

Brendan Nasby
I.D. No. 63618
Lovelock Corr. Ctr.
1200 Prison Rd.
Lovelock, NV 89419
(Petitioner In Pro Se)

FILED

JUN 27 2017

Elizabeth A. Brown
CLERK OF COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * *

Electronically Filed
Jul 07 2017 02:49 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Brendan Nasby,
Petitioner,
vs.
The State of Nevada,
Respondent.

8th Jud. Dist. Ct. Case No. 98C154293-2
Original 8th Jud. Dist. Ct. No. A-16-741719-W
11th Jud. Dist. Ct. Case No. PI 16-1002
8th Jud. Dist. Ct., Dept. No. 19

NOTICE OF APPEAL

NOTICE IS GIVEN that Petitioner, Brendan Nasby, in Pro Se, hereby appeals to the Nevada Supreme Court the denial of his "Petition For Writ of Habeas Corpus" which was denied on May 15, 2017; the denial of his "Motion For Reconsideration (NRCP 60(b))" which was denied on April 26, 2017; and the denial of his "Motion For Appointment of Counsel" & his "Motion To Extend Prison Copywork Limit", both of which were never address-
ed by any court.

To date, Petitioner has not received an Order or Judgment disposing of ANY OF THE ABOVE filings.

Dated this 22nd day of June, 2017.

RECEIVED
JUN 27 2017
CLERK OF THE COURT

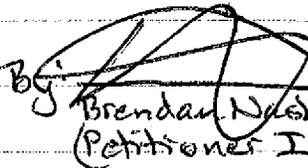
By: *[Signature]*
Brendan Nasby #63618
Lovelock Corr. Ct.
1200 Prison Rd.
Lovelock, NV 89419
(Petitioner In Pro Se)

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CERTIFICATE OF MAILING

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address on this 22nd day of June, 2017, by placing same in the U.S. Mail via prison law

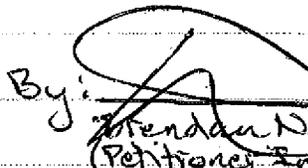
library staff: 1) District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

By: 
Brendan Nelson #63612
(Petitioner In Pro Se)

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. 98015429-3, does not contain the social security number of any person.

Dated this 22nd day of June, 2017.

By: 
Brendan Nelson #63618
(Petitioner In Pro Se)

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

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STATE OF NEVADA,

Case No: 98C154293-2

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Plaintiff(s),

Dept No: XIX

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vs.

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BRENDAN J. NASBY,

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Defendant(s),

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CASE APPEAL STATEMENT

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1. Appellant(s): Brendan Nasby

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2. Judge: William D. Kephart

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3. Appellant(s): Brendan Nasby

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Counsel:

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Brendan Nasby #63618
1200 Prison Rd.
Lovelock, NV 89419

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4. Respondent: The State of Nevada

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Counsel:

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Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101

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(702) 671-2700

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

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

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

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

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: October 21, 1998

10. Brief Description of the Nature of the Action: Criminal

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

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 35319, 47130, 58579, 67476, 67580, 67704, 68039,
70626

12. Child Custody or Visitation: N/A

Dated This 29 day of June 2017.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton

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

cc: Brendan Nasby

DEPARTMENT 19
CASE SUMMARY
CASE NO. 98C154293-2

State of Nevada
vs
Brendan Nasby

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Location: **Department 19**
Judicial Officer: **Kephart, William D.**
Filed on: **10/21/1998**
Case Number History:
Cross-Reference Case **C154293**
Number:
Defendant's Scope ID #: **1517690**
Lower Court Case # Root: **98F11168**
Lower Court Case Number: **98F11168B**
Supreme Court No.: **58579**
67476
67580
67704
68039
70626

CASE INFORMATION

Offense	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. CONSPIRACY TO COMMIT MURDER.	F	01/01/1900		
2. MURDER WITH A DEADLY WEAPON	F	01/01/1900	Case Flags:	Bail Set <i>Bail Set at \$300000.00</i>
Related Cases				Appealed to Supreme Court Custody Status - Nevada Department of Corrections Appeal in Court of Appeals <i>70626</i>
98C154293-1 (Multi-Defendant Case)				
98C154293-3 (Multi-Defendant Case)				
98C154293-4 (Multi-Defendant Case)				
Statistical Closures				
12/13/1999	USJR Reporting Statistical Closure			
05/13/2009	USJR Reporting Statistical Closure			

DATE	CASE ASSIGNMENT
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Current Case Assignment	
Case Number	98C154293-2
Court	Department 19
Date Assigned	01/05/2015
Judicial Officer	Kephart, William D.

PARTY INFORMATION

Defendant	Nasby, Brendan J	<i>Lead Attorneys</i>
		Pro Se
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
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01/01/1900	Plea (Judicial Officer: User, Conversion) 1. CONSPIRACY TO COMMIT MURDER. Not Guilty PCN: Sequence:
01/01/1900	Plea (Judicial Officer: User, Conversion) 2. MURDER WITH A DEADLY WEAPON Not Guilty PCN: Sequence:

DEPARTMENT 19
CASE SUMMARY
CASE NO. 98C154293-2

- 10/21/1998  Information
- 10/22/1998  Criminal Bindover
- 10/27/1998 **Initial Arraignment (9:00 AM)**
INITIAL ARRAIGNMENT Relief Clerk: CAROL GREEN Reporter/Recorder: JAMES HELLESO Heard By: Joseph Pavlikowski
- 11/09/1998  Information
- 11/12/1998 **Arraignment Continued (8:30 AM)**
ARRAIGNMENT CONTINUED Court Clerk: CAROL GREEN/cg Relief Clerk: PAULA GOODELL Reporter/Recorder: JAMES HELLESO Heard By: Joseph Pavlikowski
- 11/12/1998  Agreement
Agreement to Testify
- 11/12/1998  Guilty Plea Agreement
- 11/13/1998  Criminal Bindover
- 11/24/1998 **Initial Arraignment (8:30 AM)**
INITIAL ARRAIGNMENT Court Clerk: LINDA SKINNER/ls Relief Clerk: CAROL GREEN Reporter/Recorder: JAMES HELLESO Heard By: Joseph Pavlikowski
- 12/03/1998  Information
- 12/04/1998  Criminal Bindover
- 12/10/1998 **Initial Arraignment (8:30 AM)**
INITIAL ARRAIGNMENT
- 12/10/1998 **Initial Arraignment (8:30 AM)**
INITIAL ARRAIGNMENT
- 12/10/1998 **All Pending Motions (8:30 AM)**
ALL PENDING MOTIONS 12/10/98 Relief Clerk: CAROL GREEN Reporter/Recorder: JAMES HELLESO Heard By: Joseph Pavlikowski
- 12/10/1998  Motion
Motion for Own Recognizance Release or House Arrest
- 12/10/1998  Guilty Plea Agreement
- 12/10/1998  Guilty Plea Agreement
- 12/10/1998  Reporters Transcript
Transcript of Hearing Held on November 5, 1998
- 12/14/1998  Reporters Transcript
Transcript of Hearing Held on December 2, 1998
- 12/15/1998 **Motion for Own Recognizance Release/Setting Reasonable Bail (8:30 AM)**

DEPARTMENT 19
CASE SUMMARY
CASE NO. 98C154293-2

Events: 12/10/1998 Motion
DEFT'S MOTION FOR O.R. RELEASE OR HOUSE ARREST Heard By: Joseph Pavlikowski

12/15/1998 **Motion for Own Recognizance Release/Setting Reasonable Bail (8:30 AM)**
DEFT'S REQUEST FOR O.R. RELEASE OR BAIL REDUCTION Heard By: Joseph Pavlikowski

12/15/1998 **All Pending Motions (8:30 AM)**
ALL PENDING MOTIONS 12/15/98 Court Clerk: LINDA SKINNER Reporter/Recorder: JAMES HELLESO Heard By: Joseph Pavlikowski

12/18/1998  Notice of Witnesses
Notice of Witnesses [NRS 174.234 (1)(b)]

12/18/1998  Notice of Expert Witnesses
Notice of Expert Witnesses [NRS 174.234 (2)]

12/21/1998  Order Denying Motion
Order Denying Defendants Motion for Own Recognizance Release or House Arrest

01/05/1999  Notice of Witnesses
Superseding Notice of Witnesses [NRS 174.234 (1)(b)]

01/06/1999  Notice of Motion
Notice of Motion and Motion to Revoke Defendant Nasby's Jail Privileges and to Place him in Isolation

01/07/1999  Order
Order for Transcript

01/08/1999 **Motion to Revoke Own Recognizance Release (8:30 AM)**
Events: 01/06/1999 Notice of Motion
STATE'S MOTION TO REVOKE DEFT NASBY'S JAIL PRIVILEGES AND PLACE IN ISOLATION Relief Clerk: CAROL GREEN Reporter/Recorder: JAMES HELLESO Heard By: Pavlikowski, Joseph S.

01/21/1999  Subpoena

01/22/1999 **Motion to Revoke Own Recognizance Release (9:00 AM)**
STATE'S MOTION TO REVOKE DEFT NASBY'S JAIL PRIVILEGES AND PLACE IN ISOLATION Court Clerk: CAROL GREEN Relief Clerk: CONNIE KALSKI/CK Reporter/Recorder: JAMES HELLESO Heard By: Pavlikowski, Joseph S.

01/28/1999 **Calendar Call (8:30 AM)**
CALENDAR CALL Court Clerk: LINDA SKINNER Reporter/Recorder: JAMES HELLESO Heard By: Pavlikowski, Joseph S.

01/28/1999  Subpoena

01/29/1999 **Calendar Call (8:30 AM)**
CALENDAR CALL

01/29/1999 **Motion to Revoke Own Recognizance Release (8:30 AM)**
STATE'S MOTION TO REVOKE DEFT NASBY'S JAIL PRIVILEGES AND PLACE IN ISOLATION Heard By: Joseph Pavlikowski

01/29/1999 **All Pending Motions (9:00 AM)**

DEPARTMENT 19
CASE SUMMARY
CASE NO. 98C154293-2

ALL PENDING MOTIONS 1/29/99 Relief Clerk: CAROL GREEN Reporter/Recorder: JAMES HELLESO Heard By: Joseph Pavlikowski

- 02/01/1999 **Motion to Revoke Own Recognizance Release (8:30 AM)**
STATE'S MOTION TO REVOKE DEFT NASBY'S JAIL PRIVILEGES AND PLACE IN ISOLATION Heard By: Joseph Pavlikowski
- 02/01/1999 **Status Check (8:30 AM)**
STATUS CHECK: TRIAL SETTING Heard By: Joseph Pavlikowski
- 02/01/1999 **All Pending Motions (8:30 AM)**
ALL PENDING MOTIONS 2/1/99 Relief Clerk: CAROL GREEN Reporter/Recorder: JAMES HELLESO Heard By: Joseph Pavlikowski
- 02/01/1999 **CANCELED Jury Trial (9:00 AM)**
Vacated
- 02/02/1999 **Motion to Revoke Own Recognizance Release (8:30 AM)**
STATE'S MOTION TO REVOKE DEFT NASBY'S JAIL PRIVILEGES AND PLACE IN ISOLATION Heard By: Joseph Pavlikowski
- 02/02/1999 **Status Check (8:30 AM)**
STATUS CHECK: TRIAL SETTING Heard By: Joseph Pavlikowski
- 02/02/1999 **All Pending Motions (8:30 AM)**
ALL PENDING MOTIONS 2/2/99 Relief Clerk: CAROL GREEN Reporter/Recorder: JAMES HELLESO Heard By: Joseph Pavlikowski
- 02/08/1999 **Sentencing (8:30 AM)**
SENTENCING Court Clerk: LINDA SKINNER Reporter/Recorder: JAMES HELLESO Heard By: Pavlikowski, Joseph S.
- 02/10/1999 **Request of Court (8:30 AM)**
AT THE REQUEST OF THE COURT Court Clerk: LINDA SKINNER Reporter/Recorder: JAMES HELLESO Heard By: Pavlikowski, Joseph S.
- 02/12/1999 **Request of Court (8:30 AM)**
AT THE REQUEST OF THE COURT Court Clerk: LINDA SKINNER Reporter/Recorder: JAMES HELLESO Heard By: Joseph Pavlikowski
- 02/24/1999  **Order**
Order for Visitation of Inmate by Parent, Child and Finance
- 02/24/1999  **Reporters Transcript**
Transcript of Hearing Held on November 12, 1998
- 02/24/1999  **Reporters Transcript**
Transcript of Hearing Held on December 10, 1998
- 02/25/1999 **Sentencing (8:30 AM)**
SENTENCING Court Clerk: LINDA SKINNER/LS Relief Clerk: CONNIE KALSKI Reporter/Recorder: JAMES HELLESO Heard By: Pavlikowski, Joseph S.
- 02/25/1999 **Sentencing (8:30 AM)**
SENTENCING Court Clerk: LINDA SKINNER/LS Relief Clerk: CONNIE KALSKI Reporter/Recorder: JAMES HELLESO Heard By: Joseph Pavlikowski
- 02/26/1999  **Judgment of Conviction**
Judgment of Conviction (Plea)

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CASE NO. 98C154293-2

03/04/1999 **Sentencing (8:30 AM)**
*SENTENCING Court Clerk: CAROL GREEN Relief Clerk: SHARRY FRASCARELLI/sf
Reporter/Recorder: JAMES HELLESO Heard By: Joseph Pavlikowski*

03/09/1999  **Notice of Witnesses**
Notice of Witnesses [NRS 174.234 (1)(b)]

03/09/1999  **Notice of Expert Witnesses**
Notice of Expert Witnesses [NRS 174.234 (2)]

03/15/1999  **Judgment of Conviction**
Judgment of Conviction (Plea)

04/29/1999 **Calendar Call (8:30 AM)**
*CALENDAR CALL Relief Clerk: CAROL GREEN Reporter/Recorder: JAMES HELLESO
Heard By: Joseph Pavlikowski*

04/30/1999 **Calendar Call (9:00 AM)**
*CALENDAR CALL (OVERFLOW FROM DEPT III) COUMOU/SCISCENTO-17 WIT/2
OUTSTATE/5DAYS Court Clerk: RITA LOPEZ Reporter/Recorder: JOE D'AMATO Heard
By: Mosley, Donald M.*

05/03/1999 **Calendar Call (9:00 AM)**
*CALENDAR CALL (OVERFLOW FROM DEPT III) COUMOU/SCISCENTO-17 WIT/2
OUTSTATE/5DAYS Court Clerk: JUDY NORMAN Reporter/Recorder: MAUREEN SCHORN
Heard By: Donald Mosley*

05/03/1999 **CANCELED Jury Trial (1:00 PM)**
Vacated

05/06/1999 **Conversion Hearing Type (8:30 AM)**
*TRIAL SETTING Court Clerk: LINDA SKINNER Reporter/Recorder: JAMES HELLESO
Heard By: Joseph Pavlikowski*

05/13/1999 **Sentencing (8:30 AM)**
*SENTENCING Relief Clerk: CAROL GREEN Reporter/Recorder: JAMES HELLESO Heard
By: Pavlikowski, Joseph S.*

06/09/1999  **Notice of Expert Witnesses**
Notice of Expert Witnesses [NRS 174.234 (2)]

06/09/1999  **Notice of Witnesses**
Notice of Witnesses [NRS 174.234 (1)(b)]

07/09/1999  **Motion**
Motion and Notice of Motion in Limine to Preclude Evidence of Witness Intimidation

07/12/1999  **Notice**
Notice of Alibi Witnesses

07/13/1999  **Notice of Witnesses**

07/13/1999  **Supplemental**
Supplemental Notice of Alibi Witnesses

DEPARTMENT 19
CASE SUMMARY
CASE NO. 98C154293-2

07/14/1999  Response
Response to Motion in Limine to Preclude Evidence of Witness Intimidation

07/15/1999 **Calendar Call (8:30 AM)**
CALENDAR CALL

07/15/1999 **Motion in Limine (8:30 AM)**
Events: 07/09/1999 Motion
DEFT'S MOTION IN LIMINE PRECLUDE EVIDENCE OF WITNESS INTIMIDATION Heard
By: *Joseph Pavlikowski*

07/15/1999 **All Pending Motions (8:30 AM)**
ALL PENDING MOTIONS 7/15/99 Court Clerk: LINDA SKINNER Reporter/Recorder:
JAMES HELLESO Heard By: Joseph Pavlikowski

07/19/1999 **CANCELED Jury Trial (9:00 AM)**
Vacated

07/20/1999  Motion
Motion and Notice of Motion for Discovery

07/27/1999  Motion
Motion and Notice of Motion in Limine to Preclude Evidence of Other Guns Not Used in the Crime

07/28/1999  Errata
Errata to Motion and Notice of Motion in Limine to Preclude Evidence of Other Guns Not Used in the Crime

07/28/1999  Receipt of Copy

07/29/1999 **Sentencing (8:30 AM)**
SENTENCING Court Clerk: LINDA SKINNER Reporter/Recorder: JAMES HELLESO Heard
By: *Pavlikowski, Joseph S.*

07/29/1999 **Motion for Discovery (8:30 AM)**
Events: 07/20/1999 Motion
DEFT'S MOTION FOR DISCOVERY

07/29/1999 **Motion in Limine (8:30 AM)**
Events: 07/27/1999 Motion
DEFT'S MOTION IN LIMINE PRECLUDE EVID OF OTHER GUNS NOT USED IN THE CRIME Heard By: Joseph Pavlikowski

07/29/1999 **All Pending Motions (8:30 AM)**
ALL PENDING MOTIONS 7/29/99 Court Clerk: LINDA SKINNER Reporter/Recorder:
JAMES HELLESO Heard By: Joseph Pavlikowski

07/29/1999  Order Granting Motion
Order Granting Motion for Discovery

08/16/1999  Response
Response to Defendant's Motion in Limine to Preclude Evidence of Other Guns Not Used in the Crime

08/19/1999  Reply to Opposition
Defendants Reply to State's Opposition to Motion in Limine to Preclude Evidence of Other

DEPARTMENT 19
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CASE NO. 98C154293-2

Guns Not Used in the Crime

08/25/1999  Motion
Motion for Order to Take Video Deposition of Witness and to Use Video Deposition at Trial

08/31/1999  Notice of Association of Counsel

08/31/1999  Receipt of Copy

08/31/1999  Notice of Witnesses

09/02/1999  Response
Response to Defendant's Motion for Order to take Video Deposition of Witness and to Use Video Deposition at Trial

09/03/1999  Reply to Opposition
Reply to State's Opposition to Defendant's Motion for Order to Take Video Deposition of Witness and to Use Video Deposition at Trial

09/07/1999 **Motion (8:30 AM)**
Events: 08/25/1999 Motion
DEFT'S MOTION FOR ORDER TO TAKE VIDEO DEPOSITION AT TRIAL Court Clerk: LINDA SKINNER Reporter/Recorder: JAMES HELLESO Heard By: Pavlikowski, Joseph S.

09/07/1999  Notice of Expert Witnesses
Notice of Expert Witnesses [NRS 174.234 (2)]

09/07/1999  Notice of Witnesses
Notice of Witnesses [NRS 174.234 (1)(b)]

09/09/1999 **Motion (9:00 AM)**
DEFT'S MOTION FOR ORDER TO TAKE VIDEO DEPOSITION AT TRIAL Court Clerk: TINA HURD Reporter/Recorder: PATSY SMITH Heard By: Mark Gibbons

09/16/1999  Order for Production of Inmate
Order for Production of Inmate Jotee Burnside, BAC #60729

09/16/1999  Order for Production of Inmate
Order for Production of Inmate Tommie Burnside, BAC #60772

09/28/1999  Substitution of Attorney
Substitution of Attorneys

10/01/1999  Supplemental
Supplemental Notice of Alibi Witnesses

10/04/1999  Supplemental
Supplemental Notice of Expert Witnesses [NRS 174.234 (2)]

10/07/1999 **Motion in Limine (9:00 AM)**
DEFT'S MOTION IN LIMINE PRECLUDE EVIDENCE OF WITNESS INTIMIDATION Heard By: Joseph Pavlikowski

10/07/1999 **Calendar Call (9:00 AM)**

DEPARTMENT 19
CASE SUMMARY
CASE NO. 98C154293-2

CALENDAR CALL

- 10/07/1999 **Motion in Limine** (9:00 AM)
DEFT'S MOTION IN LIMINE PRECLUDE EVID OF OTHER GUNS NOT USED IN THE CRIME Heard By: Joseph Pavlikowski
- 10/07/1999 **All Pending Motions** (9:00 AM)
ALL PENDING MOTIONS 10-7-99 Court Clerk: TINA HURD Reporter/Recorder: PATSY SMITH Heard By: Mark Gibbons
- 10/11/1999 **Jury Trial** (1:30 PM)
TRIAL BY JURY Court Clerk: JOSEPHINE BOHN Reporter/Recorder: RENEE SILVAGGIO Heard By: Gibbons, Mark
- 10/12/1999 **Jury Trial** (11:00 AM)
TRIAL BY JURY Court Clerk: JOSEPHINE BOHN Reporter/Recorder: RENEE SILVAGGIO Heard By: Gibbons, Mark
- 10/12/1999 **Hearing** (11:00 AM)
HEARING Court Clerk: JOSEPHINE BOHN Reporter/Recorder: RENEE SILVAGGIO Heard By: Mark Gibbons
- 10/12/1999  Jury List
- 10/12/1999  Reporters Transcript
Transcript of Hearing Held on October 11, 1999
- 10/13/1999 **Jury Trial** (1:30 PM)
TRIAL BY JURY Court Clerk: JOSEPHINE BOHN Reporter/Recorder: RENEE SILVAGGIO Heard By: Gibbons, Mark
- 10/13/1999  Order
- 10/13/1999  Reporters Transcript
Transcript of Hearing Held on October 12, 1999
- 10/14/1999 **Jury Trial** (11:00 AM)
TRIAL BY JURY Court Clerk: JOSEPHINE BOHN Reporter/Recorder: RENEE SILVAGGIO Heard By: Gibbons, Mark
- 10/14/1999  Reporters Transcript
Transcript of Hearing Held on October 13, 1999
- 10/15/1999 **Jury Trial** (1:30 PM)
TRIAL BY JURY Court Clerk: TINA HURD Reporter/Recorder: Renee Silvaggio Heard By: Gibbons, Mark
- 10/15/1999  Order
Order for Transcript
- 10/15/1999  Reporters Transcript
Transcript of Hearing Held on October 14, 1999
- 10/18/1999 **Jury Trial** (9:00 AM)
TRIAL BY JURY Court Clerk: TINA HURD/th Relief Clerk: Blanca Madrigal Reporter/Recorder: PATSY SMITH Heard By: Gibbons, Mark

DEPARTMENT 19
CASE SUMMARY
CASE NO. 98C154293-2

10/18/1999  Reporters Transcript
Transcript of Hearing Held on October 15, 1999

10/19/1999 **Jury Trial** (9:00 AM)
*TRIAL BY JURY Court Clerk: TINA HURD/th Relief Clerk: Blanca Madrigal
Reporter/Recorder: PATSY SMITH Heard By: Mark Gibbons*

10/19/1999  Reporters Transcript
Transcript of Hearing Held on October 18, 1999

10/19/1999  Instructions to the Jury

10/19/1999  Verdict

10/19/1999  Verdict

10/22/1999  Miscellaneous Filing
Letters in Support of Defendant

10/28/1999 **Sentencing** (9:00 AM)
*SENTENCING Court Clerk: JOSEPHINE BOHN Reporter/Recorder: RENEE SILVAGGIO
Heard By: Mark Gibbons*

11/08/1999  Judgment of Conviction
Judgment of Conviction (Plea)

11/16/1999  Order Admitting Defendant to Probation & Fixing Terms
Order Admitting Defendant to Probation and Fixing the Terms Thereof

11/18/1999  PSI
Pre-Sentence Investigation Report (Unfiled) Confidential

11/29/1999 **Sentencing** (9:00 AM)
*SENTENCING Court Clerk: TINA HURD Reporter/Recorder: PATSY SMITH Heard By: Mark
Gibbons*

11/29/1999 **Disposition** (Judicial Officer: User, Conversion)
1. CONSPIRACY TO COMMIT MURDER.
Guilty
PCN: Sequence:

11/29/1999 **Disposition** (Judicial Officer: User, Conversion)

11/29/1999 **Disposition** (Judicial Officer: User, Conversion)
2. MURDER WITH A DEADLY WEAPON
Guilty
PCN: Sequence:

11/29/1999 **Disposition** (Judicial Officer: User, Conversion)

11/29/1999 **Sentence** (Judicial Officer: User, Conversion)
1. CONSPIRACY TO COMMIT MURDER.
Adult Adjudication
Converted Disposition:

DEPARTMENT 19
CASE SUMMARY
CASE NO. 98C154293-2

Sentence# 0001:
Minimum 48 Months to Maximum 120 Months
Placement: NSP
Converted Disposition:
Sentence# 0002: CREDIT FOR TIME SERVED
Minimum 480 Days to Maximum 480 Days
Converted Disposition:
Sentence# 0003: ADMINISTRATION FEE
Amount: \$25.00

11/29/1999 **Sentence** (Judicial Officer: User, Conversion)
2. MURDER WITH A DEADLY WEAPON
Adult Adjudication
Converted Disposition:
Sentence# 0001: LIFE WITH POSSIBILITY OF PAROLE
Cons/Conc: Consecutive
w/Charge Item: 0001
and Sentence#: 0001
Converted Disposition:
Sentence# 0002: LIFE WITH POSSIBILITY OF PAROLE
Cons/Conc: Consecutive
w/Charge Item: 0002
and Sentence#: 0001

12/02/1999  Judgment of Conviction
Judgment of Conviction (Jury Trial)

12/08/1999  Order
Order Appointing Counsel

12/08/1999  Order
Order Waiving Costs (Insufficient Property of Income with Which to Pay Costs of Filing)

12/14/1999  Notice of Appeal (criminal)
Notice of Appeal

12/14/1999  Case Appeal Statement

12/15/1999  Certificate of Mailing

12/15/1999  Certificate of Mailing

12/21/1999  Order
Order for Transcript

01/13/2000  Reporters Transcript
Transcript of Hearing Held on October 28, 1999

01/28/2000  Reporters Transcript
Transcript of Hearing Held on October 19, 1999

03/19/2001  NV Supreme Court Clerks Certificate/Judgment - Affirmed
Nevada Supreme Court Clerk's Certificate Judgment - Affirmed

05/31/2001  Petition for Release of Evidence

DEPARTMENT 19
CASE SUMMARY
CASE NO. 98C154293-2

05/31/2001	 Order <i>Order Releasing Evidence</i>
05/31/2001	 Petition for Release of Evidence
09/07/2001	 Motion for Discovery <i>Motion for Discovery Production and Transmission of Documents</i>
09/07/2001	 Affidavit in Support <i>Affidavit in Support of Motion for Discovery Production and Transmission of Documents</i>
09/14/2001	 Opposition to Motion <i>State's Opposition to Defendant's Motion for Discovery Production and Transmission of Documents</i>
09/17/2001	Motion (9:00 AM) Events: 09/07/2001 Motion for Discovery <i>DEFT'S PRO PER MTN TO DISCOVERY PRODUCTION/TRANSMISSION OF DOCUMENTS/38 Court Clerk: Denise Husted Heard By: Nancy Saitta</i>
09/21/2001	 Order Denying Motion <i>Order Denying Defendant's Pro Per Motion for Discovery Production and Transmission of Documents</i>
09/25/2001	 Reply to Opposition <i>Reply to State's Opposition to Petitioner's Motion for Discovery Production and Transmission of Documents</i>
01/30/2002	 Petition for Writ of Habeas Corpus <i>Petition for Writ of Habeas Corpus (Post-Conviction)</i>
01/30/2002	 Motion for Appointment of Attorney <i>Motion for Appointment of Counsel</i>
01/30/2002	 Memorandum of Points and Authorities <i>Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction N.R.S. 34.720)</i>
01/30/2002	 Motion for Leave to Proceed in Forma Pauperis <i>Motion for Leave to Proceed In Forma Pauperis (Sealed)</i>
02/01/2002	 Order for Petition for Writ of Habeas Corpus <i>Order Re Petition for Writ of Habeas Corpus</i>
02/01/2002	 Order for Petition for Writ of Habeas Corpus <i>Order Re Petition for Writ of Habeas Corpus</i>
02/04/2002	 Motion for Discovery <i>Motion for Discovery Production and Transmission of Documents</i>
02/04/2002	 Affidavit in Support <i>Affidavit in Support of Motion for Discovery Production and Transmission of Documents</i>

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02/11/2002  Motion
Motion to Attach Supplemental Exhibit to Petition for Post Conviction Relief

02/25/2002 **Motion (9:00 AM)**
Events: 02/04/2002 Motion for Discovery
*DEFT'S PRO PER MTN FOR DISCOVERY PRODUCTION AND TRANSMISSIONS OF
DOCUM/42 Court Clerk: Denise Husted Reporter/Recorder: Kristine Cornelius Heard By:
Saitta, Nancy M*

04/01/2002  Motion to Withdraw As Counsel
Motion to Withdraw as Attorney of Record

04/01/2002  Receipt of Copy

04/03/2002  Motion
Motion for Evidentiary Hearing

04/03/2002  Certificate of Mailing

04/04/2002 **Petition for Writ of Habeas Corpus (9:00 AM)**
DEFT'S PRO PER PTN FOR WRIT OF HABEAS CORPUS /39

04/04/2002 **Motion for Appointment (9:00 AM)**
DEFT'S PRO PER MTN FOR APPOINTMENT CNSL/40 Heard By: Nancy Saitta

04/04/2002 **Petition to Proceed in Forma Pauperis (9:00 AM)**
Events: 02/01/2002 Order for Petition for Writ of Habeas Corpus
DEFT'S PRO PER MTN TO PROCEED IN FORMA PAUPERIS /41

04/04/2002 **Motion (9:00 AM)**
Events: 02/11/2002 Motion
DEFT'S PRO PER MTN TO ATTACH SUPPLEMENTAL EXHIBIT TO PETITION FOR/43

04/05/2002  Response
State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)

04/05/2002  Response
State's Response to Defendant's Motion for Evidentiary Hearing

04/05/2002  Response
State's Response to Defendant's Motion for Appointment of Counsel

04/08/2002 **Petition for Writ of Habeas Corpus (9:00 AM)**
DEFT'S PRO PER PTN FOR WRIT OF HABEAS CORPUS /39

04/08/2002 **Motion for Appointment (9:00 AM)**
DEFT'S PRO PER MTN FOR APPOINTMENT CNSL/40 Heard By: Nancy Saitta

04/08/2002 **Petition to Proceed in Forma Pauperis (9:00 AM)**
DEFT'S PRO PER MTN TO PROCEED IN FORMA PAUPERIS /41

04/08/2002 **Motion (9:00 AM)**
*DEFT'S PRO PER MTN FOR DISCOVERY PRODUCTION AND TRANSMISSIONS OF
DOCUM/42*

04/08/2002 **Motion (9:00 AM)**
DEFT'S PRO PER MTN TO ATTACH SUPPLEMENTAL EXHIBIT TO PETITION FOR/43

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04/08/2002 **All Pending Motions (9:00 AM)**
ALL PENDING MOTIONS 4/8/02 Court Clerk: Amber Farley Reporter/Recorder: Kristine Cornelius Heard By: Nancy Saitta

04/08/2002 **Motion to Withdraw as Counsel (1:00 PM)**
Events: 04/01/2002 Motion to Withdraw As Counsel
FREDERICK SANTACROCE'S MTN TO WITHDRAW AS COUNSEL /44 Heard By: Nancy Saitta

04/08/2002 **Motion (1:00 PM)**
Events: 04/03/2002 Motion
DEFT'S PRO PER MTN FOR EVIDENTIARY HEARING/45

04/08/2002  **Order**

04/19/2002  **Reply to Opposition**
Petitioner's Reply to State's Opposition to Writ of Habeas Corpus (Post Conviction)

05/06/2002 **Petition for Writ of Habeas Corpus (9:00 AM)**
DEFT'S PRO PER PTN FOR WRIT OF HABEAS CORPUS /39

05/06/2002 **Motion for Appointment (9:00 AM)**
DEFT'S PRO PER MTN FOR APPOINTMENT CNSL/40 Heard By: Nancy Saitta

05/06/2002 **Petition to Proceed in Forma Pauperis (9:00 AM)**
DEFT'S PRO PER MTN TO PROCEED IN FORMA PAUPERIS /41

05/06/2002 **Motion (9:00 AM)**
DEFT'S PRO PER MTN FOR DISCOVERY PRODUCTION AND TRANSMISSIONS OF DOCUM/42

05/06/2002 **Motion (9:00 AM)**
DEFT'S PRO PER MTN TO ATTACH SUPPLEMENTAL EXHIBIT TO PETITION FOR/43

05/06/2002 **Motion (9:00 AM)**
DEFT'S PRO PER MTN FOR EVIDENTIARY HEARING/45

05/06/2002 **All Pending Motions (9:00 AM)**
ALL PENDING MOTIONS 5/6/02 Court Clerk: Amber Farley Reporter/Recorder: Debra Vanblaricom Heard By: Nancy Saitta

05/23/2002  **Order for Production of Inmate**
Order for Production of Inmate Brendan James Nasby, BAC #63618

06/24/2002 **Petition for Writ of Habeas Corpus (9:00 AM)**
DEFT'S PRO PER PTN FOR WRIT OF HABEAS CORPUS /39

06/24/2002 **Motion for Appointment (9:00 AM)**
DEFT'S PRO PER MTN FOR APPOINTMENT CNSL/40 Heard By: Nancy Saitta

06/24/2002 **Petition to Proceed in Forma Pauperis (9:00 AM)**
DEFT'S PRO PER MTN TO PROCEED IN FORMA PAUPERIS /41

06/24/2002 **Motion (9:00 AM)**
DEFT'S PRO PER MTN FOR DISCOVERY PRODUCTION AND TRANSMISSIONS OF DOCUM/42

06/24/2002 **Motion (9:00 AM)**

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DEFT'S PRO PER MTN TO ATTACH SUPPLEMENTAL EXHIBIT TO PETITION FOR/43

06/24/2002 **Motion (9:00 AM)**
DEFT'S PRO PER MTN FOR EVIDENTIARY HEARING/45

06/24/2002 **All Pending Motions (9:00 AM)**
ALL PENDING MOTIONS 6/24/02 Court Clerk: Amber Farley Reporter/Recorder: Kristine Cornelius Heard By: Nancy Saitta

07/01/2002 **Petition for Writ of Habeas Corpus (9:00 AM)**
DEFT'S PRO PER PTN FOR WRIT OF HABEAS CORPUS /39

07/01/2002 **Petition to Proceed in Forma Pauperis (9:00 AM)**
DEFT'S PRO PER MTN TO PROCEED IN FORMA PAUPERIS /41

07/01/2002 **Motion (9:00 AM)**
DEFT'S PRO PER MTN FOR DISCOVERY PRODUCTION AND TRANSMISSIONS OF DOCUM/42

07/01/2002 **Motion (9:00 AM)**
DEFT'S PRO PER MTN TO ATTACH SUPPLEMENTAL EXHIBIT TO PETITION FOR/43

07/01/2002 **Motion (9:00 AM)**
DEFT'S PRO PER MTN FOR EVIDENTIARY HEARING/45

07/01/2002 **Motion for Confirmation of Counsel (9:00 AM)**
CONFIRMATION OF COUNSEL (L. TEICHER) Heard By: Nancy Saitta

07/01/2002 **All Pending Motions (9:00 AM)**
ALL PENDING MOTIONS 7/1/02 Court Clerk: Amber Farley Reporter/Recorder: Tina Smith Heard By: Kathy Hardcastle

08/07/2002  **Order**
Order Appointing Counsel

08/16/2002  **Order**
Nunc Pro Tunc Order Appointing Counsel

08/19/2002 **Status Check (9:00 AM)**
STATUS CHECK: PENDING MOTIONS Court Clerk: Amber Farley Reporter/Recorder: Kristine Cornelius Heard By: Nancy Saitta

10/31/2002  **Ex Parte Motion**
Ex-Parte Motion for Appointment of Investigator and Excess Fees

11/06/2002  **Order**

12/05/2002  **Motion**
Motion for Extension of Time to File Supplemental Petition

12/18/2002 **CANCELED Motion (9:00 AM)**
*Events: 12/05/2002 Motion
Vacated*

12/19/2002  **Stipulation and Order**

02/05/2003 **Hearing (9:00 AM)**
ARGUMENT: POST-CONVICTION WRIT (SAO 2/26/03) Heard By: Nancy Saitta

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02/26/2003  Stipulation and Order
Stipulation and Order (Second Defense Request)

04/08/2003  Substitution of Attorney
Substitution of Attorneys

05/29/2003  Order
Order Authorizing First Interim Payment

06/25/2003 **Hearing (10:00 AM)**
ARGUMENT: POST-CONVICTION WRIT (SAO 2/26/03) Heard By: Nancy Saitta

01/21/2004  Motion for Substitution
Motion for Substitute Counsel

01/28/2004  Response
State's Response to Defendant's Motion for Substitution of Attorneys

02/02/2004 **Motion for Substitution (9:00 AM)**
Events: 01/21/2004 Motion for Substitution
DEFT'S PRO PER MTN FOR SUBSTITUTION COUNSEL/54 Court Clerk: Amber Farley Reporter/Recorder: Kristine Cornelius Heard By: Nancy Saitta

02/04/2004  Notice
Notice of Confirmation of Appointment of Counsel

02/04/2004  Order
Order Appointing Counsel

03/01/2004 **Status Check (9:00 AM)**
STATUS CHECK: BRIEFING SCHEDULE Court Clerk: Amber Farley Reporter/Recorder: Dick Kangas Heard By: Nancy Saitta

11/02/2004  Petition
Petition and Order for Honorable Discharge from Probation

11/03/2004  Ex Parte Motion
Ex Parte Motion for Extension of Time to File Post Conviction Memorandum of Points and Authorities

11/03/2004  Affidavit in Support
Affidavit in Support of Ex Parte Motion for Extension of Time to File Post Conviction Memorandum of Points and Authorities

11/05/2004  Order Granting Motion
Order Granting Ex Parte Motion for Extension of Time to File Post Conviction Memorandum of Points and Authorities

11/10/2004  Stipulation and Order

11/17/2004  Memorandum of Points and Authorities
Memorandum of Points and Authorities in Support of Petitioner's Post Conviction Relief

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11/24/2004  Certificate of Mailing

01/10/2005 **Hearing (9:00 AM)**
ARGUMENT: POST-CONVICTION WRIT Heard By: Nancy Saitta

02/01/2005  Stipulation and Order

02/04/2005  Opposition
State's Opposition to Defendant's Petition for Writ of Habeas Corpus Post-Conviction

02/09/2005 **Hearing (9:00 AM)**
ARGUMENT: POST-CONVICTION WRIT Heard By: Nancy Saitta

02/22/2005  Reply to Opposition
Defendant's Reply to State's Opposition to Defendant's Petition for Writ of Habeas Corpus Post-Conviction

02/28/2005  Receipt of Copy

03/02/2005 **Hearing (9:00 AM)**
ARGUMENT: POST-CONVICTION WRIT Court Clerk: Kristen Brown Reporter/Recorder: Jo Anne Pierpont Heard By: Cory, Ken

03/14/2005 **Hearing (9:00 AM)**
ARGUMENT: POST-CONVICTION WRIT Heard By: Nancy Saitta

03/25/2005  Stipulation and Order

03/28/2005 **Hearing (9:00 AM)**
ARGUMENT: POST-CONVICTION WRIT Heard By: Nancy Saitta

05/02/2005 **Hearing (9:00 AM)**
ARGUMENT: POST-CONVICTION WRIT Relief Clerk: Jennifer Kimmel Reporter/Recorder: Jo Anne Pierpont Heard By: Nancy Saitta

05/04/2005  Order for Production of Inmate
Order for Production of Inmate Brendan J. Nasby, BAC #63618

06/10/2005 **Evidentiary Hearing (9:00 AM)**
EVIDENTIARY HEARING RE: TRIAL STRATEGY (INEFFECTIVE ASSISTANCE OF COUNSEL) Heard By: Nancy Saitta

06/16/2005  Stipulation and Order

08/10/2005  Stipulation and Order

08/11/2005 **Evidentiary Hearing (11:00 AM)**
EVIDENTIARY HEARING RE: TRIAL STRATEGY (INEFFECTIVE ASSISTANCE OF COUNSEL) Heard By: Nancy Saitta

08/12/2005  Certificate of Facsimile
Certificate of Facsimile and Mailing

09/02/2005 **Evidentiary Hearing (11:00 AM)**
EVIDENTIARY HEARING RE: TRIAL STRATEGY (INEFFECTIVE ASSISTANCE OF COUNSEL) Relief Clerk: Theresa Lee Reporter/Recorder: Jo Anne Pierpont Heard By: Saitta,

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Nancy M

- 09/26/2005 **Evidentiary Hearing (10:30 AM)**
EVIDENTIARY HEARING RE: TRIAL STRATEGY (INEFFECTIVE ASSISTANCE OF COUNSEL) Court Clerk: Kristen Brown Reporter/Recorder: Jo Anne Pierpont Heard By: Saiitta, Nancy M
- 11/02/2005 **Evidentiary Hearing (10:30 AM)**
EVIDENTIARY HEARING RE: TRIAL STRATEGY (INEFFECTIVE ASSISTANCE OF COUNSEL) Heard By: Nancy Saiitta
- 11/09/2005 **Evidentiary Hearing (10:30 AM)**
EVIDENTIARY HEARING RE: TRIAL STRATEGY (INEFFECTIVE ASSISTANCE OF COUNSEL) Court Clerk: Kristen Brown Reporter/Recorder: Jo Anne Pierpont Heard By: Nancy Saiitta
- 11/28/2005  **Reporters Transcript**
Transcript of Hearing Held on November 9, 2005
- 01/11/2006 **Hearing (11:00 AM)**
ARGUMENT Court Clerk: Kristen Brown Reporter/Recorder: Jo Anne Pierpont Heard By: Pavlikowski, Joseph S.
- 02/14/2006  **Brief**
Defendant's Supplemental Reply Brief to State's Opposition to Defendant's Petition for Writ of Habeas Corpus Post-Conviction
- 02/15/2006 **Hearing (11:00 AM)**
ARGUMENT Court Clerk: Kristen Brown Reporter/Recorder: Jo Anne Pierpont Heard By: Saiitta, Nancy M
- 02/27/2006 **Hearing (10:30 AM)**
ARGUMENT Court Clerk: Kristen Brown Reporter/Recorder: Jo Anne Pierpont Heard By: Saiitta, Nancy M
- 03/27/2006 **Hearing (10:30 AM)**
ARGUMENT Relief Clerk: Cynthia Georgilas Reporter/Recorder: Jo Anne Pierpont Heard By: Nancy Saiitta
- 04/12/2006  **Notice of Appeal (criminal)**
Notice of Appeal
- 04/12/2006  **Case Appeal Statement**
- 04/13/2006  **Case Appeal Statement**
- 04/26/2006  **Findings of Fact, Conclusions of Law and Order**
- 04/27/2006  **Notice of Entry of Decision and Order**
- 05/05/2006  **Ex Parte Motion**
Ex Parte Motion for Authorization of Payment of Fees
- 05/08/2006  **Order**
Order Authorizing Payment of Fees

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05/24/2006	 Notice of Appeal (criminal) <i>Notice of Appeal to Supreme Court</i>
05/24/2006	 Case Appeal Statement
06/16/2006	 Request <i>Request for Rough Draft Transcripts</i>
06/20/2006	 Reporters Transcript <i>Transcript of Hearing Held on March 27, 2006</i>
06/20/2006	 Request <i>Request for Rough Draft Transcripts</i>
01/29/2007	 Ex Parte Motion <i>Ex Parte Motion for Authorization of Payment of Fees</i>
02/12/2007	 Order <i>Order Authorizing Payment of Fees</i>
07/16/2007	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>Nevada Supreme Court Clerk's Certificate Judgment - Affirmed</i>
02/18/2011	 Petition for Writ of Habeas Corpus Filed by: Defendant Nasby, Brendan J <i>Petition for Writ of Habeas Corpus (Postconviction)</i>
02/18/2011	 Motion for Leave to Proceed in Forma Pauperis Filed By: Defendant Nasby, Brendan J <i>Motion for Leave to Proceed In Forma Pauperis (Sealed)</i>
02/18/2011	 Affidavit in Support Filed By: Defendant Nasby, Brendan J <i>Affidavit in Support of Motion to Proceed in Forma Pauperis (Sealed)</i>
02/18/2011	 Motion Filed By: Defendant Nasby, Brendan J <i>Motion for Evidentiary Hearing</i>
02/18/2011	 Memorandum of Points and Authorities Filed By: Defendant Nasby, Brendan J <i>Memorandum of Points and Authorities in Support of Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction N.R.S. 34.720)</i>
02/18/2011	 Motion for Appointment of Attorney Filed By: Defendant Nasby, Brendan J <i>Motion for Appointment of Counsel</i>
02/28/2011	 Order for Petition for Writ of Habeas Corpus
04/08/2011	 Response <i>State's Response and Motion to Dismiss Defendant's Petition for Writ of Habeas Corpus</i>

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- 04/27/2011  **Petition for Writ of Habeas Corpus** (8:15 AM) (Judicial Officer: Barker, David)
04/27/2011, 05/11/2011
Events: 02/28/2011 Order for Petition for Writ of Habeas Corpus
- 04/29/2011  Reply
Filed by: Defendant Nasby, Brendan J
Petitioner's Reply to State's Response and Motion to Dismiss Petitioner's Petition for Writ of Habeas Corpus
- 06/06/2011  Notice
Filed By: Defendant Nasby, Brendan J
Notice to the Court and Motion Requesting Update
- 06/13/2011  Notice of Appeal (criminal)
Party: Defendant Nasby, Brendan J
Notice of Appeal
- 06/16/2011  Case Appeal Statement
- 06/17/2011  Findings of Fact, Conclusions of Law and Order
Filed By: Plaintiff State of Nevada
- 06/20/2011  **Motion** (8:15 AM) (Judicial Officer: Barker, David)
Events: 06/06/2011 Notice
Notice to the Court and Motion Requesting Update
- 06/27/2011  Notice of Entry of Decision and Order
- 03/12/2012  NV Supreme Court Clerks Certificate/Judgment - Affirmed
Nevada Supreme Court Clerk's Certificate Judgment - Affirmed
- 07/01/2014  Motion
Motion to Expand the Record
- 07/11/2014  Opposition to Motion
Filed By: Plaintiff State of Nevada
State's Opposition to Defendant's Pro Per Motion to Expand the Record
- 07/14/2014  **Motion** (8:15 AM) (Judicial Officer: Barker, David)
Deft's Pro Per Motion to Expand the Record
- 08/14/2014  Order Denying Motion
Filed By: Plaintiff State of Nevada
Order Denying Defendant's Pro Per Motion to Expand the Record
- 12/09/2014  Inmate Filed - Petition for Writ of Habeas Corpus
Party: Defendant Nasby, Brendan J
Petition for Writ of Habeas Corpus (Post-Conviction Relief - NRS 34.735 Petition: Form)
- 12/16/2014  Motion
Filed By: Defendant Nasby, Brendan J
Motion for Evidentiary Hearing

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12/17/2014  Order for Petition for Writ of Habeas Corpus
Order for Petition for Writ of Habeas Corpus (Post-Conviction Relief - NRS 34.735 Petition: Form)

12/18/2014  Motion for Appointment of Attorney
Filed By: Defendant Nasby, Brendan J
Motion for Appointment of Counsel

12/18/2014  Application to Proceed in Forma Pauperis
Filed By: Defendant Nasby, Brendan J
Application to Proceed In Forma Pauperis (Sealed)

01/02/2015  Opposition to Motion
Filed By: Plaintiff State of Nevada
State's Opposition to Defendant's Motion for an Evidentiary Hearing

01/07/2015  **Motion** (8:30 AM) (Judicial Officer: Kephart, William D.)
Defendant's Pro Per Motion for Evidentiary Hearing

01/09/2015  Opposition to Motion
State's Opposition to Defendant's Motion for Appointment of Counsel

01/12/2015  **Motion for Appointment of Attorney** (8:30 AM) (Judicial Officer: Kephart, William D.)
Defendant's Pro Per Motion for Appointment of Counsel

01/12/2015 **CANCELED Motion** (8:30 AM) (Judicial Officer: Barker, David)
Vacated - On in Error
Motion for Hearing to Remove Unconstitutional "Pre-Trial Punishment Stipulation"

01/27/2015  Motion for Appointment of Attorney
Filed By: Defendant Nasby, Brendan J
Renewed Motion for Appointment of Counsel

01/27/2015  Motion
Filed By: Defendant Nasby, Brendan J
Motion for Leave of Court to File Renewed Motion for Appointment of Counsel

01/27/2015  Application to Proceed in Forma Pauperis
Filed By: Defendant Nasby, Brendan J
Application to Proceed In Forma Pauperis (Sealed)

02/04/2015  Response
Filed by: Plaintiff State of Nevada
State's Response and Motion to Dismiss to Defendant's Pro Per Petition for Writ of Habeas Corpus

02/05/2015  Opposition to Motion
State's Opposition to Defendant's Renewed Pro Per Motion for Appointment of Counsel

02/11/2015  Order Denying Motion
Filed By: Plaintiff State of Nevada
Order Denying Defendant's Pro Per Motion for Evidentiary Hearing

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02/11/2015  Order Denying Motion
Filed By: Plaintiff State of Nevada
Order Denying Defendant's Pro Per Motion for Appointment of Counsel

02/18/2015  **Motion for Leave** (8:30 AM) (Judicial Officer: Kephart, William D.)
Defendant's Pro Per Motion for Leave of Court to File Renewed Motion for Appointment of Counsel

02/23/2015  Affidavit
Filed By: Defendant Nasby, Brendan J
Affidavit/Declaration for Entry of Default

02/23/2015  Application
Filed By: Defendant Nasby, Brendan J
Application for Default Judgment and Sanctions

02/23/2015  Reply to Opposition
Filed by: Defendant Nasby, Brendan J
Reply to State's Opposition to Defendant's Renewed Motion for Appointment of Counsel and Petitioner's Request for Sanctions

02/23/2015  Application
Filed By: Defendant Nasby, Brendan J
Application for a Judgment by Default

02/23/2015  Affidavit
Affidavit/Declaration for Entry of Default

02/24/2015  Notice of Appeal (criminal)
Party: Defendant Nasby, Brendan J
Notice of Appeal

02/25/2015 **Petition for Writ of Habeas Corpus** (8:30 AM) (Judicial Officer: Kephart, William D.)
Defendant's Pro Per Petition for Writ of Habeas Corpus

02/25/2015 **Motion to Dismiss** (8:30 AM) (Judicial Officer: Kephart, William D.)
State's Response and Motion to Dismiss to Defendant's Pro Per Petition for Writ of Habeas Corpus

02/25/2015  **All Pending Motions** (8:30 AM) (Judicial Officer: Kephart, William D.)

02/25/2015  Case Appeal Statement
Filed By: Defendant Nasby, Brendan J

02/25/2015  Reply
Filed by: Defendant Nasby, Brendan J
Reply and Motion to Strike State's Response and Motion to Dismiss

02/26/2015  Motion
Filed By: Defendant Nasby, Brendan J
Renewed Motion for Evidentiary Hearing and Motion to Produce Inmate

02/26/2015  Motion
Filed By: Plaintiff State of Nevada

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Motion for Leave of Court to File Renewed Motion for Evidentiary Hearing

03/13/2015  Notice of Appeal (criminal)
Party: Defendant Nasby, Brendan J
Notice of Appeal

03/16/2015  Case Appeal Statement
Filed By: Defendant Nasby, Brendan J

03/16/2015  Order Denying Motion
Filed By: Plaintiff State of Nevada
Order Denying Defendant's Pro Per Motion for Leave of Court to File Renewed Motion for Appointment of Counsel

03/18/2015  Opposition to Motion
Filed By: Plaintiff State of Nevada
State's Opposition to Defendant's Pro Per Motion for Leave of Court to File Renewed Motion for Evidentiary Hearing and Motion for Evidentiary Hearing and Production of Inmate

03/23/2015 **Motion** (8:30 AM) (Judicial Officer: Kephart, William D.)
Defendant's Pro Per Renewed Motion for Evidentiary Hearing and Motion to Produce Inmate

03/23/2015 **Motion** (8:30 AM) (Judicial Officer: Kephart, William D.)
Defendant's Pro Per Motion for Leave of Court to File Renewed Motion for Evidentiary Hearing

03/23/2015  **All Pending Motions** (8:30 AM) (Judicial Officer: Kephart, William D.)

03/30/2015  Notice of Appeal (criminal)
Amended Notice of Appeal

03/30/2015  Certificate of Service

03/30/2015  Findings of Fact, Conclusions of Law and Order
Filed By: Plaintiff State of Nevada

03/31/2015  Case Appeal Statement
Filed By: Defendant Nasby, Brendan J

04/03/2015  Motion to Disqualify Judge
Filed By: Defendant Nasby, Brendan J

04/06/2015  Notice of Entry
Filed By: Plaintiff State of Nevada
Notice of Entry of Findings of Fact, Conclusions of Law and Order

04/21/2015  Notice
Filed By: Defendant Nasby, Brendan J
Notice to the Court and Motion to Attach Supplemental Exhibit to Motion to Disqualify Judge

04/22/2015  NV Supreme Court Clerks Certificate/Judgment - Dismissed
Nevada Supreme Court Clerk's Certificate Judgment - Dismissed

04/28/2015

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-  Opposition to Motion
Filed By: Plaintiff State of Nevada
State's Opposition to Defendant's Pro Per Motion to Disqualify Judge; Notice to the Court and Motion to Attach Supplemental Exhibit to Motion to Disqualify Judge
- 04/28/2015  Order Denying Motion
Order Denying Motion to Disqualify Judge
- 04/30/2015 **CANCELED Motion to Disqualify Judge** (3:00 AM) (Judicial Officer: Barker, David)
Vacated - per Judge
Pro Per's Motion to Disqualify Judge
- 05/11/2015  Motion
Filed By: Defendant Nasby, Brendan J
Second Motion to Attach Supplemental Exhibit to Motion to Disqualify Judge
- 05/14/2015 **CANCELED Motion** (3:00 AM) (Judicial Officer: Barker, David)
Vacated - Superseding Order
Notice to the Court and Motion to Attach Supplemental Exhibit to Motion to Disqualify Judge
- 05/18/2015  Notice of Appeal (criminal)
Party: Defendant Nasby, Brendan J
Notice of Appeal
- 05/20/2015  Case Appeal Statement
Filed By: Defendant Nasby, Brendan J
- 05/27/2015  NV Supreme Court Clerks Certificate/Judgment - Dismissed
Nevada Supreme Court Clerk's Certificate Judgment - Dismissed
- 06/01/2015  **Motion** (8:30 AM) (Judicial Officer: Kephart, William D.)
Defendant's Second Motion to Attach Supplemental Exhibit to Motion to Disqualify Judge
- 08/11/2015  NV Supreme Court Clerks Certificate/Judgment - Dismissed
Nevada Supreme Court Clerk's Certificate Judgment - Dismissed
- 10/12/2015  NV Supreme Court Clerks Certificate/Judgment - Affirmed
Nevada Supreme Court Clerk's Certificate Judgment - Affirmed
- 01/04/2016  Filed Under Seal
Application to Proceed in Forma Pauperis (Sealed)
- 01/05/2016  Petition for Writ of Habeas Corpus
Filed by: Defendant Nasby, Brendan J
Petition for Writ of Habeas Corpus (Post-Conviction Relief - NRS 34.735 Petition: Form)
(Actual Innocence)
- 01/05/2016  Motion for Appointment of Attorney
Filed By: Defendant Nasby, Brendan J
Motion for Appointment of Counsel
- 01/05/2016  Motion
Filed By: Defendant Nasby, Brendan J
Motion to Extend Prison Copywork Limit

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01/05/2016  Memorandum of Points and Authorities
Filed By: Defendant Nasby, Brendan J
Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction-Actual Innocence)

01/05/2016  Affidavit in Support
Filed By: Defendant Nasby, Brendan J
Affidavit in Support of Petition for Writ of Habeas Corpus (Post-Conviction-Actual Innocence)

01/05/2016  Notice
Filed By: Defendant Nasby, Brendan J
Notice to the Clerk, the Court, and all Interested Parties

01/05/2016  Supplemental
Filed by: Defendant Nasby, Brendan J
Supplemental Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post- Conviction-Actual Innocence)

01/14/2016  Order for Petition for Writ of Habeas Corpus

02/01/2016  Motion for Order
Filed By: Defendant Nasby, Brendan J
Motion for Order to Produce Prisoner

02/22/2016  **Motion for Order** (8:30 AM) (Judicial Officer: Kephart, William D.)
Defendant's Pro Per Motion to Produce Prisoner

02/23/2016  Response
Filed by: Plaintiff State of Nevada
State's Response to Defendant's Post-Conviction Petition for Writ of Habeas Corpus, Memorandum of Points and Authorities in Support, and Supplemental Memorandum and Opposition to Defendant's Motion for Appointment of Counsel

03/10/2016  Reply
Filed by: Defendant Nasby, Brendan J
Reply to State's Response to Defendant's Post-Conviction Petition for Writ of Habeas Corpus, Memorandum of Points and Authorities in Support, and Supplemental Memorandum and Opposition to Defendant's Motion for Appointment of Counsel

03/16/2016 **Motion for Appointment of Attorney** (8:30 AM) (Judicial Officer: Kephart, William D.)
03/16/2016, 04/04/2016
Defendant's Pro Per Motion for Appointment of Counsel

03/16/2016 **Motion** (8:30 AM) (Judicial Officer: Kephart, William D.)
03/16/2016, 04/04/2016
Defendant's Pro Per Motion to Extend Prison Copy Work Limit

03/16/2016 **Petition for Writ of Habeas Corpus** (8:30 AM) (Judicial Officer: Kephart, William D.)
03/16/2016, 04/04/2016
Events: 01/14/2016 Order for Petition for Writ of Habeas Corpus
Defendant's Pro Per Petition for Writ of Habeas Corpus Post-Conviction

03/16/2016  **All Pending Motions** (8:30 AM) (Judicial Officer: Kephart, William D.)

04/04/2016  **All Pending Motions** (8:30 AM) (Judicial Officer: Kephart, William D.)

DEPARTMENT 19
CASE SUMMARY
CASE NO. 98C154293-2

04/04/2016  Order Denying Motion
Filed By: Plaintiff State of Nevada
Order Denying Defendant's Pro Per Motion to Produce Prisoner

05/09/2016  Findings of Fact, Conclusions of Law and Order

05/10/2016  Certificate of Service
Filed by: Plaintiff State of Nevada

05/12/2016  Notice of Entry
Filed By: Plaintiff State of Nevada
Notice of Entry of Findings of Fact, Conclusions of Law and Order

05/18/2016  Motion
Filed By: Defendant Nasby, Brendan J
Motion to Alter or Amend a Judgment N.R.Civ.P. 59(e)

06/02/2016  Response
Filed by: Plaintiff State of Nevada
State's Response to Defendant's Pro Per Motion to Alter or Amend Judgment N. R. CIV. P. 59 (e)

06/08/2016  **Motion** (8:30 AM) (Judicial Officer: Kephart, William D.)
Defendant's Pro Per Motion to Alter or Amend a Judgment

06/14/2016  Notice of Appeal (criminal)
Party: Defendant Nasby, Brendan J
Notice of Appeal

06/15/2016  Case Appeal Statement

07/06/2016  Order Denying Motion
Filed By: Plaintiff State of Nevada
Order Denying Defendant's Pro Per Motion to Alter or Amend Judgment N.R. CIV.P.59(E)

08/16/2016  Order
Filed By: Defendant Nasby, Brendan J
Order Transferring Petition

08/16/2016  Order to Proceed In Forma Pauperis

03/09/2017 Order for Petition for Writ of Habeas Corpus

03/16/2017  Order for Petition for Writ of Habeas Corpus
Order for Petition for Writ of Habeas Corpus

04/04/2017  Motion
Filed By: Defendant Nasby, Brendan J
Motion for Reconsideration (NRCP 60(b))

04/19/2017  Response
Filed by: Plaintiff State of Nevada

DEPARTMENT 19
CASE SUMMARY
CASE NO. 98C154293-2

State s Response to Defendant s Pro Per Motion for Reconsideration (NRCP 60(B))

04/25/2017

 Response

Filed by: Plaintiff State of Nevada
State's Response to Defendant's Petition for Writ of Habeas Corpus (NRS 34.360 - Constitutional Questions/Questions of Law)

04/26/2017

 **Motion For Reconsideration** (8:30 AM) (Judicial Officer: Kephart, William D.)
Defendant's Pro Per Motion for Reconsideration

05/10/2017

 Reply

Filed by: Defendant Nasby, Brendan J
Reply to State's Response to Petition for Writ of Habeas Corpus (NRS 34.306 - Constitutional Questions/ Questions of Law)

05/15/2017

 **Petition for Writ of Habeas Corpus** (8:30 AM) (Judicial Officer: Kephart, William D.)
Defendant's Pro Per Petition for Writ of Habeas Corpus (Post Conviction)

06/14/2017

 Notice

Notice to the Court, Clerk, and Respodent

06/20/2017

 Order

Filed By: Plaintiff State of Nevada
Order Denying Defendant's Pro Per Motion for Reconsideration

06/20/2017

 Findings of Fact, Conclusions of Law and Order

Filed By: Plaintiff State of Nevada

06/27/2017

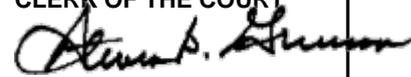
 Notice of Entry

Notice of Entry of Findings of Fact, Conclusions of Law and Order

06/27/2017

 Notice of Appeal (criminal)

Notice of Appeal



1 **FCL**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CAL THOMAN
6 Deputy District Attorney
7 Nevada Bar #12649
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 BRENDAN JAMES NASBY,
13 #1517690

14 Defendant.

CASE NO: 98C154293-2

DEPT NO: XIX

15 FINDINGS OF FACT, CONCLUSIONS OF
16 LAW AND ORDER

17 DATE OF HEARING: 05/15/17
18 TIME OF HEARING: 8:30 AM

19 THIS CAUSE having come on for hearing before the Honorable WILLIAM D.
20 KEPHART, District Judge, on the 15th day of May, 2017, the Petitioner not being present,
21 PROCEEDING IN PROPER PERSON, the Respondent being represented by STEVEN B.
22 WOLFSON, Clark County District Attorney, by and through EKATERINA DERJAVINA,
23 Deputy District Attorney, and the Court having considered the matter, including briefs,
24 transcripts, arguments of counsel, and documents on file herein, now therefore, the Court
25 makes the following findings of fact and conclusions of law:

26 ///

27 ///

28 ///

///

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

2 On November 9, 1998, the State filed an Information charging Brendan James Nasby
3 (“Defendant”) with: Count 1 – Conspiracy to Commit Murder (Felony - NRS 199.480,
4 200.010, 200.030) and Count 2 – Murder with use of a Deadly Weapon (Open Murder) (Felony
5 - NRS 200.010, 200.030, 193.165).

6 Defendant’s jury trial began on October 11, 1999. On October 19, 1999, the jury
7 returned found Defendant guilty on both counts; as to Count 2, the jury returned a guilty verdict
8 for First Degree Murder with use of a Deadly Weapon. On November 29, 1999, Defendant
9 was sentenced to the Nevada Department of Corrections as follows: as to Count 1 – 48 to 120
10 months and as to Count 2 – life with the possibility of parole, plus an equal and consecutive
11 term for the use of a deadly weapon, to run consecutive to Count 1. Defendant’s Judgment of
12 Conviction was filed on December 2, 1999.

13 Defendant filed a Notice of Appeal on December 14, 1999. The Nevada Supreme Court
14 affirmed Defendant’s conviction on February 7, 2001. Nasby v. State, No. 35319 (Order of
15 Affirmance, Feb. 7, 2001). Remittitur issued on March 6, 2001.

16 On January 30, 2002, Defendant filed a Post-Conviction Petition for Writ of Habeas
17 Corpus. The State filed a Response on April 5, 2002. On March 27, 2006, the Court denied
18 Defendant’s Petition. Defendant filed a Notice of Appeal on April 12, 2006. The Court filed
19 its Findings of Fact, Conclusions of Law and Order on April 26, 2006, and its Notice of Entry
20 on April 27, 2006. On June 18, 2007, the Nevada Supreme Court affirmed the Court’s denial
21 of Defendant’s first Petition. Nasby v. State, No. 47130 (Order of Affirmance, June 28, 2007).
22 Remittitur issued on July 13, 2007.

23 Defendant filed his second Post-Conviction Petition for Writ of Habeas Corpus on
24 February 18, 2011. The State responded on April 8, 2011. The Court denied Defendant’s
25 second Petition as procedurally barred on May 11, 2011. The Court filed its Findings of Fact,
26 Conclusions of Law on June 17, 2011. Defendant filed a Notice of Appeal on June 13, 2011,
27 with the Nevada Supreme Court affirming the decision of the district court on February 8,
28

1 2012, and issuing Remittitur on March 5, 2012. Nasby v. State, No. 58579 (Order of
2 Affirmance, Feb. 8, 2012).

3 On December 9, 2014, Defendant filed his third Post-Conviction Petition for Writ of
4 Habeas Corpus. The State responded on February 4, 2015. This Court denied Defendant's
5 Petition as procedurally barred on February 25, 2015. Defendant filed a Notice of Appeal on
6 March 13, 2015. This Findings of Fact, Conclusions of Law was filed on March 30, 2015. On
7 September 11, 2015, the Nevada Supreme Court affirmed the Court's denial of Defendant's
8 third petition as untimely, successive, and an abuse of the writ without a showing of good
9 cause and prejudice.

10 On April 3, 2015, Defendant filed a Motion to Disqualify Judge, and Notice and Motion
11 to Attach Supplemental Exhibits on April 21, 2015. The State filed on Opposition on April 28,
12 2015. On April 28, 2015, the Court filed a written order denying Defendant's motions.
13 Defendant appealed this decision and the Nevada Supreme Court dismissed Defendant's
14 appeal on July 8, 2015.

15 On January 5, 2016, Defendant filed his fourth Post-Conviction Petition for Writ of
16 Habeas Corpus, a Memorandum of Points and Authorities in Support, a Supplemental
17 Memorandum of Points and Authorities in Support, and a Motion for Appointment of Counsel.
18 The State filed a Response on February 23, 2016. Defendant filed a reply on March 10, 2016.
19 On April 4, 2016, Defendant's Petition was denied. The Findings of Fact, Conclusions of Law
20 were filed on May 9, 2016.

21 On May 18, 2016, Defendant filed a Motion to Alter or Amend Judgment N. R. Civ. P.
22 59(e). The State responded on June 2, 2016. The Court denied Defendant's Motion on June 8,
23 2016. Defendant filed a Notice of Appeal on June 14, 2016; the appeal is still pending with
24 the Nevada Court of Appeals.

25 On January 26, 2016, Defendant filed the instant Petition for Writ of Habeas Corpus
26 (NRS 34.360 - Constitutional Questions/Questions of Law) in the Eleventh Judicial District
27 Court, seeking a declaratory judgment on seven allegations of trial error. The Eleventh Judicial
28 District Court transferred Defendant's Petition back to this Court, as this Court has proper

1 jurisdiction over Defendant. On April 4, 2017, Defendant filed a Motion for Reconsideration.
2 The State responded on April 19, 2017. The Motion for Reconsideration is still pending. The
3 State responded on April 25, 2017. Defendant filed a Motion for Reconsideration on April 26,
4 2017, and a Reply on May 10, 2017. The Court now orders that Defendant's Petition and
5 associated motions be DENIED, as Defendant's claims are procedurally time-barred and
6 successive.

7 Defendant asserts that the instant Petition cannot be barred under the strictures of NRS
8 34.745, NRS 34.800, or NRS 34.810 because he is not requesting relief from his sentence.¹
9 Petition, pp. 23. Defendant is wrong. Upon review, Defendant's instant, *fifth* Petition for Writ
10 of Habeas Corpus is a post-conviction petition for relief. First, advisory opinions are improper.
11 Personhood Nev. v. Bristol, 126 Nev. 599, 603, 245 P.3d 572, 575 (2010) (citing Nev. Const.
12 art. 6, § 4; Applebaum v. Applebaum, 97 Nev. 11, 12, 621 P.2d 1110, 1110 (1981) ("This court
13 will not render advisory opinions on moot or abstract questions."); City of No. Las Vegas v.
14 Cluff, 85 Nev. 200, 201, 452 P.2d 461, 462 (1969) (declining to review a challenge to an
15 initiative when no actual controversy existed)).

16 "Moreover, a post-conviction petition for a writ of habeas corpus '[c]omprehends and
17 takes the place of all other common-law, statutory or other remedies which have been available
18 for challenging the validity of the conviction or sentence, and must be used exclusively in
19 place of them.'" Harris v. State, 130 Nev. ___, ___, 329 P.3d 619, 622 (2014) (quoting NRS
20 34.724(2) (b)). This includes NRS 34.360. In reforming the statutory post-conviction scheme,
21 the Legislature desired "[a] single post-conviction remedy ... to reduce confusion and to
22 ensure that constitutional claims would be heard by the courts in a timely manner." Id. at ___,
23 329 P.3d at 627. Pursuant to NRS 34.360, "[e]very person unlawfully committed, detained,
24 confined or restrained of his or her liberty, under any pretense whatever, may prosecute a writ
25 of habeas corpus to inquire into the cause of such imprisonment or restraint." NRS 34.360.

26
27
28 ¹ The Court notes that Defendant initially sought review by the Eleventh Judicial District Court, asking only for an advisory
opinion with respect to his case in the Eighth Judicial District Court. Indeed Defendant asserted it was of no concern what
relief he sought based on desired Eleventh Judicial District Court decision on law. See Petition, pp. 2, 23.

1 To the extent that Defendant brings the instant Petition only for an advisory opinion,
2 the Court must deny his Petition. See Bristol, 126 Nev. at 603, 245 P.3d at 575. To the extent
3 that Defendant is challenging alleged trial error and his custody is based on his conviction for
4 murder, it follows that his Petition is a collateral attack on the validity of his conviction and
5 must be treated as a post-conviction Petition under NRS Chapter 34.

6 Defendant's reliance on the Nevada Supreme Court's holding that "[h]abeas corpus
7 relief is available 'to allow the presentation of questions of law that cannot otherwise be
8 reviewed, or that are so important as to render ordinary procedure inadequate and justify the
9 extraordinary remedy'" is misplaced. Boatwright v. Angelone, 109 Nev. 318, 320-321, 849
10 P.2d 274, 276 (1993) (quoting State ex rel. Orsborn v. Fogliani, 82 Nev. 300, 417 P.2d 148
11 (1966)); see Petition, pp. 2. The Nevada Supreme Court has noted that while the writ has been
12 deemed appropriate for testing the constitutionality of a law or challenging the sufficiency of
13 probable cause while on bail—and thus not incarcerated for purposes of habeas corpus—the
14 Court has consistently “held that the use of the extraordinary writ is warranted only to
15 challenge present custody or restraint and the legality of that confinement.” Arndt, 98 Nev. at
16 85-86, 640 P.2d at 1319. Because Defendant challenges the legality of his confinement post-
17 conviction in his Petition, he is subject to NRS Chapter 34.

18 Further, Defendant fails to demonstrate how ordinary procedure was inadequate in his
19 case—he has filed a direct appeal and *four* prior petitions pursuant to NRS Chapter 34, in
20 which he raised a multitude of meritless claims. Indeed, each claim that Defendant now raises
21 could—and should—have been raised on direct appeal because they are all claims of trial error.
22 NRS 34.810(1)(b)(2); (b)(3); see Petition, pp. 7-8. Accordingly, Defendant's instant Petition
23 as one seeking post-conviction relief. As a post-conviction petition for writ of habeas corpus,
24 Defendant must comply with the procedural rules articulated in NRS Chapter 34. See Brown
25 v. McDaniel, 130 Nev. ___, ___, 331 P.3d 867, 870 (2014) (“Nevada's statutory post-
26 conviction scheme places procedural limits on the filing of a post-conviction petition for a writ
27 of habeas corpus.”); Harris, 130 Nev. at ___, 329 P.3d at 628 (requiring adherence to the
28

1 “procedural requirements of NRS Chapter 34”). As such, the instant Petition must be denied
2 as procedurally barred by NRS 34.800, NRS 34.726, and NRS 34.810.

3 First, the Court notes that the Nevada Supreme Court has held that “[a]pplication of the
4 statutory procedural default rules to post-conviction habeas petitions is *mandatory*,” noting:

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

8 State v. Dist. Court (Riker), 121 Nev. 225, 112 P.3d 1070 (2005) (emphasis added).
9 Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
10 when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
11 has granted no discretion to the district courts regarding whether to apply the statutory
12 procedural bars; the rules *must* be applied.

13 NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
14 exceeding five years between the filing of a judgment of conviction, an order imposing a
15 sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the
16 filing of a petition challenging the validity of a judgment of conviction....” The statute also
17 requires that the State plead laches in its motion to dismiss the petition. NRS 34.800. The State
18 pleaded laches in the instant case.

19 The Judgment of Conviction was filed on December 2, 1999. Defendant filed the instant
20 Petition on August 16, 2016. Since approximately 17 years have elapsed since the date the
21 Judgment of Conviction was filed and the filing of the instant petition, NRS 34.800 directly
22 applies in this case. The delay is more than triple the five years required for a presumption of
23 prejudice to arise. After such a passage of time, the Court finds that the State is prejudiced in
24 its ability to retry this case should relief be granted.

25 Additionally, Defendant’s Petition is time-barred. The mandatory provision of NRS
26 34.726(1) states:

27 Unless there is good cause shown for delay, a petition that
28 challenges the validity of a judgment or sentence must be filed

1 *within 1 year after entry of the judgment of conviction* or, if an
2 appeal has been taken from the judgment, *within 1 year after the*
3 *Supreme Court issues its remittitur.*

4 (emphasis added). “[T]he statutory rules regarding procedural default are mandatory and
5 cannot be ignored when properly raised by the State.” Riker, 121 Nev. at 233, 112 P.3d at
6 1075.

7 Accordingly, the one-year time bar prescribed by NRS 34.726 begins to run from the
8 date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
9 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998); see Pellegrini v.
10 State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding that NRS 34.726 should be
11 construed by its plain meaning).

12 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme
13 Court affirmed the rejection of a habeas petition that was filed two days late, pursuant to the
14 “clear and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
15 importance of filing the petition with the District Court within the one-year mandate, absent a
16 showing of “good cause” for the delay in filing. Gonzales, 590 P.3d at 902. The one-year time
17 bar is therefore strictly construed. In contrast with the short amount of time to file a notice of
18 appeal, a prisoner has an ample full year to file a post-conviction habeas petition, so there is
19 no injustice in a strict application of NRS 34.726(1), despite any alleged difficulties with the
20 postal system. Gonzales, 118 Nev. at 595, 53 P.3d at 903.

21 Here, Defendant filed no timely direct appeal from his Judgment of Conviction, which
22 was filed on approximately December 2, 1999. Accordingly, Defendant had until
23 approximately December 2, 2000, to file a post-conviction petition. The instant Petition was
24 not filed until August 16, 2016, nearly 16 years later. Therefore, absent a showing of good
25 cause, Defendant’s motion must be denied as time-barred pursuant to NRS 34.726(1). NRS
26 34.726 can only be overcome upon a showing of good cause and prejudice or actual innocence,
27 which Defendant fails to demonstrate. Accordingly, this Court must deny Defendant’s Petition
28 as time-barred absent Defendant’s demonstration of good cause and prejudice.

1 Furthermore, Defendant's Petition is successive and an abuse of the writ. NRS 34.810
2 provides in pertinent part that:

3 2. A second or successive petition must be dismissed if the judge
4 or justice determines that it fails to allege new or different grounds
5 for relief and that the prior determination was on the merits or, if
6 new and different grounds are alleged, the judge or justice finds
7 that the failure of the Defendant to assert those grounds in a prior
8 petition constituted an abuse of the writ.

9 Defendant filed four previous Petitions for Writ of Habeas Corpus (Post-Conviction)
10 on January 30, 2002, February 18, 2011, December 9, 2014, and January 5, 2016. Each petition
11 was duly considered and denied by the Court. Consequently, the instant petition filed on March
12 13, 2017, is a successive petition. Moreover, Defendant raises the exact same sentencing claim
13 he raised on direct appeal. As such, the instant petition is also an abuse of the writ. See
14 Pellegrini, 117 Nev. at 888, 34 P.3d at 538; Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798
(1975).

15 To avoid procedural default under NRS 34.726 or NRS 34.800, Defendant has the
16 burden of pleading and proving specific facts that demonstrate both good cause for his failure
17 to present his claim in earlier proceedings and actual prejudice, which Defendant fails to
18 demonstrate. See Hogan, 109 Nev. at 959-60, 860 P.2d at 715-16; Phelps, 104 Nev. at 659,
19 764 P.2d at 1305. Accordingly, the Court must deny Defendant's Petition.

20 "To establish good cause, appellants *must* show that an impediment external to the
21 defense prevented their compliance with the applicable procedural rule." Clem v. State, 119
22 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.
23 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Such an external
24 impediment could be "that the factual or legal basis for a claim was not reasonably available
25 to counsel, or that 'some interference by officials' made compliance impracticable."
26 Hathaway, 119 Nev. at 251, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106
27 S. Ct. 2639, 2645 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v.

1 Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)). Any delay in filing of the petition
2 must not be the fault of the petitioner. NRS 34.726(1)(a).

3 The Nevada Supreme Court has clarified that a defendant cannot attempt to
4 manufacture good cause. Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there
5 must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71
6 P.3d at 506. Excuses such as the lack of assistance of counsel when preparing a petition, as
7 well as the failure of trial counsel to forward a copy of the file to a petitioner have been found
8 not to constitute good cause. See Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded by
9 statute on other grounds as recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145
10 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995). Moreover, a return to state court
11 to exhaust remedies for federal habeas is not good cause to overcome state procedural bars.
12 Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

13 Finally, claims asserted in a petition for post-conviction relief must be supported with
14 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v.
15 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked” allegations are not
16 sufficient, nor are those belied and repelled by the record. Id.

17 Defendant fails to assert any good cause for his procedural default. Instead, he argues,
18 as discussed, supra, that the procedural bars do not apply to him. For the reasons discussed,
19 they do. Moreover, Defendant could and should have previously raised these issues on direct
20 appeal. As such, Defendant fails to establish an impediment external to the defense and
21 therefore does not constitute good cause to overcome the procedural bars. Phelps v. Director,
22 Nevada Department of Prisons, 104 Nev. 656, 764 P.2d 1303 (1988). Accordingly, Defendant
23 cannot demonstrate good cause and his Petition must be denied.

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ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus shall be, and it is, hereby denied.

DATED this 15th day of June, 2017.



DISTRICT JUDGE

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

BY 

CAL THOMAN
Deputy District Attorney
Nevada Bar #12649

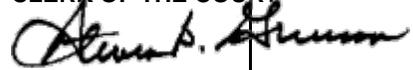
CERTIFICATE OF SERVICE

I certify that on the 20th day of JUNE, 2017, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

Brendan Nasby #63618
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

BY /s/ Stephanie Johnson
Secretary for the District Attorney's Office

98F11168A/AV/saj/MVU



1 NEO

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

4 BRENDAN NASBY,

5
6 Petitioner,

Case No: 98C154293-2

Dept No: XIX

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on June 20, 2017, the court entered a decision or order in this matter, a
true and correct copy of which is attached to this notice.

12 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
13 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
14 mailed to you. This notice was mailed on June 27, 2017.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

17
18
19 CERTIFICATE OF E-SERVICE / MAILING

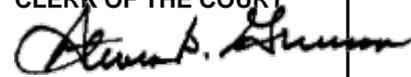
20 I hereby certify that on this 27 day of June 2017, I served a copy of this Notice of Entry on the following:

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

23 The United States mail addressed as follows:
24 Brendan Nasby # 63618
1200 Prison Rd.
25 Lovelock, NV 89419

26 /s/ Amanda Hampton

27 Amanda Hampton, Deputy Clerk



1 **FCL**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CAL THOMAN
6 Deputy District Attorney
7 Nevada Bar #12649
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 BRENDAN JAMES NASBY,
13 #1517690

14 Defendant.

CASE NO: 98C154293-2

DEPT NO: XIX

15 FINDINGS OF FACT, CONCLUSIONS OF
16 LAW AND ORDER

17 DATE OF HEARING: 05/15/17
18 TIME OF HEARING: 8:30 AM

19 THIS CAUSE having come on for hearing before the Honorable WILLIAM D.
20 KEPHART, District Judge, on the 15th day of May, 2017, the Petitioner not being present,
21 PROCEEDING IN PROPER PERSON, the Respondent being represented by STEVEN B.
22 WOLFSON, Clark County District Attorney, by and through EKATERINA DERJAVINA,
23 Deputy District Attorney, and the Court having considered the matter, including briefs,
24 transcripts, arguments of counsel, and documents on file herein, now therefore, the Court
25 makes the following findings of fact and conclusions of law:

26 ///

27 ///

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///

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

2 On November 9, 1998, the State filed an Information charging Brendan James Nasby
3 (“Defendant”) with: Count 1 – Conspiracy to Commit Murder (Felony - NRS 199.480,
4 200.010, 200.030) and Count 2 – Murder with use of a Deadly Weapon (Open Murder) (Felony
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7 returned found Defendant guilty on both counts; as to Count 2, the jury returned a guilty verdict
8 for First Degree Murder with use of a Deadly Weapon. On November 29, 1999, Defendant
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10 months and as to Count 2 – life with the possibility of parole, plus an equal and consecutive
11 term for the use of a deadly weapon, to run consecutive to Count 1. Defendant’s Judgment of
12 Conviction was filed on December 2, 1999.

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14 affirmed Defendant’s conviction on February 7, 2001. Nasby v. State, No. 35319 (Order of
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18 Defendant’s Petition. Defendant filed a Notice of Appeal on April 12, 2006. The Court filed
19 its Findings of Fact, Conclusions of Law and Order on April 26, 2006, and its Notice of Entry
20 on April 27, 2006. On June 18, 2007, the Nevada Supreme Court affirmed the Court’s denial
21 of Defendant’s first Petition. Nasby v. State, No. 47130 (Order of Affirmance, June 28, 2007).
22 Remittitur issued on July 13, 2007.

23 Defendant filed his second Post-Conviction Petition for Writ of Habeas Corpus on
24 February 18, 2011. The State responded on April 8, 2011. The Court denied Defendant’s
25 second Petition as procedurally barred on May 11, 2011. The Court filed its Findings of Fact,
26 Conclusions of Law on June 17, 2011. Defendant filed a Notice of Appeal on June 13, 2011,
27 with the Nevada Supreme Court affirming the decision of the district court on February 8,
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1 2012, and issuing Remittitur on March 5, 2012. Nasby v. State, No. 58579 (Order of
2 Affirmance, Feb. 8, 2012).

3 On December 9, 2014, Defendant filed his third Post-Conviction Petition for Writ of
4 Habeas Corpus. The State responded on February 4, 2015. This Court denied Defendant's
5 Petition as procedurally barred on February 25, 2015. Defendant filed a Notice of Appeal on
6 March 13, 2015. This Findings of Fact, Conclusions of Law was filed on March 30, 2015. On
7 September 11, 2015, the Nevada Supreme Court affirmed the Court's denial of Defendant's
8 third petition as untimely, successive, and an abuse of the writ without a showing of good
9 cause and prejudice.

10 On April 3, 2015, Defendant filed a Motion to Disqualify Judge, and Notice and Motion
11 to Attach Supplemental Exhibits on April 21, 2015. The State filed on Opposition on April 28,
12 2015. On April 28, 2015, the Court filed a written order denying Defendant's motions.
13 Defendant appealed this decision and the Nevada Supreme Court dismissed Defendant's
14 appeal on July 8, 2015.

15 On January 5, 2016, Defendant filed his fourth Post-Conviction Petition for Writ of
16 Habeas Corpus, a Memorandum of Points and Authorities in Support, a Supplemental
17 Memorandum of Points and Authorities in Support, and a Motion for Appointment of Counsel.
18 The State filed a Response on February 23, 2016. Defendant filed a reply on March 10, 2016.
19 On April 4, 2016, Defendant's Petition was denied. The Findings of Fact, Conclusions of Law
20 were filed on May 9, 2016.

21 On May 18, 2016, Defendant filed a Motion to Alter or Amend Judgment N. R. Civ. P.
22 59(e). The State responded on June 2, 2016. The Court denied Defendant's Motion on June 8,
23 2016. Defendant filed a Notice of Appeal on June 14, 2016; the appeal is still pending with
24 the Nevada Court of Appeals.

25 On January 26, 2016, Defendant filed the instant Petition for Writ of Habeas Corpus
26 (NRS 34.360 - Constitutional Questions/Questions of Law) in the Eleventh Judicial District
27 Court, seeking a declaratory judgment on seven allegations of trial error. The Eleventh Judicial
28 District Court transferred Defendant's Petition back to this Court, as this Court has proper

1 jurisdiction over Defendant. On April 4, 2017, Defendant filed a Motion for Reconsideration.
2 The State responded on April 19, 2017. The Motion for Reconsideration is still pending. The
3 State responded on April 25, 2017. Defendant filed a Motion for Reconsideration on April 26,
4 2017, and a Reply on May 10, 2017. The Court now orders that Defendant's Petition and
5 associated motions be DENIED, as Defendant's claims are procedurally time-barred and
6 successive.

7 Defendant asserts that the instant Petition cannot be barred under the strictures of NRS
8 34.745, NRS 34.800, or NRS 34.810 because he is not requesting relief from his sentence.¹
9 Petition, pp. 23. Defendant is wrong. Upon review, Defendant's instant, *fifth* Petition for Writ
10 of Habeas Corpus is a post-conviction petition for relief. First, advisory opinions are improper.
11 Personhood Nev. v. Bristol, 126 Nev. 599, 603, 245 P.3d 572, 575 (2010) (citing Nev. Const.
12 art. 6, § 4; Applebaum v. Applebaum, 97 Nev. 11, 12, 621 P.2d 1110, 1110 (1981) ("This court
13 will not render advisory opinions on moot or abstract questions."); City of No. Las Vegas v.
14 Cluff, 85 Nev. 200, 201, 452 P.2d 461, 462 (1969) (declining to review a challenge to an
15 initiative when no actual controversy existed)).

16 "Moreover, a post-conviction petition for a writ of habeas corpus '[c]omprehends and
17 takes the place of all other common-law, statutory or other remedies which have been available
18 for challenging the validity of the conviction or sentence, and must be used exclusively in
19 place of them.'" Harris v. State, 130 Nev. ___, ___, 329 P.3d 619, 622 (2014) (quoting NRS
20 34.724(2) (b)). This includes NRS 34.360. In reforming the statutory post-conviction scheme,
21 the Legislature desired "[a] single post-conviction remedy ... to reduce confusion and to
22 ensure that constitutional claims would be heard by the courts in a timely manner." Id. at ___,
23 329 P.3d at 627. Pursuant to NRS 34.360, "[e]very person unlawfully committed, detained,
24 confined or restrained of his or her liberty, under any pretense whatever, may prosecute a writ
25 of habeas corpus to inquire into the cause of such imprisonment or restraint." NRS 34.360.

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28 ¹ The Court notes that Defendant initially sought review by the Eleventh Judicial District Court, asking only for an advisory
opinion with respect to his case in the Eighth Judicial District Court. Indeed Defendant asserted it was of no concern what
relief he sought based on desired Eleventh Judicial District Court decision on law. See Petition, pp. 2, 23.

1 To the extent that Defendant brings the instant Petition only for an advisory opinion,
2 the Court must deny his Petition. See Bristol, 126 Nev. at 603, 245 P.3d at 575. To the extent
3 that Defendant is challenging alleged trial error and his custody is based on his conviction for
4 murder, it follows that his Petition is a collateral attack on the validity of his conviction and
5 must be treated as a post-conviction Petition under NRS Chapter 34.

6 Defendant's reliance on the Nevada Supreme Court's holding that "[h]abeas corpus
7 relief is available 'to allow the presentation of questions of law that cannot otherwise be
8 reviewed, or that are so important as to render ordinary procedure inadequate and justify the
9 extraordinary remedy'" is misplaced. Boatwright v. Angelone, 109 Nev. 318, 320-321, 849
10 P.2d 274, 276 (1993) (quoting State ex rel. Orsborn v. Fogliani, 82 Nev. 300, 417 P.2d 148
11 (1966); see Petition, pp. 2. The Nevada Supreme Court has noted that while the writ has been
12 deemed appropriate for testing the constitutionality of a law or challenging the sufficiency of
13 probable cause while on bail—and thus not incarcerated for purposes of habeas corpus—the
14 Court has consistently “held that the use of the extraordinary writ is warranted only to
15 challenge present custody or restraint and the legality of that confinement.” Arndt, 98 Nev. at
16 85-86, 640 P.2d at 1319. Because Defendant challenges the legality of his confinement post-
17 conviction in his Petition, he is subject to NRS Chapter 34.

18 Further, Defendant fails to demonstrate how ordinary procedure was inadequate in his
19 case—he has filed a direct appeal and *four* prior petitions pursuant to NRS Chapter 34, in
20 which he raised a multitude of meritless claims. Indeed, each claim that Defendant now raises
21 could—and should—have been raised on direct appeal because they are all claims of trial error.
22 NRS 34.810(1)(b)(2); (b)(3); see Petition, pp. 7-8. Accordingly, Defendant's instant Petition
23 as one seeking post-conviction relief. As a post-conviction petition for writ of habeas corpus,
24 Defendant must comply with the procedural rules articulated in NRS Chapter 34. See Brown
25 v. McDaniel, 130 Nev. ___, ___, 331 P.3d 867, 870 (2014) (“Nevada's statutory post-
26 conviction scheme places procedural limits on the filing of a post-conviction petition for a writ
27 of habeas corpus.”); Harris, 130 Nev. at ___, 329 P.3d at 628 (requiring adherence to the
28

1 “procedural requirements of NRS Chapter 34”). As such, the instant Petition must be denied
2 as procedurally barred by NRS 34.800, NRS 34.726, and NRS 34.810.

3 First, the Court notes that the Nevada Supreme Court has held that “[a]pplication of the
4 statutory procedural default rules to post-conviction habeas petitions is *mandatory*,” noting:

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

8 State v. Dist. Court (Riker), 121 Nev. 225, 112 P.3d 1070 (2005) (emphasis added).
9 Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
10 when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
11 has granted no discretion to the district courts regarding whether to apply the statutory
12 procedural bars; the rules *must* be applied.

13 NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
14 exceeding five years between the filing of a judgment of conviction, an order imposing a
15 sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the
16 filing of a petition challenging the validity of a judgment of conviction....” The statute also
17 requires that the State plead laches in its motion to dismiss the petition. NRS 34.800. The State
18 pleaded laches in the instant case.

19 The Judgment of Conviction was filed on December 2, 1999. Defendant filed the instant
20 Petition on August 16, 2016. Since approximately 17 years have elapsed since the date the
21 Judgment of Conviction was filed and the filing of the instant petition, NRS 34.800 directly
22 applies in this case. The delay is more than triple the five years required for a presumption of
23 prejudice to arise. After such a passage of time, the Court finds that the State is prejudiced in
24 its ability to retry this case should relief be granted.

25 Additionally, Defendant’s Petition is time-barred. The mandatory provision of NRS
26 34.726(1) states:

27 Unless there is good cause shown for delay, a petition that
28 challenges the validity of a judgment or sentence must be filed

1 *within 1 year after entry of the judgment of conviction* or, if an
2 appeal has been taken from the judgment, *within 1 year after the*
3 *Supreme Court issues its remittitur.*

4 (emphasis added). “[T]he statutory rules regarding procedural default are mandatory and
5 cannot be ignored when properly raised by the State.” Riker, 121 Nev. at 233, 112 P.3d at
6 1075.

7 Accordingly, the one-year time bar prescribed by NRS 34.726 begins to run from the
8 date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
9 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998); see Pellegrini v.
10 State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding that NRS 34.726 should be
11 construed by its plain meaning).

12 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme
13 Court affirmed the rejection of a habeas petition that was filed two days late, pursuant to the
14 “clear and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
15 importance of filing the petition with the District Court within the one-year mandate, absent a
16 showing of “good cause” for the delay in filing. Gonzales, 590 P.3d at 902. The one-year time
17 bar is therefore strictly construed. In contrast with the short amount of time to file a notice of
18 appeal, a prisoner has an ample full year to file a post-conviction habeas petition, so there is
19 no injustice in a strict application of NRS 34.726(1), despite any alleged difficulties with the
20 postal system. Gonzales, 118 Nev. at 595, 53 P.3d at 903.

21 Here, Defendant filed no timely direct appeal from his Judgment of Conviction, which
22 was filed on approximately December 2, 1999. Accordingly, Defendant had until
23 approximately December 2, 2000, to file a post-conviction petition. The instant Petition was
24 not filed until August 16, 2016, nearly 16 years later. Therefore, absent a showing of good
25 cause, Defendant’s motion must be denied as time-barred pursuant to NRS 34.726(1). NRS
26 34.726 can only be overcome upon a showing of good cause and prejudice or actual innocence,
27 which Defendant fails to demonstrate. Accordingly, this Court must deny Defendant’s Petition
28 as time-barred absent Defendant’s demonstration of good cause and prejudice.

1 Furthermore, Defendant's Petition is successive and an abuse of the writ. NRS 34.810
2 provides in pertinent part that:

3 2. A second or successive petition must be dismissed if the judge
4 or justice determines that it fails to allege new or different grounds
5 for relief and that the prior determination was on the merits or, if
6 new and different grounds are alleged, the judge or justice finds
7 that the failure of the Defendant to assert those grounds in a prior
8 petition constituted an abuse of the writ.

9 Defendant filed four previous Petitions for Writ of Habeas Corpus (Post-Conviction)
10 on January 30, 2002, February 18, 2011, December 9, 2014, and January 5, 2016. Each petition
11 was duly considered and denied by the Court. Consequently, the instant petition filed on March
12 13, 2017, is a successive petition. Moreover, Defendant raises the exact same sentencing claim
13 he raised on direct appeal. As such, the instant petition is also an abuse of the writ. See
14 Pellegrini, 117 Nev. at 888, 34 P.3d at 538; Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798
(1975).

15 To avoid procedural default under NRS 34.726 or NRS 34.800, Defendant has the
16 burden of pleading and proving specific facts that demonstrate both good cause for his failure
17 to present his claim in earlier proceedings and actual prejudice, which Defendant fails to
18 demonstrate. See Hogan, 109 Nev. at 959-60, 860 P.2d at 715-16; Phelps, 104 Nev. at 659,
19 764 P.2d at 1305. Accordingly, the Court must deny Defendant's Petition.

20 "To establish good cause, appellants *must* show that an impediment external to the
21 defense prevented their compliance with the applicable procedural rule." Clem v. State, 119
22 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.
23 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Such an external
24 impediment could be "that the factual or legal basis for a claim was not reasonably available
25 to counsel, or that 'some interference by officials' made compliance impracticable."
26 Hathaway, 119 Nev. at 251, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106
27 S. Ct. 2639, 2645 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v.

1 Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)). Any delay in filing of the petition
2 must not be the fault of the petitioner. NRS 34.726(1)(a).

3 The Nevada Supreme Court has clarified that a defendant cannot attempt to
4 manufacture good cause. Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there
5 must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71
6 P.3d at 506. Excuses such as the lack of assistance of counsel when preparing a petition, as
7 well as the failure of trial counsel to forward a copy of the file to a petitioner have been found
8 not to constitute good cause. See Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded by
9 statute on other grounds as recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145
10 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995). Moreover, a return to state court
11 to exhaust remedies for federal habeas is not good cause to overcome state procedural bars.
12 Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

13 Finally, claims asserted in a petition for post-conviction relief must be supported with
14 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v.
15 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked” allegations are not
16 sufficient, nor are those belied and repelled by the record. Id.

17 Defendant fails to assert any good cause for his procedural default. Instead, he argues,
18 as discussed, supra, that the procedural bars do not apply to him. For the reasons discussed,
19 they do. Moreover, Defendant could and should have previously raised these issues on direct
20 appeal. As such, Defendant fails to establish an impediment external to the defense and
21 therefore does not constitute good cause to overcome the procedural bars. Phelps v. Director,
22 Nevada Department of Prisons, 104 Nev. 656, 764 P.2d 1303 (1988). Accordingly, Defendant
23 cannot demonstrate good cause and his Petition must be denied.

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ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus shall be, and it is, hereby denied.

DATED this 15th day of June, 2017.



DISTRICT JUDGE

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

BY 

CAL THOMAN
Deputy District Attorney
Nevada Bar #12649

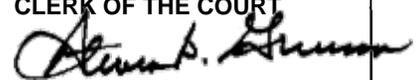
CERTIFICATE OF SERVICE

I certify that on the 20th day of JUNE, 2017, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

Brendan Nasby #63618
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

BY /s/ Stephanie Johnson
Secretary for the District Attorney's Office

98F11168A/AV/saj/MVU



1 **ORDER**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 RICHARD H. SCOW
6 Chief Deputy District Attorney
7 Nevada Bar #009182
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 BRENDAN JAMES NASBY,
14 #1517690

15 Defendant.

CASE NO: 98C154293-2

DEPT NO: XIX

16 ORDER DENYING DEFENDANT'S PRO PER MOTION
17 FOR RECONSIDERATION

18 DATE OF HEARING: APRIL 26, 2017
19 TIME OF HEARING: 8:30 A.M.

20 THIS MATTER having come on for hearing before the above entitled Court on the
21 26th day of April, 2017, the Defendant not being present, IN PROPER PERSON, the Plaintiff
22 being represented by STEVEN B. WOLFSON, District Attorney, through RICHARD H.
23 SCOW, Chief Deputy District Attorney, without argument, based on the pleadings and good
24 cause appearing therefor,

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IT IS HEREBY ORDERED that the Defendant's Pro Per Motion for Reconsideration, shall be, and it is DENIED. Defendant has failed to show good cause to overcome the procedural bars.

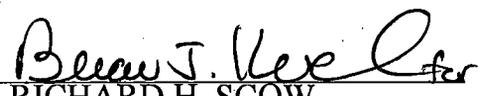
DATED this 15th day of June, 2017.



DISTRICT JUDGE



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

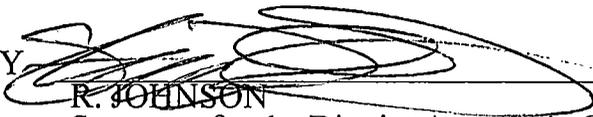
BY 
RICHARD H. SCOW
Chief Deputy District Attorney
Nevada Bar #009182

CERTIFICATE OF SERVICE

I certify that on the 20th day of June, 2017, I mailed a copy of the foregoing
Order to:

BRENDAN JAMES NASBY #63618
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NV 89419

BY



R. JOHNSON
Secretary for the District Attorney's Office

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jr for rj/M-1



CLERK OF THE COURT

1 **FCL**
2 **STEVEN B. WOLFSON**
3 Clark County District Attorney
4 Nevada Bar #001565
5 **CHRISTOPHER F. BURTON**
6 Deputy District Attorney
7 Nevada Bar #012940
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 BRENDAN JAMES NASBY,
13 #1517690

14 Defendant.

CASE NO: 98C154293-2

DEPT NO: XIX

15 FINDINGS OF FACT, CONCLUSIONS OF
16 LAW AND ORDER

17 DATE OF HEARING: APRIL 4, 2016
18 TIME OF HEARING: 8:30 A.M.

19 THIS CAUSE having come on for hearing before the Honorable WILLIAM D.
20 KEPHART, District Judge, on the 4th day of April, 2016, the Petitioner not being present,
21 PROCEEDING IN FORMA PAUPERIS, the Respondent being represented by STEVEN B.
22 WOLFSON, Clark County District Attorney, by and through MEGAN THOMSON, Chief
23 Deputy District Attorney, and the Court having considered the matter, including briefs,
24 transcripts, arguments of counsel, and documents on file herein, now therefore, the Court
25 makes the following findings of fact and conclusions of law:

26 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

27 On November 9, 1998, the State charged BRENDAN JAMES NASBY (hereinafter
28 "Defendant") by way of Information as follows: COUNT 1 – Conspiracy to Commit Murder

1 (Felony – NRS 199.480, 200.010, 200.030) and COUNT 2 – Murder with use of a Deadly
2 Weapon (Open Murder) (Felony – NRS 200.010, 200.030, 193.165).

3 A jury trial commenced on October 11, 1999, and on October 19, 1999, the jury
4 returned with a verdict of guilty on both counts; as to COUNT 2, the jury returned a guilty
5 verdict for First Degree Murder with use of a Deadly Weapon. On November 29, 1999,
6 Defendant was sentenced as follows: as to COUNT 1 – 48 to 120 months in the Nevada
7 Department of Corrections (NDC) and as to COUNT 2 – Life with the possibility of parole,
8 plus an equal and consecutive term for the use of a deadly weapon, to run consecutive to
9 COUNT 1. Defendant’s Judgment of Conviction was entered on December 2, 1999.

10 Defendant filed a Notice of Appeal on December 14, 1999. The Nevada Supreme Court
11 affirmed Defendant’s conviction on February 7, 2001. See Nasby v. State, No. 35319, Order
12 of Affirmance (Feb. 7, 2001). Remittitur issued on March 6, 2001.

13 On January 30, 2002, Defendant filed a Post-Conviction Petition for Writ of Habeas
14 Corpus. The State filed a Response on April 5, 2002. On March 27, 2006, the court denied
15 Defendant’s Petition. Defendant filed a Notice of Appeal on April 12, 2006. The district court
16 filed its Findings of Fact, Conclusions of Law and Order on April 26, 2006, and its Notice of
17 Entry on April 27, 2006. On June 18, 2007, the Nevada Supreme Court affirmed the district
18 court’s denial of Defendant’s Petition. See Nasby v. State, No. 47130, Order of Affirmance
19 (June 28, 2007). Remittitur issued on July 13, 2007.

20 Defendant filed his second Post-Conviction Petition for Writ of Habeas Corpus on
21 February 18, 2011. The State responded on April 8, 2011. The court denied Defendant’s
22 Second Petition as procedurally barred on May 11, 2011. The court filed its Findings of Fact,
23 Conclusions of Law and Order on June 17, 2011, with Notice of Entry being filed on June 27,
24 2011. Defendant filed a Notice of Appeal on June 13, 2011, with the Nevada Supreme Court
25 affirming the decision of the district court on February 8, 2012, and issuing Remittitur on
26 March 5, 2012. Nasby v. State, No. 58579, Order of Affirmance (Feb. 8, 2012).

27 On December 9, 2014, Defendant filed his third Post-Conviction Petition for Writ of
28 Habeas Corpus. The State responded on February 4, 2015. This Court denied Defendant’s

1 Petition as procedurally barred on February 25, 2015. Defendant filed a notice of appeal on
2 March 13, 2015. This Court's Findings of Fact, Conclusions of Law and Order was filed on
3 March 30, 2015, with Notice of Entry being filed April 6, 2015. On September 11, 2015, the
4 Nevada Supreme Court affirmed the district court's denial of Defendant's third petition as
5 untimely, successive, and an abuse of the writ without a showing of good cause and prejudice.
6 On April 3, 2015, Defendant filed a Motion to Disqualify Judge, and Notice and Motion to
7 Attach Supplemental Exhibits on April 21, 2015. The State filed on Opposition on April 28,
8 2015. On April 28, 2015, the district court filed a written order denying Defendant's motions.
9 Defendant appealed this decision and the Nevada Supreme Court dismissed Defendant's
10 appeal on July 8, 2015.

11 On January 5, 2016, Defendant filed his fourth Post-Conviction Petition for Writ of
12 Habeas Corpus ("Petition"), a Memorandum of Points and Authorities in Support, a
13 Supplemental Memorandum of Points and Authorities in Support, and a Motion for
14 Appointment of Counsel. The State filed a Response on February 23, 2016. Defendant filed
15 a reply on March 10, 2016.

16 After considering the pleadings, the Court finds that Defendant's Petition is
17 procedurally barred pursuant to NRS 34.726 and NRS 34.810(1)-(2), and subject to laches
18 pursuant to NRS 34.800, and now orders that Defendant's Supplement be DENIED.

19 **I. Defendant's Petition is time-barred.**

20 The mandatory provisions of NRS 34.726(1) states:

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

- 25 (a) That the delay is not the fault of the petitioner; and
26 (b) That dismissal of the petition as untimely will
unduly prejudice the petitioner. . .

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28 //

1 NRS 34.726(1) (emphasis added). “[T]he statutory rules regarding procedural default are
2 mandatory and cannot be ignored when properly raised by the State.” State v. Eighth Judicial
3 Dist. Ct. (Riker), 121 Nev. 225, 233, 112 P.3d 1070, 1075 (2005).

4 Here, Defendant filed a direct appeal. Thus, the one-year time bar began to run from
5 the date the Supreme Court issued Remittitur on March 6, 2001. Defendant had until March
6 6, 2002 to file his Petition. However, Defendant waited almost 14 years until January 5, 2016,
7 to file. This Court finds that Defendant’s Petition is procedurally barred under NRS 34.726
8 and is therefore, denied.

9 **II. Defendant’s Petition is Successive.**

10 Defendant’s instant petition is successive pursuant to NRS 34.810. Pertinent portions
11 of NRS 34.810 state:

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

18 3. Pursuant to subsections 1 and 2, the petitioner has the
19 burden of pleading and proving specific facts that demonstrate:

- 20 (a) Good cause for the petitioner’s failure to present the
21 claim or for presenting the claim again; and
22 (b) Actual prejudice to the petitioner.

23 NRS 34.810(2), (3). The Nevada Supreme Court recognizes that “[u]nlike initial petitions
24 which certainly require a careful review of the record, successive petitions may be dismissed
25 based solely on the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123,
26 129 (1995).

27 Defendant filed his first post-conviction petition on February 1, 2002, which was denied
28 on March 27, 2006, and affirmed by the Nevada Supreme Court on June 18, 2007. Notably,
29 Defendant filed a second petition on February 18, 2011, which was denied as procedurally
30 barred on May 11, 2011. On December 9, 2014, Defendant filed his third petition, which was
31 denied on February 25, 2015, and affirmed by the Nevada Supreme Court on September 11,
32 2015, as untimely, successive, and an abuse of the writ without a showing of good cause and

1 prejudice. This Court finds that Defendant's first petition was filed and decided on the merits
2 and that the instant Petition is successive pursuant to NRS 34.810(2) and therefore, denied.

3 **III. Defendant has failed to demonstrate good cause.**

4 The Nevada Supreme Court has specifically found that the district court has a duty to
5 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily
6 disregard them. In Riker, the Court held that "[a]pplication of the statutory procedural default
7 rules to post-conviction habeas petitions is mandatory," and "cannot be ignored when properly
8 raised by the State." Id. at 231, 233, 112 P.3d at 1074, 1075. There, the Court reversed the
9 district court's decision not to bar the defendant's untimely and successive petition:

10 Given the untimely and successive nature of [defendant's]
11 petition, the district court *had a duty imposed by law* to consider
12 whether any or all of [defendant's] claims were barred under NRS
13 34.726, NRS 34.810, NRS 34.800, or by the law of the case . . .
[and] the court's failure to make this determination here
constituted an arbitrary and unreasonable exercise of discretion.

14 Id. at 234, 112 P.3d at 1076 (emphasis added). "To establish good cause, appellants *must* show
15 that an impediment external to the defense prevented their compliance with the applicable
16 procedural rule." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added);
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24 Additionally, the Nevada Supreme Court has clarified that, "appellants cannot attempt to
25 manufacture good cause[.]" Clem, 119 Nev. at 621, 81 P.3d at 526.

26 In an effort to demonstrate good cause for his untimely and successive fourth Petition,
27 Defendant alleges that "[t]he authority relied upon in this petition did not exist 1 year following
28 the filing of the judgment of conviction or the filing of a decision on direct appeal."

1 Specifically, Defendant asserts a claim of actual innocence explaining that he “was not made
2 aware, nor had the ability to know of the Nevada Supreme Court’s ruling in Nika.”¹

3 To the extent Defendant asserts a claim of “actual innocence” as an explanation of good
4 cause, this Court finds this assertion to be without merit. The United States Supreme Court
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12 on pursuing a procedurally-barred *legal* claim.

13 This Court finds that Nika does not constitute new evidence and Defendant cannot
14 manufacture good cause in an attempt to circumvent the statutory procedural bars. Clem, 119
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18 each time a potentially promising decision was decided in the courts many years after
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8 Petition challenging the conviction or sentence of death under NRS 34.820(1)(a), one does not
9 have “[a]ny constitutional or statutory right to counsel at all” in post-conviction proceedings.
10 112 Nev. at 164, 912 P.2d at 258. Because Defendant had no right to post-conviction
11 counsel—as his was not a capital case—he may not assert that alleged instances of ineffective
12 post-conviction counsel constituted good cause for his untimely filing. Therefore, his claim is
13 denied.

14 **IV. Defendant’s Petition is barred by the doctrine of laches.**

15 NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
16 exceeding five years [elapses] between the filing of a judgment of conviction, an order
17 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
18 conviction and the filing of a petition challenging the validity of a judgment of conviction...”
19 The Nevada Supreme Court observed in Groesbeck v. Warden, “[P]etitions that are filed many
20 years after conviction are an unreasonable burden on the criminal justice system. The
21 necessity for a workable system dictates that there must exist a time when a criminal conviction
22 is final.” 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the statute requires
23 the State plead laches in its motion to dismiss the petition. NRS 34.800(2). This Court finds
24 that the State affirmatively pleads laches in the instant case, the doctrine of laches applies as
25 to bar the Defendant’s Petition, and the Petition is denied.

26 //

27 //

28 //

1 **V. Defendant is not entitled to the appointment of counsel.**

2 The United States Constitution and Nevada Constitution do not provide for a right to
3 counsel in post-conviction proceedings. See Coleman v. Thompson, 501 U.S. 722, 752, 111
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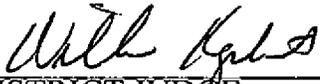
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proceedings; or
(c) Counsel is necessary to proceed with discovery.

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13 petitioner "must show that the requested review is not frivolous before he may have an attorney
14 appointed." Peterson v. Warden, 87 Nev. 134, 136, 483 P.2d 204, 205 (1971) (citing former
15 statute NRS 177.345(2)). This Court finds that Defendant is not entitled to appointment of
16 counsel because he has failed to demonstrate that his claims are not frivolous and that his
17 untimely and successive fourth Petition will not be summarily dismissed.

18 **ORDER**

19 THEREFORE, IT IS HEREBY ORDERED that the Post-Conviction Petition for Writ
20 of Habeas Corpus and Motion for Appointment of Counsel shall be, and are, hereby DENIED.

21 DATED this 5th day of April, 2016.

22 
23 _____
DISTRICT JUDGE

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

26 BY 
27 CHRISTOPHER F. BURTON
28 Deputy District Attorney
Nevada Bar #012940

CERTIFICATE OF SERVICE

I certify that on the 26th day of April, 2016, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

BRENDAN JAMES NASBY #63618
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NV 89419

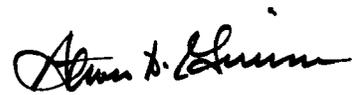
BY



R. JOHNSON
Secretary for the District Attorney's Office

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FL/CFB/rj/M-1



CLERK OF THE COURT

1 NEO

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

4
5 BRENDAN NASBY,

6 Petitioner,

Case No: 98C154293-2

Dept No: XIX

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on May 9, 2016, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on May 12, 2016.

16 STEVEN D. GRIERSON, CLERK OF THE COURT



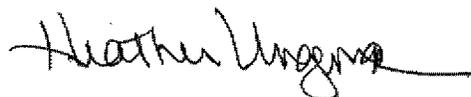
18 Heather Ungermann, Deputy Clerk

19 CERTIFICATE OF MAILING

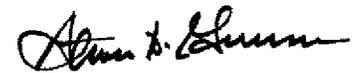
20 I hereby certify that on this 12 day of May 2016, I placed a copy of this Notice of Entry in:

21 The bin(s) located in the Regional Justice Center of:
22 Clark County District Attorney's Office
23 Attorney General's Office – Appellate Division-

24 The United States mail addressed as follows:
25 **Brendan Nasby # 63618**
26 1200 Prison Road
27 Lovelock, NV 89419



28 Heather Ungermann, Deputy Clerk



CLERK OF THE COURT

1 FCL
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER F. BURTON
6 Deputy District Attorney
7 Nevada Bar #012940
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 BRENDAN JAMES NASBY,
13 #1517690

14 Defendant.

CASE NO: 98C154293-2

DEPT NO: XIX

15 FINDINGS OF FACT, CONCLUSIONS OF
16 LAW AND ORDER

17 DATE OF HEARING: APRIL 4, 2016
18 TIME OF HEARING: 8:30 A.M.

19 THIS CAUSE having come on for hearing before the Honorable WILLIAM D.
20 KEPHART, District Judge, on the 4th day of April, 2016, the Petitioner not being present,
21 PROCEEDING IN FORMA PAUPERIS, the Respondent being represented by STEVEN B.
22 WOLFSON, Clark County District Attorney, by and through MEGAN THOMSON, Chief
23 Deputy District Attorney, and the Court having considered the matter, including briefs,
24 transcripts, arguments of counsel, and documents on file herein, now therefore, the Court
25 makes the following findings of fact and conclusions of law:

26 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

27 On November 9, 1998, the State charged BRENDAN JAMES NASBY (hereinafter
28 "Defendant") by way of Information as follows: COUNT 1 – Conspiracy to Commit Murder

1 (Felony – NRS 199.480, 200.010, 200.030) and COUNT 2 – Murder with use of a Deadly
2 Weapon (Open Murder) (Felony – NRS 200.010, 200.030, 193.165).

3 A jury trial commenced on October 11, 1999, and on October 19, 1999, the jury
4 returned with a verdict of guilty on both counts; as to COUNT 2, the jury returned a guilty
5 verdict for First Degree Murder with use of a Deadly Weapon. On November 29, 1999,
6 Defendant was sentenced as follows: as to COUNT 1 – 48 to 120 months in the Nevada
7 Department of Corrections (NDC) and as to COUNT 2 – Life with the possibility of parole,
8 plus an equal and consecutive term for the use of a deadly weapon, to run consecutive to
9 COUNT 1. Defendant's Judgment of Conviction was entered on December 2, 1999.

10 Defendant filed a Notice of Appeal on December 14, 1999. The Nevada Supreme Court
11 affirmed Defendant's conviction on February 7, 2001. See Nasby v. State, No. 35319, Order
12 of Affirmance (Feb. 7, 2001). Remittitur issued on March 6, 2001.

13 On January 30, 2002, Defendant filed a Post-Conviction Petition for Writ of Habeas
14 Corpus. The State filed a Response on April 5, 2002. On March 27, 2006, the court denied
15 Defendant's Petition. Defendant filed a Notice of Appeal on April 12, 2006. The district court
16 filed its Findings of Fact, Conclusions of Law and Order on April 26, 2006, and its Notice of
17 Entry on April 27, 2006. On June 18, 2007, the Nevada Supreme Court affirmed the district
18 court's denial of Defendant's Petition. See Nasby v. State, No. 47130, Order of Affirmance
19 (June 28, 2007). Remittitur issued on July 13, 2007.

20 Defendant filed his second Post-Conviction Petition for Writ of Habeas Corpus on
21 February 18, 2011. The State responded on April 8, 2011. The court denied Defendant's
22 Second Petition as procedurally barred on May 11, 2011. The court filed its Findings of Fact,
23 Conclusions of Law and Order on June 17, 2011, with Notice of Entry being filed on June 27,
24 2011. Defendant filed a Notice of Appeal on June 13, 2011, with the Nevada Supreme Court
25 affirming the decision of the district court on February 8, 2012, and issuing Remittitur on
26 March 5, 2012. Nasby v. State, No. 58579, Order of Affirmance (Feb. 8, 2012).

27 On December 9, 2014, Defendant filed his third Post-Conviction Petition for Writ of
28 Habeas Corpus. The State responded on February 4, 2015. This Court denied Defendant's

1 Petition as procedurally barred on February 25, 2015. Defendant filed a notice of appeal on
2 March 13, 2015. This Court's Findings of Fact, Conclusions of Law and Order was filed on
3 March 30, 2015, with Notice of Entry being filed April 6, 2015. On September 11, 2015, the
4 Nevada Supreme Court affirmed the district court's denial of Defendant's third petition as
5 untimely, successive, and an abuse of the writ without a showing of good cause and prejudice.
6 On April 3, 2015, Defendant filed a Motion to Disqualify Judge, and Notice and Motion to
7 Attach Supplemental Exhibits on April 21, 2015. The State filed on Opposition on April 28,
8 2015. On April 28, 2015, the district court filed a written order denying Defendant's motions.
9 Defendant appealed this decision and the Nevada Supreme Court dismissed Defendant's
10 appeal on July 8, 2015.

11 On January 5, 2016, Defendant filed his fourth Post-Conviction Petition for Writ of
12 Habeas Corpus ("Petition"), a Memorandum of Points and Authorities in Support, a
13 Supplemental Memorandum of Points and Authorities in Support, and a Motion for
14 Appointment of Counsel. The State filed a Response on February 23, 2016. Defendant filed
15 a reply on March 10, 2016.

16 After considering the pleadings, the Court finds that Defendant's Petition is
17 procedurally barred pursuant to NRS 34.726 and NRS 34.810(1)-(2), and subject to laches
18 pursuant to NRS 34.800, and now orders that Defendant's Supplement be DENIED.

19 **I. Defendant's Petition is time-barred.**

20 The mandatory provisions of NRS 34.726(1) states:

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

- 25 (a) That the delay is not the fault of the petitioner; and
26 (b) That dismissal of the petition as untimely will
unduly prejudice the petitioner. . .

27 //

28 //

1 NRS 34.726(1) (emphasis added). “[T]he statutory rules regarding procedural default are
2 mandatory and cannot be ignored when properly raised by the State.” State v. Eighth Judicial
3 Dist. Ct. (Riker), 121 Nev. 225, 233, 112 P.3d 1070, 1075 (2005).

4 Here, Defendant filed a direct appeal. Thus, the one-year time bar began to run from
5 the date the Supreme Court issued Remittitur on March 6, 2001. Defendant had until March
6 6, 2002 to file his Petition. However, Defendant waited almost 14 years until January 5, 2016,
7 to file. This Court finds that Defendant’s Petition is procedurally barred under NRS 34.726
8 and is therefore, denied.

9 **II. Defendant’s Petition is Successive.**

10 Defendant’s instant petition is successive pursuant to NRS 34.810. Pertinent portions
11 of NRS 34.810 state:

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

18 3. Pursuant to subsections 1 and 2, the petitioner has the
19 burden of pleading and proving specific facts that demonstrate:

- 20 (a) Good cause for the petitioner’s failure to present the
21 claim or for presenting the claim again; and
22 (b) Actual prejudice to the petitioner.

23 NRS 34.810(2), (3). The Nevada Supreme Court recognizes that “[u]nlike initial petitions
24 which certainly require a careful review of the record, successive petitions may be dismissed
25 based solely on the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123,
26 129 (1995).

27 Defendant filed his first post-conviction petition on February 1, 2002, which was denied
28 on March 27, 2006, and affirmed by the Nevada Supreme Court on June 18, 2007. Notably,
29 Defendant filed a second petition on February 18, 2011, which was denied as procedurally
30 barred on May 11, 2011. On December 9, 2014, Defendant filed his third petition, which was
31 denied on February 25, 2015, and affirmed by the Nevada Supreme Court on September 11,
32 2015, as untimely, successive, and an abuse of the writ without a showing of good cause and

1 prejudice. This Court finds that Defendant's first petition was filed and decided on the merits
2 and that the instant Petition is successive pursuant to NRS 34.810(2) and therefore, denied.

3 **III. Defendant has failed to demonstrate good cause.**

4 The Nevada Supreme Court has specifically found that the district court has a duty to
5 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily
6 disregard them. In Riker, the Court held that "[a]pplication of the statutory procedural default
7 rules to post-conviction habeas petitions is mandatory," and "cannot be ignored when properly
8 raised by the State." Id. at 231, 233, 112 P.3d at 1074, 1075. There, the Court reversed the
9 district court's decision not to bar the defendant's untimely and successive petition:

10 Given the untimely and successive nature of [defendant's]
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27 Defendant alleges that "[t]he authority relied upon in this petition did not exist 1 year following
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3 To the extent Defendant asserts a claim of “actual innocence” as an explanation of good
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19 The Nevada Supreme Court observed in Groesbeck v. Warden, “[P]etitions that are filed many
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23 the State plead laches in its motion to dismiss the petition. NRS 34.800(2). This Court finds
24 that the State affirmatively pleads laches in the instant case, the doctrine of laches applies as
25 to bar the Defendant’s Petition, and the Petition is denied.

26 //

27 //

28 //

1 **V. Defendant is not entitled to the appointment of counsel.**

2 The United States Constitution and Nevada Constitution do not provide for a right to
3 counsel in post-conviction proceedings. See Coleman v. Thompson, 501 U.S. 722, 752, 111
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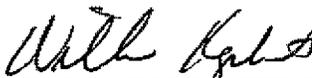
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17 untimely and successive fourth Petition will not be summarily dismissed.

18 **ORDER**

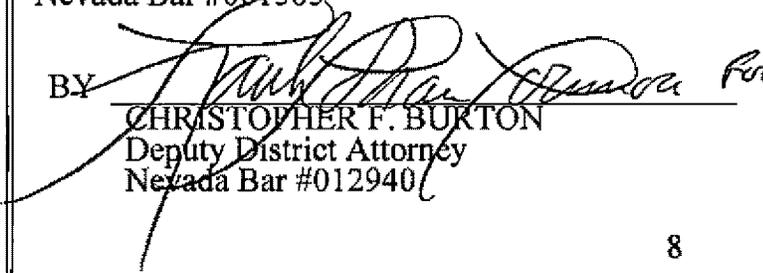
19 THEREFORE, IT IS HEREBY ORDERED that the Post-Conviction Petition for Writ
20 of Habeas Corpus and Motion for Appointment of Counsel shall be, and are, hereby DENIED.

21 DATED this 5th day of April, 2016.

22 
23 _____
DISTRICT JUDGE

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

26 BY

27 
CHRISTOPHER F. BURTON
28 Deputy District Attorney
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CERTIFICATE OF SERVICE

I certify that on the 26th day of April, 2016, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

BRENDAN JAMES NASBY #63618
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NV 89419

BY



R. JOHNSON
Secretary for the District Attorney's Office

FL/CFB/rj/M-1

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

October 27, 1998

98C154293-2 State of Nevada
 vs
 Brendan Nasby

October 27, 1998 9:00 AM Initial Arraignment INITIAL
ARRAIGNMENT
Relief Clerk: CAROL
GREEN
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski

HEARD BY: COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Coumou, Frank Attorney

JOURNAL ENTRIES

- Mr. Coumou requested continuance until 11/10 to finalize negotiations. No objection by Mr. Golightly. COURT ORDERED, matter CONTINUED.
BOND
11/12/98 8:30 AM ARRAIGNMENT CONTINUED

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 24, 1998

98C154293-2 State of Nevada
vs
Brendan Nasby

November 24, 1998	8:30 AM	Initial Arraignment	INITIAL ARRAIGNMENT Court Clerk: LINDA SKINNER/ls Relief Clerk: CAROL GREEN Reporter/Recorder: JAMES HELLESO Heard By: Joseph Pavlikowski
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HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Lalli, Christopher J.	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- DEFT ARRAIGNED, PLED NOT GUILTY AND INVOKED THE 60 DAY RULE. COURT ORDERED, matter set for trial. Court advised this date is a few days past the 60 day rule. All parties agreed. Mr. Sciscento will have 21 days from the filing of the transcript to file a writ.

CUSTODY

1/28/99 8:30 AM CALENDAR CALL

2/1/99 9:00 AM JURY TRIAL

ACCESSORY TO MURDER (F). COURT ACCEPTED plea, ADJUDGED DEFENDANT GUILTY and ORDERED, matter referred to Parole and Probation and set for sentencing. Further, COURT ORDERED, Police Report will be made a part of this plea.

Regarding request for O.R. Release on behalf of Deft. Jotee Burnside, Court advised counsel to file written motion and get something from Intake Services and matter will be put on 12/15 calendar. Counsel advised that Deft. Tommie Burnside would join in motion. Matter will be on calendar as to both Defendants.

CUSTODY (BOTH)

12/15/98 8:30 AM DEFTS' REQUEST FOR O.R. RELEASE (BOTH)

2/25/99 8:30 AM SENTENCING (BOTH)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 15, 1998

98C154293-2

State of Nevada
vs
Brendan Nasby

December 15, 1998

8:30 AM

All Pending Motions

**ALL PENDING
MOTIONS 12/15/98
Court Clerk: LINDA
SKINNER
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Coumou, Frank

Attorney

JOURNAL ENTRIES

- DEFT'S MOTION FOR OWN RECOGNIZANCE RELEASE OR HOUSE ARREST (JOTEE)...DEFT'S REQUEST FOR O.R. RELEASE (TOMMIE)

Mr. Brooks advised the Intake Services Report denies an O.R. release, but would request house arrest as Deft's mother has a full time job and can afford the fees. Mr. Figler stated this applies to Tommie as well. Mr. Coumou opposed both motions because of Deft's gang affiliation and their records. COURT ORDERED, both Motions are DENIED, however, reduced the bail to \$10,000 for each Deft. CUSTODY (BOTH)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

January 08, 1999

98C154293-2 State of Nevada
vs
Brendan Nasby

January 08, 1999	8:30 AM	Motion to Revoke Own Recognizance Release	STATE'S MOTION TO REVOKE DEFT NASBY'S JAIL PRIVILEGES AND PLACE IN ISOLATION Relief Clerk: CAROL GREEN Reporter/Recorder: JAMES HELLESO Heard By: Pavlikowski, Joseph S.
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HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Mr. Sciscento advised that Defendant will stipulate to isolation until matter can be set for and Evidentiary hearing and Defendant would only request contact with his parents, daughter and two attorneys. Mr. Coumou stated no objection to contact with close family members. COURT ORDERED, matter CONTINUED for hearing; Defendant, having stipulated to being placed in isolation, will be allowed contact with parents, daughter and two attorneys.

98C154293-2

CUSTODY

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

January 22, 1999

98C154293-2 State of Nevada
vs
Brendan Nasby

January 22, 1999	9:00 AM	Motion to Revoke Own Recognizance Release	STATE'S MOTION TO REVOKE DEFT NASBY'S JAIL PRIVILEGES AND PLACE IN ISOLATION Court Clerk: CAROL GREEN Relief Clerk: CONNIE KALSKI/CK Reporter/Recorder: JAMES HELLESO Heard By: Pavlikowski, Joseph S.
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HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Mr. Sciscento advised that the allegations made against Defendant will require him to call witnesses. Mr. Sciscento, therefore, requested matter be continued and be put at the end of the court's calendar. COURT ORDERED, matter CONTINUED.

98C154293-2

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 28, 1999

98C154293-2

State of Nevada
vs
Brendan Nasby

January 28, 1999

8:30 AM

Calendar Call

**CALENDAR CALL
Court Clerk: LINDA
SKINNER
Reporter/Recorder:
JAMES HELLESO
Heard By:
Pavlikowski, Joseph
S.**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Brown, Philip H.
Nasby, Brendan J
Sciscento, Joseph S.

Attorney
Defendant
Attorney

JOURNAL ENTRIES

- Mr. Brown appeared for Mr. Coumou and upon Court's inquiry, Mr. Sciscento advised he would not be ready for trial as he has a civil matter going on Monday. COURT ORDERED, matter CONTINUED with Motion set for Friday.
CUSTODY

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

January 29, 1999

98C154293-2 State of Nevada
 vs
 Brendan Nasby

January 29, 1999	9:00 AM	All Pending Motions	ALL PENDING MOTIONS 1/29/99 Relief Clerk: CAROL GREEN Reporter/Recorder: JAMES HELLESO Heard By: Joseph Pavlikowski
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HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Duffy, John L.	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- CALENDAR CALL...STATE'S MOTION TO REVOKE DEFT'S JAIL PRIVILEGES AND TO PLACE HIM IN ISOLATION

Argument by Mr. Coumou and Mr. Sciscento. Regarding Jury Trial, Mr. Sciscento advised that as he will be in another trial on Monday, he would request a continuance. Defendant had no objection to continuance of trial. COURT ORDERED, Trial Date VACATED; matter CONTINUED for Decision and Status Check on trial setting. Defendant's custody status will remain status quo.

CUSTODY

2/1/99 8:30 AM STATUS CHECK: TRIAL SETTING...STATE'S MOTION TO REVOKE DEFT'S JAIL

PRIVILEGES AND TO PLACE HIM IN ISOLATION

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

February 01, 1999

98C154293-2 State of Nevada
vs
Brendan Nasby

February 01, 1999 8:30 AM All Pending Motions ALL PENDING
MOTIONS 2/1/99
Relief Clerk: CAROL
GREEN
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski

HEARD BY: COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Brown, Philip H. Attorney
Duffy, John L. Attorney
Nasby, Brendan J Defendant

JOURNAL ENTRIES

- STATUS CHECK: TRIAL SETTING...STATE'S MOTION TO REVOKE DEFT'S JAIL PRIVILEGES
AND TO PLACE HIM IN ISOLATION

Mr. Duffy advised that Mr. Sciscento is in Los Angeles and is requesting that matter be continued
until tomorrow. COURT ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 2/2/99 8:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

February 08, 1999

98C154293-2

State of Nevada
vs
Brendan Nasby

February 08, 1999

8:30 AM

Sentencing

SENTENCING
Court Clerk: LINDA
SKINNER
Reporter/Recorder:
JAMES HELLESO
Heard By:
Pavlikowski, Joseph
S.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Coumou, Frank

Attorney

JOURNAL ENTRIES

- Dawn Williams from the Division of Parole and Probation present. CONFERENCE AT BENCH.
Pursuant to that conference, COURT ORDERED, matter CONTINUED.
BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 10, 1999

98C154293-2

State of Nevada
vs
Brendan Nasby

February 10, 1999

8:30 AM

Request of Court

**AT THE REQUEST
OF THE COURT
Court Clerk: LINDA
SKINNER
Reporter/Recorder:
JAMES HELLESO
Heard By:
Pavlikowski, Joseph
S.**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Coumou, Frank	Attorney
Duffy, John L.	Attorney
Nasby, Brendan J	Defendant
Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Mr. Coumou advised he had no objection to Deft's fiancée being allowed to visit Deft. Mr. Sciscento to prepare Order adding her name, Colleen Warner, to the list of visitors.

CUSTODY

CLERK'S NOTE: After calendar, Secretary advised an issue was not addressed and requested matter be put back on calendar for Friday. ls.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 12, 1999

98C154293-2

State of Nevada
vs
Brendan Nasby

February 12, 1999

8:30 AM

Request of Court

**AT THE REQUEST
OF THE COURT
Court Clerk: LINDA
SKINNER
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Coumou, Frank
Nasby, Brendan J

Attorney
Defendant

JOURNAL ENTRIES

- Court advised there was a question regarding correspondence to and from Deft. Mr. Coumou advised he did not have a problem with Deft receiving or sending correspondence as long as it is monitored. COURT SO ORDERED and Mr. Coumou advised he would prepare the Order. DURING CALENDAR: Mr. Sciscento appeared and was apprised of what happened. Mr. Sciscento advised he would speak with Mr. Coumou as he wanted the Order to also contain the information regarding visitation.
CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 25, 1999

98C154293-2

State of Nevada
vs
Brendan Nasby

February 25, 1999

8:30 AM

Sentencing

**SENTENCING
Court Clerk: LINDA
SKINNER/LS Relief
Clerk: CONNIE
KALSKI
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Coumou, Frank

Attorney

JOURNAL ENTRIES

- J.R. Haggerty from the Division of Parole and Probation present. Mr. Brooks advised Deft did not want to proceed with sentencing, but would like this continued for several months so that he might bail out. Upon Court's inquiry, Court DENIED this request. Parties argued and submitted. Statement by Deft. Having been ADJUDGED GUILTY of ACCESSORY TO MURDER (F), COURT ORDERED, in addition to the \$25 Administrative Assessment Fee, DEFT JOTEE BURNSIDE SENTENCED to the Nevada Department of Prisons for a MAXIMUM term of (30) MONTHS with a MINIMUM parole eligibility of TWELVE (12) MONTHS with 121 days credit for time served. BOND, if any, EXONERATED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 29, 1999

98C154293-2 State of Nevada
 vs
 Brendan Nasby

April 29, 1999

8:30 AM

Calendar Call

**CALENDAR CALL
Relief Clerk: CAROL
GREEN
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Duffy, John L.	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Mr. Coumou advised that State is ready, with 17 witnesses, with two out-of-State witnesses. Mr. Sciscento stated that he is ready, but co-counsel, Mr. Duffy may be in another trial beginning next week. COURT ORDERED, matter sent to OVERFLOW.

CUSTODY

4/30/99 9:00 AM CALENDAR CALL IN DEPT XIV (OVERFLOW FROM DEPT III)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

April 30, 1999

98C154293-2 State of Nevada
vs
Brendan Nasby

April 30, 1999

9:00 AM

Calendar Call

CALENDAR CALL
(OVERFLOW FROM
DEPT III)
COUMOU/SCISCEN
TO-17 WIT/2
OUTSTATE/5DAYS
Court Clerk: RITA
LOPEZ
Reporter/Recorder:
JOE D'AMATO
Heard By: Mosley,
Donald M.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Duffy, John L.	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Mr. Sciscento advised the Court Mr. Duffy is co-counsel in this matter. Colloquy between Court and Counsel regarding the length of trial and number of witnesses. Due to the Judge's Conference next week, COURT ORDERED, MATTER CONTINUED IN DEPARTMENT XIV TO SEE IF THE TRIAL CAN BE ENTERTAINED.

98C154293-2

CUSTODY

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

May 03, 1999

98C154293-2 State of Nevada
vs
Brendan Nasby

May 03, 1999

9:00 AM

Calendar Call

CALENDAR CALL
(OVERFLOW FROM
DEPT III)
COUMOU/SCISCEN
TO-17 WIT/2
OUTSTATE/5DAYS
Court Clerk: JUDY
NORMAN
Reporter/Recorder:
MAUREEN
SCHORN Heard By:
Donald Mosley

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Duffy, John L.	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Mr. Sciscento advised Mr. Duffy would be setting second chair in this matter. There not being a Courtroom available, COURT ORDERED, matter referred back to Dept. III for Trial setting; TRIAL DATE VACATED.

CUSTODY

98C154293-2

5/6/99 8:30 AM TRIAL SETTING

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

May 06, 1999

98C154293-2 State of Nevada
vs
Brendan Nasby

May 06, 1999	8:30 AM	Conversion Hearing Type	TRIAL SETTING Court Clerk: LINDA SKINNER Reporter/Recorder: JAMES HELLESO Heard By: Joseph Pavlikowski
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HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- CONFERENCE AT BENCH. Pursuant to that conference, COURT ORDERED, matter set for trial. Mr. Sciscento inquired if the Order for visit of Deft's mother, could also include Deft's father. Mr. Coumou had no opposition. COURT SO ORDERED.

CUSTODY

7/15/99 8:30 AM CALENDAR CALL

7/19/99 9:00 AM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

July 15, 1999

98C154293-2 State of Nevada
vs
Brendan Nasby

July 15, 1999 8:30 AM All Pending Motions ALL PENDING
MOTIONS 7/15/99
Court Clerk: LINDA
SKINNER
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski

HEARD BY: COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Coumou, Frank Attorney
Nasby, Brendan J Defendant
Sciscento, Joseph S. Attorney

JOURNAL ENTRIES

- CALENDAR CALL...DEFT'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF WITNESS
INTIMIDATION

Upon Court's inquiry, Mr. Coumou advised he is not ready for trial as the witness that examined the
gun and cassings will be unavailable. Further, Mr. Coumou advised Mr. Sciscento served an
Amended Notice of Witnesses within 10 days of trial and two of these witnesses live out of State and
there will not be enough time before trial to interview them. For these reasons, Mr. Coumou
requested a continuance. Mr. Sciscento had no objection to a short continuance. COURT ORDERED,
trial date VACATED and RESET and Motion set for today will be CONTINUED to calendar call.
CUSTODY

98C154293-2

10/7/99 8:30 AM CALENDAR CALL
10/11/99 9:00 AM JURY TRIAL

98C154293-2

USED IN THE CRIME

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

September 07, 1999

98C154293-2 State of Nevada
vs
Brendan Nasby

September 07, 1999	8:30 AM	Motion	DEFT'S MOTION FOR ORDER TO TAKE VIDEO DEPOSITION AT TRIAL Court Clerk: LINDA SKINNER Reporter/Recorder: JAMES HELLESO Heard By: Pavlikowski, Joseph S.
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HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- CONFERENCE AT BENCH. Pursuant to that conference, COURT ORDERED, matter CONTINUED and TRANSFERED TO DEPT. 7 CUSTODY

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

September 09, 1999

98C154293-2 State of Nevada
 vs
 Brendan Nasby

September 09, 1999	9:00 AM	Motion	DEFT'S MOTION FOR ORDER TO TAKE VIDEO DEPOSITION AT TRIAL Court Clerk: TINA HURD Reporter/Recorder: PATSY SMITH Heard By: Mark Gibbons
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HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Court advised he has read the pleadings. Mr. Sciscento advised the witness, Nina Hoque, is getting married and moving out of the country to Bangladesh or Thailand and may not be available for trial. Mr. Coumou advised there are too many questions regarding the availability of the witness. Court advised Ms. Hoque can be placed under subpoena and, if she is available, the deposition will not be used. Mr. Coumou objected to the video deposition and argued there is no authority for it and he does not want the other witnesses to decide not to appear and have their depositions taken as well. Mr. Coumou advised it is the State's position this is a concocted story and if this deposition is on tape,

it can be shared with the other witnesses to solidify their story; these witnesses have been extremely uncooperative with the State. Mr. Coumou further argued there is no attached affidavit from this witness stating she is not going to be available. Mr. Sciscento advised he became aware of this recently and wants to preserve her testimony; further, he gave the witnesses names and phone numbers to the State and it is not his responsibility if they do not cooperate with the State. Mr. Sciscento advised these witnesses have also received threats. COURT ORDERED, motion GRANTED and the video deposition will be taken in this courtroom at a time mutually convenient for both counsel; if the witness is available, the tape will not be used and the witness will be subpoenaed to be here, however, the deposition may be used for impeachment. At request of Mr. Coumou, COURT FURTHER ORDERED, this testimony is not to be shared with anyone and admonished deft. not to share the testimony he hears during the deposition. Counsel to contact the Court for a time. CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 07, 1999

98C154293-2

State of Nevada
vs
Brendan Nasby

October 07, 1999

9:00 AM

All Pending Motions

**ALL PENDING
MOTIONS 10-7-99
Court Clerk: TINA
HURD
Reporter/Recorder:
PATSY SMITH
Heard By: Mark
Gibbons**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Coumou, Frank
Nasby, Brendan J
Sciscento, Joseph S.

Attorney
Defendant
Attorney

JOURNAL ENTRIES

- AS TO DEFT'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS NOT USED IN THE CRIME...Court FINDS the probative value is outweighed by the prejudicial effect, however, this would be proper for rebuttal if it comes up. COURT ORDERED, motion GRANTED. AS TO DEFT'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF WITNESS INTIMIDATION.. .COURT ORDERED, motion DENIED as this is relevant if deft. is shown to be the source of the intimidation. Colloquy regarding a pre-trial evidentiary hearing. Mr. Coumou advised he has a handwriting expert that states deft. Nasby is the source of these letters. Mr. Sciscento advised he is not prepared for trial at this time as he got the report of the firearms expert, Tory Johnson, a little late. Mr. Coumou objected to a continuance and advised this case has been continued countless times. AS

to the discovery motion, Mr. Coumou advised it is speculative and Mr. Sciscento had ample time to do this as the motion was granted on July 29 and all paperwork requested had been photocopied previously as the State had no objection. Further, Mr. Coumou advised defense counsel has a duty to provide notice of an expert which he has not received. Mr. Sciscento advised his request was for Mr. Johnson's personal notes and when his office called, they were told by Mr. Johnson's office that they would get to it when they got to it. COURT ORDERED, motion to continue is DENIED and trial will go forward Monday afternoon.

CUSTODY

10-11-99 1:30 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 11, 1999

98C154293-2

State of Nevada
vs
Brendan Nasby

October 11, 1999

1:30 PM

Jury Trial

TRIAL BY JURY
Court Clerk:
JOSEPHINE BOHN
Reporter/Recorder:
RENEE SILVAGGIO
Heard By: Gibbons,
Mark

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Santacroce, Frederick A.	Attorney
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. Mr. Sciscento stated there was a motion granted regarding guns not used and he was concerned that witness Johnson would mention them. Mr. Coumou stated he has already spoken to the witness regarding that issue and they will not be mentioned. Colloquy regarding the removal of clips from the gun used outside the presence of the jury and the assault rifle not being admitted but released back to the crime scene analyst. Mr. Sciscento addressed the issue of a letter intercepted by the District Attorney's office as well as an audio tape. Court noted the letter was provided to the Court and it was reviewed. Mr. Coumou advised that the letter was obtained by search warrant, but he has found nothing of evidentiary value on the audio tape. Colloquy as to an evidentiary hearing on the issue of the letter. Court stated jury

selection would begin and the hearing can be held tomorrow. IN THE PRESENCE OF THE JURY PANEL. Conference at the bench. Jury selection proceeded. Prospective panel admonished and excused for the evening. OUTSIDE THE PRESENCE OF THE JURY. Court permitted the State to make its first peremptory challenge, juror #137 McNeal. Batson objection by Mr. Sciscento. Arguments by counsel. Court found the State had a rational basis for the challenge and, ORDERED, CHALLENGE APPROVED. Court in recess.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 12, 1999

98C154293-2 State of Nevada
 vs
 Brendan Nasby

October 12, 1999

11:00 AM

Jury Trial

**TRIAL BY JURY
Court Clerk:
JOSEHINE BOHN
Reporter/Recorder:
RENEE SILVAGGIO
Heard By: Gibbons,
Mark**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Santacroce, Frederick A.	Attorney
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Court reconvened with all present as before. Counsel stipulated to the PRESENCE OF THE JURY. Jury and alternates selected and sworn. Conference at the bench. Information ready by the Clerk of the Court. EXCLUSIONARY RULE INVOKED BY THE COURT. Opening statements by Mr. Coumou and Mr. Sciscento. Jury admonished and excused for the evening. OUTSIDE THE PRESENCE OF THE JURY. Mr. Santacroce moved for a mistrial based on the State's opening statement regarding the letter which was the basis for the hearing this date. Following arguments by counsel, COURT ORDERED, motion is DENIED. Court in recess.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 12, 1999

98C154293-2 State of Nevada
 vs
 Brendan Nasby

October 12, 1999	11:00 AM	Hearing	HEARING Court Clerk: JOSEPHINE BOHN Reporter/Recorder: RENEE SILVAGGIO Heard By: Mark Gibbons
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HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Santacroce, Frederick A.	Attorney
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Court noted this is a hearing regarding the intimidation of witnesses. Testimony and exhibits presented. (See worksheets.) Mr. Sciscento moved to exclude testimony under the Fifth Amendment as well as the letter received after November 4. He stated that any statements made prior to that date are not a part of this motion. Opposition by Mr. Coumou who argued that this is a motion in limine and should have been brought before the Court 10 days prior to the calendar call. Arguments of counsel regarding witness Holmes being an agent of the State. Court stated it will reserve decision until after reviewing the transcript of this hearing which the Court Reporter is ORDERED to prepare and submit to the Court. Court advised counsel the transcript will be reviewed to determine when the letters were delivered and when the witness spoke to the police. COURT ORDERED, RULING

RESERVED on the Fifth Amendment issue and witness Holmes working as an agent of the State. Mr. Santacroce moved to exclude testimony and conclusions of Kelly Daubert regarding handwriting comparisons. Court stated the defense can cross examine on that issue and ORDERED, motion is DENIED.
CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 13, 1999

98C154293-2

State of Nevada
vs
Brendan Nasby

October 13, 1999

1:30 PM

Jury Trial

**TRIAL BY JURY
Court Clerk:
JOSEPHINE BOHN
Reporter/Recorder:
RENEE SILVAGGIO
Heard By: Gibbons,
Mark**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Santacroce, Frederick A.	Attorney
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Court reconvened with all present as before. Counsel stipulated to the PRESENCE OF THE JURY. Testimony and exhibits presented. (See worksheets.) Jury admonished and excused for lunch recess. Court reconvened with all present as before. Counsel stipulated to the PRESENCE OF THE JURY. Testimony continued. Exhibits admitted. Jury admonished and excused. Evening recess.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 14, 1999

98C154293-2

State of Nevada
vs
Brendan Nasby

October 14, 1999

11:00 AM

Jury Trial

**TRIAL BY JURY
Court Clerk:
JOSEPHINE BOHN
Reporter/Recorder:
RENEE SILVAGGIO
Heard By: Gibbons,
Mark**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Coumou, Frank	Attorney
Nasby, Brendan J	Defendant
Santacroce, Frederick A.	Attorney
Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Court reconvened with all present as before. Counsel stipulated to the PRESENCE OF THE JURY. Testimony and exhibits presented. (See worksheets.) Counsel stipulated to the chain of custody of exhibits 52, 52A, 52B and 52C. Counsel further stipulated to exhibit 52 being WITHDRAWN AND RETURNED TO Officer McPhail of Metro. Jury admonished and excused. Evening recess.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 15, 1999

98C154293-2

State of Nevada
vs
Brendan Nasby

October 15, 1999

1:30 PM

Jury Trial

**TRIAL BY JURY
Court Clerk: TINA
HURD
Reporter/Recorder:
Renee Silvaggio
Heard By: Gibbons,
Mark**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Coumou, Frank	Attorney
Nasby, Brendan J	Defendant
Santacroce, Frederick A.	Attorney
Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- 11:15 A.M.--OUTSIDE THE PRESENCE OF THE JURY, Court advised records from the jail have been subpoenaed and he has reviewed them with Mitchell Cohen, DDA, and there are two possible names that may pertain to this case. Court advised he has asked Mr. Cohen to make copies of those two possibilities and provide those to counsel. Mr. Sciscento advised there is an issue regarding the visitation records. Off record conference between Court and Mr. Cohen. On the record, Court advised he did not see any names of anyone involved in this case on the records except Mr. Buczek. 11:20 a.m.--Counsel stipulated to the presence of the Jury. Further testimony and exhibits presented per worksheets. 12:42 p.m.--Jury admonished and excused for lunch, to return at 2:00 p.m. OUTSIDE THE PRESENCE OF THE JURY, Court admonished deft. Nasby regarding his right not to be

compelled to testify. Upon Court's inquiry, counsel and deft. stipulated to WAIVE the penalty phase if there is a conviction and deft. is to be sentenced by the Court. COURT SO ORDERED.

2:05 P.M.--Counsel stipulated to the presence of the Jury. Further testimony and exhibits presented.

3:41 p.m.--OUTSIDE THE PRESENCE OF THE JURY, Court addressed the issue of John Holmes' testimony. Colloquy regarding when John Holmes spoke with law enforcement. State advised there was no interrogation going on, however, there may be a Sixth Amendment issue; John Holmes subsequently received a letter with names and addresses of people deft. wanted intimidated or killed and that is a separate crime. Court advised that sounds like a Petrocelli issue. Court stated his findings and ORDERED, the letter will be EXCLUDED as the prejudice outweighs the probative value. Brief recess taken. 4:08 p.m.--Counsel stipulated to the presence of the Jury. Further testimony and exhibits presented. Court admonished the Jury and excused them for the weekend at 5:10 p.m. to return at 1:30 p.m. Monday afternoon. OUTSIDE THE PRESENCE OF THE JURY, colloquy regarding scheduling. Mr. Sciscento requested the State bring back Jerimiah Deskin. COURT SO ORDERED. Court adjourned for the weekend.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 18, 1999

98C154293-2 State of Nevada
 vs
 Brendan Nasby

October 18, 1999

9:00 AM

Jury Trial

**TRIAL BY JURY
Court Clerk: TINA
HURD/th Relief
Clerk: Blanca
Madrigal
Reporter/Recorder:
PATSY SMITH
Heard By: Gibbons,
Mark**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- 11:28 A.M.--Deft's presence waived. Counsel stipulated instructions may be settled on the record before both sides rest on the record with counsel having the right to additional instructions if further issues arise. Jury Instructions settled on the record. Off the record at 11:38 a.m.

1:30 P.M.--Counsel stipulated to the presence of the Jury. State rested. Conference at the bench. 1:33 p.m.--OUTSIDE THE PRESENCE OF THE JURY, Mr. Sciscento moved to dismiss on the grounds the State did not prove their case beyond a reasonable doubt and argued. State argued this should be argued to the Jury as an issue of fact. Court FINDS the State has set forth a prima facie case and ORDERED, motion DENIED. 1:36 p.m.--IN THE PRESENCE OF THE JURY, Defense rested. Court

instructed the Jury. Closing arguments by counsel. 3:25 p.m.--Bailiff sworn to take charge of the Jury. Court explained the scheduling to the Jury. At the hour of 3:28 p.m. this date, Jury retired to commence deliberations. Court in recess.

5:00 P.M.--Jury admonished and excused for the evening to return at 9:00 a.m. tomorrow morning.
CUSTODY

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

October 19, 1999

98C154293-2 State of Nevada
vs
Brendan Nasby

October 19, 1999	9:00 AM	Jury Trial	TRIAL BY JURY Court Clerk: TINA HURD/th Relief Clerk: Blanca Madrigal Reporter/Recorder: PATSY SMITH Heard By: Mark Gibbons
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HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- 9:00 A.M.--Jury retired to continue deliberations.
1:34 P.M.--Counsel stipulated to the presence of the Jury. Jury returned with VERDICTS of GUILTY OF COUNT I - CONSPIRACY TO COMMIT MURDER (F) and GUILTY OF COUNT II - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (F). Jury polled at request of Mr. Sciscento; 12 affirmed. Court thanked and excused the Jury at 1:38 p.m. OUTSIDE THE PRESENCE OF THE JURY, deft. Nasby having been found guilty, COURT ORDERED, matter REFERRED to P&P and set for sentencing; deft. REMANDED TO CUSTODY.
CUSTODY

98C154293-2

11-29-99 9:00 AM SENTENCING

COUNT I - CONSPIRACY TO COMMIT MURDER (F) and COUNT II - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (F). Sworn statements made by victim's grandmother and mother, ELLEN BEAVER-JONES and VELMA BEASLEY, and deft's mother, BRENDA NASBY. Matter argued and submitted. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, deft. is SENTENCED to a MAXIMUM term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS in the Nevada Department of Prisons for Count I and SENTENCED to LIFE WITH THE POSSIBILITY OF PAROLE plus an equal and CONSECUTIVE term of LIFE WITH THE POSSIBILITY OF PAROLE for use of a deadly weapon. for Count II, CONSECUTIVE to Count I, with 480 DAYS credit for time served. BOND, if any, EXONERATED. Mr. Sciscento advised deft's visitors have been restricted to his mother, fiancée and child by court order and requested that be lifted. State advised he moved for that when he found all his witnesses were being intimidated and threatened; deft. is obviously not in isolation now or he would not have these new charges for Battery on a Corrections Officer. COURT ORDERED, the Court order restricting visitation is LIFTED and matter is left to the discretion of the jail commander. Mr. Sciscento advised, as to the appeal, he believes there will be a conflict as the Special Public Defender represented one of the co-defts. and requested the Court appoint Mr. Santacrocce. State took no position. COURT ORDERED, Mr. Santacrocce is APPOINTED to represent deft. Nasby on appeal. Off the record at 3:16 p.m.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

September 17, 2001

98C154293-2

State of Nevada

vs

Brendan Nasby

September 17, 2001

9:00 AM

Motion

DEFT'S PRO PER
MTN TO
DISCOVERY
PRODUCTION/TRA
NSMISSION OF
DOCUMENTS/38
Court Clerk: Denise
Husted Heard By:
Nancy Saitta

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Brower, Keith

Attorney

JOURNAL ENTRIES

- COURT noted Defendant has failed to file a writ and is not entitled to the documents, therefore ORDERED, motion DENIED.

NDC

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

February 25, 2002

98C154293-2

State of Nevada
vs
Brendan Nasby

February 25, 2002

9:00 AM

Motion

DEFT'S PRO PER
MTN FOR
DISCOVERY
PRODUCTION AND
TRANSMISSIONS
OF DOCUM/42
Court Clerk: Denise
Husted
Reporter/Recorder:
Kristine Cornelius
Heard By: Saitta,
Nancy M

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Goettsch, Becky S.

Attorney

JOURNAL ENTRIES

- COURT noted no opposition from the State and ORDERED, motion CONTINUED to 4/8/02; State to file response.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 08, 2002

98C154293-2

State of Nevada
vs
Brendan Nasby

April 08, 2002

9:00 AM

All Pending Motions

**ALL PENDING
MOTIONS 4/8/02
Court Clerk: Amber
Farley
Reporter/Recorder:
Kristine Cornelius
Heard By: Nancy
Saitta**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Coumou, Frank

Attorney

Santacroce, Frederick A.

Attorney

JOURNAL ENTRIES

- F. SANTACROCE'S MOTION TO WITHDRAW AS COUNSEL Mr. Santacroce stated he took this case on the appeal, the appeal was denied and the conviction was affirmed. COURT ORDERED, Motion GRANTED, order signed in open court.

DEFT'S PRO PER MOTION FOR DISCOVERY PRODUCTION...DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S PRO PER MOTION FOR APPOINTMENT OF COUNSEL ...DEFTS PRO PER MOTION TO PROCEED IN FORMA PAUPERIS...DEFT'S PRO PER MOTION TO ATTACH SUPPLEMENTAL EXHIBIT TO PETITION FOR POST CONVICTION RELIEF...DEFT'S PRO PER MOTION FOR EVIDENTIARY HEARING

Mr. Coumou stated he doesn't believe an evidentiary hearing is needed and that the motions can be ruled on. Court indicated that it will continue this matter for thirty days to ensure that everything

98C154293-2

has been fully reviewed, and SO ORDERED.

NDC

ABOVE MOTIONS CONTINUED TO: 5/6/02 9:00 AM

98C154293-2

NDC

7/1/02 9:00 AM CONFIRMATION OF COUNSEL (L. TEICHER)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 01, 2002

98C154293-2

State of Nevada
vs
Brendan Nasby

July 01, 2002

9:00 AM

All Pending Motions

**ALL PENDING
MOTIONS 7/1/02
Court Clerk: Amber
Farley
Reporter/Recorder:
Tina Smith Heard
By: Kathy Hardcastle**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Teicher, Lori C.
Wall, David T.

Attorney
Attorney

JOURNAL ENTRIES

- DEFT'S PRO PER MOTION FOR DISCOVERY PRODUCTION AND TRANSMISSION OF DOCUMENTS...DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S PRO PER MOTION TO PROCEED IN FORMA PAUPERIS...DEFT'S PRO PER MOTION TO ATTACH SUPPLEMENTAL EXHIBIT TO PETITION FOR POST CONVICTION RELIEF... DEFT'S PRO PER MOTION FOR EVIDENTIARY HEARING...CONFIRMATION OF COUNSEL (L. TEICHER) Ms. Teicher confirmed as counsel. COURT ORDERED, counsel to work out a briefing schedule and ORDERED, matter set for a status check in forty-five days.

NDC

8/19/02 9:00 AM STATUS CHECK: PENDING MOTIONS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 19, 2002

98C154293-2

State of Nevada
vs
Brendan Nasby

August 19, 2002

9:00 AM

Status Check

**STATUS CHECK:
PENDING
MOTIONS Court
Clerk: Amber Farley
Reporter/Recorder:
Kristine Cornelius
Heard By: Nancy
Saitta**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Nasby, Brendan J	Defendant
	Teicher, Lori C.	Attorney
	Wall, David T.	Attorney

JOURNAL ENTRIES

- Ms. Teicher stated she has met with the Defendant and now has the file; requested a briefing schedule be set. COURT SO ORDERED, as follows:

Opening due 11/22/02 Response due 12/20/02 Reply due 1/24/02

Matter set for hearing.

NDC

2/5/03 9:00 AM ARGUMENT: POST-CONVICTION WRIT

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

March 01, 2004

98C154293-2 State of Nevada
vs
Brendan Nasby

March 01, 2004 9:00 AM Status Check

STATUS CHECK:
BRIEFING
SCHEDULE Court
Clerk: Amber Farley
Reporter/Recorder:
Dick Kangas Heard
By: Nancy Saitta

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Owens, Steven S. Attorney
Sgro, Anthony P. Attorney

JOURNAL ENTRIES

- Mr. Sgro stated the writ was filed in July 2002 and never litigated, and recounted the procedural history regarding the writ. Mr. Sgro stated the writ was filed 1/30/02, which cures the one-year time bar. Mr. Owens requested that issue be argued, stating that good cause must be shown for the delay. Bench conference. The Court set a briefing schedule, as follows: Opening due 9/3/04; Response due 11/12/04; Reply due 11/17/04; and matter set for argument.
NDC
1/10/05 9:00 AM ARGUMENT: WRIT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 02, 2005

98C154293-2

State of Nevada

vs

Brendan Nasby

March 02, 2005

9:00 AM

Hearing

**ARGUMENT: POST-
CONVICTION
WRIT Court Clerk:
Kristen Brown
Reporter/Recorder: Jo
Anne Pierpont
Heard By: Cory, Ken**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Coumou, Frank
Sgro, Anthony P.

Attorney
Attorney

JOURNAL ENTRIES

- At the request of counsel, COURT ORDERED, matter CONTINUED to be heard in front of Judge Saitta.
NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 02, 2005

98C154293-2 State of Nevada
vs
Brendan Nasby

September 02, 2005	11:00 AM	Evidentiary Hearing	EVIDENTIARY HEARING RE: TRIAL STRATEGY (INEFFECTIVE ASSISTANCE OF COUNSEL) Relief Clerk: Theresa Lee Reporter/Recorder: Jo Anne Pierpont Heard By: Saitta, Nancy M
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HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Michaelides, Thomas C.	Attorney

JOURNAL ENTRIES

- (Witnesses present, Joseph Sciscento, Esq. and Frederick Santacroce, Esq.)
 Deft not present. Mr. Michaelides contacted Mr. Sgro whom he is appearing for and was informed he wanted the deft present for the hearing. COURT ORDERED, hearing CONTINUED, State to prepare a new Order to Transport. Counsel believed the hearing could take one hour.
 NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 26, 2005

98C154293-2

State of Nevada
vs
Brendan Nasby

September 26, 2005

10:30 AM

Evidentiary Hearing

**EVIDENTIARY
HEARING RE:
TRIAL STRATEGY
(INEFFECTIVE
ASSISTANCE OF
COUNSEL) Court
Clerk: Kristen Brown
Reporter/Recorder: Jo
Anne Pierpont
Heard By: Saitta,
Nancy M**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Coumou, Frank
Nasby, Brendan J

Attorney
Defendant

JOURNAL ENTRIES

- Court advised the deft. that it received information that the deft. was not transported and called off Mr. Sciscento, therefore, ORDERED, matter CONTINUED.
NDC

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 09, 2005

98C154293-2 State of Nevada
 vs
 Brendan Nasby

November 09, 2005	10:30 AM	Evidentiary Hearing	EVIDENTIARY HEARING RE: TRIAL STRATEGY (INEFFECTIVE ASSISTANCE OF COUNSEL) Court Clerk: Kristen Brown Reporter/Recorder: Jo Anne Pierpont Heard By: Nancy Saitta
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HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Michaelides, Thomas C.	Attorney
	Nasby, Brendan J	Defendant

JOURNAL ENTRIES

- Frederick Santacroce, Esq. and Joseph Sciscento, Esq., sworn and testified. Argument by Mr. Coumou. Mr. Michaelides requested to file a written response. Court stated it will give Mr. Michaelides 30 days to file a written response and will give the State 30 days to file a reply. COURT ORDERED, matter set for argument.

NDC

1/11/06 11:00 AM ARGUMENT

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

January 11, 2006

98C154293-2

State of Nevada

vs

Brendan Nasby

January 11, 2006

11:00 AM

Hearing

ARGUMENT Court
Clerk: Kristen Brown
Reporter/Recorder: Jo
Anne Pierpont
Heard By:
Pavlikowski, Joseph
S.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Coumou, Frank
Nasby, Brendan J

Attorney
Defendant

JOURNAL ENTRIES

- COURT ORDERED, matter CONTINUED.
NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 15, 2006

98C154293-2

State of Nevada
vs
Brendan Nasby

February 15, 2006

11:00 AM

Hearing

**ARGUMENT Court
Clerk: Kristen Brown
Reporter/Recorder: Jo
Anne Pierpont
Heard By: Saitta,
Nancy M**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Coumou, Frank	Attorney
Michaelides, Thomas C.	Attorney
Nasby, Brendan J	Defendant

JOURNAL ENTRIES

- Mr. Coumou advised the Court that he just received deft's supplemental pleading and is prepared to respond. COURT ORDERED, matter CONTINUED for oral argument.
NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 27, 2006

98C154293-2

State of Nevada

vs

Brendan Nasby

February 27, 2006

10:30 AM

Hearing

**ARGUMENT Court
Clerk: Kristen Brown
Reporter/Recorder: Jo
Anne Pierpont
Heard By: Saitta,
Nancy M**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Coumou, Frank
Nasby, Brendan J

Attorney
Defendant

JOURNAL ENTRIES

- COURT ORDERED, matter CONTINUED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 27, 2006

98C154293-2 State of Nevada
 vs
 Brendan Nasby

March 27, 2006	10:30 AM	Hearing	ARGUMENT Relief Clerk: Cynthia Georgilas Reporter/Recorder: Jo Anne Pierpont Heard By: Nancy Saitta
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HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Sgro, Anthony P.	Attorney

JOURNAL ENTRIES

- Mr. Sgro summarized the facts of the case. Argument by Mr. Sgro regarding counsel's representation at the time of trial. Argument by Mr. Coumou regarding potential alibi witness and handwriting expert, and requested the Court deny Defendant's Post Conviction for Writ of Habeas Corpus. Court FINDS, the decisions by counsel were reasonable and within the discretion of decision making and the evidence does not support ineffective assistance of counsel and therefore counsels' actions were effective. Mr. Coumou to prepare the Order.

NDC

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

June 20, 2011

98C154293-2 State of Nevada
 vs
 Brendan Nasby

June 20, 2011 8:15 AM Motion

HEARD BY: Barker, David COURTROOM: RJC Courtroom 11B

COURT CLERK: Billie Jo Craig

RECORDER: Richard Kangas

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- Deputy District Attorney Frank Ponticello present for the State. Kevin Leik appearing for Anthony Sgro representing defendant. Defendant not present.

Colloquy regarding status of case. COURT ORDERED, Defendant's Pro Per Motion is DENIED. At request of Mr. Leik, COURT ORDERED, Sgro allowed to WITHDRAW as Counsel of Record. RECALLED LATER. The State advised the Findings of Facts and Conclusions of Law were previously filed and forwarded to defendant at Ely.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 07, 2015

98C154293-2

State of Nevada

vs

Brendan Nasby

January 07, 2015

8:30 AM

Motion

**Defendant's Pro Per
Motion for
Evidentiary Hearing**

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: Ying Pan

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT:

Overly, Sarah
State of Nevada

Attorney
Plaintiff

JOURNAL ENTRIES

- Defendant not present.

COURT FINDS, the motion is premature, and ORDERED, Motion DENIED. State to prepare a proposed Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 18, 2015

98C154293-2

State of Nevada
vs
Brendan Nasby

February 18, 2015

8:30 AM

Motion for Leave

**Defendant's Pro Per
Motion for Leave of
Court to File
Renewed Motion for
Appointment of
Counsel**

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: Ying Pan

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT:

Keeler, Brett O.
State of Nevada

Attorney
Plaintiff

JOURNAL ENTRIES

- Defendant not present.

Court NOTED, this Motion was heard previously, Defendant has not established anything overcoming the prerequisites. COURT ORDERED, Motion DENIED.

NDC

CLERK'S NOTE: The above minute order has been distributed via U.S. Regular Mail to: Defendant:

Brendan Nasby #63618
Lovelock Correctional Center
1200 Prison Road

98C154293-2

Lovelock, NV 89419
- YP 2-24-15

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 25, 2015

98C154293-2 State of Nevada
 vs
 Brendan Nasby

February 25, 2015 8:30 AM All Pending Motions

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Ying Pan

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Benedict, Susan M Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS ... STATE'S RESPONSE AND MOTION TO DISMISS TO DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS

Defendant not present.

COURT ORDERED, State's Motion to Dismiss to Defendant's Petition GRANTED and Defendant's Petition for Writ of Habeas Corpus DENIED. State to prepare a proposed Order including finding of facts and conclusion of law.

CLERK'S NOTE: The above minute order has been distributed via U.S. Regular Mail to: Defendant:

BRENDAN JAMES NASBY #63618
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NV 89419

98C154293-2

- YP 2-26-15

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

June 01, 2015

98C154293-2 State of Nevada
vs
Brendan Nasby

June 01, 2015 8:30 AM Motion Defendant's Second Motion to Attach Supplemental Exhibit to Motion to Disqualify Judge

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Ying Pan

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Beverly, Leah C Attorney
State of Nevada Plaintiff

JOURNAL ENTRIES

- Defendant not present.

Court NOTED, this matter was addressed and the Supreme Court denied Defendant's motion previously. COURT ORDERED, matter OFF CALENDAR.

NDC

CLERK'S NOTE: The above minute order has been distributed via U.S. Regular Mail to: Defendant,

Brendan Nasby #63618
Love Lock Correctional Center
1200 Prison Road
Lovelock, NV 89419

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 22, 2016

98C154293-2 State of Nevada
 vs
 Brendan Nasby

February 22, 2016 8:30 AM Motion for Order

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: State of Nevada Plaintiff
 Thomson, Megan Attorney

JOURNAL ENTRIES

- COURT ORDERED, motion DENIED and noted Defendant continuously files motions of the same nature.

NDC

CLERK'S NOTE: The above minute order has been distributed to:

BRENDAN JAMES NASBY #63618
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NEVADA 89419

98C154293-2

LOVELOCK,NV 89419

OFFERED ADMITTED

	OFFERED	ADMITTED
1. <u>Poster - Areal</u>	<input checked="" type="checkbox"/> no obj	<input checked="" type="checkbox"/> 10/13/99
2. <u>Poster - Crime scene diagram</u>	<input checked="" type="checkbox"/> no obj	<input checked="" type="checkbox"/> 10/13
3. <u>Poster - Autopsy photos</u>	<input checked="" type="checkbox"/> obj OK	<input checked="" type="checkbox"/> 10/13
4. <u>Package (cigarette butts) - Evidence envelope</u>	<input checked="" type="checkbox"/> no obj	<input checked="" type="checkbox"/> 10/13/99
5. <u>Package - Evidence envelope</u>	<input checked="" type="checkbox"/> "	<input checked="" type="checkbox"/> 10/13
5 A - <u>Cartridge Case</u>	<input checked="" type="checkbox"/> "	<input checked="" type="checkbox"/> "
5 B - " "	<input checked="" type="checkbox"/> "	<input checked="" type="checkbox"/> "
5 C - " "	<input checked="" type="checkbox"/> "	<input checked="" type="checkbox"/> "
5 D - " "	<input checked="" type="checkbox"/> "	<input checked="" type="checkbox"/> "
6. <u>Photo</u>	<input checked="" type="checkbox"/> no obj	<input checked="" type="checkbox"/> 10/13/99
7. "	<input type="checkbox"/>	<input type="checkbox"/>
8. "	<input type="checkbox"/>	<input type="checkbox"/>
9. "	<input type="checkbox"/>	<input type="checkbox"/>
10. "	<input type="checkbox"/>	<input type="checkbox"/>
11. "	<input type="checkbox"/>	<input type="checkbox"/>
12. "	<input type="checkbox"/>	<input type="checkbox"/>
13. "	<input type="checkbox"/>	<input type="checkbox"/>
14. "	<input type="checkbox"/>	<input type="checkbox"/>
15. "	<input type="checkbox"/>	<input type="checkbox"/>
16. "	<input type="checkbox"/>	<input type="checkbox"/>
17. "	<input type="checkbox"/>	<input type="checkbox"/>
18. "	<input type="checkbox"/>	<input type="checkbox"/>
19. "	<input type="checkbox"/>	<input type="checkbox"/>
20. "	<input type="checkbox"/>	<input type="checkbox"/>
21. <u>Photo</u>	<input checked="" type="checkbox"/> no obj	<input checked="" type="checkbox"/> 10/13/99

DO NOT REVERSE

	OFFERED	ADMITTED
22 Photo	<input checked="" type="checkbox"/> 20/13/99	<input checked="" type="checkbox"/> 10/13/99
23 "	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
24 "	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
25 "	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
26 "	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
27 "	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
28 "	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
29 "	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
30 Photo	<input checked="" type="checkbox"/> no obj	<input checked="" type="checkbox"/> 10/13/99
31 Photo	<input checked="" type="checkbox"/> no obj	<input checked="" type="checkbox"/> 10/13/99
32 "	<input checked="" type="checkbox"/> no obj	<input checked="" type="checkbox"/> 10/13/99
33 "	<input checked="" type="checkbox"/> "	<input checked="" type="checkbox"/>
34 "	<input checked="" type="checkbox"/> obj OR	<input checked="" type="checkbox"/>
35 "	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
36 "	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
37 "	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
38 "	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
39 "	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
40 "	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
41. Package - Evidence envelope	<input checked="" type="checkbox"/> no obj	<input checked="" type="checkbox"/> 10/13/99
41.A - Casings	<input checked="" type="checkbox"/> obj OR	<input checked="" type="checkbox"/>
41.B - Bullet	<input checked="" type="checkbox"/> obj OR	<input checked="" type="checkbox"/>
41.C - Bullet	<input checked="" type="checkbox"/> obj OR	<input checked="" type="checkbox"/>
41.D - Bullet fragments	<input checked="" type="checkbox"/> obj OR	<input checked="" type="checkbox"/>
41.E - Bullet	<input checked="" type="checkbox"/> no obj	<input checked="" type="checkbox"/>

- 41 F - Bullet + Fragments
- 4. G - Bullet Fragments
- 42 Photo
- 43
- 44
- 45
- 46
- 47
- 48
- 49
- 50
- 51
- 52 Evidence Bag Released to Metro
- 52A Gun - (hand)
- 52B Clips
- 52C Blue gym bag
- 53 Photo
- ~~54 Withdrawn~~
- ~~55 Withdrawn~~
- 56 Photo
- 57
- 58 "
- 59 - Copy of "The Girl's statement"
- 60 - Copy of List of Names + Addresses, Photos.
- 61 - NOT PROVIDED

OFFERED ADMITTED

OFFERED	ADMITTED
<input checked="" type="checkbox"/> no obj	<input checked="" type="checkbox"/> 10/13/99
<input checked="" type="checkbox"/> no obj	<input checked="" type="checkbox"/> "
<input checked="" type="checkbox"/> ok	<input checked="" type="checkbox"/> 10/13/99
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/> no obj	<input checked="" type="checkbox"/> 10/14/99
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> "
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/> no obj	<input checked="" type="checkbox"/> 10/14/99
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> no obj	<input checked="" type="checkbox"/> 10/14/99
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

BRENDAN NASBY #63618
1200 PRISON RD.
LOVELOCK, NV 89419

DATE: June 29, 2017
CASE: 98C154293-2

RE CASE: STATE OF NEVADA vs. BRENDAN J. NASBY

NOTICE OF APPEAL FILED: June 27, 2017

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- Case Appeal Statement
- NRAP 3 (a)(1), Form 2
- Order
- Notice of Entry of Order (*for Order filed on 06/20/2017*)

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

“The district court clerk must file appellant’s notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12.”

Please refer to Rule 3 for an explanation of any possible deficiencies.

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; ORDER DENYING DEFENDANT'S PRO PER MOTION FOR RECONSIDERATION; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

STATE OF NEVADA,

Plaintiff(s),

vs.

BRENDAN J. NASBY,

Defendant(s).

Case No: 98C154293-2

Dept No: XIX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 29 day of June 2017.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

