

NOASC  
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Nevada Bar No. 00854  
Law Office of Terrence M. Jackson  
624 South Ninth Street  
Las Vegas, NV 89101  
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*Counsel for Frederick H. Harris*

Electronically Filed  
Jun 01 2020 11:11 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
FREDERICK H. HARRIS JR., )  
#1149356, )  
Defendant. )

District Case No.: **A-18-784704-W**  
**C-13-291374-1**

Dept.: **XII**

**NOTICE OF APPEAL**

NOTICE is hereby given that the Defendant, FREDERICK H. HARRIS JR., by and through his attorney, TERRENCE M. JACKSON, ESQ., hereby appeals to the Nevada Supreme Court, from the Findings of Fact, Conclusions of Law and Order, file-stamped May 21, 2020, denying his Post-Conviction Petition for Writ of Habeas Corpus.

Defendant, FREDERICK H. HARRIS JR., further states he is indigent and requests that the filing fees be waived.

Respectfully submitted this 27th day of May, 2020.

/s/ Terrence M. Jackson  
Terrence M. Jackson, Esquire  
Nevada Bar No. 00854  
Law Office of Terrence M. Jackson  
624 South Ninth Street  
Las Vegas, NV 89101  
T: 702-386-0001 / F: 702-386-0085  
[Terry.jackson.esq@gmail.com](mailto:Terry.jackson.esq@gmail.com)

*Counsel for Defendant, Frederick H. Harris, Jr.*

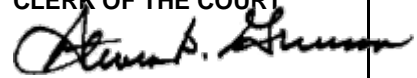
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- [X] Via Odyssey eFile and Serve to the Eighth Judicial District Court;
- [X] Via the NSC Drop Box on the 1st floor of the Nevada Court of Appeals, or U.S. mail to NSC, located at 408 E. Clark Avenue in Las Vegas, Nevada;
- [X] and by United States first class mail to the Nevada Attorney General and the Defendant as follows:

JAMES R. SWEETIN  
Chief Deputy District Attorney  
[james.sweetin@clarkcountynyda.com](mailto:james.sweetin@clarkcountynyda.com)

AARON D. FORD, ESQUIRE  
Nevada Attorney General  
100 North Carson Street  
Carson City, NV 89701

-2-



ASTA  
TERRENCE M. JACKSON, ESQ.  
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[Terry.jackson.esq@gmail.com](mailto:Terry.jackson.esq@gmail.com)

*Counsel for Frederick H. Harris*

IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, )  
 )  
Plaintiff, )  
v. )  
 )  
FREDERICK H. HARRIS, JR., )  
#1149356, )  
Defendant. )

District Case No.: **A-18-784704-W**  
**C-13-291374-1**

Dept.: **XII**

**CASE APPEAL STATEMENT**

1. Appellant(s): FREDERICK HAROLD HARRIS, JR.

2. Judge: MICHELLE LEAVITT

3. Appellant(s): FREDERICK HAROLD HARRIS, JR.

Counsel:

Terrence M. Jackson  
624 South Ninth Street  
Las Vegas, NV 89101  
(702) 386-0001

4. Respondent: STATE OF NEVADA

Counsel:

Steven B. Wolfson, District Attorney  
200 Lewis Avenue  
Las Vegas, NV 89101  
(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: YES

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: YES

8. Appellant Granted Leave to Proceed in Forma Pauperis: YES

9. Date Commenced in District Court: July 30, 2013

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

Type of Judgment or Order Being Appealed:

### Denial of Writ of Habeas Corpus for Post-Conviction Relief.

11. NO.

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

**Dated** this 27th day of May, 2020.

/s/ Terrence M. Jackson

Terrence M. Jackson, Esquire

Nevada Bar No. 00854

Law Office of Terrence M. Jackson

624 South Ninth Street

Las Vegas, NV 89101

T: 702-386-0001 / F: 702-386-0085

Terry.jackson.esq@gmail.com

*Counsel for Frederick H. Harris, Jr.*

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- [X] Via Odyssey eFile and Serve to the Eighth Judicial District Court;
- [X] Via the NSC Drop Box on the 1st floor of the Nevada Court of Appeals, located at 408 E. Clark Avenue in Las Vegas, Nevada;
- [X] and by United States first class mail to the Nevada Attorney General and the Defendant as follows:

JAMES R. SWEETIN  
Chief Deputy District Attorney - Criminal  
[james.sweetin@clarkcountynvda.com](mailto:james.sweetin@clarkcountynvda.com)

AARON D. FORD, ESQUIRE  
Nevada Attorney General  
100 North Carson Street  
Carson City, Nevada 89701

# CASE SUMMARY

## CASE NO. A-18-784704-W

State Of Nevada, Plaintiff(s)  
vs.  
Frederick Harris, Defendant(s)

§  
§  
§  
§  
§

Location: **Department 12**  
Judicial Officer: **Leavitt, Michelle**  
Filed on: **11/16/2018**  
Case Number History:  
Cross-Reference Case Number: **A784704**

### CASE INFORMATION

#### Related Cases

C-13-291374-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Case Status: **11/16/2018 Open**

### DATE

### CASE ASSIGNMENT

#### Current Case Assignment

Case Number A-18-784704-W  
Court Department 12  
Date Assigned 11/19/2018  
Judicial Officer Leavitt, Michelle

### PARTY INFORMATION







<b>Plaintiff</b>	<b>Of Nevada, State</b>	<b>Zadrowski, Bernard B.</b> <i>Retained</i> 7024555859(W)
<b>Defendant</b>	<b>Harris, Frederick</b>	<b>Jackson, Terrence Michael</b> <i>Retained</i> 702-386-0001(W)

### DATE

### EVENTS & ORDERS OF THE COURT

### INDEX


#### EVENTS


11/16/2018	 Petition for Writ of Habeas Corpus <i>Petition for writ of habeas corpus (post-conviction)</i>
11/20/2018	 Notice of Hearing <i>Notice of Hearing</i>
06/26/2019	 Order Filed By: Defendant Harris, Frederick <i>Order Appointing Counsel</i>
11/01/2019	 Supplemental Points and Authorities Filed by: Defendant Harris, Frederick <i>Supplemental Points and Authorities in Support of Petition for Writ of Habeas Corpus for Post-Conviction Relief</i>
04/06/2020	 Response <i>State's Response to Petitioner's Supplemental Post-Conviction Petition for Writ of Habeas Corpus</i>
04/10/2020	 Response


# CASE SUMMARY


CASE NO. A-18-784704-W

Filed by: Defendant Harris, Frederick  
*Reply to State's Response to Petitioner's Supplemental Post Conviction Petition for Writ of Habeas Corpus*


05/21/2020  Findings of Fact, Conclusions of Law and Order  
*Findings of Fact, Conclusions of Law and Order*

05/27/2020  Notice of Appeal (criminal)  
 Party: Defendant Harris, Frederick  
*Notice of Appeal*

05/27/2020  Case Appeal Statement  
 Filed By: Defendant Harris, Frederick  
*Case Appeal Statement*

05/28/2020  Notice of Entry of Findings of Fact, Conclusions of Law  
 Filed By: Plaintiff Of Nevada, State  
*Notice of Entry of Findings of Fact, Conclusions of Law and Order*

## HEARINGS

01/17/2019  **Petition for Writ of Habeas Corpus (8:30 AM)** (Judicial Officer: Leavitt, Michelle)  
**01/17/2019, 03/21/2019, 06/06/2019, 06/20/2019, 08/06/2019**





Matter Continued;  
 Matter Continued;  
 Matter Continued;  
 Matter Continued;  
 Briefing Schedule Set;  
 Matter Continued;  
 Matter Continued;  
 Matter Continued;  
 Matter Continued;  
 Briefing Schedule Set;  
 Matter Continued;  
 Matter Continued;  
 Matter Continued;  
 Matter Continued;  
 Briefing Schedule Set;  
 Matter Continued;  
 Matter Continued;  
 Matter Continued;  
 Briefing Schedule Set;  
 Journal Entry Details:

*Defendant not present. Mr. Oram advised they were unsuccessful on direct appeal; in order to protect the Defendant's time bar, a Writ was filed on behalf of the Defendant and is not able to further assist the Defendant. Further, Mr. Oram stated he will advise the Defendant in writing that if he wants to supplement, he needs to get this done right away. COURT ORDERED, matter CONTINUED 45 days for the Defendant to file a supplement by 05/02/19; State to file a response by 06/03/19; matter CONTINUED and SET for Hearing. Mr. Oram advised he will notify the Defendant in writing. Mr. Oram requested he no longer be required to appear. COURT SO ORDERED. 06/06/19 8:30 AM HEARING;*

Matter Continued;  
 Matter Continued;  
 Matter Continued;  
 Matter Continued;  
 Briefing Schedule Set;  
 Journal Entry Details:

*Defendant not present. Mr. Oram requested this matter be continued two months as the Defendant's family is trying to hire him. There being no objection by the State, COURT ORDERED, matter CONTINUED. NDC CONTINUED TO: 03/21/19 8:30 AM;*

**CASE SUMMARY**  
**CASE NO. A-18-784704-W**

06/06/2019	<b>Hearing (8:30 AM)</b> (Judicial Officer: Leavitt, Michelle) Matter Heard;
06/06/2019	 <b>All Pending Motions (8:30 AM)</b> (Judicial Officer: Leavitt, Michelle) Matter Heard; Journal Entry Details: <i>HEARING ... PETITION FOR WRIT OF HABEAS CORPUS Defendant not present. COURT ORDERED, matter CONTINUED; Post Conviction Counsel APPOINTED; matter SET for Status Check regarding confirmation of counsel. CONTINUED TO: 06/20/19 8:30 AM 06/20/19 8:30 AM STATUS CHECK: CONFIRMATION OF COUNSEL;</i>
06/20/2019	<b>Status Check: Confirmation of Counsel (8:30 AM)</b> (Judicial Officer: Leavitt, Michelle) Counsel Confirmed;
06/20/2019	 <b>All Pending Motions (8:30 AM)</b> (Judicial Officer: Leavitt, Michelle) Matter Heard; Journal Entry Details: <i>PETITION FOR WRIT OF HABEAS CORPUS ... STATUS CHECK: CONFIRMATION OF COUNSEL Defendant not present. Mr. Jackson CONFIRMED as counsel and requested a status check. COURT ORDERED, matter CONTINUED and SET for Status Check. CONTINUED TO: 08/06/19 8:30 AM 08/06/19 8:30 AM STATUS CHECK;</i>
08/06/2019	<b>Status Check (8:30 AM)</b> (Judicial Officer: Leavitt, Michelle) Briefing Schedule Set;
08/06/2019	 <b>All Pending Motions (8:30 AM)</b> (Judicial Officer: Leavitt, Michelle) Matter Heard; Journal Entry Details: <i>PETITION FOR WRIT OF HABEAS CORPUS ... STATUS CHECK Defendant not present. At request of Mr. Jackson, COURT ORDERED, Defendant's pleadings due 11/04/19; State's reply due 12/04/19; Defendant's response due 01/03/20; matter SET for Hearing. 01/09/20 8:30 AM HEARING;</i>
01/09/2020	 <b>Hearing (8:30 AM)</b> (Judicial Officer: Leavitt, Michelle) <b>01/09/2020, 04/23/2020</b> Matter Continued; Denied; Journal Entry Details: <i>Counsel appearing by video. Defendant not present. Following arguments by counsel, COURT ORDERED, Petition for Writ DENIED. NDC;</i> Matter Continued; Denied; Journal Entry Details: <i>Defendant not present. At request of the Defense, COURT ORDERED, matter CONTINUED. CONTINUED TO: 02/20/20 8:30 AM CLERK'S NOTE: Mr. Jackson notified of continued hearing date via email. hvp/1/9/20;</i>



## DISTRICT COURT CIVIL COVER SHEET

A-18-784704-W

County, Nevada

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

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

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

Frederick Harris

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

State of Nevada

Attorney (name/address/phone):

Christopher R. Oram, Esq.

520 South 4th Street, 2nd Floor

Las Vegas, NV 89101

Attorney (name/address/phone):

Clark County District Attorney

200 Lewis Avenue

Las Vegas, NV 89101

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

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <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
<b>Probate</b> <b>Probate</b> (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 <b>Estate Value</b> <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	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <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	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input checked="" type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrantum <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

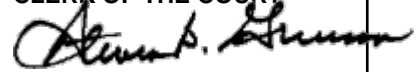
Business Court filings should be filed using the Business Court civil coversheet.

11/16/2018

Date

Signature of initiating party or representative

See other side for family-related case filings.



**FFCO**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**JAMES R. SWEETIN**  
Chief Deputy District Attorney  
Nevada Bar #005144  
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-

**FREDERICK HAROLD HARRIS JR.,  
#0972945**

Defendant.

CASE NO: **A-18-784704-W  
C-13-291374-1**

DEPT NO: **XII**

**FINDINGS OF FACT, CONCLUSIONS OF**

**LAW AND ORDER**

DATE OF HEARING: **APRIL 23, 2020**  
TIME OF HEARING: **12:00 PM**

THIS CAUSE having presented before the Honorable MICHELLE LEAVITT, District Judge, on the 23rd day of April, 2020; Defendant not present, represented by TERRENCE MICHAEL JACKSON, ESQ.; Plaintiff represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JAMES SWEETIN, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

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1 //

2 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

3 **PROCEDURAL HISTORY**

4 On July 23, 2013, Defendant Frederick Harris ("Petitioner") was charged by  
5 way of Information with the following: Counts 1, 15-18: Child Abuse, Neglect, or  
6 Endangerment (Category B Felony - NRS 200.508); Counts 2-3, 6, 8-11, 13-14, 21- 22:  
7 Sexual Assault With a Minor Under Fourteen Years of Age (Category A Felony - NRS  
8 200.364, 200.366); Counts 4-5, 7, 12, 20: Lewdness with a Child Under the Age of 14  
9 (Category A Felony - NRS 201.230); Counts 19, 25, 28, 37: First Degree Kidnapping  
10 (Category A Felony - NRS 200.310, 200.320); Count 23: Coercion (Sexually Motivated)  
11 (Category B Felony - NRS 207.190); Counts 24 and 27: Administration of a Drug to Aid in  
12 the Commission of a Crime (Category B Felony - NRS 200.405); Counts 26, 29-35: Sexual  
13 Assault With a Minor Under Sixteen Years of Age (Category A Felony - NRS 200.364,  
14 200.366); Counts 36, 39-41: Sexual Assault (Category A Felony - NRS 200.364, 200.366);  
15 Count 38: Battery with Intent to Commit Sexual Assault (Category A Felony - NRS  
16 200.400); Count 42: Pandering (Category C Felony - NRS 201.300); Count 44: Living from  
17 the Earnings of a Prostitute (Category D Felony - NRS 201.320); and Count 45: Battery by  
18 Strangulation (Category C Felony - NRS 200.481).

19 A jury trial commenced on March 25, 2014. 9 AA 999. On April 15, 2014, after  
20 hearing 12 days of evidence and after approximately two days of deliberation, the jury found  
21 Petitioner guilty of the following: eleven counts of Sexual Assault With a Minor Under  
22 Fourteen Years of Age; five counts of Lewdness With a Child Under the Age of 14; six  
23 counts of Sexual Assault With a Minor Under Sixteen Years of Age; four counts of Sexual  
24 Assault; four counts of First Degree Kidnapping; one count of Administration of a Drug to  
25 Aid in the Commission of a Crime; one count of Coercion (Sexually Motivated); one count  
26 of Battery With Intent to Commit Sexual Assault; one count of Child Abuse, Neglect or  
27 Endangerment; one count of Pandering; and one count of Living From the Earnings of a  
28 Prostitute. The jury found Defendant not guilty of the following: two counts of Sexual

1 Assault With a Minor Under Sixteen Years of Age; one count of Sexual Assault; one count  
2 of Administration of a Drug to Aid in the Commission of a Crime; four counts of Child  
3 Abuse, Neglect or Endangerment; and one count of Battery by Strangulation.

4 Petitioner filed a Motion for New Trial on April 28, 2014. The State filed an  
5 Opposition on June 13, 2014. Petitioner's Motion was denied on June 30, 2015.

6 On November 2, 2014, Petitioner was adjudged guilty of the following: OF COUNT 2  
7 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (F);  
8 COUNT3-SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE  
9 (F); COUNT 4 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (F); COUNT 5 –  
10 LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (F); COUNT6-SEXUAL  
11 ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (F); COUNT 7 -  
12 LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (F); COUNT 8 -SEXUAL  
13 ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (F); COUNT 9 -  
14 SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (F);  
15 COUNT 10 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF  
16 AGE (F); COUNT 11 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN  
17 YEARS OF AGE (F); COUNT 12- LEWDNESS WITH A CHILD UNDER THE AGE OF  
18 14 (F); COUNT 13- SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS  
19 OF AGE (F); COUNT 14 -SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN  
20 YEARS OF AGE (F); COUNT 16 - CHILD ABUSE, NEGLECT OR ENDANGERMENT  
21 (F); COUNT 19 - FIRST DEGREE KIDNAPPING (F); COUNT 20 - LEWDNESS WITH A  
22 CHILD UNDER THE AGE OF 14 (F); COUNT 21- SEXUAL ASSAULT WITH A  
23 MINOR UNDER FOURTEEN YEARS OF AGE (F); COUNT 22- SEXUAL ASSAULT  
24 WITH A MINOR UNDER FOURTEEN YEARS OF AGE (F); COUNT 23 -COEROON  
25 (SEXUALLY MOTIVATED) (F); COUNT 24- ADMINISTRATION OF A DRUG TO AID  
26 IN THE COMMISSION OF A CRIME (F); COUNT 25 - FIRST DEGREE KIDNAPPING  
27 (F); COUNT 26 -SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF  
28 AGE (F); COUNT 28 - FIRST DEGREE KIDNAPPING (F); COUNT 29 - SEXUAL

1 ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE (F); COUNT 31 -  
2 SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE (F); COUNT  
3 33 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE (F);  
4 COUNT 34- SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE  
5 (F); COUNT 35 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF  
6 AGE (F); COUNT 36 – SEXUAL ASSAULT (F); COUNT 37 - FIRST DEGREE  
7 KIDNAPPING (F); COUNT 38- BATTERY WITH INTENT TO COMMIT SEXUAL  
8 ASSAULT (F); COUNT 39- SEXUAL ASSAULT (F); COUNT 40- SEXUAL ASSAULT  
9 (F); COUNT 41 SEXUAL ASSAULT (F); COUNT 42 - PANDERING (F); AND, COUNT  
10 44 – LIVING FROM THE EARNINGS OF A PROSTITUTE (F); COUNTS 1 , 15, 17, 18,  
11 27, 30, 32, 43, and 45 were dismissed.

12       Petitioner was sentenced as follows: COUNT 2 - LIFE with a MINIMUM Parole  
13 Eligibility of THIRTY FIVE (35) YEARS in the Nevada Department of Corrections (NDC);  
14 COUNT 3 - LIFE with a MINIMUM Parole Eligibility of THIRTY FIVE (35) YEARS in  
15 the Nevada Department of Corrections (NDC); COUNT 4 - LIFE with a MINIMUM Parole  
16 Eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC); COUNT 5  
17 - LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS in the Nevada Department  
18 of Corrections (NDC); COUNT 6 - LIFE with a MINIMUM Parole Eligibility of THIRTY  
19 FIVE (35) YEARS in the Nevada Department of Corrections (NDC); COUNT 7 - LIFE with  
20 a MINIMUM Parole Eligibility of TEN (10) YEARS in the Nevada Department of  
21 Corrections (NDC); COUNT 8 – LIFE with a MINIMUM Parole Eligibility of THIRTY  
22 FIVE (35) YEARS in the Nevada Department of Corrections (NDC); COUNT 9 - LIFE with  
23 a MINIMUM Parole Eligibility of THIRTY FIVE (35) YEARS in the Nevada Department of  
24 Corrections (NDC); COUNT 10 - LIFE with a MINIMUM Parole Eligibility of THIRTY  
25 FIVE (35) YEARS in the Nevada Department of Corrections (NDC); COUNT 11 - LIFE with  
26 a MINIMUM Parole Eligibility of THIRTY FIVE (35) YEARS in the Nevada Department of  
27 Corrections (NDC); COUNT 12- LIFE with a MINIMUM Parole Eligibility of TEN (10)  
28 YEARS in the Nevada Department of Corrections (NDC); COUNT 13 - LIFE with a

1 MINIMUM Parole Eligibility of THIRTY FIVE (35) YEARS in the Nevada Department of  
2 Corrections (NDC); COUNT 14 - LIFE with a MINIMUM Parole Eligibility of THIRTY  
3 FIVE (35) YEARS in the Nevada Department of Corrections (NDC); COUNT 16 - to a  
4 MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO  
5 (72) MONTHS in the Nevada Department of Corrections (NDC); COUNT 19 – LIFE with a  
6 MINIMUM Parole Eligibility of FIVE (5) YEARS in the Nevada Department of Corrections  
7 (NDC); COUNT 20- LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS in the  
8 Nevada Department of Corrections (NDC); COUNT 21 - LIFE with a MINIMUM Parole  
9 Eligibility of TWENTY (20) YEARS in the Nevada Department of Corrections (NDC);  
10 COUNT 22- LIFE with a MINIMUM Parole Eligibility of TWENTY (20) YEARS in the  
11 Nevada Department of Corrections (NDC); COUNT 23 - to a MINIMUM of TWENTY  
12 EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS in the  
13 Nevada Department of Corrections (NDC); COUNT 24 - to a MINIMUM of TWENTY  
14 FOUR (24) MONTHS and a MAXIMUM of SIXTY (60) MONTHS in the Nevada  
15 Department of Corrections (NDC); COUNT 25 - LIFE with a MINIMUM Parole Eligibility  
16 of FIVE (5) YEARS in the Nevada Department of Corrections (NDC); COUNT 26 - LIFE  
17 with a MINIMUM Parole Eligibility of TWENTY (20) YEARS in the Nevada Department  
18 of Corrections (NDC); COUNT 28 - LIFE with a MINIMUM Parole Eligibility of FIVE (5)  
19 YEARS in the Nevada Department of Corrections (NDC); COUNT 29 - LIFE with a  
20 MINIMUM Parole Eligibility of TWENTY (20) YEARS in the Nevada Department of  
21 Corrections (NDC); COUNT 31 - LIFE with a MINIMUM Parole Eligibility of TWENTY  
22 (20) YEARS in the Nevada Department of Corrections (NDC); COUNT 33 - LIFE with a  
23 MINIMUM Parole Eligibility of TWENTY (20) YEARS in the Nevada Department of  
24 Corrections (NDC); COUNT 34 - LIFE with a MINIMUM Parole Eligibility of TWENTY  
25 (20) YEARS in the Nevada Department of Corrections (NDC); COUNT 35 - LIFE with a  
26 MINIMUM Parole Eligibility of TWENTY (20) YEARS in the Nevada Department of  
27 Corrections (NDC); COUNT 36 - LIFE with a MINIMUM Parole Eligibility of TEN (10)  
28 YEARS in the Nevada Department of Corrections (NDC); COUNT 37 - LIFE with a

1 MINIMUM Parole Eligibility of FIVE (5) YEARS in the Nevada Department of Corrections  
2 (NDC); COUNT 38 - LIFE with a MINIMUM Parole Eligibility of TWO (2) YEARS in the  
3 Nevada Department of Corrections (NDC); COUNT 39- LIFE with a MINIMUM Parole  
4 Eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC); COUNT  
5 40 - LIFE with a MIN MUM Parole Eligibility of TEN (10) YEARS in the Nevada  
6 Department of Corrections (NDC); COUNT 41 - LIFE with a MINIMUM Parole Eligibility  
7 of TEN (10) YEARS in the Nevada Department of Corrections (NDC); COUNT 42- to a  
8 MINIMUM of TWENTY FOUR (24) MONTHS and a MAXIMUM of SIXTY (60)  
9 MONTHS in the Nevada Department of Corrections (NDC); and COUNT 44 - to a  
10 MINIMUM of EIGHTEEN (18) MONTHS and a MAXIMUM of FORTY EIGHT (48)  
11 MONTHS in the Nevada Department of Corrections (NDC); COUNTS 2, 3, 6, 8, 9, 10,  
12 11,13, and 14 are to run CONCURRENT with each other; COUNT 21 to run  
13 CONSECUTIVE to COUNT 22; COUNTS 4, 5, 7, 12, and 20 are to run CONCURRENT  
14 with each other and to the other Counts; COUNT 16 to run CONCURRENT to the other  
15 Counts; COUNTS 19, 25, 28, and 37 are to run CONCURRENT with each other and to the  
16 other Counts; COUNT 23 to run CONCURRENT to the other Counts; COUNT 24 to run  
17 CONCURRENT to the other Counts; COUNTS 26, 29, 31, 33, 34, and 35 are to run  
18 CONCURRENT with each other and CONSECUTIVE to the other Counts; COUNTS 36,  
19 39, 40, and 41 are to run CONCURRENT with each other; COUNT 38 to run  
20 CONCURRENT to the other Counts; and, COUNT 42 to run CONSECUTIVE to COUNT  
21 44, with NINE HUNDRED SEVENTY NINE (979) DAYS CREDIT FOR TIME SERVED.  
22 Petitioner's AGGREGATE TOTAL SENTENCE is LIFE with a MINIMUM sentence of  
23 SEVEN HUNDRED TWENTY (720) MONTHS.

24 On October 27, 2015, Petitioner filed a Notice of Appeal.

25 On November 2, 2015, the Court filed the Judgment of Conviction.

26 On November 14, 2016, the Court filed an Amended Judgment of Conviction.

27 On May 24, 2017, the Supreme Court of Nevada affirmed Petitioner's Judgment of  
28 Conviction. Remittitur issued on November 21, 2017.

1 On November 16, 2018, Petitioner filed a Petition for Writ of Habeas Corpus. On  
2 June 6, 2019, the Court appointed petitioner post-conviction counsel. On June 20, 2019, Mr.  
3 Jackson confirmed as counsel. On November 1, 2019, Petitioner filed his Supplemental  
4 Points and Authorities in Support of Petition for Writ of Habeas Corpus for Post-Conviction  
5 Relief ("Petition"). On April 6, 2020, the State filed its Response. On April 10, 2020,  
6 Petitioner filed his Reply. On April 23, 2020, this Court denied Petitioner's Petition.

### 7 **STATEMENT OF THE FACTS**

8 Petitioner physically and sexually assaulted T.D. and several of her children between  
9 2004 and 2012. T.D. and Petitioner first became acquainted in 2004 in Louisiana and T.D.  
10 moved to Las Vegas shortly thereafter. For several months between 2004 and 2005, T.D. and  
11 her five children (V.D., M.D., S.D., Tah. D., and Taq. D.) lived with Petitioner's girlfriend,  
12 who they came to call "Miss Ann."

13 At some point in 2005, T.D. and her children moved to Utah where they stayed for  
14 about two years. When they returned to Las Vegas in July of 2007, T.D. and her eldest  
15 child, V.D., moved into Petitioner's mother's house. The other four children went to live  
16 with Petitioner and Miss Ann on Blankenship Street. T.D. and V.D. moved several times  
17 over the next year before moving into the Blankenship house. From 2008 to 2010, Petitioner,  
18 Miss Ann, T.D. and T.D.'s five children lived at Blankenship. In 2010, T.D., V.D., M.D.,  
19 and S.D., moved out of the Blankenship house and into an apartment in Henderson, while  
20 Tah. D. and Taq. D. remained at Blankenship with Petitioner and Miss Ann. Tah. D. and  
21 Taq. D. joined their mom and siblings in Henderson for the summer of 2012, before  
22 returning to the house on Blankenship. Taq. D. and Tah. D. were removed from Petitioner  
23 and Miss Ann's home in the Fall of 2012 and lived with a foster family for about a year  
24 before being reunited with T.D., who they resided with at the time of trial.

25 T.D. was working as a cocktail waitress in Louisiana where she lived with her five  
26 children when she met Petitioner in 2004. T.D.'s children, who ranged in age from toddlers  
27 to twelve years old, were enrolled in school for the first time in 2004. Petitioner, a Las Vegas  
28 resident, was visiting Louisiana and met T.D. at the bar where she worked. Shortly



1 thereafter, T.D. left Louisiana for Las Vegas, while her children stayed behind. While  
2 neighbors periodically checked on the children, twelve-year-old V.D. was primarily  
3 responsible for the care of her younger siblings. A few days after T.D.'s arrival in Las Vegas,  
4 Petitioner's brother picked up T.D.'s children and moved them from Louisiana to Las Vegas.

5 In 2004, when T.D.'s children moved to Las Vegas, Petitioner's girlfriend, Miss Ann,  
6 was living at a house on Trish Lane while Petitioner lived in a separate apartment. The  
7 children and T.D. moved in with Miss Ann, where they lived for about six months. During  
8 the same period of time, Petitioner regularly hit V.D. and S.D. with both his hands and a belt.  
9 Petitioner also first sexually assaulted V.D. who was approximately twelve during this time,  
10 between December 2004 and May 2005, while she was living with Miss Ann and he was  
11 living in his own apartment.

12 One morning when V.D.'s siblings were ill, Petitioner took V.D. and her siblings to  
13 his apartment, where the children fell asleep. When V.D. woke up, her siblings were no  
14 longer in the house and Petitioner told V.D. that they were at the park. Petitioner entered the  
15 bedroom where V.D. was, took his penis out of his pants and placed her hand on it. He told  
16 her that he would beat her if she told anyone what happened, and proceeded to remove  
17 V.D.'s pants. He pushed his fingers into her vagina, and then his penis. He told her again that  
18 he would beat her if she told anyone what he had done.

19 About a week after this assault, V.D. told Miss Ann what Petitioner had done to her.  
20 Miss Ann informed Petitioner's mother, as well as T.D. Miss Ann, Petitioner, and  
21 Petitioner's mother confronted V.D., who they berated for reporting this assault and told her  
22 they did not believe her. At that time, no one reported the abuse or sexual assault to  
23 authorities. Subsequently, T.D. and her five children left Las Vegas and moved to Utah.  
24 They lived in Utah for approximately one-and-a half years, before T.D. returned to Las  
25 Vegas alone. While T.D. was in Las Vegas, her children were taken into state custody in  
26 Utah. T.D. returned to Utah and over the course of six months participated in parenting  
27 classes and was reunited with her children. Shortly after, she abruptly moved back to Las  
28 Vegas, this time taking her children with her.

1 When T.D. and her children moved back to Las Vegas in the summer of 2007, Miss  
2 Ann and Petitioner were living together in a house on Blankenship Street. T.D.'s four  
3 youngest children moved into that house, while T.D. and V.D. moved into the house of  
4 Petitioner's mother. 11 AA 1544-47. Petitioner committed another sexual assault on V.D.,  
5 who was 15 years old, during this time period. Leading up to this assault, Petitioner believed  
6 V.D. was a virgin and told her he wanted to "take her virginity" and made her pick a date for  
7 it to occur. On August 24, 2007, Petitioner, T.D., and V.D. sat in Petitioner's car outside his  
8 mother's house, where he taunted V.D., saying he would be taking her virginity later.  
9 Petitioner drove around town with V.D. and T.D. in the car during the day, picking up  
10 alcohol which all three consumed. That night, Petitioner drove the three of them up to the top  
11 of a hill where he parked the car. Initially, Petitioner and T.D. sat in the front seat, while  
12 V.D. sat in the back. Petitioner moved to the back seat where he began to rub V.D.'s breasts  
13 while her mother watched. T.D. seemed amused as Petitioner removed her daughter's pants.  
14 He raped V.D. in the backseat of the car by forcing his penis into her vagina and told her he  
15 would do the same to her again. Afterwards, Petitioner drove back to his mother's house  
16 where he dropped off V.D. and T.D.

17 In the next few months, T.D. and V.D. moved out of Petitioner's mother's house and  
18 into a long-term motel efficiency apartment. T.D.'s four youngest children continued to live  
19 with Petitioner and Miss Ann on Blankenship Drive. While T.D. and V.D. lived in the  
20 efficiency, Petitioner pressured T.D. to engage in sex work and give the money she earned to  
21 him, in addition to the wages she earned through her job at Bally's housekeeping. Petitioner  
22 and T.D. engaged in a consensual sexual relationship during this time. Petitioner also  
23 continued to sexually assault V.D., who was then 15, while she and T.D. lived in the  
24 efficiency. At times, Petitioner would come to the apartment while T.D. was at work, drink  
25 beer, and force V.D. to have sex with him. Other times he would rape V.D. while T.D. was  
26 home. On at least two occasions, T.D. engaged in sexual activities with V.D. at Petitioner's  
27 behest. Specifically, Petitioner insisted that T.D. insert one end of a sex toy into her vagina  
28 while the other end was inserted into V.D.'s vagina. He also forced T.D. to perform oral sex

1 on V.D. without V.D.'s consent and forced T.D. to hold a vibrator to V.D.'s genitals. On  
2 another occasion, Petitioner became enraged with T.D. who had not surrendered enough  
3 money to him, and in response he raped her by forcing his penis into her anus.

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6 After about six months, T.D. and V.D. moved from the efficiency apartment to an  
7 apartment on Walnut Street, where they lived for about six months. Petitioner continued to  
8 rape V.D., who was 15 years old, at the apartment on Walnut Street. In July of 2008, T.D.  
9 and V.D. moved into the Blankenship house. Petitioner, Miss Ann, Miss Ann's daughter,  
10 T.D., and all five of T.D.'s children were living in the house on Blankenship at that point.  
11 Petitioner raped V.D., aged 16, once while she lived at the Blankenship house, in the  
12 bathroom connected to his bedroom.

13 Petitioner was also physically abusive to T.D. and her children. Among other  
14 incidents, Petitioner struck the children with a belt, punched S.D. in the face and stomach,  
15 and strangled M.D. Petitioner similarly struck T.D. with a belt on at least one occasion. V.D.  
16 lived there for about two years before she and T.D. moved to Henderson with two of V.D.'s  
17 siblings. That left T.D.'s youngest two children (Tah. D. and Taq. D.) with Petitioner and  
18 Miss Ann at the Blankenship house, while T.D., V.D., M.D., and S.D. lived in an apartment  
19 called "St. Andrews."

20 Petitioner also raped V.D. once while she was living at the St. Andrew's apartment,  
21 and approximately 17 years old. In 2010, when V.D., her mom, and siblings were moving  
22 into the St. Andrew's apartment, V.D. met Rose Smith, who she came to call Miss Rose.  
23 Over the course of several months, V.D. spent time at Miss Rose's house, where she  
24 eventually lived for a period of time. Before V.D. moved in with Miss Rose, while she was  
25 visiting in December of 2011, V.D. told Miss Rose about the sexual abuse she had  
26 experienced. Miss Rose took V.D. to a police station in Henderson, where the desk officer  
27 called the special victims unit and Detective Aguiar was dispatched to the station to  
28 interview Miss Rose and V.D. After interviewing V.D. at the station, Detective Aguiar went

1 to V.D.'s home on Center Street where T.D. and two of V.D.'s siblings lived. Over the  
2 course of his interviews, Detective Aguiar learned that V.D. had been physically and  
3 sexually assaulted by Petitioner on multiple occasions and that V.D.'s younger sisters were  
4 currently living with Petitioner. Detective Aguiar then proceeded to Petitioner's home on  
5 Blankenship. After interviewing everyone in the home, the officers concluded that probable  
6 cause did not exist to make an arrest. The officers from Henderson Police Department made  
7 contact with CPS who began an investigation as well.

8 In the summer of 2012, two years after T.D., V.D., S.D., and M.D. moved out of the  
9 Blankenship house, and a few months after the police first questioned him, Petitioner began  
10 sexually assaulting Tah. D., who was twelve years old. On more than one occasion,  
11 Petitioner sexually assaulted Tah. D. in the bathroom attached to his bedroom by rubbing her  
12 breasts and the outside of her vagina with his hand, and putting his penis inside her vagina.  
13 At other times, he forced Tah. D. to put her hand on his penis, and put his penis in her mouth  
14 and vagina in her bedroom. He also sexually assaulted Tah. D. in the same manner in the  
15 garage. On one particular occasion, he woke Tah. D. and took her from her bedroom to the  
16 laundry room where he unbuckled his pants and forced his fingers in her vagina. When Taq.  
17 D. began to approach the laundry room, he stopped and told Tah. D. not to tell anyone what  
18 he had done. Taq. D. saw Petitioner through a crack in the laundry room door touching Tah.  
19 D.'s leg and asked Tah. D. what happened. Tah. D. subsequently told Taq. D. that Petitioner  
20 had molested her. Together, the two girls told Miss Ann. At that time, Miss Ann took both  
21 Tah. D. and Taq. D. to a gynecologist for pelvic exams. Miss Ann did not report the  
22 disclosure to the police and, although Tah. D. and Taq. D. briefly lived with their mother and  
23 siblings in Henderson during the summer of 2012, they returned to the Blankenship house in  
24 September.

25 In September of 2012, approximately nine months after the police first reported to the  
26 Blankenship house and two or three months after Tah. D. was sexually assaulted, Taq. D.  
27 called the CPS hotline to report Petitioner sexually assaulting Tah. D. CPS and the Las  
28 Vegas Metropolitan Police Department were assigned to the case and arranged for Tah. D.

1 and Taq. D. to be interviewed and undergo medical exams at the Children's Assessment  
2 Center. Miss Ann was also interviewed at that time. T.D. and her other children were  
3 subsequently interviewed. Petitioner was arrested early in 2013 and by the start of trial in  
4 2014, Tah. D. and Taq. D. had been reunited with their mother and lived in Henderson.

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### 7 ANALYSIS

8 Petitioner brings eight (8) grounds in his Petition. The first seven (7) grounds allege  
9 ineffective assistance of counsel. Pet. at 2. Ground eight (8) alleges that cumulative error by  
10 defense counsel requires reversal of this conviction. Pet. at 2.

11 The Sixth Amendment to the United States Constitution provides that, "[i]n all  
12 criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel  
13 for his defense." The United States Supreme Court has long recognized that "the right to  
14 counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466  
15 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138,  
16 865 P.2d 322, 323 (1993).

17 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
18 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test  
19 of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138,  
20 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's  
21 representation fell below an objective standard of reasonableness, and second, that but for  
22 counsel's errors, there is a reasonable probability that the result of the proceedings would  
23 have been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada  
24 State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland  
25 two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to  
26 approach the inquiry in the same order or even to address both components of the inquiry if  
27 the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct.  
28 at 2069.

1 The court begins with the presumption of effectiveness and then must determine  
2 whether the defendant has demonstrated by a preponderance of the evidence that counsel  
3 was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective  
4 counsel does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the  
5 range of competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev.  
6 430, 432, 537 P.2d 473, 474 (1975).

7 //

8 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
9 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
10 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
11 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
12 (2002).

13 Based on the above law, the role of a court in considering allegations of ineffective  
14 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
15 whether, under the particular facts and circumstances of the case, trial counsel failed to  
16 render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708,  
17 711 (1978). This analysis does not mean that the court should “second guess reasoned  
18 choices between trial tactics nor does it mean that defense counsel, to protect himself against  
19 allegations of inadequacy, must make every conceivable motion no matter how remote the  
20 possibilities are of success.” Id. To be effective, the constitution “does not require that  
21 counsel do what is impossible or unethical. If there is no bona fide defense to the charge,  
22 counsel cannot create one and may disserve the interests of his client by attempting a useless  
23 charade.” United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19  
24 (1984).

25 “There are countless ways to provide effective assistance in any given case. Even the  
26 best criminal defense attorneys would not defend a particular client in the same way.”  
27 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
28 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,

1 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
2 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's  
3 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
4 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

5 Even if a defendant can demonstrate that his counsel's representation fell below an  
6 objective standard of reasonableness, he must still demonstrate prejudice and show a  
7 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
8 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
9 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
10 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-  
11 89, 694, 104 S. Ct. at 2064-65, 2068).

12 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
13 disputed factual allegations underlying his ineffective-assistance claim by a preponderance  
14 of the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
15 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief  
16 must be supported with specific factual allegations, which if true, would entitle the petitioner  
17 to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and  
18 “naked” allegations are not sufficient, nor are those belied and repelled by the record. Id.  
19 NRS 34.735(6) states in relevant part, “[Petitioner] must allege specific facts supporting the  
20 claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may  
21 cause your petition to be dismissed.” (emphasis added).

## 22 **I. COUNSEL’S PRETRIAL INVESTIGATION WAS NOT INEFFECTIVE**

23 In Ground One (1), Petitioner alleges that his trial counsel was ineffective in pretrial  
24 investigation. Specifically, Petitioner seems to allege that counsel was ineffective for not  
25 fully investigating how to attack the credibility of the State’s main witness. Pet. at 5-6.  
26 Petitioner also alleges that counsel was ineffective for not seeking the services of a credible  
27 expert witness to do a pretrial psychiatric examination of the victims and challenge the  
28 State’s expert witnesses. Pet. at 7.

1 A defendant who contends his attorney was ineffective because he did not adequately  
2 investigate must show how a better investigation would have rendered a more favorable  
3 outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). “Strickland  
4 does not enact Newton’s third law for the presentation of evidence, requiring for every  
5 prosecution expert an equal and opposite expert for the defense.” Harrington v. Richter, 562  
6 U.S. 86, 111, 131 S.Ct. a770, 791 (2011).

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8 //

9 First, the Court notes that Petitioner has not even alleged what a different  
10 investigation would have revealed. Petitioner merely asserts that the main witness’s  
11 credibility could potentially have been attacked and that a psychiatric examination could  
12 have been run. Petitioner does not allege what impeachment evidence a better investigation  
13 would have turned up. In fact, he does not even mention the name (or in the instant case  
14 identifying initials) of the “main witness” who trial counsel was allegedly obligated to  
15 investigate. Further, Petitioner does not allege what a psychiatric examination would have  
16 contributed to Petitioner’s defense at trial. As such, the Court finds that Petitioner’s claims  
17 must fail. Further, the Court finds that these claims are bare and naked assertions pursuant to  
18 Hargrove, and thereby suitable only for summary dismissal.

19 Second, the Court finds that Petitioner is incorrect in alleging that counsel was  
20 ineffective for failing to secure an expert witness to challenge the State’s expert witnesses.  
21 “Strickland does not enact Newton’s third law for the presentation of evidence, requiring for  
22 every prosecution expert an equal and opposite expert for the defense.” Harrington, 562 U.S.  
23 at 111, 131 S. Ct. at 791. Trial counsel has the “immediate and ultimate responsibility of  
24 deciding if and when to object, which witnesses, if any, to call, and what defenses to  
25 develop.” Rhyne, 118 Nev. at 8, 38 P.3d at 167. Once again, Petitioner has made no claims  
26 regarding why such an expert witness needed to be called. Petitioner merely alleges that an  
27 expert witness could have challenged the State’s child medical experts. Pet. at 7. However,



Petitioner does not identify what grounds an expert would or even could have challenged the State's expert witnesses on.

Third, assuming that Petitioner means V.D. when he refers to the "main witness" (as V.D. was the victim of the majority of Petitioner's sexual assaults), the Court finds that the record shows that counsel's cross-examination evidenced a thorough understanding both of the case and the witness's history. Counsel began by reviewing previous statements and testimony V.D. had given in the case. Trial Transcript, Day 6, at 37. Counsel went on to demonstrate a thorough understanding of the factual allegations surrounds the case. See inter alia, Id. at 38-53. Counsel further attempted to impeach V.D. with her preliminary hearing transcripts. Id. at 58-72. None of these things would have been possible without a thorough investigation into the case. As such, it is clear that Petitioner's counsel conducted a reasonable pre-trial investigation.

As such, Petitioner has brought only bare and naked allegations that it was unreasonable for counsel not to undertake these actions in her investigation. Pursuant to Hargrove, these claims are denied.

## **II. TRIAL COUNSEL WAS NOT INEFFECTIVE DURING JURY SELECTION**

### **A. Counsel Was Not Ineffective For Not Requesting Sequestered Individual Voir Dire**

Petitioner first alleges that counsel was ineffective for failing to secure sequestered individual voir dire. Pet. at 8. According to Petitioner, such a failure resulted in an impartial jury because (1) jurors may have been unwilling to reveal that they had previously been victims of sexual assault, and (2) those jurors who had been victims of sexual assault may have been seen as more credible by other jurors, and therefore have been able to sway their minds during jury deliberation.

First, the Court finds that such a decision was not unreasonable. Petitioner has cited to no authority suggesting that not requesting sequestered individual voir dire constitutes ineffective assistance of counsel. Petitioner's entire premise underlying this claim is that

jurors who had been victims of sexual assault may not come forward if the voir dire was not sequestered. This claim is belied not only by the record, but Petitioner's own pleadings. The Court notes that Petitioner readily admits the numerous jurors admitted they had been the victims of sexual assault during voir dire. Pet. at 8. The record reflects that the court asked the jurors whether they or anyone close to them had been the victim of sexual crimes. (Trial Transcript, Day 1, at 111). It was further made clear to the jurors that they were free to approach the bench to discuss any sensitive answers they did not wish to vocalize to the public when the district court had one potential juror do just that when the juror became emotional while discussing her past. (Trial Transcript, Day 1, at 123). The jury was therefore aware that they could disclose any sensitive information out of the presence of the rest of the panel. Given that this option was available and made known to the jury, it is disingenuous to suggest that jurors would have responded differently to a sequestered voir dire.

The Court would further note that Petitioner does not actually allege in this section that a juror concealed their relevant history and subsequently had a disproportionate effect during deliberations. Petitioner merely asserts that this *could* have occurred. Pet. at 9.<sup>1</sup> Given that Petitioner has not identified any jurors that concealed bias, his entire argument is based on hypotheticals. As such, the Court finds that Petitioner has failed to establish that he was prejudiced as a result of his trial counsel's decision to not request sequestered individual voir dire.

Given that the voir dire strategy pursued by counsel was not unreasonable, and that Petitioner has failed to demonstrate he was prejudiced by failing to even allege that an impartial jury was empaneled as a result, counsel was not ineffective. This claim is denied.

### **B. Trial Counsel Was Not Ineffective For Failing to Hire a Jury Selection Expert**

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<sup>1</sup> The Court does note however, that Petitioner claims under Ground Six that Yvonne Lewis (one of the jurors in the underlying case), discussed being sexually abused as a child during the jury deliberations. Pet. at 22. However, the record shows that Yvonne Lewis raised her hand during voir dire, indicating that she or someone close to her had been the victim of sexual crimes. Trial Transcript, Day 1, at 121-22. Specifically, Ms. Lewis indicated that her family had a history of domestic abuse that occurred while she young. However, she did not allege any sexual assault, and stood by that assertion at a later evidentiary hearing. Id.; Recorders Transcript of Proceedings RE: Evidentiary Hearing on Defendant's Motion for New Trial, at 31-32, November 24, 2014. When questioned, Ms. Lewis indicated that despite these circumstances, she could be fair and impartial during the trial. Id. Given that Ms. Lewis indicated both at voir dire and at an evidentiary hearing that she had not been sexually assaulted, her selection as a juror in this case does not support Petitioner's argument.

1 Appellant next argues that his trial counsel was ineffective for failing to hire a jury  
2 selection expert. Pet at 10. As an initial point, the Court notes that once again, Petitioner does  
3 not even allege that an impartial jury was empaneled as a result of this trial decision. As  
4 such, the Court finds that Petitioner has failed to reach his burden of even arguing that this  
5 decision prejudiced the outcome of his trial under Strickland's second prong.

6 In addition, the Court finds that Petitioner has failed to show that the decision not to  
7 hire a jury selection expert was an unreasonable one. First, Petitioner does not allege what a  
8 jury selection expert would have contributed to his case. Instead, Petitioner merely states that  
9 "[a] jury consultant, would have seen many things that counsel missed because they would  
10 have been trained to look for certain things." Pet. at 14. Petitioner does not state what  
11 "things" his trial counsel missed, and instead relies on the circular argument that trial counsel  
12 must have missed "things" because he did not hire a jury selection expert. Such bare and  
13 naked allegations cannot support a successful ineffective assistance of counsel claim.  
14 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

15 Second, Petitioner only points to the partial voir dire of two potential jurors as proof  
16 that a jury selection expert was needed. However, the Court notes that neither of these two  
17 jurors was ultimately selected to be on the jury, showing that no jury selection expert was  
18 necessary to distinguish which of the jurors displayed bias. Trial Transcript, Day 1, at  
19 111,123; Trial Transcript, Day 2, at 239. Given that neither of these jurors were selected,  
20 Petitioner has brought no actual evidence forward indicating that a biased jury was  
21 empaneled as a result of his counsel's decisions. As such, Petitioner has not demonstrated  
22 that he was prejudiced by counsel's decision not to hire a jury expert. Therefore, counsel  
23 cannot be deemed ineffective, and this claim is denied.

### 24 **III. COUNSEL'S DECISIONS REGARDING WHICH PRE-TRIAL MOTIONS** 25 **TO FILE WERE NOT INEFFECTIVE**

26 In Ground Three, Petitioner alleges that counsel was ineffective for failing to file  
27 various motions. Pet. at 2. "Strategic choices made by counsel after thoroughly investigating  
28 the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825

1 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).  
2 In essence, the court must “judge the reasonableness of counsel's challenged conduct on the  
3 facts of the particular case, viewed as of the time of counsel's conduct.” Strickland, 466 U.S.  
4 at 690, 104 S. Ct. at 2066. Counsel cannot be ineffective for failing to make futile objections  
5 or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

6 **A. Counsel Had No Obligation to File a Motion For a Defense Psychiatric**  
7 **Examination**

8 Petitioner first alleges in this section that his counsel was ineffective for failing to file  
9 a Motion for Defense Psychiatric Examination. Pet. at 14. Petitioner alleges that there were  
10 indications that Tah. D. and M.D. may have had psychological problems that would have  
11 rendered their testimony inherently suspect or unreliable. Pet. at 15. Petitioner bases his  
12 argument off Tah.D. being diagnosed with “cognitive delay” and M.D. being diagnosed with  
13 “anxiety disorder.”

14 In Abbott v. State, 122 Nev. 715, 138 P.3d 462 (2006), the Nevada Supreme Court  
15 departed from a two year old precedent by overruling State v. District Court (Romano), 120  
16 Nev. 613, 97 P.3d 594 (2004). In doing so, the Court returned to the requirements it  
17 previously set forth in Koerschner v. State, 116 Nev. 111, 13 P.3d 451 (2000), reasserting  
18 that a trial judge should order an independent psychological or psychiatric examination of a  
19 child victim in a sexual assault case only if the defendant presents a compelling reason for  
20 such an examination. “Thus, compelling reasons to be weighed, not necessarily to be given  
21 equal weight, involve whether the State actually calls or obtains some benefit from an expert  
22 in psychology or psychiatry, whether the evidence of the offense is supported by little or no  
23 corroboration beyond the testimony of the victim, and whether there is a reasonable basis for  
24 believing that the victim's mental or emotional state may have affected his or her veracity.”  
25 Koerschner, 116 Nev. at 116-117, 13 P.3d at 455.

26 First, the Court notes that Petitioner does not even address that these factors exist,  
27 much less show that they would have weighed in favor of granting the Motion. As such,  
28

1 Petitioner's claim that this Motion would have been meritorious is a bare and naked  
2 allegation suitable only for summary dismissal.

3 Second, the Court finds that the factors articulated in Koerschner would not have  
4 weighed towards a finding that an independent psychological or psychiatric examination was  
5 required. First, there was significant corroborating evidence to these two victims' testimony.  
6 The State called a large number of witnesses, who testified to Petitioner's violent and  
7 sexually criminal behavior towards multiple members of the Duke family. See inter alia,  
8 Trial Transcript, Day 1, at 73, 105-117 (testimony of T.D.); Trial Transcript, Day 5, at 112,  
9 120-124 (testimony of V.D.); Trial Transcript, Day 8, at 85, 103-115, 118-120, 137-145  
10 (testimony of Taq. D.); Trial Transcript, Day 9, at 96, 104-107 (testimony of CPS employee  
11 Sholeh Nourbakhsh). Second, neither disorder suffered by either victim bears on their  
12 credibility. M.D. has a general anxiety disorder (Trial Transcript, Day 7, at 66-71), while  
13 Tah.D. has a learning disability (Trial Transcript, Day 9, at 92-94). Neither of these  
14 diagnoses affect one's ability to discern reality. Neither do these diagnoses make one  
15 inherently unreliable or likely to fabricate. In fact, both witnesses were able to respond  
16 articulately and clearly at trial. As such, the factors articulated in Koerschner would not have  
17 weighed towards finding that an independent psychological examination was required.

18 Finally, the Court notes that approximately one (1) year after the trial in the  
19 underlying case took place, the Nevada legislature codified NRS 50.700. NRS 50.700(1)  
20 forbids the Court from ordering a victim or witness to a sexual assault to undergo a  
21 psychological or psychiatric examination. NRS 50.700. While the date the statute become  
22 operable means that NRS 50.700 would not have been applicable at the time of the  
23 underlying trial, it's subsequent inclusion in this jurisdiction's statutory framework indicates  
24 that the Motion would have been disfavored (as the underlying offenses of this Petition  
25 include many charges of Sexual Assault). As such, any Motion filed to this effect would  
26 likely have been denied.

27 Since the Motion was not likely to succeed, filing it likely would have been a  
28 frivolous exercise. Counsel has no obligation to file frivolous motions. See Ennis v. State,

1 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). However even if the motion would not have  
2 been frivolous, its dubious chances for success would make whether to file such a motion a  
3 strategic decision. “Strategic choices made by counsel after thoroughly investigating the  
4 plausible options are almost unchallengeable.” Dawson v. State, 108 Nev. 112, 117, 825 P.2d  
5 593, 596 (1992). As such, the Court finds that counsel was not ineffective for not filing this  
6 motion, and this claim is denied.

7 **B. Defense Counsel Was not Ineffective For Not Filing a Motion in Limine**

8 Petitioner next argues that his counsel was ineffective for failing to oppose the State’s  
9 Motion in Limine “to restrict cross-examination for bias.” This pleading bare of facts and  
10 citations. Odyssey does not reflect any written Motion in Limine on file. If the alleged  
11 Motion was an oral motion, Petitioner has provided no citation to the record regarding where  
12 it occurred. Neither has Petitioner said what witness this Motion was in regards to, or on  
13 what day of this 14-day trial it occurred. Given that this claim is the epitome of a bare and  
14 naked allegation, it is denied pursuant to Hargrove.

15 **IV. COUNSEL WAS NOT INEFFECTIVE DURING TRIAL**

16 **A. Trial Counsel’s Impeachment Was Effective**

17 Petitioner next alleges that counsel was ineffective in their cross-examination of  
18 Tah.D. Pet. at 17. Specifically, Petitioner claims that the State’s objections kept any useful  
19 information from being elicited. Such a claim is belied by the record.

20 Petitioner’s complaint regarding counsel’s performance after the State objected to a  
21 line of questioning for “lack of foundation” is confusing. The Court notes that the objection  
22 was posed merely because the question was asked in a confusing manner. Trial Transcript,  
23 Day 9, at 161. Counsel clarified her question, and was able to proceed with the line of  
24 questioning. Id. The State further objected to a hearsay statement which was sustained. Id. at  
25 167. However, the failure to get a hearsay statement admitted into evidence is not a  
26 byproduct of counsel’s effectiveness, it is a byproduct of the fact that the statement was  
27 hearsay and not permitted under the rules of evidence.

1 Further, the Court finds that Petitioner's counsel was effective on cross-examination.  
2 Counsel elicited that Petitioner was the one who drove the children to well in school. Trial  
3 Transcript, Day 9, at 140-141. Counsel elicited that the witness had reported feeling  
4 "protected" while staying with Petitioner. Id. at 151. Counsel elicited that the witness had  
5 told detectives she had no problems with anybody in the house. Id. at 153. Counsel outlined  
6 the potential contradiction between witness saying she was raped for the first time at age 11,  
7 but saying during that same year she was not uncomfortable around Petitioner. Pet. at 153-  
8 54. Counsel elicited as much information that was helpful to Petitioner's case as was  
9 possible under the circumstances. Further, the scope of cross-examination is a strategic  
10 decision that is virtually unchallengeable. See Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163,  
11 167 (2002); Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992).

12 Here, the record demonstrates that counsel effectively elicited varying pieces of  
13 helpful information on cross-examination. Further, the record belies Petitioner's claim that  
14 his counsel was ineffective at dealing with the State's objections. Finally, Petitioner has  
15 failed to demonstrate how a different cross-examination would have made a more favorable  
16 outcome at trial probable. Therefore, the Court finds that counsel cannot be deemed  
17 ineffective and this claim is denied.

18 **B. There Was No Prosecutorial Misconduct For Petitioner's Counsel to Object**  
19 **To**

20 Petitioner next claims his counsel was ineffective for failing to object when the State  
21 committed prosecutorial misconduct by allegedly vouching for witnesses during closing  
22 argument. Pet. at 18. Specifically, Petitioner raises issue with the following excerpt from the  
23 States closing:

24 You heard from the Dukes. Do you really think that they could have  
25 concocted all of this, those people you heard on the stand? There is  
26 no way. Ladies and gentlemen, the State of Nevada cannot hold the  
27 Defendant accountable for his actions. Even the Court cannot hold  
the Defendant accountable for his actions. Only you can. The  
evidence shows that the Defendant is guilty of these charges, so  
please find him guilty. Thank you.

28 Pet. at 18.

1 Vouching occurs when the State “places ‘the prestige of the government behind the  
2 witness’ by providing ‘personal assurances of [the] witness's veracity.’” Browning v. State,  
3 120 Nev. 347, 359, 91 P.3d 39, 48 (2004) (citing U.S. v. Kerr, 981 F.2d 1050, 1053 (9th Cir.  
4 1992). This Court has held that it is not vouching where the State claims that a witness’  
5 identification was “as good as you could ask for” during closing argument. Id. Further,  
6 “when a case involves numerous material witnesses and the outcome depends on which  
7 witnesses are telling the truth, reasonable latitude should be given to the prosecutor to argue  
8 the credibility of the witness—even if this means occasionally stating in argument that a  
9 witness is lying.” Rowland v. State, 118 Nev. 31, 39, 39 P.3d 114, 119 (2002). However, the  
10 State may not go so far as to argue that a witness is a person of “integrity” or “honor.” Id.  
11 Finally, it is the province of counsel to determine what objections, if any, to make during a  
12 closing argument. See Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002) (stating that it  
13 is trial counsel that has the “immediate and ultimate responsibility of deciding if and when to  
14 object, which witnesses, if any, to call, and what defenses to develop”). Counsel cannot be  
15 ineffective for failing to make futile objections or arguments. See Ennis v. State, 122 Nev.  
16 694, 706, 137 P.3d 1095, 1103 (2006).

17 A review of the State’s closing argument shows that no vouching occurred during the  
18 State’s closing argument. Much like in Rowland, the instant case involved multiple material  
19 witnesses, and the outcome was dependent upon whether the jury believed these witnesses  
20 were telling the truth. As such, the State should be afforded reasonable latitude during  
21 closing argument. However, here, said latitude was not even necessary. The State did not  
22 make any personal assurances of the witness’ veracity. As the record plainly shows, the State  
23 was merely highlighting that it had presented extensive corroborating evidence. The State’s  
24 argument that evidence which is corroborated by other evidence should be considered more  
25 persuasive is not vouching, but a common legal principle that has been recognized by the  
26 Court in multiple contexts. See, inter alia, NRS175.291 (stating that the conviction of a  
27 defendant cannot be had on the testimony of an accomplice unless the accomplice is  
28 corroborated by other evidence); Sefton v. State, 72 Nev. 106, 110, 295 P.2d 385, 387 (1956)



1 (stating: “extrajudicial confession does not warrant a conviction unless it is corroborated by  
2 independent evidence”).

3       Given that the statement did not amount to “vouching,” the State did not commit  
4 prosecutorial misconduct. It therefore would have been futile for counsel to object. Counsel  
5 has no obligation to raise futile arguments pursuant to Ennis. Further, even if statements  
6 were to be considered vouching, the statements were not such that the failure to object would  
7 have rendered a more favorable outcome at trial probable. See Rowland, 118 Nev. at 31, 39  
8 P.3d at 167 (stating: “the level of misconduct necessary to reverse a conviction depends upon  
9 how strong and convincing is the evidence of guilt”). In the instant case, the evidence of guilt  
10 was strong. The State presented multiple witnesses, including the entire Duke Family,  
11 individuals close with the family, and investigating officers. Given the overwhelming  
12 evidence presented against Petitioner, even if the statements were considered vouching,  
13 Petitioner was not prejudiced by his counsel not objecting.

14       Therefore, Counsel cannot be held ineffective on this ground, and this claim is denied.  
15       //  
16       //

### 17       **C. Counsel’s Closing Argument Was Adequate**

18       Petitioner next argues that his counsel was ineffective during closing argument. Pet. at  
19 19. Petitioner does not articulate why, or what portions of the closing argument were  
20 ineffective. Petitioner does not allege what counsel should or even could have done  
21 differently in order to present a more compelling closing argument. As such, the Court finds  
22 that this claim is nothing more than a bare and naked allegation suitable only for summary  
23 dismissal pursuant to Hargrove.

24       Further, the court would note that what arguments to present during closing argument  
25 is a strategic decision left to counsel in most circumstances. See Rhyne v. State, 118 Nev. 1,  
26 8, 38 P.3d 163, 167 (2002) (stating that it is trial counsel that has the “immediate and  
27 ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and  
28 what defenses to develop”); but see also (Jones v. State, 110 Nev. 730, 877 P.2d 1052 (1994)

1 (holding that it is reversible error for an attorney to concede guilt during closing argument  
2 over his client's testimonial disavowal).

3 Given that Petitioner has not alleged any issue pursuant to Jones or other rule of law  
4 that confines the scope of counsel's arguments, the only question is whether counsel  
5 performed reasonably at closing. The record reveals this to be the case. Counsel began by  
6 challenging the veracity of the State's witness V.D. Trial Transcript, Day 12, at 70. Counsel  
7 went on to point out the V.D.'s mother T.D. had potential issues with Child Protective  
8 Services when living in Louisiana. Id. at 72. Counsel highlighted that it would have been odd  
9 for T.D. to bring her children back to the Petitioner after they suffered such abuse at his  
10 hands. Id. at 74. Counsel further went on to point out the timing of the reports versus the  
11 timing of the incidents. Id. at 74-75. Counsel went on to reiterate that the children's grades  
12 were the best they had ever been during this time. Id. at 77. The record clearly shows that  
13 counsel's closing argument was designed to discredit the witnesses and attempt to show that  
14 Petitioner had been a positive influence on the family. The Court finds that while this  
15 strategy was ultimately not successful, it was clearly not unreasonable. Therefore, counsel  
16 was not ineffective during closing argument and this claim is denied.

#### 17 **V. COUNSEL WAS EFFECTIVE AT SENTENCING**

18 While Petitioner makes to claims under Section five of his Petition, the Court breaks  
19 up its analysis here as they are two distinct issues.<sup>2</sup> Petitioner alleges that counsel performed  
20 ineffectively at sentencing. Specifically, Petitioner claims that it was ineffective for counsel  
21 to not file a sentencing memorandum, as well as to not present any witnesses to provide  
22 mitigation testimony. Pet. at 20.

23 As an initial point, the Court notes that Petitioner has not alleged what information  
24 should or could have been presented in a sentencing memorandum. Petitioner further has not  
25 alleged what witnesses could have been called to present mitigation testimony, or what these  
26 alleged witnesses would have even testified to. As such, the Court finds that Petitioner's  
27  
28

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<sup>2</sup> For analysis on why Petitioner's sentence was neither cruel nor unusual see section VI.

1 claims are bare and naked assertions suitable only for summary dismissal pursuant to  
2 Hargrove.

3 Further, the record demonstrates that Petitioner's counsel performed effectively at  
4 sentencing. Counsel began by noting the number of people who had been called as witnesses  
5 who testified that none of the State's witnesses had spoken up regarding the abuse.  
6 Recorders Transcript RE: Sentencing, at 7, October 27, 2015. To the extent Petitioner  
7 believes these are the witnesses who should have been called, such a decision was  
8 unnecessary. The sentencing judge was the same judge who had presided over the trial, and  
9 as such, had already heard this testimony. Id. at 5. Counsel further noted Petitioner's  
10 relatively old age. Id. at 7. The Court finds that counsel's inability to present a more  
11 sympathetic argument was due not to counsel's alleged ineffectiveness, but the nature of  
12 Appellant's actions. Therefore, this claim is denied.

#### 13 **VI. PETITIONER'S SENTENCE WAS NOT CRUEL AND UNUSUAL**

14 Petitioner also argues that his sentence was cruel and unusual. Pet. at 20-21.

15 The Eighth Amendment to the United States Constitution as well as Article 1, Section  
16 6 of the Nevada Constitution prohibits the imposition of cruel and unusual punishment. The  
17 Nevada Supreme Court has stated that "[a] sentence within the statutory limits is not 'cruel  
18 and unusual punishment unless the statute fixing punishment is unconstitutional or the  
19 sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" Allred v. State, 120 Nev. 410, 92 P.2d 1246, 1253 (2004) (quoting Blume v. State, 112 Nev.  
20 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435,  
21 596 P.2d 220, 221-22 (1979)).

23 Additionally, the Nevada Supreme Court has granted district courts "wide discretion"  
24 in sentencing decisions, and these are not to be disturbed "[s]o long as the record does not  
25 demonstrate prejudice resulting from consideration of information or accusations founded on  
26 facts supported only by impalpable or highly suspect evidence." Allred, 120 Nev. at 410, 92  
27 P.2d at 1253 (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)). A  
28 sentencing judge is permitted broad discretion in imposing a sentence and absent an abuse of

1 discretion, the district court's determination will not be disturbed on appeal. Randell v. State,  
2 109 Nev. 5, 846 P.2d 278 (1993) (citing Deveroux v. State, 96 Nev. 388, 610 P.2d 722  
3 (1980)). As long as the sentence is within the limits set by the legislature, a sentence will  
4 normally not be considered cruel and unusual. Glegola v. State, 110 Nev. 344, 871 P.2d 950  
5 (1994).

6 The Court first notes that Petitioner concedes that his sentence was within the  
7 statutory limits. Pet. at 20-21. Further, Petitioner does not even allege that the Court relied on  
8 impalpable or highly suspect evidence. Instead Petitioner makes a proportionality argument,  
9 alleging that his sentence is simply too long given his crimes. The Court disagrees. Appellant  
10 was convicted for sexually assaulting multiple minors over many years. Appellant was  
11 further convicted of beating minors. Appellant was also convicted of sexually assaulting  
12 their mother and forcing her to work as a prostitute. See generally, Trial Transcript, Day 14.  
13 The sentence is therefore proportional to the crimes committed. As such, Petitioner's  
14 sentence is neither cruel nor unusual, and this claim is denied.

## 15 **VII. COUNSEL WAS NOT INEFFECTIVE IN ARGUING THE MOTION FOR** 16 **A NEW TRIAL**

17 Petitioner next argues that his counsel was ineffective in their preparation and  
18 arguments regarding Petitioner's Motion for a New Trial. Pet. at 21-22. While Petitioner  
19 dedicates multiple pages to trying to relitigate the issue of whether he should have been  
20 granted a new trial due to juror misconduct, his only real claim that counsel was ineffective  
21 is that counsel failed to secure Kathleen Smith's ("Smith") signature on her affidavit once it  
22 had been revised. Pet. a 22-25.

23 The affidavit Petitioner references Smith's allegations that a juror (Yvonne Lewis)  
24 spoke about being sexually assaulted during jury deliberations. Lewis did not indicate during  
25 voir dire that she had ever been sexually assaulted. As such, Petitioner claimed this was  
26 grounds for a new trial due to juror misconduct.

27 However, the Court finds that counsel's failure to get Smith to sign the affidavit does  
28 not constitute ineffective assistance of counsel. Counsel prepared the affidavit after her

1 investigator spoke to Smith. However, Smith requested that changes be made to the affidavit  
2 and refused to sign it, claiming “she did not want to get involved.” Reply to State’s Response  
3 to Motion for a New Trial and Supplement to Defendant’s Motion for a New Trial, at 9-10,  
4 Jul 9, 2014; Recorders Transcript of Proceedings RE: Evidentiary Hearing on Defendant’s  
5 Motion for New Trial, at 22, November 24, 2014. Petitioner’s counsel cannot force someone  
6 to sign a document, and any assertion that her failure to do so constitutes ineffective  
7 assistance of counsel is absurd.

8 Further, the Court finds that counsel’s conduct following Smith’s refusal to sign the  
9 affidavit was reasonable. Counsel requested and received an evidentiary hearing on the issue.  
10 Id.; Reply to State’s Response to Motion for a New Trial and Supplement to Defendant’s  
11 Motion for a New Trial, at 7, Jul 9, 2014. At the hearing, counsel called Smith as a witness,  
12 and asked her to explain her experience during deliberation. Recorders Transcript of  
13 Proceedings RE: Evidentiary Hearing on Defendant’s Motion for New Trial, at 4, 9-17,  
14 November 24, 2014. Counsel further received a hand written statement from Smith detailing  
15 what happened during the deliberation. Id. This statement was attached as Exhibit B to  
16 Petitioner’s Reply.

17 The Court finds that Petitioner’s Motion being denied has nothing to do with  
18 counsel’s alleged ineffectiveness. It has everything to do with the fact that multiple jurors  
19 (including Yvonne Lewis) testified that Lewis did not claim during deliberations that she had  
20 been sexually assaulted. Id. at 31-32, 55. These jurors also indicated that Ms. Smith had  
21 claimed she could not vote guilty based upon Petitioner’s race. Id. at 33, 41. As such, it is  
22 clear that counsel did everything she could have possibly done in investigating this claim.  
23 Counsel was not ineffective on this Ground, and this claim is denied.

24 Further, to the extent Petitioner is seeking to relitigate the fact that he should have  
25 been granted a new trial due to juror misconduct, the Court finds that such a claim is barred  
26 by law of the case doctrine. “The law of a first appeal is law of the case on all subsequent  
27 appeals in which the facts are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535  
28 P.2d 797, 798 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)).

1 “The doctrine of the law of the case cannot be avoided by a more detailed and precisely  
2 focused argument subsequently made after reflection upon the previous proceedings.” Id. at  
3 316, 535 P.2d at 799. Under the law of the case doctrine, issues previously decided on direct  
4 appeal may not be reargued in a habeas petition. Pellegrini v. State, 117 Nev. 860, 879, 34  
5 P.3d 519, 532 (2001) (citing McNelton v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275  
6 (1999)). Furthermore, this Court cannot overrule the Nevada Supreme Court. NEV. CONST.  
7 Art. VI § 6.

8 On November 28, 2017, the Supreme Court of Nevada issued an Order of Affirmance  
9 finding that stated “the district court did not abuse its discretion in denying the motion for a  
10 new trial for juror misconduct, as any misconduct did not prejudice Petitioner.” Order of  
11 Affirmance, at 2, November 28, 2017. As such, the Court finds that any attempt Petitioner  
12 now makes to relitigate this issue is barred by law of the case and is denied.

#### 13 **VIII. APPELLATE COUNSEL WAS NOT INEFFECTIVE**

14 Petitioner next argues that his appellate counsel was ineffective for not raising the  
15 following issues on appeal: (1) that Petitioner’s sentence was a cruel and unusual punishment  
16 in violation of the eighth amendment; (2) that the court erred by limiting cross-examination;  
17 and (3) that the court erred by not restraining excessive prosecutorial misconduct. Pet. at 27.

18 There is a strong presumption that appellate counsel's performance was reasonable  
19 and fell within “the wide range of reasonable professional assistance.” See United States v.  
20 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990); citing Strickland, 466 U.S. at 689, 104 S. Ct. at  
21 2065. A claim of ineffective assistance of appellate counsel must satisfy the two-prong test  
22 set forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). In  
23 order to satisfy Strickland’s second prong, the defendant must show that the omitted issue  
24 would have had a reasonable probability of success on appeal. Id.

25 The professional diligence and competence required on appeal involves “winnowing  
26 out weaker arguments on appeal and focusing on one central issue if possible, or at most on a  
27 few key issues.” Jones v. Barnes, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313 (1983). In  
28 particular, a “brief that raises every colorable issue runs the risk of burying good arguments .

1 . . in a verbal mound made up of strong and weak contentions.” Id. at 753, 103 S. Ct. at 3313.  
2 “For judges to second-guess reasonable professional judgments and impose on appointed  
3 counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very  
4 goal of vigorous and effective advocacy.” Id. at 754, 103 S. Ct. at 3314.

5 The Court finds that Appellate counsel was not ineffective for not bringing the claims  
6 Petitioner now urges they should have. The claims Petitioner advocates for are either without  
7 merit, or so bare of factual underpinnings in this Petition that their merit is impossible to  
8 address. First, as the Court articulated in Section VI, Petitioner’s punishment was not cruel  
9 and unusual. Second, it is unclear what witnesses Petitioner was not entitled to fully cross-  
10 examine. The Court notes that appellate counsel did raise the issue on appeal of whether the  
11 district court erred in limiting his cross-examination regarding a book written by T.D. To the  
12 extent this is the issue Petitioner is alleging, his claim is belied by the record. Otherwise, the  
13 underlying claim Petitioner alleges counsel should have brought is nothing more than a bare  
14 and naked allegation. Finally, as the Court articulated in Section IV(B), the State did not  
15 engage in vouching, so any prosecutorial misconduct claim on these grounds would have  
16 been frivolous.

17 Further, the Court notes that Appellate counsel brought the following claims on  
18 appeal: (1) whether the district court erred in restricting the scope of cross examination  
19 regarding a book written by T.D.; (2) whether the court improperly allowed the State to  
20 introduce testimonial hearsay statements into evidence; (3) whether the district court  
21 improperly prevented Petitioner from inquiring into one of children’s past sexual history; (4)  
22 whether Petitioner’s kidnapping charges were incidental to other charges; (5) whether  
23 Petitioner was entitled to a new trial on the basis of juror misconduct; (6) whether there was  
24 insufficient evidence to support Petitioner’s convictions; and (7) whether cumulative error  
25 warranted reversal. Given the multitude of claims brought by appellate counsel, as well as  
26 the lack of merit regarding the claims Petitioner now alleges his counsel should have brought  
27 on appeal, the Court finds that appellate counsel was not ineffective. Therefore, this claim is  
28 denied.





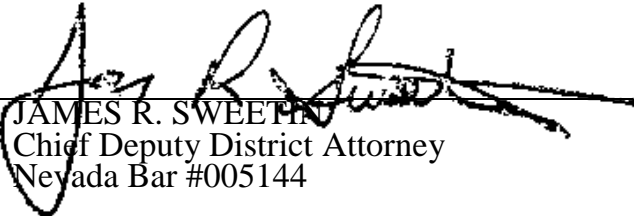
1           **THEREFORE, IT IS HEREBY ORDERED** that the Post-Conviction Petition for  
2 Writ of Habeas Corpus shall be and is DENIED.

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5           DATED this 21 day of May, 2020.

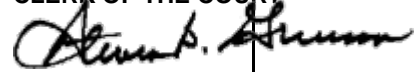
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7 \_\_\_\_\_  
8 **DISTRICT JUDGE**

9 **STEVEN B. WOLFSON**  
10 Clark County District Attorney  
11 Nevada Bar #001565

12 BY

13   
14 **JAMES R. SWEET**  
15 Chief Deputy District Attorney  
16 Nevada Bar #005144

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1 NEFF

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

4 STATE OF NEVADA,

5  
6 Petitioner,

7 vs.

8 FREDERICK HARRIS,

9 Respondent,

Case No: A-18-784704-W

Dept No: XII

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

10  
11 **PLEASE TAKE NOTICE** that on May 21, 2020, 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 28, 2020.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Amanda Hampton

18 Amanda Hampton, Deputy Clerk

19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 28 day of May 2020, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

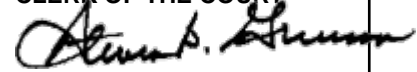
22 Clark County District Attorney's Office  
Attorney General's Office – Appellate Division-

23 ☒ The United States mail addressed as follows:

24 Frederick Harris # 1149356 Terremce M. Jackson, Esq.  
1200 Prison Rd. 624 S. Ninth St.  
25 Lovelock, NV 89419 Las Vegas, NV 89101

26 /s/ Amanda Hampton

27 Amanda Hampton, Deputy Clerk



**FFCO**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**JAMES R. SWEETIN**  
Chief Deputy District Attorney  
Nevada Bar #005144  
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-

**FREDERICK HAROLD HARRIS JR.,  
#0972945**

Defendant.

CASE NO: **A-18-784704-W  
C-13-291374-1**

DEPT NO: **XII**

**FINDINGS OF FACT, CONCLUSIONS OF**

**LAW AND ORDER**

DATE OF HEARING: **APRIL 23, 2020**  
TIME OF HEARING: **12:00 PM**

THIS CAUSE having presented before the Honorable MICHELLE LEAVITT, District Judge, on the 23rd day of April, 2020; Defendant not present, represented by TERRENCE MICHAEL JACKSON, ESQ.; Plaintiff represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JAMES SWEETIN, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

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2 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

3 **PROCEDURAL HISTORY**

4 On July 23, 2013, Defendant Frederick Harris ("Petitioner") was charged by  
5 way of Information with the following: Counts 1, 15-18: Child Abuse, Neglect, or  
6 Endangerment (Category B Felony - NRS 200.508); Counts 2-3, 6, 8-11, 13-14, 21- 22:  
7 Sexual Assault With a Minor Under Fourteen Years of Age (Category A Felony - NRS  
8 200.364, 200.366); Counts 4-5, 7, 12, 20: Lewdness with a Child Under the Age of 14  
9 (Category A Felony - NRS 201.230); Counts 19, 25, 28, 37: First Degree Kidnapping  
10 (Category A Felony - NRS 200.310, 200.320); Count 23: Coercion (Sexually Motivated)  
11 (Category B Felony - NRS 207.190); Counts 24 and 27: Administration of a Drug to Aid in  
12 the Commission of a Crime (Category B Felony - NRS 200.405); Counts 26, 29-35: Sexual  
13 Assault With a Minor Under Sixteen Years of Age (Category A Felony - NRS 200.364,  
14 200.366); Counts 36, 39-41: Sexual Assault (Category A Felony - NRS 200.364, 200.366);  
15 Count 38: Battery with Intent to Commit Sexual Assault (Category A Felony - NRS  
16 200.400); Count 42: Pandering (Category C Felony - NRS 201.300); Count 44: Living from  
17 the Earnings of a Prostitute (Category D Felony - NRS 201.320); and Count 45: Battery by  
18 Strangulation (Category C Felony - NRS 200.481).

19 A jury trial commenced on March 25, 2014. 9 AA 999. On April 15, 2014, after  
20 hearing 12 days of evidence and after approximately two days of deliberation, the jury found  
21 Petitioner guilty of the following: eleven counts of Sexual Assault With a Minor Under  
22 Fourteen Years of Age; five counts of Lewdness With a Child Under the Age of 14; six  
23 counts of Sexual Assault With a Minor Under Sixteen Years of Age; four counts of Sexual  
24 Assault; four counts of First Degree Kidnapping; one count of Administration of a Drug to  
25 Aid in the Commission of a Crime; one count of Coercion (Sexually Motivated); one count  
26 of Battery With Intent to Commit Sexual Assault; one count of Child Abuse, Neglect or  
27 Endangerment; one count of Pandering; and one count of Living From the Earnings of a  
28 Prostitute. The jury found Defendant not guilty of the following: two counts of Sexual

1 Assault With a Minor Under Sixteen Years of Age; one count of Sexual Assault; one count  
2 of Administration of a Drug to Aid in the Commission of a Crime; four counts of Child  
3 Abuse, Neglect or Endangerment; and one count of Battery by Strangulation.

4 Petitioner filed a Motion for New Trial on April 28, 2014. The State filed an  
5 Opposition on June 13, 2014. Petitioner's Motion was denied on June 30, 2015.

6 On November 2, 2014, Petitioner was adjudged guilty of the following: OF COUNT 2  
7 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (F);  
8 COUNT3-SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE  
9 (F); COUNT 4 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (F); COUNT 5 –  
10 LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (F); COUNT6-SEXUAL  
11 ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (F); COUNT 7 -  
12 LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (F); COUNT 8 -SEXUAL  
13 ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (F); COUNT 9 -  
14 SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (F);  
15 COUNT 10 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF  
16 AGE (F); COUNT 11 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN  
17 YEARS OF AGE (F); COUNT 12- LEWDNESS WITH A CHILD UNDER THE AGE OF  
18 14 (F); COUNT 13- SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS  
19 OF AGE (F); COUNT 14 -SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN  
20 YEARS OF AGE (F); COUNT 16 - CHILD ABUSE, NEGLECT OR ENDANGERMENT  
21 (F); COUNT 19 - FIRST DEGREE KIDNAPPING (F); COUNT 20 - LEWDNESS WITH A  
22 CHILD UNDER THE AGE OF 14 (F); COUNT 21- SEXUAL ASSAULT WITH A  
23 MINOR UNDER FOURTEEN YEARS OF AGE (F); COUNT 22- SEXUAL ASSAULT  
24 WITH A MINOR UNDER FOURTEEN YEARS OF AGE (F); COUNT 23 -COEROON  
25 (SEXUALLY MOTIVATED) (F); COUNT 24- ADMINISTRATION OF A DRUG TO AID  
26 IN THE COMMISSION OF A CRIME (F); COUNT 25 - FIRST DEGREE KIDNAPPING  
27 (F); COUNT 26 -SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF  
28 AGE (F); COUNT 28 - FIRST DEGREE KIDNAPPING (F); COUNT 29 - SEXUAL

1 ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE (F); COUNT 31 -  
2 SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE (F); COUNT  
3 33 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE (F);  
4 COUNT 34- SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE  
5 (F); COUNT 35 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF  
6 AGE (F); COUNT 36 - SEXUAL ASSAULT (F); COUNT 37 - FIRST DEGREE  
7 KIDNAPPING (F); COUNT 38- BATTERY WITH INTENT TO COMMIT SEXUAL  
8 ASSAULT (F); COUNT 39- SEXUAL ASSAULT (F); COUNT 40- SEXUAL ASSAULT  
9 (F); COUNT 41 SEXUAL ASSAULT (F); COUNT 42 - PANDERING (F); AND, COUNT  
10 44 - LIVING FROM THE EARNINGS OF A PROSTITUTE (F); COUNTS 1, 15, 17, 18,  
11 27, 30, 32, 43, and 45 were dismissed.

12 Petitioner was sentenced as follows: COUNT 2 - LIFE with a MINIMUM Parole  
13 Eligibility of THIRTY FIVE (35) YEARS in the Nevada Department of Corrections (NDC);  
14 COUNT 3 - LIFE with a MINIMUM Parole Eligibility of THIRTY FIVE (35) YEARS in  
15 the Nevada Department of Corrections (NDC); COUNT 4 - LIFE with a MINIMUM Parole  
16 Eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC); COUNT 5  
17 - LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS in the Nevada Department  
18 of Corrections (NDC); COUNT 6 - LIFE with a MINIMUM Parole Eligibility of THIRTY  
19 FIVE (35) YEARS in the Nevada Department of Corrections (NDC); COUNT 7 - LIFE with  
20 a MINIMUM Parole Eligibility of TEN (10) YEARS in the Nevada Department of  
21 Corrections (NDC); COUNT 8 - LIFE with a MINIMUM Parole Eligibility of THIRTY  
22 FIVE (35) YEARS in the Nevada Department of Corrections (NDC); COUNT 9 - LIFE with  
23 a MINIMUM Parole Eligibility of THIRTY FIVE (35) YEARS in the Nevada Department of  
24 Corrections (NDC); COUNT 10 - LIFE with a MINIMUM Parole Eligibility of THIRTY  
25 FIVE (35) YEARS in the Nevada Department of Corrections (NDC); COUNT 11 - LIFE with  
26 a MINIMUM Parole Eligibility of THIRTY FIVE (35) YEARS in the Nevada Department of  
27 Corrections (NDC); COUNT 12- LIFE with a MINIMUM Parole Eligibility of TEN (10)  
28 YEARS in the Nevada Department of Corrections (NDC); COUNT 13 - LIFE with a

1 MINIMUM Parole Eligibility of THIRTY FIVE (35) YEARS in the Nevada Department of  
2 Corrections (NDC); COUNT 14 - LIFE with a MINIMUM Parole Eligibility of THIRTY  
3 FIVE (35) YEARS in the Nevada Department of Corrections (NDC); COUNT 16 - to a  
4 MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO  
5 (72) MONTHS in the Nevada Department of Corrections (NDC); COUNT 19 – LIFE with a  
6 MINIMUM Parole Eligibility of FIVE (5) YEARS in the Nevada Department of Corrections  
7 (NDC); COUNT 20- LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS in the  
8 Nevada Department of Corrections (NDC); COUNT 21 - LIFE with a MINIMUM Parole  
9 Eligibility of TWENTY (20) YEARS in the Nevada Department of Corrections (NDC);  
10 COUNT 22- LIFE with a MINIMUM Parole Eligibility of TWENTY (20) YEARS in the  
11 Nevada Department of Corrections (NDC); COUNT 23 - to a MINIMUM of TWENTY  
12 EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS in the  
13 Nevada Department of Corrections (NDC); COUNT 24 - to a MINIMUM of TWENTY  
14 FOUR (24) MONTHS and a MAXIMUM of SIXTY (60) MONTHS in the Nevada  
15 Department of Corrections (NDC); COUNT 25 - LIFE with a MINIMUM Parole Eligibility  
16 of FIVE (5) YEARS in the Nevada Department of Corrections (NDC); COUNT 26 - LIFE  
17 with a MINIMUM Parole Eligibility of TWENTY (20) YEARS in the Nevada Department  
18 of Corrections (NDC); COUNT 28 - LIFE with a MINIMUM Parole Eligibility of FIVE (5)  
19 YEARS in the Nevada Department of Corrections (NDC); COUNT 29 - LIFE with a  
20 MINIMUM Parole Eligibility of TWENTY (20) YEARS in the Nevada Department of  
21 Corrections (NDC); COUNT 31 - LIFE with a MINIMUM Parole Eligibility of TWENTY  
22 (20) YEARS in the Nevada Department of Corrections (NDC); COUNT 33 - LIFE with a  
23 MINIMUM Parole Eligibility of TWENTY (20) YEARS in the Nevada Department of  
24 Corrections (NDC); COUNT 34 - LIFE with a MINIMUM Parole Eligibility of TWENTY  
25 (20) YEARS in the Nevada Department of Corrections (NDC); COUNT 35 - LIFE with a  
26 MINIMUM Parole Eligibility of TWENTY (20) YEARS in the Nevada Department of  
27 Corrections (NDC); COUNT 36 - LIFE with a MINIMUM Parole Eligibility of TEN (10)  
28 YEARS in the Nevada Department of Corrections (NDC); COUNT 37 - LIFE with a

1 MINIMUM Parole Eligibility of FIVE (5) YEARS in the Nevada Department of Corrections  
2 (NDC); COUNT 38 - LIFE with a MINIMUM Parole Eligibility of TWO (2) YEARS in the  
3 Nevada Department of Corrections (NDC); COUNT 39- LIFE with a MINIMUM Parole  
4 Eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC); COUNT  
5 40 - LIFE with a MIN MUM Parole Eligibility of TEN (10) YEARS in the Nevada  
6 Department of Corrections (NDC); COUNT 41 - LIFE with a MINIMUM Parole Eligibility  
7 of TEN (10) YEARS in the Nevada Department of Corrections (NDC); COUNT 42- to a  
8 MINIMUM of TWENTY FOUR (24) MONTHS and a MAXIMUM of SIXTY (60)  
9 MONTHS in the Nevada Department of Corrections (NDC); and COUNT 44 - to a  
10 MINIMUM of EIGHTEEN (18) MONTHS and a MAXIMUM of FORTY EIGHT (48)  
11 MONTHS in the Nevada Department of Corrections (NDC); COUNTS 2, 3, 6, 8, 9, 10,  
12 11,13, and 14 are to run CONCURRENT with each other; COUNT 21 to run  
13 CONSECUTIVE to COUNT 22; COUNTS 4, 5, 7, 12, and 20 are to run CONCURRENT  
14 with each other and to the other Counts; COUNT 16 to run CONCURRENT to the other  
15 Counts; COUNTS 19, 25, 28, and 37 are to run CONCURRENT with each other and to the  
16 other Counts; COUNT 23 to run CONCURRENT to the other Counts; COUNT 24 to run  
17 CONCURRENT to the other Counts; COUNTS 26, 29, 31, 33, 34, and 35 are to run  
18 CONCURRENT with each other and CONSECUTIVE to the other Counts; COUNTS 36,  
19 39, 40, and 41 are to run CONCURRENT with each other; COUNT 38 to run  
20 CONCURRENT to the other Counts; and, COUNT 42 to run CONSECUTIVE to COUNT  
21 44, with NINE HUNDRED SEVENTY NINE (979) DAYS CREDIT FOR TIME SERVED.  
22 Petitioner's AGGREGATE TOTAL SENTENCE is LIFE with a MINIMUM sentence of  
23 SEVEN HUNDRED TWENTY (720) MONTHS.

24 On October 27, 2015, Petitioner filed a Notice of Appeal.

25 On November 2, 2015, the Court filed the Judgment of Conviction.

26 On November 14, 2016, the Court filed an Amended Judgment of Conviction.

27 On May 24, 2017, the Supreme Court of Nevada affirmed Petitioner's Judgment of  
28 Conviction. Remittitur issued on November 21, 2017.



1 On November 16, 2018, Petitioner filed a Petition for Writ of Habeas Corpus. On  
2 June 6, 2019, the Court appointed petitioner post-conviction counsel. On June 20, 2019, Mr.  
3 Jackson confirmed as counsel. On November 1, 2019, Petitioner filed his Supplemental  
4 Points and Authorities in Support of Petition for Writ of Habeas Corpus for Post-Conviction  
5 Relief ("Petition"). On April 6, 2020, the State filed its Response. On April 10, 2020,  
6 Petitioner filed his Reply. On April 23, 2020, this Court denied Petitioner's Petition.

### 7 **STATEMENT OF THE FACTS**

8 Petitioner physically and sexually assaulted T.D. and several of her children between  
9 2004 and 2012. T.D. and Petitioner first became acquainted in 2004 in Louisiana and T.D.  
10 moved to Las Vegas shortly thereafter. For several months between 2004 and 2005, T.D. and  
11 her five children (V.D., M.D., S.D., Tah. D., and Taq. D.) lived with Petitioner's girlfriend,  
12 who they came to call "Miss Ann."

13 At some point in 2005, T.D. and her children moved to Utah where they stayed for  
14 about two years. When they returned to Las Vegas in July of 2007, T.D. and her eldest  
15 child, V.D., moved into Petitioner's mother's house. The other four children went to live  
16 with Petitioner and Miss Ann on Blankenship Street. T.D. and V.D. moved several times  
17 over the next year before moving into the Blankenship house. From 2008 to 2010, Petitioner,  
18 Miss Ann, T.D. and T.D.'s five children lived at Blankenship. In 2010, T.D., V.D., M.D.,  
19 and S.D., moved out of the Blankenship house and into an apartment in Henderson, while  
20 Tah. D. and Taq. D. remained at Blankenship with Petitioner and Miss Ann. Tah. D. and  
21 Taq. D. joined their mom and siblings in Henderson for the summer of 2012, before  
22 returning to the house on Blankenship. Taq. D. and Tah. D. were removed from Petitioner  
23 and Miss Ann's home in the Fall of 2012 and lived with a foster family for about a year  
24 before being reunited with T.D., who they resided with at the time of trial.

25 T.D. was working as a cocktail waitress in Louisiana where she lived with her five  
26 children when she met Petitioner in 2004. T.D.'s children, who ranged in age from toddlers  
27 to twelve years old, were enrolled in school for the first time in 2004. Petitioner, a Las Vegas  
28 resident, was visiting Louisiana and met T.D. at the bar where she worked. Shortly

1 thereafter, T.D. left Louisiana for Las Vegas, while her children stayed behind. While  
2 neighbors periodically checked on the children, twelve-year-old V.D. was primarily  
3 responsible for the care of her younger siblings. A few days after T.D.'s arrival in Las Vegas,  
4 Petitioner's brother picked up T.D.'s children and moved them from Louisiana to Las Vegas.

5 In 2004, when T.D.'s children moved to Las Vegas, Petitioner's girlfriend, Miss Ann,  
6 was living at a house on Trish Lane while Petitioner lived in a separate apartment. The  
7 children and T.D. moved in with Miss Ann, where they lived for about six months. During  
8 the same period of time, Petitioner regularly hit V.D. and S.D. with both his hands and a belt.  
9 Petitioner also first sexually assaulted V.D. who was approximately twelve during this time,  
10 between December 2004 and May 2005, while she was living with Miss Ann and he was  
11 living in his own apartment.

12 One morning when V.D.'s siblings were ill, Petitioner took V.D. and her siblings to  
13 his apartment, where the children fell asleep. When V.D. woke up, her siblings were no  
14 longer in the house and Petitioner told V.D. that they were at the park. Petitioner entered the  
15 bedroom where V.D. was, took his penis out of his pants and placed her hand on it. He told  
16 her that he would beat her if she told anyone what happened, and proceeded to remove  
17 V.D.'s pants. He pushed his fingers into her vagina, and then his penis. He told her again that  
18 he would beat her if she told anyone what he had done.

19 About a week after this assault, V.D. told Miss Ann what Petitioner had done to her.  
20 Miss Ann informed Petitioner's mother, as well as T.D. Miss Ann, Petitioner, and  
21 Petitioner's mother confronted V.D., who they berated for reporting this assault and told her  
22 they did not believe her. At that time, no one reported the abuse or sexual assault to  
23 authorities. Subsequently, T.D. and her five children left Las Vegas and moved to Utah.  
24 They lived in Utah for approximately one-and-a half years, before T.D. returned to Las  
25 Vegas alone. While T.D. was in Las Vegas, her children were taken into state custody in  
26 Utah. T.D. returned to Utah and over the course of six months participated in parenting  
27 classes and was reunited with her children. Shortly after, she abruptly moved back to Las  
28 Vegas, this time taking her children with her.

1 When T.D. and her children moved back to Las Vegas in the summer of 2007, Miss  
2 Ann and Petitioner were living together in a house on Blankenship Street. T.D.'s four  
3 youngest children moved into that house, while T.D. and V.D. moved into the house of  
4 Petitioner's mother. 11 AA 1544-47. Petitioner committed another sexual assault on V.D.,  
5 who was 15 years old, during this time period. Leading up to this assault, Petitioner believed  
6 V.D. was a virgin and told her he wanted to "take her virginity" and made her pick a date for  
7 it to occur. On August 24, 2007, Petitioner, T.D., and V.D. sat in Petitioner's car outside his  
8 mother's house, where he taunted V.D., saying he would be taking her virginity later.  
9 Petitioner drove around town with V.D. and T.D. in the car during the day, picking up  
10 alcohol which all three consumed. That night, Petitioner drove the three of them up to the top  
11 of a hill where he parked the car. Initially, Petitioner and T.D. sat in the front seat, while  
12 V.D. sat in the back. Petitioner moved to the back seat where he began to rub V.D.'s breasts  
13 while her mother watched. T.D. seemed amused as Petitioner removed her daughter's pants.  
14 He raped V.D. in the backseat of the car by forcing his penis into her vagina and told her he  
15 would do the same to her again. Afterwards, Petitioner drove back to his mother's house  
16 where he dropped off V.D. and T.D.

17 In the next few months, T.D. and V.D. moved out of Petitioner's mother's house and  
18 into a long-term motel efficiency apartment. T.D.'s four youngest children continued to live  
19 with Petitioner and Miss Ann on Blankenship Drive. While T.D. and V.D. lived in the  
20 efficiency, Petitioner pressured T.D. to engage in sex work and give the money she earned to  
21 him, in addition to the wages she earned through her job at Bally's housekeeping. Petitioner  
22 and T.D. engaged in a consensual sexual relationship during this time. Petitioner also  
23 continued to sexually assault V.D., who was then 15, while she and T.D. lived in the  
24 efficiency. At times, Petitioner would come to the apartment while T.D. was at work, drink  
25 beer, and force V.D. to have sex with him. Other times he would rape V.D. while T.D. was  
26 home. On at least two occasions, T.D. engaged in sexual activities with V.D. at Petitioner's  
27 behest. Specifically, Petitioner insisted that T.D. insert one end of a sex toy into her vagina  
28 while the other end was inserted into V.D.'s vagina. He also forced T.D. to perform oral sex

1 on V.D. without V.D.'s consent and forced T.D. to hold a vibrator to V.D.'s genitals. On  
2 another occasion, Petitioner became enraged with T.D. who had not surrendered enough  
3 money to him, and in response he raped her by forcing his penis into her anus.

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6 After about six months, T.D. and V.D. moved from the efficiency apartment to an  
7 apartment on Walnut Street, where they lived for about six months. Petitioner continued to  
8 rape V.D., who was 15 years old, at the apartment on Walnut Street. In July of 2008, T.D.  
9 and V.D. moved into the Blankenship house. Petitioner, Miss Ann, Miss Ann's daughter,  
10 T.D., and all five of T.D.'s children were living in the house on Blankenship at that point.  
11 Petitioner raped V.D., aged 16, once while she lived at the Blankenship house, in the  
12 bathroom connected to his bedroom.

13 Petitioner was also physically abusive to T.D. and her children. Among other  
14 incidents, Petitioner struck the children with a belt, punched S.D. in the face and stomach,  
15 and strangled M.D. Petitioner similarly struck T.D. with a belt on at least one occasion. V.D.  
16 lived there for about two years before she and T.D. moved to Henderson with two of V.D.'s  
17 siblings. That left T.D.'s youngest two children (Tah. D. and Taq. D.) with Petitioner and  
18 Miss Ann at the Blankenship house, while T.D., V.D., M.D., and S.D. lived in an apartment  
19 called "St. Andrews."

20 Petitioner also raped V.D. once while she was living at the St. Andrew's apartment,  
21 and approximately 17 years old. In 2010, when V.D., her mom, and siblings were moving  
22 into the St. Andrew's apartment, V.D. met Rose Smith, who she came to call Miss Rose.  
23 Over the course of several months, V.D. spent time at Miss Rose's house, where she  
24 eventually lived for a period of time. Before V.D. moved in with Miss Rose, while she was  
25 visiting in December of 2011, V.D. told Miss Rose about the sexual abuse she had  
26 experienced. Miss Rose took V.D. to a police station in Henderson, where the desk officer  
27 called the special victims unit and Detective Aguiar was dispatched to the station to  
28 interview Miss Rose and V.D. After interviewing V.D. at the station, Detective Aguiar went

1 to V.D.'s home on Center Street where T.D. and two of V.D.'s siblings lived. Over the  
2 course of his interviews, Detective Aguiar learned that V.D. had been physically and  
3 sexually assaulted by Petitioner on multiple occasions and that V.D.'s younger sisters were  
4 currently living with Petitioner. Detective Aguiar then proceeded to Petitioner's home on  
5 Blankenship. After interviewing everyone in the home, the officers concluded that probable  
6 cause did not exist to make an arrest. The officers from Henderson Police Department made  
7 contact with CPS who began an investigation as well.

8 In the summer of 2012, two years after T.D., V.D., S.D., and M.D. moved out of the  
9 Blankenship house, and a few months after the police first questioned him, Petitioner began  
10 sexually assaulting Tah. D., who was twelve years old. On more than one occasion,  
11 Petitioner sexually assaulted Tah. D. in the bathroom attached to his bedroom by rubbing her  
12 breasts and the outside of her vagina with his hand, and putting his penis inside her vagina.  
13 At other times, he forced Tah. D. to put her hand on his penis, and put his penis in her mouth  
14 and vagina in her bedroom. He also sexually assaulted Tah. D. in the same manner in the  
15 garage. On one particular occasion, he woke Tah. D. and took her from her bedroom to the  
16 laundry room where he unbuckled his pants and forced his fingers in her vagina. When Taq.  
17 D. began to approach the laundry room, he stopped and told Tah. D. not to tell anyone what  
18 he had done. Taq. D. saw Petitioner through a crack in the laundry room door touching Tah.  
19 D.'s leg and asked Tah. D. what happened. Tah. D. subsequently told Taq. D. that Petitioner  
20 had molested her. Together, the two girls told Miss Ann. At that time, Miss Ann took both  
21 Tah. D. and Taq. D. to a gynecologist for pelvic exams. Miss Ann did not report the  
22 disclosure to the police and, although Tah. D. and Taq. D. briefly lived with their mother and  
23 siblings in Henderson during the summer of 2012, they returned to the Blankenship house in  
24 September.

25 In September of 2012, approximately nine months after the police first reported to the  
26 Blankenship house and two or three months after Tah. D. was sexually assaulted, Taq. D.  
27 called the CPS hotline to report Petitioner sexually assaulting Tah. D. CPS and the Las  
28 Vegas Metropolitan Police Department were assigned to the case and arranged for Tah. D.

1 and Taq. D. to be interviewed and undergo medical exams at the Children's Assessment  
2 Center. Miss Ann was also interviewed at that time. T.D. and her other children were  
3 subsequently interviewed. Petitioner was arrested early in 2013 and by the start of trial in  
4 2014, Tah. D. and Taq. D. had been reunited with their mother and lived in Henderson.

5 //

6 //

### 7 ANALYSIS

8 Petitioner brings eight (8) grounds in his Petition. The first seven (7) grounds allege  
9 ineffective assistance of counsel. Pet. at 2. Ground eight (8) alleges that cumulative error by  
10 defense counsel requires reversal of this conviction. Pet. at 2.

11 The Sixth Amendment to the United States Constitution provides that, "[i]n all  
12 criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel  
13 for his defense." The United States Supreme Court has long recognized that "the right to  
14 counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466  
15 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138,  
16 865 P.2d 322, 323 (1993).

17 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
18 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test  
19 of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138,  
20 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's  
21 representation fell below an objective standard of reasonableness, and second, that but for  
22 counsel's errors, there is a reasonable probability that the result of the proceedings would  
23 have been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada  
24 State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland  
25 two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to  
26 approach the inquiry in the same order or even to address both components of the inquiry if  
27 the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct.  
28 at 2069.

1 The court begins with the presumption of effectiveness and then must determine  
2 whether the defendant has demonstrated by a preponderance of the evidence that counsel  
3 was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective  
4 counsel does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the  
5 range of competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev.  
6 430, 432, 537 P.2d 473, 474 (1975).

7 //

8 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
9 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
10 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
11 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
12 (2002).

13 Based on the above law, the role of a court in considering allegations of ineffective  
14 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
15 whether, under the particular facts and circumstances of the case, trial counsel failed to  
16 render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708,  
17 711 (1978). This analysis does not mean that the court should “second guess reasoned  
18 choices between trial tactics nor does it mean that defense counsel, to protect himself against  
19 allegations of inadequacy, must make every conceivable motion no matter how remote the  
20 possibilities are of success.” Id. To be effective, the constitution “does not require that  
21 counsel do what is impossible or unethical. If there is no bona fide defense to the charge,  
22 counsel cannot create one and may disserve the interests of his client by attempting a useless  
23 charade.” United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19  
24 (1984).

25 “There are countless ways to provide effective assistance in any given case. Even the  
26 best criminal defense attorneys would not defend a particular client in the same way.”  
27 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
28 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,

1 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
2 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's  
3 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
4 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

5 Even if a defendant can demonstrate that his counsel's representation fell below an  
6 objective standard of reasonableness, he must still demonstrate prejudice and show a  
7 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
8 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
9 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
10 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-  
11 89, 694, 104 S. Ct. at 2064-65, 2068).

12 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
13 disputed factual allegations underlying his ineffective-assistance claim by a preponderance  
14 of the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
15 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief  
16 must be supported with specific factual allegations, which if true, would entitle the petitioner  
17 to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and  
18 “naked” allegations are not sufficient, nor are those belied and repelled by the record. Id.  
19 NRS 34.735(6) states in relevant part, “[Petitioner] must allege specific facts supporting the  
20 claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may  
21 cause your petition to be dismissed.” (emphasis added).

## 22 **I. COUNSEL’S PRETRIAL INVESTIGATION WAS NOT INEFFECTIVE**

23 In Ground One (1), Petitioner alleges that his trial counsel was ineffective in pretrial  
24 investigation. Specifically, Petitioner seems to allege that counsel was ineffective for not  
25 fully investigating how to attack the credibility of the State’s main witness. Pet. at 5-6.  
26 Petitioner also alleges that counsel was ineffective for not seeking the services of a credible  
27 expert witness to do a pretrial psychiatric examination of the victims and challenge the  
28 State’s expert witnesses. Pet. at 7.



1 A defendant who contends his attorney was ineffective because he did not adequately  
2 investigate must show how a better investigation would have rendered a more favorable  
3 outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). “Strickland  
4 does not enact Newton’s third law for the presentation of evidence, requiring for every  
5 prosecution expert an equal and opposite expert for the defense.” Harrington v. Richter, 562  
6 U.S. 86, 111, 131 S.Ct. a770, 791 (2011).

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8 //

9 First, the Court notes that Petitioner has not even alleged what a different  
10 investigation would have revealed. Petitioner merely asserts that the main witness’s  
11 credibility could potentially have been attacked and that a psychiatric examination could  
12 have been run. Petitioner does not allege what impeachment evidence a better investigation  
13 would have turned up. In fact, he does not even mention the name (or in the instant case  
14 identifying initials) of the “main witness” who trial counsel was allegedly obligated to  
15 investigate. Further, Petitioner does not allege what a psychiatric examination would have  
16 contributed to Petitioner’s defense at trial. As such, the Court finds that Petitioner’s claims  
17 must fail. Further, the Court finds that these claims are bare and naked assertions pursuant to  
18 Hargrove, and thereby suitable only for summary dismissal.

19 Second, the Court finds that Petitioner is incorrect in alleging that counsel was  
20 ineffective for failing to secure an expert witness to challenge the State’s expert witnesses.  
21 “Strickland does not enact Newton’s third law for the presentation of evidence, requiring for  
22 every prosecution expert an equal and opposite expert for the defense.” Harrington, 562 U.S.  
23 at 111, 131 S. Ct. at 791. Trial counsel has the “immediate and ultimate responsibility of  
24 deciding if and when to object, which witnesses, if any, to call, and what defenses to  
25 develop.” Rhyne, 118 Nev. at 8, 38 P.3d at 167. Once again, Petitioner has made no claims  
26 regarding why such an expert witness needed to be called. Petitioner merely alleges that an  
27 expert witness could have challenged the State’s child medical experts. Pet. at 7. However,

Petitioner does not identify what grounds an expert would or even could have challenged the State's expert witnesses on.

Third, assuming that Petitioner means V.D. when he refers to the "main witness" (as V.D. was the victim of the majority of Petitioner's sexual assaults), the Court finds that the record shows that counsel's cross-examination evidenced a thorough understanding both of the case and the witness's history. Counsel began by reviewing previous statements and testimony V.D. had given in the case. Trial Transcript, Day 6, at 37. Counsel went on to demonstrate a thorough understanding of the factual allegations surrounds the case. See inter alia, Id. at 38-53. Counsel further attempted to impeach V.D. with her preliminary hearing transcripts. Id. at 58-72. None of these things would have been possible without a thorough investigation into the case. As such, it is clear that Petitioner's counsel conducted a reasonable pre-trial investigation.

As such, Petitioner has brought only bare and naked allegations that it was unreasonable for counsel not to undertake these actions in her investigation. Pursuant to Hargrove, these claims are denied.

## **II. TRIAL COUNSEL WAS NOT INEFFECTIVE DURING JURY SELECTION**

### **A. Counsel Was Not Ineffective For Not Requesting Sequestered Individual Voir Dire**

Petitioner first alleges that counsel was ineffective for failing to secure sequestered individual voir dire. Pet. at 8. According to Petitioner, such a failure resulted in an impartial jury because (1) jurors may have been unwilling to reveal that they had previously been victims of sexual assault, and (2) those jurors who had been victims of sexual assault may have been seen as more credible by other jurors, and therefore have been able to sway their minds during jury deliberation.

First, the Court finds that such a decision was not unreasonable. Petitioner has cited to no authority suggesting that not requesting sequestered individual voir dire constitutes ineffective assistance of counsel. Petitioner's entire premise underlying this claim is that

jurors who had been victims of sexual assault may not come forward if the voir dire was not sequestered. This claim is belied not only by the record, but Petitioner's own pleadings. The Court notes that Petitioner readily admits the numerous jurors admitted they had been the victims of sexual assault during voir dire. Pet. at 8. The record reflects that the court asked the jurors whether they or anyone close to them had been the victim of sexual crimes. (Trial Transcript, Day 1, at 111). It was further made clear to the jurors that they were free to approach the bench to discuss any sensitive answers they did not wish to vocalize to the public when the district court had one potential juror do just that when the juror became emotional while discussing her past. (Trial Transcript, Day 1, at 123). The jury was therefore aware that they could disclose any sensitive information out of the presence of the rest of the panel. Given that this option was available and made known to the jury, it is disingenuous to suggest that jurors would have responded differently to a sequestered voir dire.

The Court would further note that Petitioner does not actually allege in this section that a juror concealed their relevant history and subsequently had a disproportionate effect during deliberations. Petitioner merely asserts that this *could* have occurred. Pet. at 9.<sup>1</sup> Given that Petitioner has not identified any jurors that concealed bias, his entire argument is based on hypotheticals. As such, the Court finds that Petitioner has failed to establish that he was prejudiced as a result of his trial counsel's decision to not request sequestered individual voir dire.

Given that the voir dire strategy pursued by counsel was not unreasonable, and that Petitioner has failed to demonstrate he was prejudiced by failing to even allege that an impartial jury was empaneled as a result, counsel was not ineffective. This claim is denied.

### **B. Trial Counsel Was Not Ineffective For Failing to Hire a Jury Selection Expert**

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<sup>1</sup> The Court does note however, that Petitioner claims under Ground Six that Yvonne Lewis (one of the jurors in the underlying case), discussed being sexually abused as a child during the jury deliberations. Pet. at 22. However, the record shows that Yvonne Lewis raised her hand during voir dire, indicating that she or someone close to her had been the victim of sexual crimes. Trial Transcript, Day 1, at 121-22. Specifically, Ms. Lewis indicated that her family had a history of domestic abuse that occurred while she young. However, she did not allege any sexual assault, and stood by that assertion at a later evidentiary hearing. Id.; Recorders Transcript of Proceedings RE: Evidentiary Hearing on Defendant's Motion for New Trial, at 31-32, November 24, 2014. When questioned, Ms. Lewis indicated that despite these circumstances, she could be fair and impartial during the trial. Id. Given that Ms. Lewis indicated both at voir dire and at an evidentiary hearing that she had not been sexually assaulted, her selection as a juror in this case does not support Petitioner's argument.

1 Appellant next argues that his trial counsel was ineffective for failing to hire a jury  
2 selection expert. Pet at 10. As an initial point, the Court notes that once again, Petitioner does  
3 not even allege that an impartial jury was empaneled as a result of this trial decision. As  
4 such, the Court finds that Petitioner has failed to reach his burden of even arguing that this  
5 decision prejudiced the outcome of his trial under Strickland's second prong.

6 In addition, the Court finds that Petitioner has failed to show that the decision not to  
7 hire a jury selection expert was an unreasonable one. First, Petitioner does not allege what a  
8 jury selection expert would have contributed to his case. Instead, Petitioner merely states that  
9 "[a] jury consultant, would have seen many things that counsel missed because they would  
10 have been trained to look for certain things." Pet. at 14. Petitioner does not state what  
11 "things" his trial counsel missed, and instead relies on the circular argument that trial counsel  
12 must have missed "things" because he did not hire a jury selection expert. Such bare and  
13 naked allegations cannot support a successful ineffective assistance of counsel claim.  
14 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

15 Second, Petitioner only points to the partial voir dire of two potential jurors as proof  
16 that a jury selection expert was needed. However, the Court notes that neither of these two  
17 jurors was ultimately selected to be on the jury, showing that no jury selection expert was  
18 necessary to distinguish which of the jurors displayed bias. Trial Transcript, Day 1, at  
19 111,123; Trial Transcript, Day 2, at 239. Given that neither of these jurors were selected,  
20 Petitioner has brought no actual evidence forward indicating that a biased jury was  
21 empaneled as a result of his counsel's decisions. As such, Petitioner has not demonstrated  
22 that he was prejudiced by counsel's decision not to hire a jury expert. Therefore, counsel  
23 cannot be deemed ineffective, and this claim is denied.

### 24 **III. COUNSEL'S DECISIONS REGARDING WHICH PRE-TRIAL MOTIONS** 25 **TO FILE WERE NOT INEFFECTIVE**

26 In Ground Three, Petitioner alleges that counsel was ineffective for failing to file  
27 various motions. Pet. at 2. "Strategic choices made by counsel after thoroughly investigating  
28 the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825

1 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).  
2 In essence, the court must “judge the reasonableness of counsel's challenged conduct on the  
3 facts of the particular case, viewed as of the time of counsel's conduct.” Strickland, 466 U.S.  
4 at 690, 104 S. Ct. at 2066. Counsel cannot be ineffective for failing to make futile objections  
5 or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

6 **A. Counsel Had No Obligation to File a Motion For a Defense Psychiatric**  
7 **Examination**

8 Petitioner first alleges in this section that his counsel was ineffective for failing to file  
9 a Motion for Defense Psychiatric Examination. Pet. at 14. Petitioner alleges that there were  
10 indications that Tah. D. and M.D. may have had psychological problems that would have  
11 rendered their testimony inherently suspect or unreliable. Pet. at 15. Petitioner bases his  
12 argument off Tah.D. being diagnosed with “cognitive delay” and M.D. being diagnosed with  
13 “anxiety disorder.”

14 In Abbott v. State, 122 Nev. 715, 138 P.3d 462 (2006), the Nevada Supreme Court  
15 departed from a two year old precedent by overruling State v. District Court (Romano), 120  
16 Nev. 613, 97 P.3d 594 (2004). In doing so, the Court returned to the requirements it  
17 previously set forth in Koerschner v. State, 116 Nev. 111, 13 P.3d 451 (2000), reasserting  
18 that a trial judge should order an independent psychological or psychiatric examination of a  
19 child victim in a sexual assault case only if the defendant presents a compelling reason for  
20 such an examination. “Thus, compelling reasons to be weighed, not necessarily to be given  
21 equal weight, involve whether the State actually calls or obtains some benefit from an expert  
22 in psychology or psychiatry, whether the evidence of the offense is supported by little or no  
23 corroboration beyond the testimony of the victim, and whether there is a reasonable basis for  
24 believing that the victim's mental or emotional state may have affected his or her veracity.”  
25 Koerschner, 116 Nev. at 116-117, 13 P.3d at 455.

26 First, the Court notes that Petitioner does not even address that these factors exist,  
27 much less show that they would have weighed in favor of granting the Motion. As such,  
28

1 Petitioner's claim that this Motion would have been meritorious is a bare and naked  
2 allegation suitable only for summary dismissal.

3 Second, the Court finds that the factors articulated in Koerschner would not have  
4 weighed towards a finding that an independent psychological or psychiatric examination was  
5 required. First, there was significant corroborating evidence to these two victims' testimony.  
6 The State called a large number of witnesses, who testified to Petitioner's violent and  
7 sexually criminal behavior towards multiple members of the Duke family. See inter alia,  
8 Trial Transcript, Day 1, at 73, 105-117 (testimony of T.D.); Trial Transcript, Day 5, at 112,  
9 120-124 (testimony of V.D.); Trial Transcript, Day 8, at 85, 103-115, 118-120, 137-145  
10 (testimony of Taq. D.); Trial Transcript, Day 9, at 96, 104-107 (testimony of CPS employee  
11 Sholeh Nourbakhsh). Second, neither disorder suffered by either victim bears on their  
12 credibility. M.D. has a general anxiety disorder (Trial Transcript, Day 7, at 66-71), while  
13 Tah.D. has a learning disability (Trial Transcript, Day 9, at 92-94). Neither of these  
14 diagnoses affect one's ability to discern reality. Neither do these diagnoses make one  
15 inherently unreliable or likely to fabricate. In fact, both witnesses were able to respond  
16 articulately and clearly at trial. As such, the factors articulated in Koerschner would not have  
17 weighed towards finding that an independent psychological examination was required.

18 Finally, the Court notes that approximately one (1) year after the trial in the  
19 underlying case took place, the Nevada legislature codified NRS 50.700. NRS 50.700(1)  
20 forbids the Court from ordering a victim or witness to a sexual assault to undergo a  
21 psychological or psychiatric examination. NRS 50.700. While the date the statute become  
22 operable means that NRS 50.700 would not have been applicable at the time of the  
23 underlying trial, it's subsequent inclusion in this jurisdiction's statutory framework indicates  
24 that the Motion would have been disfavored (as the underlying offenses of this Petition  
25 include many charges of Sexual Assault). As such, any Motion filed to this effect would  
26 likely have been denied.

27 Since the Motion was not likely to succeed, filing it likely would have been a  
28 frivolous exercise. Counsel has no obligation to file frivolous motions. See Ennis v. State,

1 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). However even if the motion would not have  
2 been frivolous, its dubious chances for success would make whether to file such a motion a  
3 strategic decision. “Strategic choices made by counsel after thoroughly investigating the  
4 plausible options are almost unchallengeable.” Dawson v. State, 108 Nev. 112, 117, 825 P.2d  
5 593, 596 (1992). As such, the Court finds that counsel was not ineffective for not filing this  
6 motion, and this claim is denied.

7 **B. Defense Counsel Was not Ineffective For Not Filing a Motion in Limine**

8 Petitioner next argues that his counsel was ineffective for failing to oppose the State’s  
9 Motion in Limine “to restrict cross-examination for bias.” This pleading bare of facts and  
10 citations. Odyssey does not reflect any written Motion in Limine on file. If the alleged  
11 Motion was an oral motion, Petitioner has provided no citation to the record regarding where  
12 it occurred. Neither has Petitioner said what witness this Motion was in regards to, or on  
13 what day of this 14-day trial it occurred. Given that this claim is the epitome of a bare and  
14 naked allegation, it is denied pursuant to Hargrove.

15 **IV. COUNSEL WAS NOT INEFFECTIVE DURING TRIAL**

16 **A. Trial Counsel’s Impeachment Was Effective**

17 Petitioner next alleges that counsel was ineffective in their cross-examination of  
18 Tah.D. Pet. at 17. Specifically, Petitioner claims that the State’s objections kept any useful  
19 information from being elicited. Such a claim is belied by the record.

20 Petitioner’s complaint regarding counsel’s performance after the State objected to a  
21 line of questioning for “lack of foundation” is confusing. The Court notes that the objection  
22 was posed merely because the question was asked in a confusing manner. Trial Transcript,  
23 Day 9, at 161. Counsel clarified her question, and was able to proceed with the line of  
24 questioning. Id. The State further objected to a hearsay statement which was sustained. Id. at  
25 167. However, the failure to get a hearsay statement admitted into evidence is not a  
26 byproduct of counsel’s effectiveness, it is a byproduct of the fact that the statement was  
27 hearsay and not permitted under the rules of evidence.

1 Further, the Court finds that Petitioner's counsel was effective on cross-examination.  
2 Counsel elicited that Petitioner was the one who drove the children to well in school. Trial  
3 Transcript, Day 9, at 140-141. Counsel elicited that the witness had reported feeling  
4 "protected" while staying with Petitioner. Id. at 151. Counsel elicited that the witness had  
5 told detectives she had no problems with anybody in the house. Id. at 153. Counsel outlined  
6 the potential contradiction between witness saying she was raped for the first time at age 11,  
7 but saying during that same year she was not uncomfortable around Petitioner. Pet. at 153-  
8 54. Counsel elicited as much information that was helpful to Petitioner's case as was  
9 possible under the circumstances. Further, the scope of cross-examination is a strategic  
10 decision that is virtually unchallengeable. See Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163,  
11 167 (2002); Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992).

12 Here, the record demonstrates that counsel effectively elicited varying pieces of  
13 helpful information on cross-examination. Further, the record belies Petitioner's claim that  
14 his counsel was ineffective at dealing with the State's objections. Finally, Petitioner has  
15 failed to demonstrate how a different cross-examination would have made a more favorable  
16 outcome at trial probable. Therefore, the Court finds that counsel cannot be deemed  
17 ineffective and this claim is denied.

18 **B. There Was No Prosecutorial Misconduct For Petitioner's Counsel to Object**  
19 **To**

20 Petitioner next claims his counsel was ineffective for failing to object when the State  
21 committed prosecutorial misconduct by allegedly vouching for witnesses during closing  
22 argument. Pet. at 18. Specifically, Petitioner raises issue with the following excerpt from the  
23 States closing:

24 You heard from the Dukes. Do you really think that they could have  
25 concocted all of this, those people you heard on the stand? There is  
26 no way. Ladies and gentlemen, the State of Nevada cannot hold the  
27 Defendant accountable for his actions. Even the Court cannot hold  
the Defendant accountable for his actions. Only you can. The  
evidence shows that the Defendant is guilty of these charges, so  
please find him guilty. Thank you.

28 Pet. at 18.



1 Vouching occurs when the State “places ‘the prestige of the government behind the  
2 witness’ by providing ‘personal assurances of [the] witness's veracity.’” Browning v. State,  
3 120 Nev. 347, 359, 91 P.3d 39, 48 (2004) (citing U.S. v. Kerr, 981 F.2d 1050, 1053 (9th Cir.  
4 1992). This Court has held that it is not vouching where the State claims that a witness’  
5 identification was “as good as you could ask for” during closing argument. Id. Further,  
6 “when a case involves numerous material witnesses and the outcome depends on which  
7 witnesses are telling the truth, reasonable latitude should be given to the prosecutor to argue  
8 the credibility of the witness—even if this means occasionally stating in argument that a  
9 witness is lying.” Rowland v. State, 118 Nev. 31, 39, 39 P.3d 114, 119 (2002). However, the  
10 State may not go so far as to argue that a witness is a person of “integrity” or “honor.” Id.  
11 Finally, it is the province of counsel to determine what objections, if any, to make during a  
12 closing argument. See Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002) (stating that it  
13 is trial counsel that has the “immediate and ultimate responsibility of deciding if and when to  
14 object, which witnesses, if any, to call, and what defenses to develop”). Counsel cannot be  
15 ineffective for failing to make futile objections or arguments. See Ennis v. State, 122 Nev.  
16 694, 706, 137 P.3d 1095, 1103 (2006).

17 A review of the State’s closing argument shows that no vouching occurred during the  
18 State’s closing argument. Much like in Rowland, the instant case involved multiple material  
19 witnesses, and the outcome was dependent upon whether the jury believed these witnesses  
20 were telling the truth. As such, the State should be afforded reasonable latitude during  
21 closing argument. However, here, said latitude was not even necessary. The State did not  
22 make any personal assurances of the witness’ veracity. As the record plainly shows, the State  
23 was merely highlighting that it had presented extensive corroborating evidence. The State’s  
24 argument that evidence which is corroborated by other evidence should be considered more  
25 persuasive is not vouching, but a common legal principle that has been recognized by the  
26 Court in multiple contexts. See, inter alia, NRS175.291 (stating that the conviction of a  
27 defendant cannot be had on the testimony of an accomplice unless the accomplice is  
28 corroborated by other evidence); Sefton v. State, 72 Nev. 106, 110, 295 P.2d 385, 387 (1956)

1 (stating: “extrajudicial confession does not warrant a conviction unless it is corroborated by  
2 independent evidence”).

3       Given that the statement did not amount to “vouching,” the State did not commit  
4 prosecutorial misconduct. It therefore would have been futile for counsel to object. Counsel  
5 has no obligation to raise futile arguments pursuant to Ennis. Further, even if statements  
6 were to be considered vouching, the statements were not such that the failure to object would  
7 have rendered a more favorable outcome at trial probable. See Rowland, 118 Nev. at 31, 39  
8 P.3d at 167 (stating: “the level of misconduct necessary to reverse a conviction depends upon  
9 how strong and convincing is the evidence of guilt”). In the instant case, the evidence of guilt  
10 was strong. The State presented multiple witnesses, including the entire Duke Family,  
11 individuals close with the family, and investigating officers. Given the overwhelming  
12 evidence presented against Petitioner, even if the statements were considered vouching,  
13 Petitioner was not prejudiced by his counsel not objecting.

14       Therefore, Counsel cannot be held ineffective on this ground, and this claim is denied.  
15       //  
16       //

### 17       **C. Counsel’s Closing Argument Was Adequate**

18       Petitioner next argues that his counsel was ineffective during closing argument. Pet. at  
19 19. Petitioner does not articulate why, or what portions of the closing argument were  
20 ineffective. Petitioner does not allege what counsel should or even could have done  
21 differently in order to present a more compelling closing argument. As such, the Court finds  
22 that this claim is nothing more than a bare and naked allegation suitable only for summary  
23 dismissal pursuant to Hargrove.

24       Further, the court would note that what arguments to present during closing argument  
25 is a strategic decision left to counsel in most circumstances. See Rhyne v. State, 118 Nev. 1,  
26 8, 38 P.3d 163, 167 (2002) (stating that it is trial counsel that has the “immediate and  
27 ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and  
28 what defenses to develop”); but see also (Jones v. State, 110 Nev. 730, 877 P.2d 1052 (1994)

1 (holding that it is reversible error for an attorney to concede guilt during closing argument  
2 over his client's testimonial disavowal).

3 Given that Petitioner has not alleged any issue pursuant to Jones or other rule of law  
4 that confines the scope of counsel's arguments, the only question is whether counsel  
5 performed reasonably at closing. The record reveals this to be the case. Counsel began by  
6 challenging the veracity of the State's witness V.D. Trial Transcript, Day 12, at 70. Counsel  
7 went on to point out the V.D.'s mother T.D. had potential issues with Child Protective  
8 Services when living in Louisiana. Id. at 72. Counsel highlighted that it would have been odd  
9 for T.D. to bring her children back to the Petitioner after they suffered such abuse at his  
10 hands. Id. at 74. Counsel further went on to point out the timing of the reports versus the  
11 timing of the incidents. Id. at 74-75. Counsel went on to reiterate that the children's grades  
12 were the best they had ever been during this time. Id. at 77. The record clearly shows that  
13 counsel's closing argument was designed to discredit the witnesses and attempt to show that  
14 Petitioner had been a positive influence on the family. The Court finds that while this  
15 strategy was ultimately not successful, it was clearly not unreasonable. Therefore, counsel  
16 was not ineffective during closing argument and this claim is denied.

## 17 **V. COUNSEL WAS EFFECTIVE AT SENTENCING**

18 While Petitioner makes to claims under Section five of his Petition, the Court breaks  
19 up its analysis here as they are two distinct issues.<sup>2</sup> Petitioner alleges that counsel performed  
20 ineffectively at sentencing. Specifically, Petitioner claims that it was ineffective for counsel  
21 to not file a sentencing memorandum, as well as to not present any witnesses to provide  
22 mitigation testimony. Pet. at 20.

23 As an initial point, the Court notes that Petitioner has not alleged what information  
24 should or could have been presented in a sentencing memorandum. Petitioner further has not  
25 alleged what witnesses could have been called to present mitigation testimony, or what these  
26 alleged witnesses would have even testified to. As such, the Court finds that Petitioner's  
27  
28

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<sup>2</sup> For analysis on why Petitioner's sentence was neither cruel nor unusual see section VI.

1 claims are bare and naked assertions suitable only for summary dismissal pursuant to  
2 Hargrove.

3 Further, the record demonstrates that Petitioner's counsel performed effectively at  
4 sentencing. Counsel began by noting the number of people who had been called as witnesses  
5 who testified that none of the State's witnesses had spoken up regarding the abuse.  
6 Recorders Transcript RE: Sentencing, at 7, October 27, 2015. To the extent Petitioner  
7 believes these are the witnesses who should have been called, such a decision was  
8 unnecessary. The sentencing judge was the same judge who had presided over the trial, and  
9 as such, had already heard this testimony. Id. at 5. Counsel further noted Petitioner's  
10 relatively old age. Id. at 7. The Court finds that counsel's inability to present a more  
11 sympathetic argument was due not to counsel's alleged ineffectiveness, but the nature of  
12 Appellant's actions. Therefore, this claim is denied.

#### 13 **VI. PETITIONER'S SENTENCE WAS NOT CRUEL AND UNUSUAL**

14 Petitioner also argues that his sentence was cruel and unusual. Pet. at 20-21.

15 The Eighth Amendment to the United States Constitution as well as Article 1, Section  
16 6 of the Nevada Constitution prohibits the imposition of cruel and unusual punishment. The  
17 Nevada Supreme Court has stated that "[a] sentence within the statutory limits is not 'cruel  
18 and unusual punishment unless the statute fixing punishment is unconstitutional or the  
19 sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" Allred v. State, 120 Nev. 410, 92 P.2d 1246, 1253 (2004) (quoting Blume v. State, 112 Nev.  
20 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435,  
21 596 P.2d 220, 221-22 (1979)).

22 Additionally, the Nevada Supreme Court has granted district courts "wide discretion"  
23 in sentencing decisions, and these are not to be disturbed "[s]o long as the record does not  
24 demonstrate prejudice resulting from consideration of information or accusations founded on  
25 facts supported only by impalpable or highly suspect evidence." Allred, 120 Nev. at 410, 92  
26 P.2d at 1253 (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)). A  
27 sentencing judge is permitted broad discretion in imposing a sentence and absent an abuse of  
28

1 discretion, the district court's determination will not be disturbed on appeal. Randell v. State,  
2 109 Nev. 5, 846 P.2d 278 (1993) (citing Deveroux v. State, 96 Nev. 388, 610 P.2d 722  
3 (1980)). As long as the sentence is within the limits set by the legislature, a sentence will  
4 normally not be considered cruel and unusual. Glegola v. State, 110 Nev. 344, 871 P.2d 950  
5 (1994).

6 The Court first notes that Petitioner concedes that his sentence was within the  
7 statutory limits. Pet. at 20-21. Further, Petitioner does not even allege that the Court relied on  
8 impalpable or highly suspect evidence. Instead Petitioner makes a proportionality argument,  
9 alleging that his sentence is simply too long given his crimes. The Court disagrees. Appellant  
10 was convicted for sexually assaulting multiple minors over many years. Appellant was  
11 further convicted of beating minors. Appellant was also convicted of sexually assaulting  
12 their mother and forcing her to work as a prostitute. See generally, Trial Transcript, Day 14.  
13 The sentence is therefore proportional to the crimes committed. As such, Petitioner's  
14 sentence is neither cruel nor unusual, and this claim is denied.

## 15 **VII. COUNSEL WAS NOT INEFFECTIVE IN ARGUING THE MOTION FOR** 16 **A NEW TRIAL**

17 Petitioner next argues that his counsel was ineffective in their preparation and  
18 arguments regarding Petitioner's Motion for a New Trial. Pet. at 21-22. While Petitioner  
19 dedicates multiple pages to trying to relitigate the issue of whether he should have been  
20 granted a new trial due to juror misconduct, his only real claim that counsel was ineffective  
21 is that counsel failed to secure Kathleen Smith's ("Smith") signature on her affidavit once it  
22 had been revised. Pet. a 22-25.

23 The affidavit Petitioner references Smith's allegations that a juror (Yvonne Lewis)  
24 spoke about being sexually assaulted during jury deliberations. Lewis did not indicate during  
25 voir dire that she had ever been sexually assaulted. As such, Petitioner claimed this was  
26 grounds for a new trial due to juror misconduct.

27 However, the Court finds that counsel's failure to get Smith to sign the affidavit does  
28 not constitute ineffective assistance of counsel. Counsel prepared the affidavit after her

1 investigator spoke to Smith. However, Smith requested that changes be made to the affidavit  
2 and refused to sign it, claiming “she did not want to get involved.” Reply to State’s Response  
3 to Motion for a New Trial and Supplement to Defendant’s Motion for a New Trial, at 9-10,  
4 Jul 9, 2014; Recorders Transcript of Proceedings RE: Evidentiary Hearing on Defendant’s  
5 Motion for New Trial, at 22, November 24, 2014. Petitioner’s counsel cannot force someone  
6 to sign a document, and any assertion that her failure to do so constitutes ineffective  
7 assistance of counsel is absurd.

8 Further, the Court finds that counsel’s conduct following Smith’s refusal to sign the  
9 affidavit was reasonable. Counsel requested and received an evidentiary hearing on the issue.  
10 Id.; Reply to State’s Response to Motion for a New Trial and Supplement to Defendant’s  
11 Motion for a New Trial, at 7, Jul 9, 2014. At the hearing, counsel called Smith as a witness,  
12 and asked her to explain her experience during deliberation. Recorders Transcript of  
13 Proceedings RE: Evidentiary Hearing on Defendant’s Motion for New Trial, at 4, 9-17,  
14 November 24, 2014. Counsel further received a hand written statement from Smith detailing  
15 what happened during the deliberation. Id. This statement was attached as Exhibit B to  
16 Petitioner’s Reply.

17 The Court finds that Petitioner’s Motion being denied has nothing to do with  
18 counsel’s alleged ineffectiveness. It has everything to do with the fact that multiple jurors  
19 (including Yvonne Lewis) testified that Lewis did not claim during deliberations that she had  
20 been sexually assaulted. Id. at 31-32, 55. These jurors also indicated that Ms. Smith had  
21 claimed she could not vote guilty based upon Petitioner’s race. Id. at 33, 41. As such, it is  
22 clear that counsel did everything she could have possibly done in investigating this claim.  
23 Counsel was not ineffective on this Ground, and this claim is denied.

24 Further, to the extent Petitioner is seeking to relitigate the fact that he should have  
25 been granted a new trial due to juror misconduct, the Court finds that such a claim is barred  
26 by law of the case doctrine. “The law of a first appeal is law of the case on all subsequent  
27 appeals in which the facts are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535  
28 P.2d 797, 798 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)).

1 “The doctrine of the law of the case cannot be avoided by a more detailed and precisely  
2 focused argument subsequently made after reflection upon the previous proceedings.” Id. at  
3 316, 535 P.2d at 799. Under the law of the case doctrine, issues previously decided on direct  
4 appeal may not be reargued in a habeas petition. Pellegrini v. State, 117 Nev. 860, 879, 34  
5 P.3d 519, 532 (2001) (citing McNelton v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275  
6 (1999)). Furthermore, this Court cannot overrule the Nevada Supreme Court. NEV. CONST.  
7 Art. VI § 6.

8 On November 28, 2017, the Supreme Court of Nevada issued an Order of Affirmance  
9 finding that stated “the district court did not abuse its discretion in denying the motion for a  
10 new trial for juror misconduct, as any misconduct did not prejudice Petitioner.” Order of  
11 Affirmance, at 2, November 28. 2017. As such, the Court finds that any attempt Petitioner  
12 now makes to relitigate this issue is barred by law of the case and is denied.

### 13 **VIII. APPELLATE COUNSEL WAS NOT INEFFECTIVE**

14 Petitioner next argues that his appellate counsel was ineffective for not raising the  
15 following issues on appeal: (1) that Petitioner’s sentence was a cruel and unusual punishment  
16 in violation of the eighth amendment; (2) that the court erred by limiting cross-examination;  
17 and (3) that the court erred by not restraining excessive prosecutorial misconduct. Pet. at 27.

18 There is a strong presumption that appellate counsel's performance was reasonable  
19 and fell within “the wide range of reasonable professional assistance.” See United States v.  
20 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990); citing Strickland, 466 U.S. at 689, 104 S. Ct. at  
21 2065. A claim of ineffective assistance of appellate counsel must satisfy the two-prong test  
22 set forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). In  
23 order to satisfy Strickland’s second prong, the defendant must show that the omitted issue  
24 would have had a reasonable probability of success on appeal. Id.

25 The professional diligence and competence required on appeal involves “winnowing  
26 out weaker arguments on appeal and focusing on one central issue if possible, or at most on a  
27 few key issues.” Jones v. Barnes, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313 (1983). In  
28 particular, a “brief that raises every colorable issue runs the risk of burying good arguments .

1 . . in a verbal mound made up of strong and weak contentions.” Id. at 753, 103 S. Ct. at 3313.  
2 “For judges to second-guess reasonable professional judgments and impose on appointed  
3 counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very  
4 goal of vigorous and effective advocacy.” Id. at 754, 103 S. Ct. at 3314.

5 The Court finds that Appellate counsel was not ineffective for not bringing the claims  
6 Petitioner now urges they should have. The claims Petitioner advocates for are either without  
7 merit, or so bare of factual underpinnings in this Petition that their merit is impossible to  
8 address. First, as the Court articulated in Section VI, Petitioner’s punishment was not cruel  
9 and unusual. Second, it is unclear what witnesses Petitioner was not entitled to fully cross-  
10 examine. The Court notes that appellate counsel did raise the issue on appeal of whether the  
11 district court erred in limiting his cross-examination regarding a book written by T.D. To the  
12 extent this is the issue Petitioner is alleging, his claim is belied by the record. Otherwise, the  
13 underlying claim Petitioner alleges counsel should have brought is nothing more than a bare  
14 and naked allegation. Finally, as the Court articulated in Section IV(B), the State did not  
15 engage in vouching, so any prosecutorial misconduct claim on these grounds would have  
16 been frivolous.

17 Further, the Court notes that Appellate counsel brought the following claims on  
18 appeal: (1) whether the district court erred in restricting the scope of cross examination  
19 regarding a book written by T.D.; (2) whether the court improperly allowed the State to  
20 introduce testimonial hearsay statements into evidence; (3) whether the district court  
21 improperly prevented Petitioner from inquiring into one of children’s past sexual history; (4)  
22 whether Petitioner’s kidnapping charges were incidental to other charges; (5) whether  
23 Petitioner was entitled to a new trial on the basis of juror misconduct; (6) whether there was  
24 insufficient evidence to support Petitioner’s convictions; and (7) whether cumulative error  
25 warranted reversal. Given the multitude of claims brought by appellate counsel, as well as  
26 the lack of merit regarding the claims Petitioner now alleges his counsel should have brought  
27 on appeal, the Court finds that appellate counsel was not ineffective. Therefore, this claim is  
28 denied.



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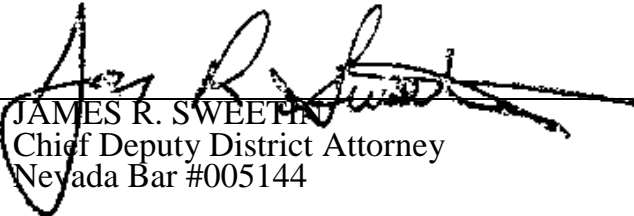
1           **THEREFORE, IT IS HEREBY ORDERED** that the Post-Conviction Petition for  
2 Writ of Habeas Corpus shall be and is DENIED.

3  
4  
5           DATED this 21 day of May, 2020.

6   
7 \_\_\_\_\_  
8 **DISTRICT JUDGE**

9 **STEVEN B. WOLFSON**  
10 Clark County District Attorney  
11 Nevada Bar #001565

12 BY

13   
14 **JAMES R. SWEET**  
15 Chief Deputy District Attorney  
16 Nevada Bar #005144

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**January 17, 2019**

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A-18-784704-W      State Of Nevada, Plaintiff(s)  
vs.  
Frederick Harris, Defendant(s)

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**January 17, 2019      8:30 AM      Petition for Writ of Habeas  
Corpus**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Oram, Christopher R      Attorney  
                 Zadrowski, Bernard B.      Attorney

**JOURNAL ENTRIES**

- Defendant not present. Mr. Oram requested this matter be continued two months as the Defendant's family is trying to hire him. There being no objection by the State, COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 03/21/19 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**March 21, 2019**

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A-18-784704-W      State Of Nevada, Plaintiff(s)  
vs.  
Frederick Harris, Defendant(s)

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**March 21, 2019      8:30 AM      Petition for Writ of Habeas  
Corpus**

**HEARD BY:** Leavitt, Michelle      **COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Beverly, Leah C      Attorney  
                 Oram, Christopher R      Attorney

**JOURNAL ENTRIES**

- Defendant not present. Mr. Oram advised they were unsuccessful on direct appeal; in order to protect the Defendant's time bar, a Writ was filed on behalf of the Defendant and is not able to further assist the Defendant. Further, Mr. Oram stated he will advise the Defendant in writing that if he wants to supplement, he needs to get this done right away. COURT ORDERED, matter CONTINUED 45 days for the Defendant to file a supplement by 05/02/19; State to file a response by 06/03/19; matter CONTINUED and SET for Hearing. Mr. Oram advised he will notify the Defendant in writing. Mr. Oram requested he no longer be required to appear. COURT SO ORDERED.

06/06/19 8:30 AM HEARING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**June 06, 2019**

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A-18-784704-W      State Of Nevada, Plaintiff(s)  
vs.  
Frederick Harris, Defendant(s)

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**June 06, 2019      8:30 AM      All Pending Motions**

**HEARD BY:** Leavitt, Michelle      **COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Marland, Melanie H.      Attorney

**JOURNAL ENTRIES**

- HEARING ... PETITION FOR WRIT OF HABEAS CORPUS

Defendant not present. COURT ORDERED, matter CONTINUED; Post Conviction Counsel APPOINTED; matter SET for Status Check regarding confirmation of counsel.

CONTINUED TO: 06/20/19 8:30 AM

06/20/19 8:30 AM STATUS CHECK: CONFIRMATION OF COUNSEL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**June 20, 2019**

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A-18-784704-W      State Of Nevada, Plaintiff(s)  
vs.  
Frederick Harris, Defendant(s)

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**June 20, 2019      8:30 AM      All Pending Motions**

**HEARD BY:** Leavitt, Michelle      **COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Jackson, Terrence   Michael      Attorney  
                         Lamanna, Brianna K.      Attorney

**JOURNAL ENTRIES**

- PETITION FOR WRIT OF HABEAS CORPUS ... STATUS CHECK: CONFIRMATION OF COUNSEL

Defendant not present. Mr. Jackson CONFIRMED as counsel and requested a status check. COURT ORDERED, matter CONTINUED and SET for Status Check.

CONTINUED TO: 08/06/19 8:30 AM

08/06/19 8:30 AM STATUS CHECK

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**August 06, 2019**

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A-18-784704-W      State Of Nevada, Plaintiff(s)  
vs.  
Frederick Harris, Defendant(s)

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**August 06, 2019      8:30 AM      All Pending Motions**

**HEARD BY:** Leavitt, Michelle      **COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Jackson, Terrence      Michael      Attorney  
Moors, Lindsey      Attorney

**JOURNAL ENTRIES**

- PETITION FOR WRIT OF HABEAS CORPUS ... STATUS CHECK

Defendant not present. At request of Mr. Jackson, COURT ORDERED, Defendant's pleadings due 11/04/19; State's reply due 12/04/19; Defendant's response due 01/03/20; matter SET for Hearing.

01/09/20 8:30 AM HEARING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**January 09, 2020**

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A-18-784704-W      State Of Nevada, Plaintiff(s)  
vs.  
Frederick Harris, Defendant(s)

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**January 09, 2020      8:30 AM      Hearing**

**HEARD BY:** Leavitt, Michelle      **COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Marland, Melanie H.      Attorney

**JOURNAL ENTRIES**

- Defendant not present. At request of the Defense, COURT ORDERED, matter CONTINUED.

CONTINUED TO: 02/20/20 8:30 AM

CLERK'S NOTE: Mr. Jackson notified of continued hearing date via email. hvp/1/9/20



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**April 23, 2020**

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A-18-784704-W      State Of Nevada, Plaintiff(s)  
vs.  
Frederick Harris, Defendant(s)

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**April 23, 2020      12:00 AM      Hearing**

**HEARD BY:** Leavitt, Michelle      **COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

**PRESENT:**      Jackson, Terrence   Michael      Attorney  
Sweetin, James   R      Attorney

**JOURNAL ENTRIES**

- Counsel appearing by video. Defendant not present.

Following arguments by counsel, COURT ORDERED, Petition for Writ DENIED.

NDC

# 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

FREDERICK HARRIS,

Petitioner(s),

vs.

STATE OF NEVADA,

Respondent(s),

Case No: A-18-784704-W

Dept No: XII

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 28 day of May 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk