

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

Electronically Filed
5/2/2019 12:20 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

Electronically Filed
May 09 2019 01:06 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

* * * *

Brendan James Nasby,
Petitioner,

vs.

Renee Baker (Warden), et al.,
Respondent.

Case No. A-19-788126-W

Dept. No. 19

NOTICE OF APPEAL

Notice is hereby given that, Brendan James Nasby, Petitioner in Pro Se, hereby appeals to the Supreme Court of the State of Nevada, from the final judgment/order Denying Petition for Post-Conviction Relief and Reply To State's Response To Petition for Writ Of Habeas Corpus, NRCP 12(f) Motion To Strike, And If Necessary NRCP 59(e) Motion To Alter Or Amend Judgment entered in this action on the 12th day of April, 2019; as well as the Denial of Petitioner's Motion For Appointment Of Counsel entered on the 10th day of April, 2019.

Dated this 26th day of April, 2019.

By: *[Signature]*
Brendan James Nasby #63618
(Petitioner In Pro Se)

CLERK OF THE COURT

MAY 02 2019

RECEIVED

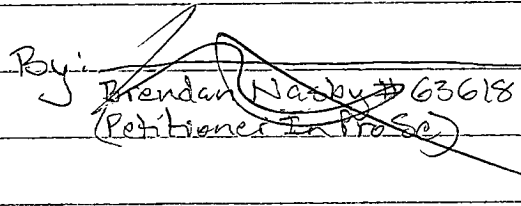
1 Certificate Of Service

2 I, Brendan James Nasby, hereby certify that on this 26th day
3 of April, 2019, I mailed to the clerk, and caused to be served by
4 the Clerk's Electronic Filing/Service, the foregoing "Notice Of
5 Appeal" to:

6 1) Attorney General
7 100 N. Carson St.
8 Carson City, NV 89710-4717

2) STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHARLES W. THOMAS
Chief Deputy District Attorney
Nevada Bar #012649
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney For Respondent.

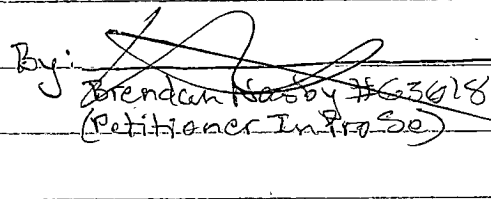
12 3) Brendan Nasby #63618
13 Care of LCC Law Librarian
14 Levelock Correctional Center
15 1200 Prison Road
Levelock, Nevada 89419
lcclawlibrary@doc.nv.gov

16 By: 
17 Brendan Nasby #63618
(Petitioner In Pro Se)

18
19 Affirmation Pursuant To NRS 239B.030.

20 The undersigned does hereby affirm that the preceding "Notice of Appeal"
21 does not contain the social security number of any person.

22 Dated this 26th day of April, 2019.

23
24 By: 
25 Brendan Nasby #63618
26 (Petitioner In Pro Se)

COPY

Electronically Filed
4/15/2019 3:13 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

NEO

DISTRICT COURT
CLARK COUNTY, NEVADA

BRENDAN NASBY,

Petitioner,

vs.

RENEE BAKER WARDEN; ET AL,

Respondent,

Case No: A-18-788126-W

Dept No: XIX

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

PLEASE TAKE NOTICE that on April 12, 2019, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on April 15, 2019.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Debra Donaldson

Debra Donaldson, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 15 day of April 2019, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

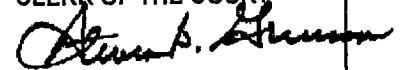
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:

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

/s/ Debra Donaldson

Debra Donaldson, Deputy Clerk



1 FCL
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHARLES W. THOMAN
6 Chief 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-

CASE NO: A-19-788126-W

12 BRENDAN JAMES NASBY,
13 #1517690
14 Defendant.

DEPT NO: XIX

15 FINDINGS OF FACT, CONCLUSIONS OF
16 LAW AND ORDER

17 DATE OF HEARING: March 25, 2019
18 TIME OF HEARING: 08:30 AM

19 THIS CAUSE having come on for hearing before the Honorable WILLIAM D.
20 KEPHART, District Judge, on the 25th day of March, 2019, the Petitioner not being present,
21 the Respondent being represented by STEVEN B. WOLFSON, Clark County District
22 Attorney, by and through BERNARD ZADROWSKI, Chief Deputy District Attorney, and the
23 Court having considered the matter, including briefs, transcripts, arguments of counsel, and
24 documents on file herein, now therefore, the Court makes the following findings of fact and
25 conclusions of law:

26 ///

27 ///

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
12 28, 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
23 8, 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 a Petition for Writ of Habeas Corpus (NRS
26 34.360 - Constitutional Questions/Questions of Law) in the Eleventh Judicial District Court,
27 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 State Responded to Defendant's Petition on April
3 25, 2017. The next day, Defendant's Motion for Reconsideration was denied.

4 On May 10, 2017, Defendant filed a Reply to the States response to Defendant's
5 Petition, and on May 15, 2017, the court denied Defendant's Petition. The Findings of Fact,
6 Conclusions of Law, and Order was filed on June 20, 2017. On June 27, 2017, Defendant filed
7 a Notice of Appeal.

8 On May 22, 2018, the Nevada Court of Appeals affirmed the denial of Defendant's
9 fourth Petition for Writ of Habeas Corpus.

10 On January 11, 2019, Defendant filed the instant Petition for Writ of Habeas Corpus.
11 This Court ordered the State to respond on January 30, 2019. The State responded on March
12 13, 2019.

13 ANALYSIS

14 **I. DEFENDANT'S FIFTH PETITION IS PROCEDURALLY BARRED**

15 **A. The Procedural Bars are Mandatory**

16 The Nevada Supreme Court has held that "[a]pplication of the statutory procedural
17 default rules to post-conviction habeas petitions is *mandatory*," noting:

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

21 State v. Dist. Court (Riker), 121 Nev. 225, 112 P.3d 1070 (2005) (emphasis added).
22 Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
23 when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
24 has granted no discretion to the district courts regarding whether to apply the statutory
25 procedural bars; the rules must be applied. For the reasons discussed below, this Court finds
26 Defendant's Petition must be denied.

27 ///

28 ///

1 **B. Defendant's Petition is Barred by Laches**

2 NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period
3 exceeding five years between the filing of a judgment of conviction, an order imposing a
4 sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the
5 filing of a petition challenging the validity of a judgment of conviction...." The statute also
6 requires that the State plead laches in its motion to dismiss the petition. NRS 34.800. The
7 State pleaded laches in the instant case.

8 The Judgment of Conviction was filed on December 2, 1999. Defendant filed the
9 instant Petition on January 11, 2019. Since more than 19 years have elapsed since the date the
10 Judgment of Conviction was filed and the filing of the instant petition, NRS 34.800 directly
11 applies in this case. The delay is more than triple the five years required for a presumption of
12 prejudice to arise. After such a passage of time, this Court finds the State is prejudiced in its
13 ability to retry this case should relief be granted.

14 **C. Defendant's Motion is Time Barred**

15 The mandatory provision of NRS 34.726(1) states:

16 Unless there is good cause shown for delay, a petition that
17 challenges the validity of a judgment or sentence must be filed
18 *within 1 year after entry of the judgment of conviction* or, if an
19 appeal has been taken from the judgment, *within 1 year after the*
20 *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:

21 (emphasis added). "[T]he statutory rules regarding procedural default are mandatory and
22 cannot be ignored when properly raised by the State." State v. Dist. Court (Riker), 121 Nev.
23 225, 233, 112 P.3d 1070, 1075 (2005).

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

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

10 Here, Defendant claims that he is not challenging his Judgement of Conviction but
11 appears to argue that his judgment of conviction is void because the jury was instructed on
12 premeditation and deliberation pursuant to the Kazalyn v. State, 108 Nev. 67, 825 P.2d 578
13 (1992) interpretation of NRS 200.030(1)(a) instead of Byford v. State, 116 Nev. 215, 994 P.2d
14 700 (2000). Petition at 5-6. This is clearly a challenge to the validity of Defendant's sentence,
15 and therefore this Petition would only be timely if brought within a year of the filing of
16 Defendant's judgement of Conviction or remittitur if Defendant appealed.

17 Defendant's Judgment of Conviction was filed on December 2, 1999. He filed a Notice
18 of Appeal on December 14, 1999, and the Nevada Supreme Court issued its remittitur on
19 March 6, 2001. Accordingly, Defendant had until approximately March 6, 2002, to file a post-
20 conviction petition. The instant motion was not filed until January 19, 2019, more than 17
21 years later. Therefore, absent a showing of good cause, Defendant's motion must be denied
22 as time-barred pursuant to NRS 34.726(1). NRS 34.726 can only be overcome upon a showing
23 of good cause and prejudice or actual innocence, which Defendant fails to demonstrate.
24 Accordingly, this Court finds Defendant's Petition must be denied.

25 **D. Defendant's Petition is Successive and an Abuse of the Writ**

26 Defendant's instant petition must be dismissed pursuant to NRS 34.810 as it is
27 successive and an abuse of the writ. NRS 34.810 provides in pertinent part that:
28

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

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

(a) Good cause for the petitioner's failure to present the
claim or for presenting the claim again; and

(b) Actual prejudice to the petitioner.

7 Defendant filed five previous Petitions for Writ of Habeas Corpus (Post-Conviction)
8 on January 30, 2002, February 18, 2011, December 9, 2014, January 5, 2016, and January 26,
9 2016. Each petition was duly considered and denied by the Court. Consequently, the instant
10 petition filed on January 19, 2019, is a successive petition. Moreover, Defendant raises the
11 exact same claim he raised on direct appeal and in his December 26, 2013, petition. As such,
12 the instant petition is also an abuse of the writ. See also Pellegrini v. State, 117 Nev. 860,
13 888, 34 P.3d 519, 538 (2001); Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975).

14 To avoid the procedural default under NRS 34.810, Defendant has the burden of
15 pleading and proving specific facts that demonstrate both good cause for his failure to present
16 his claim in a timely manner and actual prejudice, which Defendant fails to demonstrate. NRS
17 34.810(3); Hogan v. Warden, 109 Nev. 952, 959-60, 860 P.2d 710, 715-16 (1993); Phelps v.
18 Director, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). Thus, this Court finds the instant
19 Petition must be denied.

21 II. DEFENDANT CANNOT ESTABLISH GOOD CAUSE TO OVERCOME 22 THE PROCEDURAL BARS

23 To avoid procedural default under NRS 34.726 or NRS 34.800, a defendant has the
24 burden of pleading and proving specific facts that demonstrate good cause for his failure to
25 present his claim in earlier proceedings or comply with the statutory requirements. See Hogan,
26 109 Nev. at 959-60, 860 P.2d at 715-16; Phelps, 104 Nev. at 659, 764 P.2d at 1305.

27 "To establish good cause, appellants *must* show that an impediment external to the
28 defense prevented their compliance with the applicable procedural rule." Clem v. State, 119

1 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.
2 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Such an external
3 impediment could be “that the factual or legal basis for a claim was not reasonably available
4 to counsel, or that ‘some interference by officials’ made compliance impracticable.”
5 Hathaway, 119 Nev. at 251, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106
6 S. Ct. 2639, 2645 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v.
7 Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)). Any delay in filing of the petition
8 must not be the fault of the petitioner. NRS 34.726(1)(a).

9 The Nevada Supreme Court has clarified that a defendant cannot attempt to
10 manufacture good cause. Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there
11 must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251,
12 71 P.3d at 506. Excuses such as the lack of assistance of counsel when preparing a petition,
13 as well as the failure of trial counsel to forward a copy of the file to a petitioner have been
14 found not to constitute good cause. See Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded
15 by statute on other grounds as recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140,
16 1145 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995). Moreover, a return to state
17 court to exhaust remedies for federal habeas is not good cause to overcome state procedural
18 bars. Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

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

23 Defendant fails to assert any good cause for his procedural default. Instead, he argues,
24 as discussed, *supra*, that the procedural bars do not apply to him. For the reasons discussed,
25 they do. Defendant also relies on Montgomery v. Louisiana, 136 S.Ct. 718, 193 L.Ed.2d 599
26 (2016) and Welch v. U.S., 136 S.Ct. 1257, 194 L.Ed.2d 387 (2016) to argue that he could not
27 bring a timely claim because he had cases pending on appeal when these cases were decided.
28 Petition at 7. This claim lacks merit. Both Montgomery and Welch analyze when Byford

1 should be applied retroactively to cases that were final when Byford was decided. At the time
2 Byford was decided, Defendant's case was pending on appeal and therefore not a final
3 decision. The case most favorable to Defendant is Nika v. State, 124 Nev. 1272, 198 P.3d 839
4 (2008) which allowed for Byford to apply to cases pending on appeal at the time Byford
5 pronounced a change in law, and Defendant failed to file a petition within one year after Nika
6 was decided. Moreover, Defendant could and should have previously raised these issues in an
7 earlier petition. As such, Defendant fails to establish an impediment external to the defense
8 and therefore does not constitute good cause to overcome the procedural bars. Phelps v.
9 Director, Nevada Department of Prisons, 104 Nev. 656, 764 P.2d 1303 (1988). Accordingly,
10 Defendant cannot demonstrate good cause and this Court finds Defendant's Petition for Writ
11 of Habeas Corpus must be denied.

12 ORDER


13 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
14 shall be, and it is, hereby denied.

15 DATED this 9th day of April, 2019.

16 
17 DISTRICT JUDGE 

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

20 BY


21 CHARLES W. THOMAN
22 Chief Deputy District Attorney
Nevada Bar #12649

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 5th day of April, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

BRENDAN JAMES NASBY #63618
LOVELOCK CORRECTIONAL CENTER
1200 Prison Road
Lovelock, NV 89419

BY /s/D. Daniels
Secretary for the District Attorney's Office

98F11168/QH-Appeals/dd/MVU

Case Information

A-19-788126-W | Brendan Nasby, Plaintiff(s) vs. Renee Baker Warden, Defendant(s)

Case Number

A-19-788126-W

Court

Department 19

Judicial Officer

Kephart, William D.

File Date

01/11/2019

Case Type

Writ of Habeas Corpus

Case Status

Open

Party

Plaintiff

Nasby, Brendan

Active Attorneys

Pro Se

Defendant

Renee Baker Warden

Active Attorneys

Lead Attorney

Wolfson, Steven B

Retained

Attorney
Thoman, Charles W.

Retained

Defendant
State of Nevada

Active Attorneys
Attorney
Zadrowski, Bernard B.

Retained

Lead Attorney
Wolfson, Steven B

Retained

Attorney
Thoman, Charles W.

Retained

Events and Hearings

- 01/11/2019 Inmate Filed - Petition for Writ of Habeas Corpus

Comment
Post Conviction

- 01/11/2019 Application to Proceed in Forma Pauperis
- 01/25/2019 Order to Proceed In Forma Pauperis

- 01/30/2019 Order for Petition for Writ of Habeas Corpus

Comment
Order for Petition for Writ of Habeas Corpus

- 02/05/2019 Motion for Appointment of Attorney

Comment
Motion for Appointment of Counsel

- 02/26/2019 Notice of Motion

Comment
Notice of Motion

- 03/12/2019 Notice

Comment
Notice to the Court

- 03/13/2019 Response

Comment
State's Response to Defendant's Petition for Writ of Habeas Corpus (Post Conviction)

- 03/25/2019 Petition for Writ of Habeas Corpus

Judicial Officer
Kephart, William D.

Hearing Time
8:30 AM

Result
Denied

- 04/01/2019 Reply

Comment
Reply to State's Response to Petition for Writ of Habeas Corpus , NRCP 12(f) Motion to Strike ,and if Necessary NRCP 59(e) Motion to Alter or Amend Judgment

- 04/01/2019 Notice

Comment
Notice of Pleading

- 04/03/2019 Notice of Change of Hearing

Comment

Notice of Change of Hearing

- 04/08/2019 Response

Comment

State's Response to Defendant's Motion to Appoint Counsel

- 04/10/2019 Motion for Appointment of Attorney

Judicial Officer

Kephart, William D.

Hearing Time

8:30 AM

Result

Denied

Comment

Notice of Motion

Parties Present

Defendant

Attorney: Zadrowski, Bernard B.

- 04/12/2019 Findings of Fact, Conclusions of Law and Order
- 04/15/2019 Notice of Entry

Comment

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

Financial

No financial information exists for this case.

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

Lovelock Correctional Center



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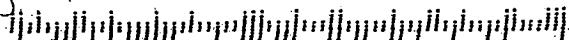
ZIP 89419 \$ 000.80⁰
02 4W
0000340675 APR 29 2019

INMATE LEGAL
MAIL CONFIDENTIAL

6th Jud. Dist. Ct.
Clerk Of The Court
200 Lewis Ave.
3rd Floor
Las Vegas, NV 89155-1160

LEGAL MAIL

10186300 0075



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1 ASTA

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

9 BRENDAN JAMES NASBY,

10 Plaintiff(s),

11 vs.

12 RENE E BAKER (WARDEN),

13 Defendant(s),
14

Case No: A-19-788126-W

Dept No: XIX

15
16 **CASE APPEAL STATEMENT**
17

18 1. Appellant(s): Brendan James Nasby

19 2. Judge: William D. Kephart

20 3. Appellant(s): Brendan James Nasby

21 Counsel:

22 Brendan James Nasby #63618
23 1200 Prison Rd.
24 Lovelock, NV 89419

25 4. Respondent (s): Renee Baker (Warden)

26 Counsel:

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

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

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

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

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

7 8. Appellant Granted Leave to Proceed in Forma Pauperis**: Yes, January 25, 2019

8 **Expires 1 year from date filed

9 Appellant Filed Application to Proceed in Forma Pauperis: N/A

10 Date Application(s) filed: N/A

11 9. Date Commenced in District Court: January 11, 2019

12 10. Brief Description of the Nature of the Action: Unknown

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

14 11. Previous Appeal: No

15 Supreme Court Docket Number(s): N/A

16 12. Child Custody or Visitation: N/A

17 13. Possibility of Settlement: Unknown

18 Dated This 7 day of May 2019.

19 Steven D. Grierson, Clerk of the Court

20 /s/ Heather Ungermann

21 Heather Ungermann, Deputy Clerk

22 200 Lewis Ave

23 PO Box 551601

24 Las Vegas, Nevada 89155-1601

25 (702) 671-0512

26 cc: Brendan James Nasby

CASE SUMMARY

CASE NO. A-19-788126-W

Brendan Nasby, Plaintiff(s)
vs.
Renee Baker Warden, Defendant(s)

§
§
§
§
§

Location: **Department 19**
 Judicial Officer: **Kephart, William D.**
 Filed on: **01/11/2019**
 Cross-Reference Case Number: **A788126**

CASE INFORMATION

Related Cases

98C154293-2 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Case Status: **01/11/2019 Open**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-19-788126-W
 Court Department 19
 Date Assigned 01/11/2019
 Judicial Officer Kephart, William D.

PARTY INFORMATION

Plaintiff

Nasby, Brendan

Lead Attorneys

Pro Se

Defendant

Renee Baker Warden

Wolfson, Steven B
Retained
 702-455-5320(W)

State of Nevada


Wolfson, Steven B
Retained
 702-455-5320(W)


DATE


EVENTS & ORDERS OF THE COURT


INDEX


EVENTS


01/11/2019  Inmate Filed - Petition for Writ of Habeas Corpus
 Party: Plaintiff Nasby, Brendan
Post Conviction

01/11/2019  Application to Proceed in Forma Pauperis
 Filed By: Plaintiff Nasby, Brendan

01/25/2019  Order to Proceed In Forma Pauperis
 Granted for: Plaintiff Nasby, Brendan

01/30/2019  Order for Petition for Writ of Habeas Corpus
Order for Petition for Writ of Habeas Corpus

02/05/2019  Motion for Appointment of Attorney
 Filed By: Plaintiff Nasby, Brendan
Motion for Appointment of Counsel

02/26/2019  Notice of Motion

CASE SUMMARY
CASE NO. A-19-788126-W

Filed By: Plaintiff Nasby, Brendan
Notice of Motion

03/12/2019



Notice

Filed By: Plaintiff Nasby, Brendan
Notice to the Court

03/13/2019



Response

Filed by: Plaintiff Nasby, Brendan
State's Response to Defendant's Petition for Writ of Habeas Corpus (Post Conviction)

04/01/2019



Reply

Filed by: Plaintiff Nasby, Brendan
Reply to State's Response to Petition for Writ of Habeas Corpus , NRCP 12(f) Motion to Strike ,and if Necessary NRCP 59(e) Motion to Alter or Amend Judgment

04/01/2019



Notice

Filed By: Plaintiff Nasby, Brendan
Notice of Pleading

04/03/2019



Notice of Change of Hearing

Notice of Change of Hearing

04/08/2019



Response

Filed by: Plaintiff Nasby, Brendan
State's Response to Defendant's Motion to Appoint Counsel

04/12/2019



Findings of Fact, Conclusions of Law and Order

Filed By: Defendant State of Nevada

04/15/2019



Notice of Entry

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

05/02/2019



Notice of Appeal

Notice of Appeal

05/07/2019



Case Appeal Statement

Case Appeal Statement

HEARINGS

03/25/2019



Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Kephart, William D.)

Denied;

Journal Entry Details:

Court FINDS, this petition is procedurally barred, successive, and an abuse of the Writ process. COURT ORDERED, Petition DENIED. NDC CLERK'S NOTE:A copy of this minute order was mailed to: Brendan Nasby #1517690 1200 Prison Road Lovelock, NV 89419;

04/10/2019



Motion for Appointment of Attorney (8:30 AM) (Judicial Officer: Kephart, William D.)

Events: 02/26/2019 Notice of Motion

Notice of Motion

Denied;

Journal Entry Details:

Court noted Defendant not present and in custody with the Nevada Department of Corrections. Further, Court noted Defendant is seeking the appointment of counsel, this motion follows the denial of Defendant's sixth Petition for Writ of Habeas Corpus. COURT ORDERED, Motion

CASE SUMMARY

CASE No. A-19-788126-W

DENIED as MOOT as the Petition was previously denied on 3/25/2019 and Defendant has provided no legal reason as to why counsel should be appointed and Defendant is not entitled to counsel at this point. NDC CLERK'S NOTE: The above minute order has been distributed to: BRENDAN NASBY # 63618 LOVELOCK CORRECTIONAL CENTER 1200 PRISON ROAD LOVELOCK, NV 89419;

DISTRICT COURT CIVIL COVER SHEET

A-19-788126-W

County, Nevada

Dept. XIX

Case No. _____

(Assigned by Clerk's Office)

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

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

Brendan James Nasby #63618
200 Prison Rd
Love Lock NV 89419

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

Attorney (name/address/phone):

Attorney (name/address/phone):

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

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

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

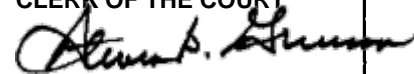
PREPARED BY CLERK

Date

Signature of initiating party or representative

See other side for family-related case filings.

 A-19-788126-W
 CCS
 Civil Cover Sheet
 4810968

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHARLES W. THOMAN
Chief Deputy District Attorney
Nevada Bar #12649
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

BRENDAN JAMES NASBY,
#1517690
Defendant.

CASE NO: A-19-788126-W

DEPT NO: XIX

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

DATE OF HEARING: March 25, 2019
TIME OF HEARING: 08:30 AM

THIS CAUSE having come on for hearing before the Honorable WILLIAM D. KEPHART, District Judge, on the 25th day of March, 2019, the Petitioner not being present, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through BERNARD ZADROWSKI, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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///

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

2 **PROCEDURAL BACKGROUND**

3 On November 9, 1998, the State filed an Information charging BRENDAN JAMES
4 NASBY ("Defendant") with: COUNT 1 – Conspiracy to Commit Murder (Felony - NRS
5 199.480, 200.010, 200.030) and COUNT 2 – Murder with use of a Deadly Weapon (Open
6 Murder) (Felony - NRS 200.010, 200.030, 193.165).

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

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

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

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

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
12 28, 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
23 8, 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 a Petition for Writ of Habeas Corpus (NRS
26 34.360 - Constitutional Questions/Questions of Law) in the Eleventh Judicial District Court,
27 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 State Responded to Defendant's Petition on April
3 25, 2017. The next day, Defendant's Motion for Reconsideration was denied.

4 On May 10, 2017, Defendant filed a Reply to the States response to Defendant's
5 Petition, and on May 15, 2017, the court denied Defendant's Petition. The Findings of Fact,
6 Conclusions of Law, and Order was filed on June 20, 2017. On June 27, 2017, Defendant filed
7 a Notice of Appeal.

8 On May 22, 2018, the Nevada Court of Appeals affirmed the denial of Defendant's
9 fourth Petition for Writ of Habeas Corpus.

10 On January 11, 2019, Defendant filed the instant Petition for Writ of Habeas Corpus.
11 This Court ordered the State to respond on January 30, 2019. The State responded on March
12 13, 2019.

13 ANALYSIS

14 **I. DEFENDANT'S FIFTH PETITION IS PROCEDURALLY BARRED**

15 **A. The Procedural Bars are Mandatory**

16 The Nevada Supreme Court has held that "[a]pplication of the statutory procedural
17 default rules to post-conviction habeas petitions is *mandatory*," noting:

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

21 State v. Dist. Court (Riker), 121 Nev. 225, 112 P.3d 1070 (2005) (emphasis added).
22 Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
23 when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
24 has granted no discretion to the district courts regarding whether to apply the statutory
25 procedural bars; the rules must be applied. For the reasons discussed below, this Court finds
26 Defendant's Petition must be denied.

27 ///

28 ///

1 **B. Defendant's Petition is Barred by Laches**

2 NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period
3 exceeding five years between the filing of a judgment of conviction, an order imposing a
4 sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the
5 filing of a petition challenging the validity of a judgment of conviction...." The statute also
6 requires that the State plead laches in its motion to dismiss the petition. NRS 34.800. The
7 State pleaded laches in the instant case.

8 The Judgment of Conviction was filed on December 2, 1999. Defendant filed the
9 instant Petition on January 11, 2019. Since more than 19 years have elapsed since the date the
10 Judgment of Conviction was filed and the filing of the instant petition, NRS 34.800 directly
11 applies in this case. The delay is more than triple the five years required for a presumption of
12 prejudice to arise. After such a passage of time, this Court finds the State is prejudiced in its
13 ability to retry this case should relief be granted.

14 **C. Defendant's Motion is Time Barred**

15 The mandatory provision of NRS 34.726(1) states:

16 Unless there is good cause shown for delay, a petition that
17 challenges the validity of a judgment or sentence must be filed
18 *within 1 year after entry of the judgment of conviction* or, if an
19 appeal has been taken from the judgment, *within 1 year after the*
20 *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:

21 (emphasis added). "[T]he statutory rules regarding procedural default are mandatory and
22 cannot be ignored when properly raised by the State." State v. Dist. Court (Riker), 121 Nev.
23 225, 233, 112 P.3d 1070, 1075 (2005).

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

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

10 Here, Defendant claims that he is not challenging his Judgement of Conviction but
11 appears to argue that his judgment of conviction is void because the jury was instructed on
12 premeditation and deliberation pursuant to the Kazalyn v. State, 108 Nev. 67, 825 P.2d 578
13 (1992) interpretation of NRS 200.030(1)(a) instead of Byford v. State, 116 Nev. 215, 994 P.2d
14 700 (2000). Petition at 5-6. This is clearly a challenge to the validity of Defendant’s sentence,
15 and therefore this Petition would only be timely if brought within a year of the filing of
16 Defendant’s judgement of Conviction or remittitur if Defendant appealed.

17 Defendant’s Judgment of Conviction was filed on December 2, 1999. He filed a Notice
18 of Appeal on December 14, 1999, and the Nevada Supreme Court issued its remittitur on
19 March 6, 2001. Accordingly, Defendant had until approximately March 6, 2002, to file a post-
20 conviction petition. The instant motion was not filed until January 19, 2019, more than 17
21 years later. Therefore, absent a showing of good cause, Defendant’s motion must be denied
22 as time-barred pursuant to NRS 34.726(1). NRS 34.726 can only be overcome upon a showing
23 of good cause and prejudice or actual innocence, which Defendant fails to demonstrate.
24 Accordingly, this Court finds Defendant’s Petition must be denied.

25 **D. Defendant’s Petition is Successive and an Abuse of the Writ**

26 Defendant’s instant petition must be dismissed pursuant to NRS 34.810 as it is
27 successive and an abuse of the writ. NRS 34.810 provides in pertinent part that:
28

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

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

(a) Good cause for the petitioner's failure to present the claim or for presenting the claim again; and

(b) Actual prejudice to the petitioner.

Defendant filed five previous Petitions for Writ of Habeas Corpus (Post-Conviction) on January 30, 2002, February 18, 2011, December 9, 2014, January 5, 2016, and January 26, 2016. Each petition was duly considered and denied by the Court. Consequently, the instant petition filed on January 19, 2019, is a successive petition. Moreover, Defendant raises the exact same claim he raised on direct appeal and in his December 26, 2013, petition. As such, the instant petition is also an abuse of the writ. See also Pellegrini v. State, 117 Nev. 860, 888, 34 P.3d 519, 538 (2001); Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975).

To avoid the procedural default under NRS 34.810, Defendant has the burden of pleading and proving specific facts that demonstrate both good cause for his failure to present his claim in a timely manner and actual prejudice, which Defendant fails to demonstrate. NRS 34.810(3); Hogan v. Warden, 109 Nev. 952, 959-60, 860 P.2d 710, 715-16 (1993); Phelps v. Director, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). Thus, this Court finds the instant Petition must be denied.

II. DEFENDANT CANNOT ESTABLISH GOOD CAUSE TO OVERCOME THE PROCEDURAL BARS

To avoid procedural default under NRS 34.726 or NRS 34.800, a defendant has the burden of pleading and proving specific facts that demonstrate good cause for his failure to present his claim in earlier proceedings or comply with the statutory requirements. See Hogan, 109 Nev. at 959-60, 860 P.2d at 715-16; Phelps, 104 Nev. at 659, 764 P.2d at 1305.

"To establish good cause, appellants *must* show that an impediment external to the defense prevented their compliance with the applicable procedural rule." Clem v. State, 119

1 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.
2 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Such an external
3 impediment could be “that the factual or legal basis for a claim was not reasonably available
4 to counsel, or that ‘some interference by officials’ made compliance impracticable.”
5 Hathaway, 119 Nev. at 251, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106
6 S. Ct. 2639, 2645 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v.
7 Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)). Any delay in filing of the petition
8 must not be the fault of the petitioner. NRS 34.726(1)(a).

9 The Nevada Supreme Court has clarified that a defendant cannot attempt to
10 manufacture good cause. Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there
11 must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251,
12 71 P.3d at 506. Excuses such as the lack of assistance of counsel when preparing a petition,
13 as well as the failure of trial counsel to forward a copy of the file to a petitioner have been
14 found not to constitute good cause. See Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded
15 by statute on other grounds as recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140,
16 1145 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995). Moreover, a return to state
17 court to exhaust remedies for federal habeas is not good cause to overcome state procedural
18 bars. Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

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

23 Defendant fails to assert any good cause for his procedural default. Instead, he argues,
24 as discussed, supra, that the procedural bars do not apply to him. For the reasons discussed,
25 they do. Defendant also relies on Montgomery v. Louisiana, 136 S.Ct. 718, 193 L.Ed.2d 599
26 (2016) and Welch v. U.S., 136 S.Ct. 1257, 194 L.Ed.2d 387 (2016) to argue that he could not
27 bring a timely claim because he had cases pending on appeal when these cases were decided.
28 Petition at 7. This claim lacks merit. Both Montgomery and Welch analyze when Byford

1 should be applied retroactively to cases that were final when Byford was decided. At the time
2 Byford was decided, Defendant's case was pending on appeal and therefore not a final
3 decision. The case most favorable to Defendant is Nika v. State, 124 Nev. 1272, 198 P.3d 839
4 (2008) which allowed for Byford to apply to cases pending on appeal at the time Byford
5 pronounced a change in law, and Defendant failed to file a petition within one year after Nika
6 was decided. Moreover, Defendant could and should have previously raised these issues in an
7 earlier petition. As such, Defendant fails to establish an impediment external to the defense
8 and therefore does not constitute good cause to overcome the procedural bars. Phelps v.
9 Director, Nevada Department of Prisons, 104 Nev. 656, 764 P.2d 1303 (1988). Accordingly,
10 Defendant cannot demonstrate good cause and this Court finds Defendant's Petition for Writ
11 of Habeas Corpus must be denied.

12 **ORDER**


13 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
14 shall be, and it is, hereby denied.

15 DATED this 9th day of April, 2019.

16 
17 _____
DISTRICT JUDGE

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

20 BY


21 CHARLES W. THOMAN
22 Chief Deputy District Attorney
Nevada Bar #12649

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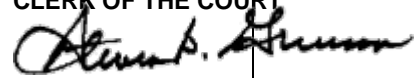
CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 5th day of April, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

BRENDAN JAMES NASBY #63618
LOVELOCK CORRECTIONAL CENTER
1200 Prison Road
Lovelock, NV 89419

BY /s/D. Daniels
Secretary for the District Attorney's Office

98F11168/QH-Appeals/dd/MVU



NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BRENDAN NASBY,

Petitioner,

vs.

RENEE BAKER WARDEN; ET AL,

Respondent,

Case No: A-18-788126-W

Dept No: XIX

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

PLEASE TAKE NOTICE that on April 12, 2019, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on April 15, 2019.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Debra Donaldson

Debra Donaldson, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 15 day of April 2019, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

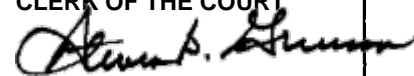
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:

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

/s/ Debra Donaldson

Debra Donaldson, Deputy Clerk



FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHARLES W. THOMAN
Chief Deputy District Attorney
Nevada Bar #12649
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

BRENDAN JAMES NASBY,
#1517690
Defendant.

CASE NO: A-19-788126-W

DEPT NO: XIX

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

DATE OF HEARING: March 25, 2019
TIME OF HEARING: 08:30 AM

THIS CAUSE having come on for hearing before the Honorable WILLIAM D. KEPHART, District Judge, on the 25th day of March, 2019, the Petitioner not being present, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through BERNARD ZADROWSKI, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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

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22 of Defendant's first Petition. Nasby v. State, No. 47130 (Order of Affirmance, June 28, 2007).
23 Remittitur issued on July 13, 2007.

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

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
12 28, 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
23 8, 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 a Petition for Writ of Habeas Corpus (NRS
26 34.360 - Constitutional Questions/Questions of Law) in the Eleventh Judicial District Court,
27 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 State Responded to Defendant's Petition on April
3 25, 2017. The next day, Defendant's Motion for Reconsideration was denied.

4 On May 10, 2017, Defendant filed a Reply to the States response to Defendant's
5 Petition, and on May 15, 2017, the court denied Defendant's Petition. The Findings of Fact,
6 Conclusions of Law, and Order was filed on June 20, 2017. On June 27, 2017, Defendant filed
7 a Notice of Appeal.

8 On May 22, 2018, the Nevada Court of Appeals affirmed the denial of Defendant's
9 fourth Petition for Writ of Habeas Corpus.

10 On January 11, 2019, Defendant filed the instant Petition for Writ of Habeas Corpus.
11 This Court ordered the State to respond on January 30, 2019. The State responded on March
12 13, 2019.

13 ANALYSIS

14 **I. DEFENDANT'S FIFTH PETITION IS PROCEDURALLY BARRED**

15 **A. The Procedural Bars are Mandatory**

16 The Nevada Supreme Court has held that "[a]pplication of the statutory procedural
17 default rules to post-conviction habeas petitions is *mandatory*," noting:

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

21 State v. Dist. Court (Riker), 121 Nev. 225, 112 P.3d 1070 (2005) (emphasis added).
22 Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
23 when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
24 has granted no discretion to the district courts regarding whether to apply the statutory
25 procedural bars; the rules must be applied. For the reasons discussed below, this Court finds
26 Defendant's Petition must be denied.

27 ///

28 ///

1 **B. Defendant's Petition is Barred by Laches**

2 NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period
3 exceeding five years between the filing of a judgment of conviction, an order imposing a
4 sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the
5 filing of a petition challenging the validity of a judgment of conviction...." The statute also
6 requires that the State plead laches in its motion to dismiss the petition. NRS 34.800. The
7 State pleaded laches in the instant case.

8 The Judgment of Conviction was filed on December 2, 1999. Defendant filed the
9 instant Petition on January 11, 2019. Since more than 19 years have elapsed since the date the
10 Judgment of Conviction was filed and the filing of the instant petition, NRS 34.800 directly
11 applies in this case. The delay is more than triple the five years required for a presumption of
12 prejudice to arise. After such a passage of time, this Court finds the State is prejudiced in its
13 ability to retry this case should relief be granted.

14 **C. Defendant's Motion is Time Barred**

15 The mandatory provision of NRS 34.726(1) states:

16 Unless there is good cause shown for delay, a petition that
17 challenges the validity of a judgment or sentence must be filed
18 *within 1 year after entry of the judgment of conviction* or, if an
19 appeal has been taken from the judgment, *within 1 year after the*
20 *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:

21 (emphasis added). "[T]he statutory rules regarding procedural default are mandatory and
22 cannot be ignored when properly raised by the State." State v. Dist. Court (Riker), 121 Nev.
23 225, 233, 112 P.3d 1070, 1075 (2005).

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

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

10 Here, Defendant claims that he is not challenging his Judgement of Conviction but
11 appears to argue that his judgment of conviction is void because the jury was instructed on
12 premeditation and deliberation pursuant to the Kazalyn v. State, 108 Nev. 67, 825 P.2d 578
13 (1992) interpretation of NRS 200.030(1)(a) instead of Byford v. State, 116 Nev. 215, 994 P.2d
14 700 (2000). Petition at 5-6. This is clearly a challenge to the validity of Defendant’s sentence,
15 and therefore this Petition would only be timely if brought within a year of the filing of
16 Defendant’s judgement of Conviction or remittitur if Defendant appealed.

17 Defendant’s Judgment of Conviction was filed on December 2, 1999. He filed a Notice
18 of Appeal on December 14, 1999, and the Nevada Supreme Court issued its remittitur on
19 March 6, 2001. Accordingly, Defendant had until approximately March 6, 2002, to file a post-
20 conviction petition. The instant motion was not filed until January 19, 2019, more than 17
21 years later. Therefore, absent a showing of good cause, Defendant’s motion must be denied
22 as time-barred pursuant to NRS 34.726(1). NRS 34.726 can only be overcome upon a showing
23 of good cause and prejudice or actual innocence, which Defendant fails to demonstrate.
24 Accordingly, this Court finds Defendant’s Petition must be denied.

25 **D. Defendant’s Petition is Successive and an Abuse of the Writ**

26 Defendant’s instant petition must be dismissed pursuant to NRS 34.810 as it is
27 successive and an abuse of the writ. NRS 34.810 provides in pertinent part that:
28

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

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

(a) Good cause for the petitioner's failure to present the claim or for presenting the claim again; and

(b) Actual prejudice to the petitioner.

Defendant filed five previous Petitions for Writ of Habeas Corpus (Post-Conviction) on January 30, 2002, February 18, 2011, December 9, 2014, January 5, 2016, and January 26, 2016. Each petition was duly considered and denied by the Court. Consequently, the instant petition filed on January 19, 2019, is a successive petition. Moreover, Defendant raises the exact same claim he raised on direct appeal and in his December 26, 2013, petition. As such, the instant petition is also an abuse of the writ. See also Pellegrini v. State, 117 Nev. 860, 888, 34 P.3d 519, 538 (2001); Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975).

To avoid the procedural default under NRS 34.810, Defendant has the burden of pleading and proving specific facts that demonstrate both good cause for his failure to present his claim in a timely manner and actual prejudice, which Defendant fails to demonstrate. NRS 34.810(3); Hogan v. Warden, 109 Nev. 952, 959-60, 860 P.2d 710, 715-16 (1993); Phelps v. Director, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). Thus, this Court finds the instant Petition must be denied.

II. DEFENDANT CANNOT ESTABLISH GOOD CAUSE TO OVERCOME THE PROCEDURAL BARS

To avoid procedural default under NRS 34.726 or NRS 34.800, a defendant has the burden of pleading and proving specific facts that demonstrate good cause for his failure to present his claim in earlier proceedings or comply with the statutory requirements. See Hogan, 109 Nev. at 959-60, 860 P.2d at 715-16; Phelps, 104 Nev. at 659, 764 P.2d at 1305.

"To establish good cause, appellants *must* show that an impediment external to the defense prevented their compliance with the applicable procedural rule." Clem v. State, 119

1 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.
2 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Such an external
3 impediment could be “that the factual or legal basis for a claim was not reasonably available
4 to counsel, or that ‘some interference by officials’ made compliance impracticable.”
5 Hathaway, 119 Nev. at 251, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106
6 S. Ct. 2639, 2645 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v.
7 Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)). Any delay in filing of the petition
8 must not be the fault of the petitioner. NRS 34.726(1)(a).

9 The Nevada Supreme Court has clarified that a defendant cannot attempt to
10 manufacture good cause. Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there
11 must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251,
12 71 P.3d at 506. Excuses such as the lack of assistance of counsel when preparing a petition,
13 as well as the failure of trial counsel to forward a copy of the file to a petitioner have been
14 found not to constitute good cause. See Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded
15 by statute on other grounds as recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140,
16 1145 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995). Moreover, a return to state
17 court to exhaust remedies for federal habeas is not good cause to overcome state procedural
18 bars. Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

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

23 Defendant fails to assert any good cause for his procedural default. Instead, he argues,
24 as discussed, supra, that the procedural bars do not apply to him. For the reasons discussed,
25 they do. Defendant also relies on Montgomery v. Louisiana, 136 S.Ct. 718, 193 L.Ed.2d 599
26 (2016) and Welch v. U.S., 136 S.Ct. 1257, 194 L.Ed.2d 387 (2016) to argue that he could not
27 bring a timely claim because he had cases pending on appeal when these cases were decided.
28 Petition at 7. This claim lacks merit. Both Montgomery and Welch analyze when Byford

1 should be applied retroactively to cases that were final when Byford was decided. At the time
2 Byford was decided, Defendant's case was pending on appeal and therefore not a final
3 decision. The case most favorable to Defendant is Nika v. State, 124 Nev. 1272, 198 P.3d 839
4 (2008) which allowed for Byford to apply to cases pending on appeal at the time Byford
5 pronounced a change in law, and Defendant failed to file a petition within one year after Nika
6 was decided. Moreover, Defendant could and should have previously raised these issues in an
7 earlier petition. As such, Defendant fails to establish an impediment external to the defense
8 and therefore does not constitute good cause to overcome the procedural bars. Phelps v.
9 Director, Nevada Department of Prisons, 104 Nev. 656, 764 P.2d 1303 (1988). Accordingly,
10 Defendant cannot demonstrate good cause and this Court finds Defendant's Petition for Writ
11 of Habeas Corpus must be denied.

12 **ORDER**


13 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
14 shall be, and it is, hereby denied.

15 DATED this 9th day of April, 2019.

16 
17 _____
DISTRICT JUDGE

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

20 BY


21 CHARLES W. THOMAN
22 Chief Deputy District Attorney
Nevada Bar #12649

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 5th day of April, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

BRENDAN JAMES NASBY #63618
LOVELOCK CORRECTIONAL CENTER
1200 Prison Road
Lovelock, NV 89419

BY /s/D. Daniels
Secretary for the District Attorney's Office

98F11168/QH-Appeals/dd/MVU

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

March 25, 2019

A-19-788126-W Brendan Nasby, Plaintiff(s)
vs.
Renee Baker Warden, Defendant(s)

**March 25, 2019 8:30 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Shannon Emmons

RECORDER: Christine Erickson

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Court FINDS, this petition is procedurally barred, successive, and an abuse of the Writ process.
COURT ORDERED, Petition DENIED.

NDC

CLERK'S NOTE: A copy of this minute order was mailed to:

Brendan Nasby #1517690
1200 Prison Road
Lovelock, NV 89419

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

April 10, 2019

A-19-788126-W Brendan Nasby, Plaintiff(s)
vs.
Renee Baker Warden, Defendant(s)

**April 10, 2019 8:30 AM Motion for Appointment of
Attorney**

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Zadrowski, Bernard B. Attorney

JOURNAL ENTRIES

- Court noted Defendant not present and in custody with the Nevada Department of Corrections. Further, Court noted Defendant is seeking the appointment of counsel, this motion follows the denial of Defendant's sixth Petition for Writ of Habeas Corpus. COURT ORDERED, Motion DENIED as MOOT as the Petition was previously denied on 3/25/2019 and Defendant has provided no legal reason as to why counsel should be appointed and Defendant is not entitled to counsel at this point.

NDC

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

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



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

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

DATE: May 7, 2019
CASE: A-19-788126-W

RE CASE: BRENDAN JAMES NASBY vs. RENEE BAKER (WARDEN)

NOTICE OF APPEAL FILED: May 2, 2019

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

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

- ☐ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☐ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☒ Written Order *re: April 10, 2019 hearing*
- ☒ Notice of Entry of Written Order *re: April 10, 2019 hearing*

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.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

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

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

BRENDAN JAMES NASBY,

Plaintiff(s),

vs.

RENEE BAKER (WARDEN),

Defendant(s),

Case No: A-19-788126-W

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 7 day of May 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk