483
16 P.2d 204 (1971). In addition, the defendant must show that the requested review is
17 not frivolous. Specifically, the defendant must demonstrate: (1) the points raised
18 have merit; and (2) such merit will tend to be supported by a review of the record. Id.
19 Transcripts will not be furnished at the State's expense based upon “the mere
20 unsupported request of a petitioner who is unable to pay for them.” Peterson, 87 Nev.
21 at 135, 483 P.2d at 205.
- 22 5. “NRS 177.325, 177.335, and 177.345 do not contemplate that records will be
23 furnished at state expense upon the mere unsupported request of a petitioner who is
24 unable to pay for them. Just as the petitioner must show that the requested review is
25 not frivolous before he may have an attorney appointed (NRS 177.345(2)), so must
26 he satisfy the court that the points raised have merit and such merit will tend to be
27 supported by a review of the record before he may have trial records supplied at state
28

1 expense. He must specifically set forth grounds upon which the petition is based."

2 Id.

3 **ORDER**

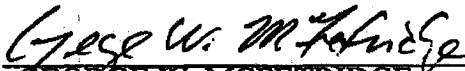
4 Based upon the Findings of Fact and Conclusions of Law contained herein, it is
5 hereby:

6 ORDERED, ADJUDGED, and DECREED that Defendant's Motion For Leave To Amend
7 Petition For Writ Of Habeas Corpus (Post Conviction) & Motion For Documents are
8 DENIED.

9 DATED this 14 day of May, 2003.

10 
11 DISTRICT JUDGE

12
13 DAVID ROGER
14 DISTRICT ATTORNEY
15 Nevada Bar #002781

16 BY 
17 GEORGE W. MCFETRIDGE
18 Deputy District Attorney
19 Nevada Bar #007442

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ORIGINAL

16

1 NEO
2 BRIAN SANDOVAL
3 Attorney General
4 By: BRIAN KUNZI
5 Nevada Bar Number 2173
6 Senior Deputy Attorney General
7 555 E. Washington Avenue, Suite 3900
8 Las Vegas, Nevada 89101
9 (702) 486-3455

FILED

MAY 16 11 44 AM '03

Shirley B. Rungius
CLERK

Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

10 JOEL BURKETT,
11
12 Petitioner,

Case No: C52190
Dept No: XI

v.

NOTICE OF ENTRY OF ORDER

13 NEVADA DEPARTMENT OF PRISONS,
14
15 Respondent.

16 PLEASE TAKE NOTICE that an Order was entered in the above-title action on the
17 14th day of May, 2003, a copy of which is attached hereto as Exhibit 1.

18 DATED this 15th day of May, 2003.

19 BRIAN SANDOVAL
20 Attorney General

21 By: *Brian T. Kunzi*
22 BRIAN KUNZI
23 Senior Deputy Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

RECEIVED

25
26
27
28

COUNTY CLERK

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on the 16th day of May, 2003, I served a true and accurate copy of the foregoing **Order** by mailing via United States mail, first class, postage prepaid to:

JOEL BURKETT #16111
ELY STATE PRISON
P.O. BOX 1989
ELY, NEVADA 89301



An Employee of the Office of the Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

EXHIBIT "1"

1 **ORDR**
2 **BRIAN SANDOVAL**
3 **Attorney General**
4 **By: BRIAN T. KUNZI**
5 **Senior Deputy Attorney General**
6 **Criminal Justice Division**
7 **Nevada Bar Number 2173**
8 **555 E. Washington Avenue, Suite 3900**
9 **Las Vegas, Nevada 89101**
10 **(702) 486-3420**
11 **(702) 486-3768 - fax**
12 **Attorneys for Respondents**

FILED

MAY 14 3 17 PM '03

Shirley B. Rungius
CLERK

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

10 **JOEL BURKETT,**

11 **Petitioner,**

12 **v.**

13 **NEVADA DEPARTMENT OF PRISONS,**

14 **Respondent.**

CASE NO.: C52190

DEPT NO.: XI

ORDER

15
16 This matter having come before this court the 1st day of May, 2003, on Petitioner JOEL
17 BURKETT'S Petition for Writ of Habeas Corpus and having considered all papers on file
18 herewith and for good cause appearing the court makes the following findings of fact,
19 conclusions of law as follows:

20 **FINDINGS OF FACT**

21 1. Petitioner Burkett was reviewed by a Department of Corrections psychological
22 panel on September 11, 2001, for the purpose of determining his suitability for parole pursuant
23 to NRS 213.1214.

24 2. The record reveals the panel concluded Burkett could not be certified as not
25 representing a high risk to re-offend.

26 3. Petitioner Burkett was considered for Parole by the Board of Parole
27 Commissioners on October 31, 2001, which Board determined Burkett was not suitable for
28 parole.

CONCLUSIONS OF LAW

1. Petitioner Burkett properly was considered for parole and was not denied parole simply because he was being housed out-of-state.

2. Petitioner Burkett's claim of ineffective assistance of counsel is a successive petition and Burkett has failed to show good cause for the filing of a successive petition..

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the petition for a writ of habeas corpus is hereby DENIED.

SO ORDERED this 14 day of May, 2003.

MICHAEL L. DOUGLAS

DISTRICT JUDGE

Respectfully submitted by:

BRIAN SANDOVAL
Attorney General

By:

Brian T. Kunzi
Brian T. Kunzi
Senior Deputy Attorney General

CRIMINAL COURT MINUTES

81-C-052190-C STATE OF NEVADA vs Burkett, Joel

02/28/94 09:00 AM 00 ALL PENDING MOTIONS (2-28-94)

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: JULIE HALL, Court Clerk
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA
000981 Noxon, Arthur G.

Y
Y

DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS ... DEFT'S PRO PER MOTION
FOR LEAVE TO PROCEED IN FORMA PAUPERIS

As to deft's Motion for Leave to Proceed in Forma Pauperis, COURT ORDERED,
MOTION GRANTED. As to deft's Petition for Writ of Habeas Corpus, arguments
by Mr. Noxon in support of his response. COURT ORDERED, PETITION IS GRANTED
TO THE LIMITED EXTENT AS SET FORTH IN THE ORDER, FILED THIS DATE.

CUSTODY (NSP)

07/13/94 09:00 AM 00 PROPER PERSON MOTION FOR ENLARGEMENT
OF TIME

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: JULIE HALL, Court Clerk
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA
003988 Langford, Robert L.

Y
Y

Mr. Langford requested a continuance to respond to the motion. COURT
ORDERED, matter continued.

NDP

CONTINUED TO: 08/03/94 09:00 AM 01

CRIMINAL COURT MINUTES

81-C-052190-C STATE OF NEVADA vs Burkett, Joel

CONTINUED FROM PAGE: 001

08/03/94 09:00 AM 01 PROPER PERSON MOTION FOR ENLARGEMENT
OF TIME

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: JULIE HALL, Court Clerk
PATSY SMITH, Reporter/RecorderPARTIES: STATE OF NEVADA
001648 Barker, David B.Y
Y

Mr. Barker submitted the matter. COURT ORDERED, Motion is DENIED.

NDP

11/02/94 09:00 AM 00 DEFENDANT'S PRO PER MOTION TO CORRECT
RECORD

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: JULIE HALL, Court Clerk
PATSY SMITH, Reporter/RecorderPARTIES: STATE OF NEVADA
003988 Langford, Robert L.Y
Y

At request of Mr. Langford, COURT ORDERED, matter continued.

NDP

CONTINUED TO: 11/16/94 09:00 AM 01

11/16/94 09:00 AM 01 DEFENDANT'S PRO PER MOTION TO CORRECT
RECORD

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: JULIE HALL, Court Clerk
CONNIE MILLER, Reporter/RecorderPARTIES: STATE OF NEVADA
001648 Barker, David B.Y
YMr. Barker advised an Amended Judgment of Conviction has been sent to the
deft. COURT ORDERED, matter TAKEN OFF CALENDAR.

NDP

CRIMINAL COURT MINUTES

81-C-052190-C STATE OF NEVADA

vs Burkett, Joel

CONTINUED FROM PAGE: 002

08/12/99 08:30 AM 00 ALL PENDING MOTIONS 8/12/99

HEARD BY: Joseph S. Pavlikowski, Senior Judge; Dept. VJ30

OFFICERS: LINDA SKINNER, Court Clerk
JAMES HELLESO, Reporter/Recorder

PARTIES: STATE OF NEVADA

Y

DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S PRO PER MOTION
FOR LEAVE TO PROCEED IN FORMA PAUPERISRene Hulse from the Attorney General's Office present. COURT ORDERED,
Deft's Pro Per Petition for Writ of Habeas Corpus is DENIED; Deft's Pro Per
Motion for Leave to Proceed in Forma Pauperis is GRANTED.

NDP

01/24/01 09:00 AM 00 ALL PENDING MOTIONS 01/24/02

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: GEORGETTE BYRD/GB, Relief Clerk
Cat Nelson, Reporter/RecorderPARTIES: STATE OF NEVADA
007409 Kosewicz, Cheryl L.

N

Y

DEFT'S PRO PER MOTION TO APPEAR..Court noted the underlying issue stems from
parole denied because of concerns with his behavior in the Nevada Department
of Corrections. He was then sent out of state and then returned due to gang
activities. COURT ORDERED, Deft's Pro Per Motion is DENIED.DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS..Court noted the defendant
was complaining as to treatment in prison. Court does not find motion is
appropriate, and has no jurisdiction, it is up to the parole board. Deft's
Pro Per Motion is DENIED.DEFT'S PRO PER MOTION TO PROCEED IN FORMA PAUPERIS..COURT ORDERED, Deft's
Pro Per Motion is GRANTED.

CRIMINAL COURT MINUTES

81-C-052190-C STATE OF NEVADA

vs Burkett, Joel

CONTINUED FROM PAGE: 003

02/26/02 09:00 AM 00 DEFT'S PRO PER MTN FOR LEAVE TO AMEND
PTN FOR WRIT HABEAS CORPUS/16

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Amber Farley, Relief Clerk
Cat Nelson, Reporter/Recorder

PARTIES: STATE OF NEVADA
006029 Lawson, Tamara F.

Y
Y

Court noted it previously denied the Defendant's writ; that Defendant is complaining of jail treatment, which isn't appropriate under the case that he filed. There being no new grounds on which to grant the motion, COURT ORDERED, MOTION DENIED.

NDC

03/12/02 09:00 AM 00 DEFT'S PRO PER MTN FOR DOCUMENTS/17

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Nora Pena, Court Clerk
Barbara Blankenship, Relief Clerk
Cat Nelson, Reporter/Recorder

PARTIES: STATE OF NEVADA
005144 Sweetin, James R.

001 D1 Burkett, Joel
PRO SE Pro Se

Y
Y

N
Y

Court noted it is not obliged to provide documents unless specific reasons are given. COURT ORDERED, Deft's Motion for Documents is DENIED.

NDC

CRIMINAL COURT MINUTES

81-C-052190-C

STATE OF NEVADA

vs Burkett, Joel

CONTINUED FROM PAGE: 004

03/18/03 09:00 AM 00 ALL PENDING MOTIONS (3/18/03)

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Sharon Chun, Court Clerk
Kit MacDonald, Reporter/RecorderPARTIES: STATE OF NEVADA
007933 Tao, JerryY
Y

DEFT'S MOTION FOR DOCUMENTS...DEFT'S MOTION FOR LEAVE TO AMEND PETITION FOR WRIT OF HABEAS CORPUS

COURT ORDERED, matter CONTINUED for appearance of the Attorney General.

NDC

3/20/03 9:00 AM DEFT'S MOTION FOR DOCUMENTS...DEFT'S MOTION FOR LEAVE TO AMEND PETITION FOR WRIT OF HABEAS CORPUS

03/20/03 09:00 AM 00 ALL PENDING MOTIONS (3/20/03)

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Sharon Chun, Court Clerk
Kit MacDonald, Reporter/RecorderPARTIES: STATE OF NEVADA
002173 Kunzi, Brian T.Y
Y001 D1 Burkett, Joel
003710 Dickinson, Sharon A.N
Y

DEFT'S MOTION FOR DOCUMENTS...DEFT'S MOTION FOR LEAVE TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS

Mr. Kunzi noted that Deft. has filed previous petitions along this same line, which have all been denied. He noted the Supreme Court had reversed and remanded the Petition and the Deft. now wants to Amend his Petition; however, Deft. is raising the same issues.

COURT ORDERED, Deft. to be brought from Ely for hearing to be SET for all pending matters. FURTHER ORDERED, the 4/15/03 calendared date is hereby VACATED and RESET for the 4/24/03 hearing date. COURT FURTHER ORDERED, Responses and documents are to be submitted within fourteen days; motions to be bifurcated.

NDC

CONTINUED ON PAGE: 006

CRIMINAL COURT MINUTES

81-C-052190-C STATE OF NEVADA

vs Burkett, Joel

CONTINUED FROM PAGE: 005

4/24/03 9:00 AM DEFT'S MOTION FOR DOCUMENTS...DEFT'S MOTION FOR LEAVE TO
AMEND PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S PETITION FOR WRIT OF
HABEAS CORPUS

04/15/03 09:00 AM 00 STATE'S MTN TO DISMISS DEFT'S PTN FOR
WRIT OF HABEAS CORPUS/24

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Sharon Chun, Court Clerk
Kit MacDonald, Reporter/Recorder

PARTIES: STATE OF NEVADA
007480 Pate, Susan
001 D1 Burkett, Joel
PRO SE Pro Se
007480 Pate, Susan

Y
Y
N
Y
Y

Deft. not having been transported, COURT ORDERED, MATTER CONTINUED; the
State is to prepare the transport order.

NDC

CLERK'S NOTE: Following Court, Court directed the State to file a Motion to
Dismiss and Response in this matter.

CONTINUED TO: 04/24/03 09:00 AM 01

04/24/03 09:00 AM 00 ALL PENDING MOTIONS (4/24/03)

HEARD BY: Nancy M Saitta, Judge; Dept. 18

OFFICERS: Sharon Chun, Court Clerk
Kit MacDonald, Reporter/Recorder

PARTIES: STATE OF NEVADA
007442 McFetridge Jr., George W.
002173 Kunzi, Brian T.

Y
Y
Y

DEFT'S MOTION FOR DOCUMENTS...DEFT'S PETITION FOR WRIT OF HABEAS
CORPUS...STATE'S MOTION TO DISMISS DEFT'S PETITION FOR WRIT OF HABEAS
CORPUS...DEFT'S MOTION FOR LEAVE TO AMEND PETITION FOR WRIT OF HABEAS
CORPUS

Because of Judge Douglas' unexpected absence today this matter was called by
Judge Saitta. Counsel were advised that at the request of Judge Douglas,
this matter is ORDERED CONTINUED.

CRIMINAL COURT MINUTES

81-C-052190-C STATE OF NEVADA

vs Burkett, Joel

CONTINUED FROM PAGE: 006

NDC

ALL PENDING MOTIONS CONTINUED TO: 5/1/03 9:00 AM

CLERK'S NOTE: Following calendar it was noted that a motion is set for 4/29/03. At request of the Dept. XI Law Clerk, the Deft's Pro Per Motion to Strike has been CONTINUED to 5/1/03 as well.

A copy of this minute order has been placed in the attorney files of:
George W. McFetridge, Jr., Office of the District Attorney Appellate
Div.
Mr. Kunzi, Senior Deputy Attorney General

05/01/03 09:00 AM 00 ALL PENDING MOTIONS (5/1/03)

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Sharon Chun/SC, Court Clerk
Kristen Brown, Relief Clerk
Kit MacDonald, Reporter/Recorder

PARTIES: STATE OF NEVADA
004610 Gardner, Gerald J.
007442 McFetridge Jr., George W.

Y
Y
Y

ALL PENDING MOTIONS, AS NOTED BELOW:

The Court advised it had received and reviewed the briefs from the District Attorney's Office and the Attorney General's Office, as well as Deft. Burkett's Pro Per Motions. Deft. Burkett is not present; however, the Supreme Court allows the operation on submission of pleadings if the Deft. is not present. The matters will proceed today and the State's Motion to Dismiss will be addressed first.

STATE'S MOTION TO DISMISS DEFT'S PETITION FOR WRIT OF HABEAS CORPUS: The Court noted this matter has been back and forth to the Nevada Supreme Court several times. The State argues the fact that Deft. has filed numerous successive Petitions for Habeas Corpus and Deft. reasserts he was denied parole because he was being housed in an out-of-State prison. The hearing was held regarding parole and it was found that Deft. did not qualify for parole. The Nevada Supreme Court found that Deft's Petition was without grounds and without merit. As to the Deft's reassertion that he had ineffective counsel: This had previously been denied as good cause was not raised. The State argues that it is a successive Petition and time-barred. COURT ORDERS, State's Motion to Dismiss Deft's Petition for Writ of Habeas Corpus, GRANTED.

DEFT'S PETITION FOR WRIT OF HABEAS CORPUS: COURT ORDERED, MOOT.

CRIMINAL COURT MINUTES

81-C-052190-C STATE OF NEVADA

vs Burkett, Joel

CONTINUED FROM PAGE: 007

DEFT'S MOTION FOR DOCUMENTS: COURT ORDERED, MOOT.

DEFT'S MOTION FOR LEAVE TO AMEND PETITION FOR WRIT OF HABEAS CORPUS: COURT ORDERED, MOOT.

DEFT'S PRO PER MOTION TO STRIKE: COURT ORDERED, MOOT.

NDC

Certification of Copy

STATE OF NEVADA

COUNTY OF CLARK

SS:

I, SHIRLEY B. PARRAGUIRRE, the duly elected, qualifying and acting Clerk of Clark County, in the State of Nevada, and Ex-Officio Clerk of the District Court, do hereby certify that the foregoing is a true, full and correct copy of the original:

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

THE STATE OF NEVADA,

Plaintiff,

VS.

JOEL BURKETT,

Defendant.

D.C. CASE C52190
DEPARTMENT XI

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, on
this the 27 day of May, 2003

SHIRLEY B. PARRAGUIRRE,
CLARK COUNTY CLERK

ASTOR CHAM, Deputy Clerk