

**IN THE COURT OF APPEALS OF THE STATE OF NEVADA**

---

BRENDAN JAMES NASBY,  
Petitioner,  
vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
COUNTY OF CLARK, STATE OF  
NEVADA, THE HONORABLE  
MONICA TRUJILLO, DISTRICT  
COURT JUDGE,

Respondent,

And

THE STATE OF NEVADA,

Real Party in Interest.

Electronically Filed  
Jun 28 2023 11:45 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

CASE NO: 86434-COA

**RESPONDENT'S APPENDIX**

BRENDAN JAMES NASBY, #63618  
Southern Desert Correctional Center  
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P.O. Box 208  
Indian Springs, Nevada 89070  
(702) 451-4921

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Pro Per Appellant

Counsel for Respondent

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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on June 28, 2023. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD  
Nevada Attorney General

JONATHAN E. VANBOSKERCK  
Chief Deputy District Attorney

I also certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

BRENDAN JAMES NASBY, #63618  
Southern Desert Correctional Center  
208 Cold Creek Road  
P.O. Box 208  
Indian Springs, Nevada 89070

I, further certify that on June 28, 2023, a copy was sent via email to:  
District Court, Department 3's JEA for Judge Trujillo:

Terri Elliott – JEA  
[ElliottT@clarkcountycourts.us](mailto:ElliottT@clarkcountycourts.us)

BY /s/ E. Davis  
Employee, District Attorney's Office

JEV//ed





deadly weapon. for Count II, CONSECUTIVE to Count I, with 480 DAYS credit for time served. BOND, if any, EXONERATED. Mr. Sciscento advised deft's visitors have been restricted to his mother, fiancée and child by court order and requested that be lifted. State advised he moved for that when he found all his witnesses were being intimidated and threatened; deft. is obviously not in isolation now or he would not have these new charges for Battery on a Corrections Officer. COURT ORDERED, the Court order restricting visitation is LIFTED and matter is left to the discretion of the jail commander. Mr. Sciscento advised, as to the appeal, he believes there will be a conflict as the Special Public Defender represented one of the co-defts. and requested the Court appoint Mr. Santacroce. State took no position. COURT ORDERED, Mr. Santacroce is APPOINTED to represent deft. Nasby on appeal. Off the record at 3:16 p.m.

[Parties Present](#)

[Return to Register of Actions](#)

JOC  
STEWART L. BELL  
DISTRICT ATTORNEY  
Nevada Bar #000477  
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FILED

DEC 2 9 54 AM '99

*Shirley L. Rungius*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

BRENDAN JAMES NASBY,  
#1517690

Defendant.

Case No. C154293  
Dept. No. VII  
Docket P

JUDGMENT OF CONVICTION (JURY TRIAL)

WHEREAS, on the 24th day of November, 1998, the Defendant BRENDAN JAMES NASBY, entered a plea of not guilty to the crimes of CONSPIRACY TO COMMIT MURDER and MURDER WITH USE OF A DEADLY WEAPON, committed on the 17th day of July, 1998, in violation of NRS 199.480, 200.010, 200.030, and the matter having been tried before a jury, and the Defendant being represented by counsel and having been found guilty of the crimes of COUNT I - CONSPIRACY TO COMMIT MURDER and COUNT II - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON; and

WHEREAS, thereafter, on the 29th day of November, 1999, the Defendant being present in Court with his counsel JOSEPH SCISCENTO, Esq., and FRANK JOHAN COUMOU, Deputy District Attorney also being present; the above entitled Court did adjudge Defendant guilty thereof by reason of said trial and verdict and, in addition to the \$25.00 Administrative Assessment Fee, sentenced Defendant to a MAXIMUM term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS in the

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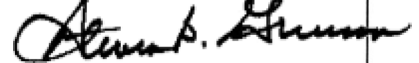
1 Nevada Department of Prisons for Count I and SENTENCED to LIFE WITH THE  
2 POSSIBILITY OF PAROLE plus an equal and CONSECUTIVE term of LIFE WITH THE  
3 POSSIBILITY OF PAROLE for use of a deadly weapon. for Count II, CONSECUTIVE to  
4 Count I, with 480 DAYS credit for time served.

5 THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this  
6 Judgment of Conviction as part of the record in the above entitled matter.

7 DATED this 1 day of <sup>December</sup> ~~November~~, 1999, in the City of Las Vegas, County of Clark,  
8 State of Nevada.

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DISTRICT JUDGE

DA#98-154293A/msr  
LVMPD EV#9807170541  
CONSP MURD; MWDW-F  
(TK3)



1 **FCL**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 TALEEN PANDUKHT  
6 Chief Deputy District Attorney  
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8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
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11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 BRENDAN JAMES NASBY,  
10 #1517690,

11 Petitioner,

CASE NO: A-19-788126-W

12 -vs-

98C154293-2

13 THE STATE OF NEVADA

DEPT NO: XIX

14 Respondent.

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

17 DATE OF HEARING: JUNE 8, 2020  
18 TIME OF HEARING: 10:15 AM

19 THIS CAUSE having come on for hearing before the Honorable WILLIAM D.  
20 KEPHART, District Judge, on the 8th day of June, 2020, the Petitioner not being present,  
21 proceeding in proper person, the Respondent being represented by STEVEN B. WOLFSON,  
22 Clark County District Attorney, by and through ANN DUNN, Deputy District Attorney, and  
23 the Court having considered the matter, including briefs, transcripts, arguments of counsel,  
24 and documents on file herein, now therefore, the Court makes the following findings of fact  
25 and conclusions of law:

26 ///

27 ///

28 ///

///

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

2 **PROCEDURAL BACKGROUND**

3 On November 9, 1998, the State filed an Information charging BRENDAN JAMES  
4 NASBY ("Petitioner") with: Count 1 – Conspiracy to Commit Murder; and Count 2 – Murder  
5 with use of a Deadly Weapon (Open Murder). Petitioner's jury trial began on October 11,  
6 1999. On October 19, 1999, the jury found Petitioner guilty on both counts; as to Count 2, the  
7 jury returned a guilty verdict for First Degree Murder with use of a Deadly Weapon.

8 On November 29, 1999, the District Court sentenced Petitioner as follows: Count 1 – a  
9 maximum of one hundred twenty (120) months to a minimum of forty-eight (48) months in  
10 the Nevada Department of Corrections ("NDC"); and Count 2 – Life with the possibility of  
11 parole, plus an equal and consecutive term of Life with the possibility of parole for the use of  
12 a deadly weapon, to run consecutive to Count 1, with four hundred eighty (480) days credit  
13 for time served. The Judgment of Conviction was filed on December 2, 1999.

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

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

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

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

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

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

15 On January 5, 2016, Petitioner filed his fourth Post-Conviction Petition for Writ of  
16 Habeas Corpus, a Memorandum of Points and Authorities in Support, a Supplemental  
17 Memorandum of Points and Authorities in Support, and a Motion for Appointment of Counsel.  
18 The State filed a Response on February 23, 2016. Petitioner filed a Reply on March 10, 2016.  
19 On April 4, 2016, the District Court denied Petitioner's Petition. The Findings of Fact,  
20 Conclusions of Law were filed on May 9, 2016. On May 18, 2016, Petitioner filed a Motion  
21 to Alter or Amend Judgment N. R. Civ. P. 59(e). The State responded on June 2, 2016. On  
22 June 8, 2016, the Court denied Petitioner's Motion. Petitioner filed a Notice of Appeal on  
23 June 14, 2016. On July 12, 2017, the Nevada Court of Appeals affirmed the denial of  
24 Petitioner's fourth Petition for Writ of Habeas Corpus.

25 On January 26, 2016, Petitioner filed a Petition for Writ of Habeas Corpus (NRS 34.360  
26 - Constitutional Questions/Questions of Law) in the Eleventh Judicial District Court, seeking  
27 a declaratory judgment on seven (7) allegations of trial error. The Eleventh Judicial District  
28 Court transferred Petitioner's Petition back to this Court, as this Court has proper jurisdiction

1 over Petitioner. On April 4, 2017, Petitioner filed a Motion for Reconsideration. The State  
2 responded on April 19, 2017. The State Responded to Petitioner's Petition on April 25, 2017.  
3 The next day, Petitioner's Motion for Reconsideration was denied. On May 10, 2017,  
4 Petitioner filed a Reply to the State's Response to Petitioner's Petition, and on May 15, 2017,  
5 the court denied Petitioner's Petition. The Findings of Fact, Conclusions of Law, and Order  
6 was filed on June 20, 2017. On June 27, 2017, Petitioner filed a Notice of Appeal. On August  
7 14, 2018, the Nevada Court of Appeals affirmed the District Court's decision; Remittitur  
8 issued on November 30, 2018.

9 On January 11, 2019, Petitioner filed another Petition for Writ of Habeas Corpus. The  
10 State responded on March 13, 2019. On March 25, 2019, the District Court denied the Petition  
11 as procedurally barred, successive, and an abuse of the Writ process. On April 1, 2019,  
12 Petitioner filed a Reply to the State's Response, NRCP 12(f) Motion to Strike; and if  
13 Necessary, NRCP 59(e) Motion to Alter or Amend Judgment". On April 12, 2019, the Court  
14 entered its Findings of Fact, Conclusions of Law and Order. On May 2, 2019, Petitioner filed  
15 a Notice of Appeal. On April 10, 2020, the Nevada Court of Appeals issued its Order of  
16 Affirmance.

17 On February 27, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus.  
18 On June 4, 2020, Petitioner filed a "Motion for Resolution of Petition Notwithstanding  
19 Respondent's Failure to Answer". The Court did not order the State to file a response and  
20 denied the Petition on June 8, 2020.

### 21 STATEMENT OF THE FACTS

22 During its case-in-chief, the State presented overwhelming evidence of Defendant's  
23 guilt. This evidence included testimony that Petitioner had murdered Michael Beasley  
24 execution style, that Petitioner made admissions to two (2) different people and that Petitioner  
25 voluntarily, and without provocation, led police to the location of the murder weapon within  
26 Petitioner's house. Furthermore, the State offered evidence from Petitioner's accomplices to  
27 detail the premeditated manner in which the homicide took place.  
28

1 The State called the three (3) accomplices that joined Petitioner in killing Michael. The  
2 first accomplice, Jeremiah Deskin ("Jeremiah"), testified that he knew Petitioner as a member  
3 of the gang L.A. Crazy Riders and that Petitioner was the gang leader. Jeremiah told the jury  
4 that Tommie Burnside ("Tommie") and his brother Jotee Burnside ("Jotee") were also  
5 members of the gang. Jeremiah said that one (1) month prior to the July 16, 1998 killing of  
6 Michael, Petitioner met with Jeremiah, Tommie, Jotee and another male gang member to  
7 discuss whether Michael should be killed. Jeremiah specifically recalled that Petitioner was  
8 soliciting opinions as to whether Michael should be killed because Michael was allegedly  
9 trying to take Petitioner's role in the gang. Jeremiah also related that the general consensus  
10 from the other gang members at that meeting was that Michael should not be killed.

11 Jeremiah further testified that on the night of the murder, he was at Petitioner's house  
12 when Petitioner called him into the garage. There inside the garage with Tommie, Petitioner  
13 told Jeremiah to go pick up Michael so that they could take him to the desert and shoot him.  
14 Jeremiah then went with Tommie and Jotee to Michael's residence. Upon returning to  
15 Petitioner's home, Petitioner displayed his Browning 9mm handgun that he had purchased  
16 from an individual named David. Jeremiah explained that the "plan" was to go to the desert to  
17 shoot guns and smoke weed, but that no one had any weed on them.

18 After driving out into the desert, Jeremiah recalled that he stopped his car near the edge  
19 of a wash. Jeremiah told the jury that all five (5) men got out of the car to look amongst the  
20 garbage and debris for something to use as a target. He also said that he kept the lights of his  
21 car on to illuminate the area. At this time Petitioner asked Jeremiah to move his car closer to  
22 the edge to brighten the area of the wash where old refrigerators were strewn about. After he  
23 got out of the car, Jeremiah observed Petitioner approach Michael from behind as Michael  
24 continued looking into the wash for something to use as a target. From closer than ten (10) feet  
25 away, Petitioner then raised the handgun and shot Michael in the upper back. Having never  
26 seen Petitioner approach him from behind, Michael grabbed his neck/shoulder area while  
27 dropping down onto one (1) knee. Petitioner then stepped forward and fired another shot at  
28 Michael's neck/head area which caused Michael to fall forward and roll over onto his back.



1 Jeremiah testified that Tommie, Jotee and Petitioner then ran back to the car after  
2 Petitioner had shot Michael for the second time. Before Jeremiah was able to start the car to  
3 leave, Petitioner jumped out, ran over to Michael and shot once more at Michael's head as  
4 Michael lay there on his back. Jeremiah recalled that when Petitioner returned to the car, he  
5 muttered something like, "Try to take me off my own set" which Jeremiah understood to mean  
6 that Petitioner believed Michael was trying to remove Petitioner from the gang.

7 Jeremiah further testified that on the way back to Las Vegas, Petitioner threatened  
8 Jeremiah and the Burnside brothers if any of them spoke of the killing. Jeremiah explained to  
9 the jury that he had also been charged in the death of Michael, but agreed to plead to a lesser  
10 charge in exchange for his testimony against Petitioner. The Burnside brothers, Tommie and  
11 Jotee, testified that they had been at Petitioner's house on the night of the murder and that  
12 Petitioner had shot Michael out in the desert. They also explained that they too had been  
13 charged with the death of Michael, but had agreed with the State to testify against Petitioner.

14 Two women next testified for the State -- Tanesha Banks ("Tanesha") and Crystal  
15 Bradley ("Crystal"). Tanesha related that she was the mother of Michael's son and had been  
16 involved in a three (3) way conversation over the telephone with Crystal and Petitioner on July  
17 17, 1998. Tanesha stated that Petitioner sounded "panicky" when she incorrectly mentioned  
18 that she had seen Michael earlier in the morning of July 17, 1998. Tanesha also told the jury  
19 that she had been beaten by a friend of Petitioner purportedly because Tanesha had been telling  
20 people she believed Petitioner was responsible for Michael's death. Tanesha later explained  
21 that once Petitioner had been arrested, she received a threatening call from him when he was  
22 being held at the Clark County Detention Center ("CCDC").

23 Crystal next testified that she had been familiar with Petitioner from the L.A. Crazy  
24 Riders gang and that she had stayed in contact with the gang. She also recalled the three (3)  
25 way telephone conversation with Tanesha and Petitioner in which Petitioner abruptly told her  
26 that he needed to speak with only Crystal. Crystal then testified that during this conversation,  
27 Petitioner admitted to murdering Michael, and he planned on attempting to make it look like  
28 another gang had committed the killing. Crystal revealed that while she did not believe

1 Petitioner at first, she later called Secret Witness when she confirmed that Michael was indeed  
2 dead.

3 Brittney Adams ("Brittney") testified that she had talked to Petitioner about Michael's  
4 death and that she thought Petitioner was "covering something up." Brittney also said that  
5 Petitioner had told her Crystal and Tanesha were involved in Michael's death and that he  
6 wanted Brittney to kill Tanesha because Tanesha was blaming him for the death. Brittney  
7 explained that she drove over to Tanesha's house with her cousin and Petitioner to get  
8 Tanesha's side of the story. Petitioner offered Brittney a hammer to use in the assault of  
9 Tanesha telling her, "You can just hit her between the eyes and kill her; just kill her, cuz; just  
10 kill her." Brittney told the jury that she refused Petitioner's offer to use the hammer, but did  
11 get into a fight with Tanesha while Petitioner remained inside the car. Brittney recalled that  
12 when they left Tanesha's house, Petitioner repeatedly said to her, "You should have killed her,  
13 cuz, you should have killed her."

14 Jomeka Beavers ("Jomeka"), Michael's aunt, testified that she was living with Michael  
15 on the day he was murdered. She related that Michael had received a telephone call early in  
16 the evening on the night he was killed. Michael then asked Jomeka to watch his infant son  
17 while he went out with his friends. Jomeka specifically remembered that Michael got into a  
18 car with Jeremiah, whom she knew as Woodpecker, but that Charles Damion Von Lewis a.k.a.  
19 Sugar Bear was not present.

20 Dr. Robert Jordan ("Jordan") testified that he performed the autopsy on Michael who  
21 had three (3) bullet wounds, two (2) to the chest and one (1) to the head. Jordan explained that  
22 the Michael had one entrance wound to the back, one exit wound to the chest and one entrance  
23 wound above the left eye. Jordan also testified that the only projectiles he recovered during  
24 the autopsy were bullet fragments from Michael's skull.

25 Las Vegas Metropolitan Police Department ("LVMPD") homicide detectives James  
26 Buczek ("Buczek") and Thomas Thowsen ("Thowsen") testified that they had been the lead  
27 investigators into Michael's death. Buczek related that he had developed Petitioner as a suspect  
28 in the murder of Michael after he spoke with Tanesha who told him about the three (3) way

1 telephone conversation she had with Crystal and Petitioner. Buczek confirmed this information  
2 by speaking with Crystal and then proceeded to have a search warrant drawn up to search  
3 Petitioner's house for evidence. Petitioner was placed under arrest after the execution of the  
4 search warrant and was advised of his Miranda rights. As Buczek was transporting him to the  
5 police station, Petitioner immediately referred to a 9mm handgun as the murder weapon even  
6 though Buczek never told Petitioner what kind of weapon was used to kill Michael. Petitioner  
7 also told Buczek that the 9mm handgun was back at his house. LVMPD found the 9mm  
8 handgun in a bag under Petitioner's bed. AA Vol. 3, p. 0480. Thowsen testified that he had  
9 investigated a September 23, 1998 phone call from CCDC to Tanesha and confirmed that it  
10 had come from a phone line within CCDC. Further investigation by Thowsen revealed that  
11 two (2) phone calls had been placed from the section of CCDC where Petitioner was being  
12 held. The jury then heard from another inmate of CCDC, John Holmes ("Holmes"), who  
13 testified that Petitioner had admitted to killing Michael. Holmes stated that Petitioner told him  
14 he murdered Michael because Michael was trying to take his leadership spot in the gang.

15 A number of LVMPD crime scene analysts testified for the State as well. Kelly Neil  
16 ("Neil") testified that he recovered four (4) shiny, new-looking shell casings from the crime  
17 scene amidst "hundreds" of expended shell casings. Neil also recovered three (3) Winston  
18 brand cigarette butts and took photographs of footprints. Neil explained that three (3) of the  
19 four (4) shell casings he retrieved were 9mm cartridges. Randall McPhail ("McPhail") testified  
20 that he collected evidence from Petitioner's house after the search warrant had been executed.  
21 McPhail explained that he recovered a 9mm handgun, took pictures of seven (7) pairs of shoes  
22 and collected cigarette butts bearing the brands Kool, Benson & Hedges and a generic brand.  
23 A further check on the 9mm handgun revealed that it had been reported stolen from a residence  
24 in North Las Vegas.

25 Fred Boyd ("Boyd") next testified that he had run fingerprint analysis on the recovered  
26 shell casings and 9mm handgun, but was unable to get any tangible latent prints. Boyd also  
27 explained that he could not find a match amongst the photographs of footprint impression at  
28 the crime scene and the photographs of the seven (7) pairs of shoes from Petitioner's house.

1 Firearms expert Torrey Johnson ("Johnson") testified that he conducted a test fire on the 9mm  
2 handgun recovered from Petitioner's house and that the shell casings discovered at the crime  
3 scene were three (3) 9mm casings and one (1) .45 casing. Johnson also told the jury that while  
4 he could not positively find that the shell casings had been fired from the 9mm handgun seized  
5 at Petitioner's house, the casings bore marks consistent with that conclusion. Moreover,  
6 Johnson explained that based on the assumption that the coroner removed bullet fragments  
7 from Michael's skull which were the resulting cause of death, the 9mm handgun examined by  
8 Jordan was the murder weapon.

### 9 ANALYSIS

#### 10 **I. PETITIONER'S SEVENTH PETITION IS PROCEDURALLY BARRED**

11 This Court FINDS that the instant Petition is time-barred, successive, and subject to the  
12 mandatory procedural bars.

##### 13 **A. The Procedural Bars are Mandatory**

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

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

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

##### 25 **B. Petitioner's Petition is Time Barred**

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

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

1           *within 1 year after entry of the judgment of conviction* or, if an  
2           appeal has been taken from the judgment, *within 1 year after the*  
3           *Supreme Court issues its remittitur*. For the purposes of this  
          subsection, good cause for delay exists if the petitioner  
          demonstrates to the satisfaction of the court:

4           (emphasis added). “[T]he statutory rules regarding procedural default are mandatory and  
5           cannot be ignored when properly raised by the State.” State v. Dist. Court (Riker), 121 Nev.  
6           225, 233, 112 P.3d 1070, 1075 (2005).

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

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

21          Petitioner’s Judgment of Conviction was filed on December 2, 1999. He filed a Notice  
22          of Appeal on December 14, 1999, and the Nevada Supreme Court issued its remittitur on  
23          March 6, 2001. Accordingly, Petitioner had until approximately March 6, 2002, to file a post-  
24          conviction petition. The instant motion was not filed until February 27, 2020, more than  
25          eighteen (18) years later. Therefore, absent a showing of good cause, Petitioner’s motion is  
26          denied as time-barred pursuant to NRS 34.726(1). NRS 34.726 can only be overcome upon a  
27          showing of good cause and prejudice or actual innocence, which Petitioner failed to  
28

1 demonstrate as stated below. Accordingly, this Court finds Petitioner's Petition must be  
2 denied.

3 **C. Petitioner's Petition is Successive and an Abuse of the Writ**

4 Petitioner's instant petition is dismissed pursuant to NRS 34.810 as it is successive and  
5 an abuse of the writ. NRS 34.810 provides in pertinent part that:

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

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

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

16 (b) Actual prejudice to the petitioner.

17 Petitioner filed six (6) previous Petitions for Writ of Habeas Corpus (Post-Conviction)  
18 on January 30, 2002, February 18, 2011, December 9, 2014, January 5, 2016, January 26,  
19 2016, and January 11, 2019. Each petition was duly considered and denied by the Court.  
20 Consequently, the instant petition filed on February 27, 2020, is a successive petition.  
21 Moreover, Petitioner raises similar claims as raised before. See e.g., Nasby v. State, No.  
22 80443-COA (Order of Affirmance and Denying Petition, Apr. 10, 2020); Nasby v. State, No.  
23 70626 (Order of Affirmance, Jul. 12, 2017). As such, the instant petition is also an abuse of  
24 the writ. See also Pellegrini v. State, 117 Nev. 860, 888, 34 P.3d 519, 538 (2001); Hall v.  
25 State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975).

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

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1  
2 **II. PETITIONER CANNOT ESTABLISH GOOD CAUSE TO OVERCOME**  
3 **THE PROCEDURAL BARS**

4 To avoid procedural default under NRS 34.726 or NRS 34.800, a defendant has the  
5 burden of pleading and proving specific facts that demonstrate good cause for his failure to  
6 present his claim in earlier proceedings or comply with the statutory requirements. See Hogan,  
7 109 Nev. at 959-60, 860 P.2d at 715-16; Phelps, 104 Nev. at 659, 764 P.2d at 1305.

8 “To establish good cause, appellants *must* show that an impediment external to the  
9 defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119  
10 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.  
11 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Such an external  
12 impediment could be “that the factual or legal basis for a claim was not reasonably available  
13 to counsel, or that ‘some interference by officials’ made compliance impracticable.”  
14 Hathaway, 119 Nev. at 251, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106  
15 S. Ct. 2639, 2645 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v.  
16 Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)). Any delay in filing of the petition  
17 must not be the fault of the petitioner. NRS 34.726(1)(a).

18 The Nevada Supreme Court has clarified that a defendant cannot attempt to  
19 manufacture good cause. Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there  
20 must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251,  
21 71 P.3d at 506. Excuses such as the lack of assistance of counsel when preparing a petition,  
22 as well as the failure of trial counsel to forward a copy of the file to a petitioner have been  
23 found not to constitute good cause. See Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded  
24 by statute on other grounds as recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140,  
25 1145 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995). Moreover, a return to state  
26 court to exhaust remedies for federal habeas is not good cause to overcome state procedural  
27 bars. Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

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

5 Petitioner failed to assert any good cause for his procedural default. Instead, he argued,  
6 as discussed, *supra*, that the procedural bars do not apply to him. For the reasons discussed,  
7 said procedural bars are mandatory. Moreover, Petitioner could and should have previously  
8 raised these issues in an earlier petition. As such, Petitioner failed to establish an impediment  
9 external to the defense and therefore does not constitute good cause to overcome the  
10 procedural bars. Phelps v. Director, Nevada Department of Prisons, 104 Nev. 656, 764 P.2d  
11 1303 (1988). Accordingly, Petitioner cannot demonstrate good cause and this Petition for Writ  
12 of Habeas Corpus is denied.

### 13 **III. CONSTITUTIONALITY OF NRS 193.050(3) AND NRS 200.030(1)(A)**

14 Petitioner argued that the statutes he was imprisoned under are unconstitutional;  
15 therefore, he is actually innocent. Petition at 20, 23. Specifically, Petitioner claims NRS  
16 193.050(3) is unconstitutional as an “invalid delegation of legislative powers and abdication  
17 of legislative duties” and NRS 200.030(1)(a) is “void-for-vagueness” since the statute does  
18 not define “willful, deliberate, and premeditated”. Petition at 23-26. This Court declines to  
19 issue any determination that NRS 193.050(3) and NRS 200.030(1)(a) are unconstitutional.

20 To the extent that similar arguments have been raised regarding the constitutionality of  
21 NRS 200.030(1)(a), said claims are barred pursuant to the Law of the Case Doctrine. Under  
22 the law of the case doctrine, an issue that has already been decided on the merits by the Nevada  
23 Supreme Court is law of the case and the holding will not be revisited in a habeas petition.  
24 “The law of a first appeal is law of the case on all subsequent appeals in which the facts are  
25 substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting  
26 Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). The law of the case doctrine may  
27 not be avoided by a more detailed and precisely focused argument made after reflection upon  
28 previous proceedings. Id. at 316, 535 P.2d at 798-99; See Nasby v. State, No. 80443-COA



1 (Order of Affirmance and Denying Petition, Apr. 10, 2020); Nasby v. State, No. 70626 (Order  
2 of Affirmance, Jul. 12, 2017).

3 **ORDER**

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

6 DATED this 29th day of June, 2020.

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

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

11 BY /s/TALEEN PANDUKHT  
12 TALEEN PANDUKHT  
13 Chief Deputy District Attorney  
Nevada Bar #005734

14  
15 **CERTIFICATE OF MAILING**

16 I hereby certify that service of the above and foregoing was made this 29th day of June,  
17 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

18  
19 BRENDAN NASBY #63618  
20 LOVELOCK CORRECTIONAL CENTER  
1200 Prison Road  
21 Lovelock, NV 89419

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

24  
25  
26  
27 98F11168A/TP/SW-Appeals/dd-MVU  
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