Supreme Court
of the
United States of America

Respondent on
Petition for a
Writ of Certiorari

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

_____ — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

_____
(Your Name)
Lovelock Correctional Center
1200 Prison Road
(Address)

Lovelock, Nevada 89419
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

1. Did Petitioner's APPLICATION FOR CERTIFICATE OF APPEALABILITY demonstrate that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling?

2. Where a Nevada state district court sentenced Petitioner pursuant to a state law that was: (1) Repealed by an act of state legislation, and (2) whose sentencing statutes were struck down by the Nevada Supreme Court ("NSC"), therefore, was the Petitioner denied his Fourteenth Amendment right to due process of law when the State of Nevada lacked jurisdiction to prosecute state crimes; for purposes of Nevada Revised Statute ("NRS") 171.010 and Senate Bill 2 ("SB2"), §§ 1 and 3.

3. Should Petitioner have been allowed to demonstrate such a massive unconstitutional statutory defect and a jurisdictional issue upon which there is a major conflict in the published decisions of the NSC and the Nevada legislature's SB2 by which Nevada state court decisions draw into question thousands of convictions obtained by the State for crimes involving defendants across several decades?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Court in Question	Docket No.	Case Caption	Date of Judgment
State District Court		Motion To Correct Illegal Sentence	11/7/22
Supreme Court of Nevada		Appellant's Opening Brief (Appeal From Order Denying Defendant's Motion To Correct Illegal Sentence	5/8/23
United States District Court District of Nevada		Petition For A Writ of Habeas Corpus § 2254	10/13/23
United States Court Of Appeals For the The Ninth Circuit		Application For Certificate Of Appealability	5/28/24

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

CASES — PAGE NO.

STATUTES

CONSTITUTIONAL PROVISIONS

OTHERS

ADDITIONAL STATEMENT

Pro se Petitioner is held to a less stringent standard than practicing attorney's, *Haines v. Kerner*, 404 U.S. 519 (1972), and as he acts as his own Counsel it's not to be imposed on him the same high standard as members of the Bar, for that would have a prejudicial effect on him because he is unlearned in the complicated procedures of pleadings, it is enough that he represents an allegation that is supported by facts which, if sustained, would entitle him to relief, *Price v. Johnston*, 334 US, 266 (1948).

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to N/A the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the United States district court appears at Appendix B to B5 the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

[x] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the state district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

JURISDICTION

[x] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was May 28, 2024.

[x] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[x] Notification pursuant to 28 U.S.C. § 2403(b) and R. Sup. Ct. Rule 29.4(c) has been made.

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person within its jurisdiction the equal protection of the laws."

The *Nevada Revised Statutes* is the result of the enactment by the 48th Session of the Legislature of the State of Nevada in 1957. Upon completion of the revision of the text of the statutes in December 1956, a decision had to be made: Would the NRS scheme be enacted as law or would it merely adopt the revised statutes as evidence of law?

The powers that be decided that the enactment of the revised statutes as law, rather than the mere adoption thereof as evidence of the law, would be the more desirable course of action [App. J2].

Accordingly, *Nevada Revised Statutes* was submitted to the 48th Session of the Legislature in the form of a bill providing for its enactment as law of the

State of Nevada. This bill, *Senate Bill 2*, was passed without amendment or dissenting vote, and on January 25, 1957, was approved by Governor Charles H. Russell [App. D]. Section 1 of SB2 states: "Enactment of Nevada Revised Statutes. The Nevada Revised Statutes, being the statute laws set forth after section 9 of this act, are hereby adopted and enacted as *law* of the State of Nevada." [emphasis].

From 1861 to 1951 the Legislature made no provisions for a statutory revision scheme and during that period 8,423 acts were passed [App. J]. With the passage of SB2, Section 3 of this act repealed all prior laws: "...all laws and statutes of the State of Nevada of a general, public and permanent nature enacted prior to January 21, 1957, hereby are *repealed*." [App. D2].

Enacted and adopted within this new NRS scheme was *NRS 171.010* which related to the jurisdiction of offenses committed in the State of Nevada. NRS 171.010 is entitled "Local *Jurisdiction* Of Public Offenses." [App. C] [emphasis].

Herein (SB2 §1, §3, and NRS 171.010), lies the foundation of Petitioner's Constitutional claim.

STATEMENT

The United States court of appeals held that Petitioner's APPLICATION FOR CERTIFICATE OF APPEALABILITY did not show that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." [App. A] However, reasonable jurists could debate or resolve this claim in a different manner under *Slack* and *Barefoot*.

In *Slack*, this Court held that the standard adopted in *Barefoot* would apply in all post-AEDPA cases. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (1983) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)).

> "[t]o obtain a Certificate of Appealability under §2253(c), a habeas petitioner must make a substantial showing of the denial of a constitutional right, a demonstration that, under *Barefoot*, includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement."

Slack, 529 U.S. at 483-94 (quoting *Barefoot*, 464 U.S. at 893).

"[O]bviously the petitioner need not show that he should prevail on the merits." *Barefoot*, 463 U.S. at 893 n.4. "[The litigant]" has already failed in that endeavor." *Id.* Rather, a certificate must issue if the appeal presents a question of some substance: (1) that is debatable among jurists of reason; (2) that a court could resolve in a different manner; (3) that is adequate to deserve encouragement to proceed further and (4) that is not squarely foreclosed by statute, rule, or authoritative court decision, or that has some factual basis in the record. *Id.*

Petitioner's issues for review met the low standard for granting a Certificate of Appealability ("COA"). The petition articulated a valid claim/substantial showing of the denial of a constitutional right as his COA application demonstrated the State of Nevada lacked jurisdiction to prosecute state crimes. [App. K-K9] [*infra*].

Further, jurists of reason would find it debatable whether the U.S. Court of Appeals was correct in its procedural ruling when issues of subject matter jurisdiction are never waived and can therefore be raised on a collateral appeal. *Mc Girt v. Oklahoma*, S. Ct. 2452 July 9th, 2020. Reasonable jurists could debate or resolve this claim and decision in a different manner. *See Barefoot*, 463 U.S. 893 n.4.

REASONS FOR GRANTING THE PETITION

The Nevada Supreme Court ("NSC") has effectively struck down the entire NRS statutory scheme.

In 1957, the Nevada legislature passed an act entitled: "Act of the 48th Session of the Nevada Legislation Adopting and Enacting Nevada Revised Statutes", also known as "Senate Bill 2". The legislative intent of this act was stated in the provision of section 1 as follows:

> Section 1. Enactment of Nevada Revised Statutes. The Nevada Revised Statutes, being the statute laws set forth after section 9 of this act, are hereby adopted and enacted as *law* of the State of Nevada. [App. D] [*emphasis*]

There is no ambiguity to this provision.

However, the NSC and the Nevada court of appeals have contradicted Senate Bill 2, Section 1, in numerous rulings - and decreed that the NRS statutory scheme is *not* the *law* of the State of Nevada. [*emphasis*] In numerous case-laws as follows:

Taylor v. State, 472 P.3d 195 (2020) [App. E],
Olson v. State, 133 Nev. 1058 Unpub. LEXIS 699 (2017),
Hunt v. State, 133 Nev. 1025 Unpub (Nev. 2017),
Cesar Victor v. State, LEXIS 269 Unpub. (Nev. 2017),
Peck v. State, LEXIS 867 Unpub. (Nev. 2017),
Escamilla v. State, 133 Nev. 1005 Unpub. (Nev. 2017),
Bryant v. State, 2021 Nev. App. Unpub. LEXIS 114 (2021),
Krig v. State, 125 Nev. 1054, 281 P.3d 1193 Unpub. (2009)
[App. F].

The NSC and appellate courts have clearly ruled that the NRS statutory scheme is not the law of the State of Nevada and is opposed to "Senate Bill 2" as the NSC opines in the above case-laws that the NRS scheme "merely constitutes of codified/reflective version of the statutes of Nevada." Not to confuse or conflate Nevada's actual laws, the NRS scheme is *not* the law of Nevada. "The actual laws of Nevada are contained in the statutes [*repealed*, SB2 § 3] of Nevada." *Olson* [App. G2].

The Petitioner's conviction/sentencing are based on two (2) "NRS" violations [App. H]. If these NRS sentencing statutes are *not* the law as substantiated by the published decisions of the NSC, then Petitioner's guaranteed right of due process of law under the Fourteenth Amendment to the U.S. Constitution

has been violated by implicating Petitioner's fair notice of what is lawfully prohibited. To arrest, indict, convict, and sentence this Petitioner on what is *not law* is illegal and unconstitutional

The Petitioner's sentence, based on two "NRS" violations, has been voided by an authoritative act, i.e., binding decision, of the Nevada Supreme Court when it delared the NRS statutes *not* the law of the State of Nevada implicating the state district court's subject matter jurisdiction. If there are no valid statutes charged against this Petitioner, there is nothing that can be deemed a crime, and without a crime, there is no subject matter jurisdiction.

The Nevada state district court sentenced Petitioner pursuant to a state law that was repealed by an act of legislation which deprived the court of jurisdiction to prosecute state crimes.

NRS 171.010 is cited by the NSC as the cognizance, in addition to Article 6, Section 6 of the Nevada Constitution, to impose sentence and punish defendants in criminal cases and is the source of the state court's subject matter jurisdiction. [App. E5].

NRS 171.010 states:

> *Jurisdiction* [emphasis] of offense committed in state. Every person, whether an inhabitant of this state, or any other state, or of a territory or district of the United States, is liable to punishment by the laws of this state for a public offense committed therein, except where it is by law cognizable exclusively in the courts of the United States. [App. C]

Upon examination, in the legislative history section of NRS 171.010 located in brackets below the above text, is shown the authoritative statutes [1911 Cr. Prac. § 58: RL 6908: NCL § 10705] which is derived from the statutes of Nevada.

According to this informational bracket, it is the source of its legal authority to validate its existence.[1] The interpolation following the text of NRS 171.010 means that NRS 171.010 was derived from section 58 of the Crimes and Punishment Act of 1911 and subsequently appeared in Revised Laws of Nevada (1912) section 6908, and Nevada Compiled Laws (1929) section 10705.[2]

[1] www.Leg.State.NV.US-division-LCB-index.html

Contrary to this, these statutes of Nevada have been *repealed* in 1957 by Statutes of Nevada 1957, Chapter 2, entitled "*Senate Bill 2*", Section 3. It states:

> Section 3: Repeal of prior laws. Except as provided in Section 5 of this act and unless expressly continued by specific provisions of Nevada Revised Statutes, all laws and statutes of the State of Nevada of a general, public, and permanent nature enacted prior to January 21, 1957, hereby are *repealed*. [App. D2]

Since then, no new enacted legislative acts have been passed by the Nevada legislature as law to establish the statutory authority for NRS 171.010 during or after 1957. No where in this NRS does it indicate by specific provisions that the repealed, antiquated Statutes of Nevada correlating to this NRS are to be continued.

The Federal District Court of Nevada in its order to dismiss Petitioner's Petition for Writ of Habeas Corpus 2254 states: "... NRS § 171.010 does not address the state district court's jurisdiction; rather, it provides criminal liability for persons committing offenses within Nevada." [App. B4 at 21-22].

[2] The 1957 act (SB2) that enacted and adopted NRS 171.010 does *not* appear in its history section. [App. C].

This argument fails on three levels. First, the title of NRS 171.010 describes the content of the statute: "Local *Jurisdiction* Of Public Offenses" [emphasis] [App. C]. Second, the *Nevada Cases* section beneath the text of NRS 171.010 contains several case-law examples describing NRS 171.010 as *jurisdictional* including this language, "The fact that NRS 171.010, *relating to the jurisdiction of offenses committed in the state...*" [emphasis] [App. C].

Lastly, this argument conflicts with the ruling of the NSC. As already mentioned, NRS 171.010 is cited by the NSC as the cognizance, in addition to Article 6, Section 6 of the Nevada Constitution, to impose sentence and punish defendants in criminal cases and is the source of the state courts subject matter jurisdiction [App. E5].

As a result, NRS 171.010 is invalid, void, and this Petitioner's sentencing court lacks jurisdiction to sentence and impose punishment against Petitioner. "The court may exercise judicial power only when it has a valid statutory scheme and subject matter jurisdiction. *Rhode Island v. Massachusetts*, 37 U.S. 657, 718 (1838). To impose sentence violates the Petitioner's right to due process of law as guaranteed by the Fourteenth Amendment to the U.S. Constitution. NRS 171.010 has no source sentencing statutes to sustain it because they were

all repealed.

Therefore, the Nevada state court overstepped the bounds of constitutional authority by extrajudicial action. It cannot validly sentence this Petitioner pursuant to a statute *not* in effect at the time of the offense. NRS 171.010 was repealed by legislation which deprived the state sentencing court of jurisdiction to prosecute state crimes.

I. THE NINTH CIRCUIT DECISION IS FLAWED; PETITIONER'S REASONING FOR GRANTING A CERTIFICATE OF APPEALABILITY CORRECTLY CAPTURES THE REQUIREMENTS OF *SLACK V. MC DANIEL* AND *BAREFOOT V. ESTELLE*.

Petitioner submits that he has made a substantial showing of the denial of a constitutional right in his application for COA [App. K-K6]. The standard set by *Slack* (quoting *Barefoot*) sets a low threshhold of *some* substance that the appeal presents: (1) an issue that is debatable among jurists of reason; (2) that a court could resolve in a different manner; (3) that is adequate to deserve encouragement to proceed further and (4) that is not squarely forclosed by statute, rule, or authoritative court decision, or that has some factual basis in the record.

Petitioner's originating Motion To Correct Illegal Sentence and subsequent appeals up to his application for COA demonstrated that Nevada lacked jurisdiction to prosecute him for an alleged crime; for purposes of Senate Bill 2 § 1 and 3 and NRS 171.010.

Petitioner claims Senate Bill 2 § 1, which enacted the NRS statutory scheme as law of the State of Nevada, was effectively **struck down** by the State's highest court (NSC), consequently depriving the state district court of jurisdiction over his two alleged "NRS" violations.

Petitioner claims Senate Bill 2 § 3 repealed the state district court's jurisdiction over crimes committed in the state; for the purpose of NRS 171.010.

Petitioner submits that a question of a jurisdictional defect, which implicates the very power of a state court to prosecute and punish its citizens and foreign nationals is a valid claim of the denial of a constitutional right. *Mc Girt v. Oklahoma*, 591 U.S. __; 140 S. Ct. 2452; 207 L. Ed. 2d 985; 2020 US LEXIS 3554 (2020).

Petitioner further submits that the Ninth Circuit Court's procedural ruling is flawed. This Court has held that "every federal appellate court has a special

obligation to satisfy itself not only of its own jurisdiction, *but also that of the lower courts in a cause under review.*" *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541, 89 L.Ed. 2d 501, 106 S. Ct. 1326 (1986). "There is *no* discretion to ignore lack of jurisdiction." *Joyce v. U.S.*, 474 F2d 215.

The Ninth Circuit Court's decision to deny this Petitioner a COA was flawed as Petitioner demonstrated that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253 (c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

II. UNIFORM LAWLESSNESS HAS OCCURRED IN THE STATE OF NEVADA FOR SEVERAL DECADES. THE STATE HAS OVERSTEPPED ITS AUTHORITY IN PROSECUTING THOUSANDS OF CASES ALL WHILE THE STATE AND FEDERAL COURTS TURNED A BLIND EYE.

The State of Nevada lacked jurisdiction to prosecute state crimes that occurred after January 21, 1957. The very act (SB2) that enacted NRS 171.010 (jurisdiction

for state crimes) adopted it with a fatal flaw — the three supporting Nevada statutes with pre-1957 enactment dates were repealed by SB2 (supra).

As a result of this statutory defect, thousands of convictions obtained by the State for crimes involving defendants or victims across several decades are now drawn into question.

When the State of Nevada was confronted in the state (and later Federal) courts over its lack of jurisdiction for prosecuting state crimes committed by defendants, the response has been the same.

Inmates "conflate[s] the laws of Nevada with the codified statutes. The Nevada Revised Statutes 'constitute the official codified version of the Statutes of Nevada and may be cited as *prima facie evidence of the law*.'" [*Krig v. State*, App. F2] This "codified" version of law, according to *Taylor v. State*, are laws that are grouped together "of similar subject matter" "but not itself exercising the legislative function". [*Taylor v. State*, App E6].

In *Olson*, the appellate court opined, "The actual laws of Nevada are contained in the Statutes of Nevada". [*Olson v. State*, App. G2].

To say the NRS statutory scheme is simply an "official codified version of the Statutes of Nevada" and "prima facie evidence of law" would require willful blindness to the clear and plain language of 1957's *Senate Bill 2, Section 1.* [App. D].

Historically speaking, contemperaneous legislative acts supported the legislative intent of SB2. In a separate action that expressed the sense, will, or action of the Assembly, another act entitled, "Assembly Concurrent Resolution No. 1" clearly declared the NRS statutory scheme was to become "law" and "*supersede*" all previous laws. [App. I].

Therefore, uniform lawlessness has occurred in the State of Nevada for many decades. All crimes prosecuted since January 21, 1957 lacked jurisdiction. The State has convicted thousands for "NRS" violations. Violations that have been decreed not to be law by the State's highest court.

In Nevada, a jurisdictional question can be raised at any time. *See Edwards v. State*, 112 Nev. 704 (1996); NRS 176.555. In fact, a litigant can raise a court's lack of subject matter jurisdiction at anytime in the 9th Circuit (*Newtok Vill v. Patrick*, 2021 U.S. Dist. LEXIS 35139 (9th Cir. 2021)) and in this Court (*Melo v. U.S.*, 505 F.2d 1026)

Despite this, all State and Federal courts have continuously dismissed all jurisdictional challenges as procedurally "untimely". See e.g. Altamirano v. State, case Number C-16-314317-1 (Nevada Supreme court No. 85708), Altamirano v. Garcitt et. al. No. 3:23-CV-00266-MMD-CSD, (9th Circ. No. 23-3953), Barral v. State, Supreme court case No. 85706, McCaffrey v. State, Supreme case No. 85709, et. al., Reeder v. Breitenbach, et. al, case No. 3:24-CV-00220-ART-CLB, Doyle v. Garcitt, et. al, case No. 3:23-CV-00437-MMD-CSD, Gonzales v. State, case No. C259414, and Eatherly v. State, Supreme court case No. 86565.

How long must this blatant miscarriage of justice continue? To this date the State of Nevada continues its long historical practice of illegally and unconstitutionally prosecuting and punishing thousands for serious crimes rendering punishment of the highest level including life in prison and death penalties. Illegally confining people against their will is kidnapping. Sentencing people to death without jurisdiction is murder. Our Constitution demands more than the continued use of a flawed criminal justice system.

This case is not only of state and national importance, but of *world wide* importance. Las Vegas is a world-wide tourist destination receiving millions of visitors from all over the world year after year. It once has been said of "Sin City": "Come on vacation, leave on probation". The State's jurisdictional issue must be addressed once

and for all.

History shows this Court does not shy away from correcting the errors of state governments, e.g. *Ramos v. Louisiana*[3]; *Mc Girt v. Oklahoma*[4]. Nevada's long-standing practice of asserting jurisdiction over its citizens without a valid statutory scheme must end, despite the State's view of unacceptable consequences. The magnitude of a legal wrong is no reason to perpetuate it (*Mc Girt, id.*).

When confronted with the difficult task of rendering a judgment adverse to a state with potential far-reaching consequences this Court stated the following: "Every judge must learn to live with the fact he or she will make some mistakes; it comes with the territory. But it is something else entirely to perpetuate something we all know to be wrong only because we fear the consequences of being right..." (*Ramos*, supra).

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[3] *Ramos v. Louisiana*, 590 U.S. __, __, __, 140 S. Ct. 1390, 206 L. Ed. 2d 583 (2020).

[4] *Mc Girt v. Oklahoma*, 591 U.S. __; 140 S. Ct. 2452; 207 L. Ed. 2d 985; 2020 U.S. LEXIS 3554 (2020).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: July 22nd, 2024

FILED

MAY 28 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Petitioner - Appellant, v. TIM GARRETT and ATTORNEY GENERAL OF THE STATE OF NEVADA, Respondents - Appellees.	No. D.C. No. District of Nevada, Reno ORDER

Before: CHRISTEN and FORREST, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 3) is denied because appellant has not shown that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Any pending motions are denied as moot.

DENIED.

APPENDIX A

AO450 (NVD Rev. 2/18) Judgment in a Civil Case

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

[redacted]

Petitioner,

v.

TIM GARRETT, *et al.*,

Respondents.

JUDGMENT IN A CIVIL CASE

Case No. [redacted]

___ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

___ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

_X_ **Decision by Court.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that this action is dismissed with prejudice.
IT IS FURTHER ORDERED that a certificate of appealability is denied, as jurists of reason would not find dismissal of the Petition for the reasons stated herein to be debatable or wrong.
IT IS FURTHER ORDERED that judgment is hereby entered accordingly, and this case is closed.

Date: October 13, 2023

CLERK OF COURT

Signature of Clerk or Deputy Clerk

APPENDIX B

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

Petitioner,	Case No.
v.	ORDER
TIM GARRETT, *et al.*,	
Respondents.	

Pro se Petitioner [redacted] filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. (ECF No. 1-1 ("Petition").) This Court conducted an initial review of the Petition and ordered Wilcox to show cause why the Petition should not be dismissed as untimely. (ECF No. 3.) [redacted] timely responded to the order to show cause. (ECF No. 4.) The Court now determines that the Petition is untimely, warranting its dismissal.

I. BACKGROUND[1]

Redacted

Insert Personal Case History Here

[1]Judicial notice is taken of the docket records of the Eighth Judicial District Court and Nevada appellate courts, which are accessible at https://www.clarkcountycourts.us/portal and http://caseinfo.nvsupremecourt.us/public/caseSearch.do.

APPENDIX B2

the motion, [redacted] appealed, and the Nevada Court of Appeals affirmed on May 8, 2023. [redacted] *v. State of Nevada*, No. [redacted] (Nev. Ct. Apps. May 8, 2023).

II. LEGAL STANDARD

The Antiterrorism and Effective Death Penalty Act ("AEDPA") establishes a one-year period of limitations for state prisoners to file a federal habeas petition pursuant to 28 U.S.C. § 2254. The one-year limitation period begins to run from the latest of four possible triggering dates, with the most common being the date on which the petitioner's judgment of conviction became final by either the conclusion of direct appellate review or the expiration of the time for seeking such review. *See* 28 U.S.C. § 2244(d)(1)(A). The federal limitations period is tolled while "a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending." 28 U.S.C. § 2244(d)(2). No statutory tolling is allowed for the period between finality of a direct appeal and the filing of a petition for post-conviction relief in state court because no state court proceeding is pending during that time. *See Nino v. Galaza*, 183 F.3d 1003, 1006–07 (9th Cir. 1999); *Rasberry v. Garcia*, 448 F.3d 1150, 1153 n.1 (9th Cir. 2006).

III. DISCUSSION

[redacted] conviction became final on the date on which the time for seeking direct review expired: April 9, 2018. *See* Nev. R. App. P. 4(b)(1) (requiring a notice of appeal to "be filed with the district court clerk within 30 days after the entry of the judgment or order being appealed"); *Gonzalez v. Thaler*, 565 U.S. 134, 137 (2012) (when a state prisoner "does not seek review in a State's highest court, the judgment becomes 'final' on the date that the time for seeking such review expires"). The federal statute of limitations thus began to run the following day: April 10, 2018. Accordingly, the limitations period expired 365 days later on April 10, 2019. Although [redacted] filed a motion to correct his sentence

APPENDIX B3

on October 13, 2022, it was filed after the AEDPA clock had already expired. As such, motion to correct his sentence could not have tolled an already expired limitations period. *See Jiminez v. Rice*, 276 F.3d 478, 482 (9th Cir. 2001). Accordingly, Wilcox filed his Petition four years and five months after the AEDPA limitation period expired.

In his response to the order to show cause, argues that the state district court lacked subject matter jurisdiction over his criminal case, and because subject matter jurisdiction can never be forfeited or waived, his Petition "is not subject to the statute of limitations in AEDPA." (ECF No. 4 at 2, 5.) Specifically, contends that NRS § 171.010, the statute giving Nevada state district courts their jurisdictional authority, was nullified in 1957 when the Nevada Legislature enacted the Nevada Revised Statutes and invalidated all preexisting statutes, including NRS § 171.010, so the state district court did not have subject matter jurisdiction over him. (*Id.* at 4.) Alternatively, contends that this Court should exercise its discretion to entertain his Petition given his novel subject matter jurisdiction argument. (*Id.* at 5 (citing *Reed v. Ross*, 468 U.S. 1 (1984) ("[W]here a constitutional claim is so novel that its legal basis is not reasonably available to counsel, a defendant has cause for his failure to raise the claim in accordance with applicable state procedures.").) This Court finds that these arguments lack merit.

First, regardless of NRS § 171.010, the Nevada state district court had jurisdiction over underlying criminal case under the Nevada Constitution. *See* NEV. CONST. art. VI, § 6. Second, NRS § 171.010 does not address the state district court's jurisdiction; rather, it provides criminal liability for persons committing offenses within Nevada. Third, argument that the Nevada state courts lack jurisdiction under NRS § 171.010, which is also the basis of his Petition, presents an issue of state law, but "federal habeas corpus relief does not lie for errors of state law." *Lewis v. Jeffers*, 497 U.S. 764, 780 (1990). Finally, reliance on *Reed v. Ross* is misplaced. In *Reed*, the Supreme

APPENDIX B4

Court held that a novel constitutional claim may establish cause to overcome a procedurally defaulted claim. 468 U.S. at 11. This holding in *Reed* does not apply to a time-barred petition.

IV. CONCLUSION

It is therefore ordered that this action is dismissed with prejudice as time barred. A certificate of appealability is denied, as jurists of reason would not find dismissal of the Petition for the reasons stated herein to be debatable or wrong.

It is further ordered that the motion to proceed *in forma pauperis* (ECF No. 1) is granted.

It is further ordered that the motion for order to show cause (ECF No. 4) is denied.

It is further ordered that the Clerk of Court (1) file the Petition (ECF No. 1-1); (2) add Nevada Attorney General Aaron D. Ford as counsel for Respondents;[2] (3) provide the Nevada Attorney General with copies of the Petition (ECF No. 1-1), this order, and all other filings in this matter by regenerating the notices of electronic filing; (4) enter final judgment dismissing this action with prejudice; and (5) close this case.

DATED THIS 12th day of October 2023.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE

[2]No response is required from Respondents other than to respond to any orders of a reviewing court.

APPENDIX B5

LOCAL JURISDICTION OF PUBLIC OFFENSES

NRS 171.010 Jurisdiction of offense committed in State. Every person, whether an inhabitant of this state, or any other state, or of a territory or district of the United States, is liable to punishment by the laws of this state for a public offense committed therein, except where it is by law cognizable exclusively in the courts of the United States.

[1911 Cr. Prac. § 58; RL § 6908; NCL § 10705]

NEVADA CASES.

Venue is material allegation and must be proved; use of circumstantial evidence. Venue in a criminal case is material allegation and must be proved, and proof may be made by the use of circumstantial evidence. People v. Gleason, 1 Nev. 173 (1865)

Statutes considered together show legislative intent that incarceration of convicted murderer upon life sentence does not preclude trial under indictment for another murder. RL § 6908 (cf. NRS 171.010), making every person who commits a crime liable to punishment, RL § 6921 (cf. NRS 171.080), permitting prosecution for a murder to be commenced at any time after the death of the victim, and RL § 7459 (cf. NRS 174.325), authorizing an order directing a person in prison brought before a court of criminal jurisdiction when it is necessary for any purpose, disclose legislative intent that incarceration of the convicted murderer upon a life sentence does not preclude his trial under indictment for another murder. In re Tramner, 35 Nev. 56, 126 Pac. 337 (1912)

Venue may be established by circumstantial evidence. Where, in a prosecution for the attempted grand larceny of a store, the manager of the store where the larceny was attempted testified he lived in the county and managed a store in a city located in the county, employees testified as to the address of the store and the defendant testified that he knew that the incident in which he was involved occurred in a certain store, there was sufficient circumstantial evidence to establish venue in the county of trial although no specific mention of the county was made at trial. (See NRS 171.010.) Dixon v. State, 83 Nev. 120, 424 P.2d 100 (1967), cited, Najarian v. Sheriff, Clark County, 87 Nev. 495, at 496, 489 P.2d 405 (1971), Hyler v. Sheriff, Clark County, 93 Nev. 561, at 564, 571 P.2d 114 (1977), James v. State, 105 Nev. 873, at 875, 784 P.2d 965 (1989)

Statute does not exclude prosecution of foreign national. The fact that NRS 171.010, relating to the jurisdiction of offenses committed in the state, mentioned the inhabitants of the United States but did not specifically refer to the inhabitants of foreign countries would not be construed to exclude prosecution of a foreign national who committed a crime while traveling through Nevada. Paulette v. State, 92 Nev. 71, 545 P.2d 205 (1976), cited, Thenault v. State, 92 Nev. 185, at 189, 547 P.2d 668 (1976), Johnstone v. State, 92 Nev. 241, at 242, 548 P.2d 1362 (1976), Johnstone v. State, 93 Nev. 427, at 428, 566 P.2d 1130 (1977)

Jurisdiction over crimes committed on land owned by Federal Government. Where an incident for which the defendant was accused of felony driving while intoxicated (see former NRS 484.379; cf. NRS 484C.110), occurred on land owned by the Federal Government, the courts of this State had jurisdiction to try the case because NRS 171.010 gives district court jurisdiction over crimes committed in a county except where the United States has exclusive jurisdiction, the Nevada Admission Acts revealed no retention of jurisdiction by the United States over the land in question, there was no affirmative cession of jurisdiction by Nevada and affirmative acceptance by the United States and NRS 328.110 requires recording in the office of the county recorder to effectuate cession of jurisdiction. Pendleton v. State, 103 Nev. 95, 734 P.2d 693 (1987)

Where dispute concerned which court had jurisdiction over defendant, district court erred in directing dismissal of matter. As a general rule, except for criminal offenses cognizable exclusively in federal court, some court always has jurisdiction over a criminal defendant. (See NRS 171.010.) Thus, where felony charges were awaiting a preliminary examination in justice court and the justice court had rejected the defendant's contention that the juvenile court had jurisdiction, the district court erred in granting a writ of mandamus directing the justice court to dismiss the matter for lack of jurisdiction. (See NRS 34.160.) The issue was not whether any court had jurisdiction over the defendant if he were held to answer for the charges, but which court had jurisdiction. State v. Barren, 128 Nev. 337, 279 P.3d 182 (2012)

ATTORNEY GENERAL'S OPINIONS.

Nevada court not deprived of jurisdiction where arresting officer takes defendant temporarily across state line. A Nevada court was not deprived of criminal jurisdiction where an officer, in making an arrest in Nevada, takes the defendant temporarily across the state line while en route to the nearest Nevada magistrate. AGO 52 (4-28-1955)

NRS 171.015 Jurisdiction of offense commenced without, but consummated within, this State; consummation through agent. When the commission of a public offense, commenced without the State, is consummated within its boundaries, the defendant is liable to punishment therefor in this State, though the defendant was out of the State at the time of the commission of the

APPENDIX C

LAWS OF THE STATE OF NEVADA

Passed at the

FORTY-EIGHTH SESSION OF THE LEGISLATURE

1957

Senate Bill No. 1–Senator Johnson

CHAPTER 1

AN ACT creating a legislative fund.

[Approved January 23, 1957]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. For the purpose of paying the salaries, mileage, and the postage and stationery allowances of members of the 1957 Nevada legislature, the salaries of the attaches, and the incidental expenses of the respective houses thereof, and the unpaid expenses incurred by the 1956 special session of the Nevada legislature, the state treasurer is hereby authorized and required to set apart, from any money now in the general fund not otherwise appropriated, the sum of $150,000, which shall constitute the legislative fund.

SEC. 2. The state controller is hereby authorized and required to draw his warrants on the legislative fund in favor of the members and employees of the senate and assembly for per diem, mileage, stationery allowances, compensation, and incidental expenses of the respective houses, when properly certified in accordance with law, and the state treasurer is hereby authorized and required to pay the same.

SEC. 3. Any unexpended portion of the legislative fund shall revert to the general fund on December 31, 1959.

SEC. 4. This act shall become effective upon passage and approval.

Senate Bill No. 2–Committee on Judiciary

CHAPTER 2

AN ACT to revise the laws and statutes of the State of Nevada of a general or public nature; to adopt and enact such revised laws and statutes, to be known as the Nevada Revised Statutes, as the law of the State of Nevada; to repeal all prior laws and statutes of a general, public and permanent nature; providing penalties; and other matters relating thereto.

[Approved January 25, 1957]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Enactment of Nevada Revised Statutes. The Nevada Revised Statutes, being the statute laws set forth after section 9 of this act, are hereby adopted and enacted as law of the State of Nevada.

SEC. 2. Designation and Citation. The Nevada Revised Statutes adopted and enacted into law by this act, and as hereafter amended and supplemented and printed and published pursuant to law, shall be known as Nevada Revised Statutes and may be cited as "NRS" followed by the number of the Title, chapter or section, as appropriate.

APPENDIX D

SEC. 3. Repeal of Prior Laws. Except as provided in section 5 of this act and unless expressly continued by specific provisions of Nevada Revised Statutes, all laws and statutes of the State of Nevada of a general, public and permanent nature enacted prior to January 21, 1957, hereby are repealed.

SEC. 4. Construction of Act.

1. The Nevada Revised Statutes, as enacted by this act, are intended to speak for themselves; and all sections of the Nevada Revised Statutes as so enacted shall be considered to speak as of the same date, except that in cases of conflict between two or more sections or of any ambiguity in a section, reference may be had to the acts from which the sections are derived, for the purpose of applying the rules of construction relating to repeal or amendment by implication or for the purpose of resolving the ambiguity.

2. The provisions of Nevada Revised Statutes as enacted by this act shall be considered as substituted in a continuing way for the provisions of the prior laws and statutes repealed by section 3 of this act.

3. The incorporation of initiated and referred measures is not to be deemed a legislative reenactment or amendment thereof, but only a mechanical inclusion thereof into the Nevada Revised Statutes.

4. The various analyses set out in Nevada Revised Statutes, constituting enumerations or lists of the Titles, chapters and sections of Nevada Revised Statutes, and the descriptive headings or catchlines immediately preceding or within the texts of individual sections, except the section numbers included in the headings or catchlines immediately preceding the texts of such sections, do not constitute part of the law. All derivation and other notes set out in Nevada Revised Statutes are given for the purpose of convenient reference, and do not constitute part of the law.

5. Whenever any reference is made to any portion of Nevada Revised Statutes or of any other law of this state or of the United States, such reference shall apply to all amendments and additions thereto now or hereafter made.

SEC. 5. Effect of Enactment of NRS and Repealing Clause.

1. The adoption and enactment of Nevada Revised Statutes shall not be construed to repeal or in any way affect or modify:

(a) Any special, local or temporary laws.

(b) Any law making an appropriation.

(c) Any law affecting any bond issue or by which any bond issue may have been authorized.

(d) The running of the statutes of limitations in force at the time this act becomes effective.

(e) The continued existence and operation of any department, agency or office heretofore legally established or held.

(f) Any bond of any public officer.

(g) Any taxes, fees, assessments or other charges incurred or imposed.

(h) Any statutes authorizing, ratifying, confirming, approving or accepting any compact or contract with any other state or with the United States or any agency or instrumentality thereof.

2. All laws, rights and obligations set forth in subsection 1 of this section shall continue and exist in all respects as if Nevada Revised Statutes had not been adopted and enacted.

3. The repeal of prior laws and statutes provided in section 3 of this act shall not affect any act done, or any cause of action accrued or established, nor any plea, defense, bar or matter subsisting before the time when such repeal shall take effect; but the proceedings in every case shall conform with the provisions of Nevada Revised Statutes.

4. All the provisions of laws and statutes repealed by section 3 of this act shall be deemed to have remained in force from the time when they began to take effect, so far as they may apply to any department, agency, office, or trust, or any transaction, or event, or any limitation, or any right, or obligation, or the construction of any contract already affected by such laws, notwithstanding the repeal of such provisions.

5. No fine, forfeiture or penalty incurred under laws or statutes existing prior to the time Nevada Revised Statutes take effect shall be affected by repeal of such existing laws or statutes, but the recovery of such fines and forfeitures and the enforcement of such penalties shall be effected as if the law or statute repealed had still remained in effect.

6. When an offense is committed prior to the time Nevada Revised Statutes take effect, the offender shall be punished under the law or statute in effect when the offense was committed.

7. No law or statute which heretofore has been repealed shall be revived by the repeal provided in section 3 of this act.

8. The repeal by section 3 of this act of a law or statute validating previous acts, contracts or transactions shall not affect the validity of such acts, contracts or transactions, but the same shall remain as valid as if there had been no such repeal.

9. If any provision of the Nevada Revised Statutes as enacted by this act, derived from an act that amended or repealed a preexisting statute, is held unconstitutional, the provisions of section 3 of this act shall not prevent the preexisting statute from being law if that appears to have been the intent of the legislature or the people.

SEC. 6. Severability of Provisions. If any provision of the Nevada Revised Statutes or amendments thereto, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of the Nevada Revised Statutes or such amendments that can be given effect without the invalid provision or application, and to this end the provisions of Nevada Revised Statutes and such amendments are declared to be severable.

APPENDIX D2

DONALD TAYLOR, Appellant, vs. THE STATE OF NEVADA, Respondent.
SUPREME COURT OF NEVADA
472 P.3d 195; 2020 Nev. Unpub. LEXIS 875
No. 79218
September 18, 2020, Filed

Notice:

NOT DESIGNATED FOR PUBLICATION. PLEASE CONSULT THE NEVADA RULES OF APPELLATE PROCEDURE FOR CITATION OF UNPUBLISHED OPINIONS.PUBLISHED IN TABLE FORMAT IN THE PACIFIC REPORTER.

Editorial Information: Prior History

Taylor v. State, 132 Nev. 309, 371 P.3d 1036, 2016 Nev. LEXIS 333, 2016 WL 1594007 (Apr. 21, 2016)

Judges: Parraguirre, J., Hardesty, J., Cadish, J.

Opinion

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; William D. Kephart, Judge. Appellant Donald Taylor argues that he received ineffective assistance of trial and appellate counsel. The district court denied the petition after conducting an evidentiary hearing. We affirm.

To demonstrate ineffective assistance of counsel, a petitioner must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness and that prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*); *see also Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996) (applying *Strickland* to claims of ineffective assistance of appellate counsel). The petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004), and both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697. For purposes of the deficiency prong, counsel is strongly presumed to have provided adequate assistance and exercised reasonable professional judgment in all significant decisions. *Id.* at 690. We defer to the district court's factual findings that are supported by substantial evidence and not clearly wrong, but review its application of the law to those facts de *novo*. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

Taylor first argues that trial counsel should have moved to suppress the evidence obtained following his traffic stop on the basis that he was detained for more than one hour without probable cause. He argues that the show-up identification that took place within that one-hour period could not provide

APPENDIX E

probable cause because it was unreliable. The record, however, shows that probable cause had been established before the show-up identification. The victim's phone showed text messages and calls to and from "D" shortly before the killing; the text messages depicted an agreement where the victim would sell a large quantity of marijuana; witness A. Chenault told the police that the shooting took place after the buyers arrived, pulled guns, and stated that they were stealing the marijuana; and "D"'s phone number was associated with Taylor in other police records. A challenge to Taylor's initial detention on a probable-cause basis would have failed. *See Doleman v. State*, 107 Nev. 409, 413, 812 P.2d 1287, 1289 (1991) ("Probable cause to conduct a warrantless arrest exists when police have reasonably trustworthy information of facts and circumstances that are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been or is being committed by the person to be arrested."). Taylor accordingly has not shown deficient performance or prejudice in counsel's omitting this challenge. The district court therefore did not err in denying this claim.1

Taylor next argues that trial counsel should have retained an investigator to interview Chenault about her changing description of the shooter. Specifically, he argues that an investigation could have developed evidence that Chenault's identification of Taylor as the shooter was influenced by a booking photo texted by the investigating detective to Chenault's daughter and shown to Chenault after the show-up. The discrepancies in Chenault's descriptions are well documented in the record, and counsel cross-examined Chenault on this issue and argued it extensively. As Taylor has not alleged that anything would be uncovered that was not already known and available to be argued, he has not shown deficient performance or that he was prejudiced. The district court therefore did not err in denying this claim.

Taylor next argues that trial counsel should have retained an eyewitness-identification expert, specifically Dr. Deborah Davis, who had been retained by Taylor's codefendant but did not testify after the codefendant pleaded guilty. Substantial evidence supports the district court's finding that counsel made a strategic decision to challenge Chenault's identification by cross-examination rather than an expert witness, as counsel testified at the evidentiary hearing that he identified the eyewitness identification as a significant issue and considered retaining an expert and the record shows that counsel challenged the identification through pretrial motions, cross-examination, and closing argument. Taylor has not shown extraordinary circumstances warranting a challenge to counsel's strategic decision and thus has not shown deficient performance. *See Lara v. State*, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004). Further, Taylor has not shown prejudice. Davis testified at the evidentiary hearing that her testimony would have addressed limitations on the accuracy of eyewitness identifications. Counsel, however, argued these issues and the facts undermining the reliability of Chenault's identification at trial, such that we cannot say that omitting Davis' testimony undermines our confidence in the jury's verdict. *See Strickland*, 466 U.S. at 694 ("A reasonable probability is a probability sufficient to undermine confidence in the outcome.").

Taylor next argues that appellate counsel should have better argued that Chenault's identification was irreparably tainted by the suggestive photograph of Taylor, shown to her by her daughter after the detective sent it by text message to the daughter. Appellate counsel argued briefly that Chenault's in-court identification was tainted by both the suggestive show-up identification and the photograph, such that the in-court identification should have been suppressed. We determined on appeal that the brief statement of the issue was not supported by cogent argument or relevant authority. *Taylor v. State*, 132 Nev. 309, 320 n.6, 371 P.3d 1036, 1043 n.6 (2016). Here, however, Taylor does not proffer the cogent argument or relevant authority that appellate counsel omitted, stating merely that counsel should have established that the photograph was overly suggestive and that Chenault's in-court identification was based on the photograph. We concluded that Chenault's in-court identification had

APPENDIX E2

an adequate independent basis in her observation of the suspects in her apartment before the shooting. *Id.* at 322, 371 P.3d at 1045. Taylor has not argued how the photograph compromised this independent basis. Insofar as Taylor relies on *United States v. Wade*, 388 U.S. 218, 240, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967), and *Moore v. Illinois*, 434 U.S. 220, 225-26, 98 S. Ct. 458, 54 L. Ed. 2d 424 (1977), such reliance is misplaced, as those authorities are relevant only for the general proposition that an in-court identification may be tainted by a suggestive pretrial lineup. Appellate counsel did not perform deficiently and Taylor was not prejudiced by counsel's omitting authorities supporting this general proposition. The district court therefore did not err in denying this claim.

Taylor next argues that trial and appellate counsel should have challenged references to cellular-service-company custodians of records as "experts." Taylor has not shown that either a trial or appellate challenge had merit, as testimony of a cellular-service-company record custodian is expert testimony and thus the references accurately described the testimony. *See Burnside v. State*, 131 Nev. 371, 384, 352 P.3d 627, 636-37 (2015). Taylor accordingly has shown neither deficient performance nor prejudice in the omission of meritless claims. The district court therefore did not err in denying this claim.

Taylor next argues that trial counsel should have challenged the State's failure to notice the record custodian testimony as expert testimony.2 Taylor has not provided the State's witness lists, and this claim is accordingly a bare claim unsupported by the record. *See Biggins v. State*, 107 Nev. 178, 182, 808 P.2d 535, 538 (1991) (concluding that materials omitted from the record on appeal "are presumed to support the district court's decision"), *rev'd on other grounds by Riggins v. Nevada*, 504 U.S. 127, 112 S. Ct. 1810, 118 L. Ed. 2d 479 (1992); *see also Thomas v. State*, 120 Nev. 37, 43 n.4, 83 P.3d 818, 822 n.4 (2004) ("Appellant has the ultimate responsibility to provide this court with portions of the record essential to determination of issues raised in appellant's appeal." (internal quotation marks omitted)). Even if the State failed to notice the record custodians as experts, Taylor has not shown that trial counsel performed deficiently in omitting a challenge, as we settled that expert witness notice was required in these circumstances two years after Taylor's trial. *See Burnside*, 131 Nev. at 384, 352 P.3d at 636-37. "[C]ounsel's failure to anticipate a change in the law does not constitute ineffective assistance of counsel." *Nika v. State*, 124 Nev. 1272, 1289, 198 P.3d 839, 851 (2008). The district court therefore did not err in denying this claim.

Taylor next argues that trial counsel provided ineffective assistance when his lead counsel David Phillips had his license suspended and could not appear at several pretrial hearings and that this suspension deprived him of his Sixth Amendment right to counsel. Taylor was represented at these hearings by his second attorney John Rogers. Phillips' error in allowing his license to be suspended for failing to submit his CLE certification does not constitute deficient performance. *See United States v. Mouzin*, 785 F.2d 682, 698 (9th Cir. 1986) (observing that suspension does not per se constitute ineffective representation and looking instead to counsel's trial performance). Taylor has not specifically alleged how Rogers' representation at the hearings was deficient or how Phillips' presence at these hearings would have led to a reasonable probability of a different outcome. Insofar as he argues that counsel effectively abandoned his representation by being suspended, Taylor was not abandoned by counsel because Rogers was able to represent him. *See United States v. Cronic*, 466 U.S. 648, 656, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984) ("[T]he adversarial process protected by the Sixth Amendment requires that the accused have counsel acting in the role of an advocate." (internal quotation marks omitted)). And Taylor's argument that he was denied his counsel of choice fails, as he was not entitled to counsel of his choice where counsel was appointed.3*See Young v. State*, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004) (recognizing that "[a] defendant's right to substitution of counsel is not without limit"). And to the extent that Taylor argues that appellate counsel should have

APPENDIX E3

raised these issues on appeal, he has not identified a basis that would support a meritorious appellate claim, as he had counsel at all critical stages, and thus has not shown deficient performance or prejudice. The district court therefore did not err in denying these claims.

Taylor next argues that trial counsel should have waived the penalty phase. Substantial evidence supports the district court's finding that counsel made a strategic decision to decline to waive the penalty phase when asked before trial. Taylor has not shown extraordinary circumstances warranting a challenge to that decision and thus has not shown deficient performance. *See Lara*, 120 Nev. at 180, 87 P.3d at 530. Moreover, Taylor has not shown how waiving the penalty phase would have led to a reasonable probability of a different outcome. The district court therefore did not err in denying this claim.

Taylor next argues that trial counsel did not properly prepare for the penalty phase. The record belies Taylor's contention that trial counsel failed to present a mitigation case, as the jury was presented with photographs of Taylor's girlfriend and children and evidence regarding his efforts to turn his life around through employment and education, and counsel argued in favor of Taylor's character and that he should be given an opportunity to rehabilitate himself and reenter society. Contrary to Taylor's contention, it was not objectively unreasonable for counsel to refrain from arguing that Taylor's criminal history was not significant, as this was false, the State extensively argued regarding that history, and counsel reasonably avoided calling attention to it. The record repels Taylor's contention that his mother would have testified in mitigation, as counsel reported contemporaneously that Taylor did not want to subject his mother to that. And contrary to Taylor's contention, it was not objectively unreasonable for counsel to decline to request a jury instruction on mitigating evidence pursuant to NRS 200.035, as that statute concerns mitigating circumstances to weigh against aggravating circumstances in capital penalty phases and Taylor's was not a capital trial. *See Lisle v. State*, 131 Nev. 356, 366-67, 351 P.3d 725, 733 (2015) (discussing mitigating evidence pursuant to NRS 200.035 in capital proceedings). Accordingly, Taylor has not shown deficient performance. The district court therefore did not err in denying this claim.

Taylor next argues that trial and appellate counsel should have investigated and challenged evidence during the penalty phase as to Taylor's charge for a 2001 murder in Pomona, California, that was dismissed without explanation. Taylor argues that investigation would have revealed that another suspect was culpable. Taylor, however, disregards that there were two suspect shooters in the 2001 drive-by shooting-proffering a second suspect would not preclude Taylor's participation. Taylor has not shown deficient performance by trial counsel, who argued strenuously that this evidence was impalpable and highly suspect. Further, he has not shown prejudice regarding trial counsel's performance, as evidence of a second suspect would not itself render the Pomona murder evidence impalpable or highly suspect. *See Nunnery v. State*, 127 Nev. 749, 769, 263 P.3d 235, 249 (2011) ("[Evidence of uncharged crimes] is relevant because a sentencing determination should be based on the entirety of a defendant's character, record, and the circumstances of the offense, but it may be excluded from a capital penalty hearing if it is impalpable or highly suspect." (internal citation and quotation marks omitted)). And Taylor has not shown deficient performance or prejudice regarding appellate counsel's omission, as an appellate claim lacked merit where the jury considered other evidence, including victim-impact testimony, Taylor's prior convictions, and evidence of Taylor's past domestic violence, such that his sentence did not rest solely on the Pomona murder. *See Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996) (reversing "a sentence if it is supported solely by impalpable and highly suspect evidence" (emphasis original)). The district court therefore did not err in denying this claim.

APPENDIX E4

Taylor next argues that trial and appellate counsel should have challenged prospective juror 121 for cause because she was unwilling to consider all possible punishments in a penalty phase. While prospective juror 121 stated that she believed that murder warranted "the ultimate punishment," she assented that she would consider all possible punishments and follow the court's instructions. Taylor accordingly has shown neither deficient performance nor prejudice regarding trial counsel's omitting a meritless challenge for cause on this basis. *See Leonard v. State*, 117 Nev. 53, 65, 17 P.3d 397, 405 (2001) (providing that a prospective juror should be removed for cause if her "views would prevent or substantially impair the performance of [her] duties as a juror in accordance with [her] instructions and [her] oath" (internal quotation marks omitted)). Further, Taylor has not shown that an appellate claim on this basis had merit and thus has not shown deficient performance or prejudice in that regard. *Cf. Blake v. State*, 121 Nev. 779, 796, 121 P.3d 567, 578 (2005) (recognizing that the right to an impartial jury is not violated unless a juror empaneled was unfair or biased). The district court therefore did not err in denying this claim.

Taylor next argues that *Carpenter v. United States*, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018), applies retroactively and that the seizure of his cell site location information without a warrant violated the Fourth Amendment.4*Carpenter* was decided after Taylor's conviction became final, and Taylor argues that it clarified existing law, rather than announcing a new rule of constitutional procedure. We disagree. *Carpenter* announced a new rule, as it overruled a line of authority permitting warrantless seizure of cell site data under certain circumstances. *See United States v. Carpenter*, 819 F.3d 880, 887 (2016) (citing circuit court decisions declining to apply Fourth Amendment protections to cell site metadata), revel, 138 S. Ct. 2206, 201 L. Ed. 2d 507; *United States v. Yang*, 958 F.3d 851, 864 (9th Cir. 2020) (Bea, J., concurring in the judgment) (recognizing that Carpenter set forth a new rule); *United States v.Goldstein*, 914 F.3d 200, 201-02 (3d Cir. 2019) (same); *see also Bejarano v. State*, 122 Nev. 1066, 1075, 146 P.3d 265, 272 (2006) ("[A] rule is new when it overrules precedent, disapproves a practice sanctioned by prior cases, or overturns a longstanding practice uniformly approved by lower courts."). And as Carpenter's extension of the warrant requirement to cell site location data did not "establish that it is unconstitutional to proscribe certain conduct as criminal or to impose a type of punishment on certain defendants because of their status or offense" or "establish a procedure without which the likelihood of an accurate conviction is seriously diminished," it does not apply retroactively. *See Bejarano*, 122 Nev. at 1074-75, 146 P.3d at 271. The district court therefore did not err in denying this claim.

Taylor next argues that trial and appellate counsel should have challenged the constitutionality of the legislative processes leading to the codification of the Nevada Revised Statutes. He argues that the 1951 statute that created a statute revision commission to revise and compile Nevada's laws-of which Supreme Court justices would be three members-violated a constitutional provision barring justices from holding another nonjudicial office. He also argues that this deprived the trial court of subject matter jurisdiction and violated the separation of powers. Taylor has not demonstrated deficient performance or prejudice because Taylor did not show that the trial court lacked subject matter jurisdiction. *See* Nev. Const. art. 6 § 6; NRS 171.010. Taylor further did not show that justices of the Nevada Supreme Court violated the constitution by serving in a nonjudicial public office because he did not show that participating in the commission "[i]nvolve[d] the continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty." Nev. Const. Art. 6, § 11; NRS 281.005(1) (defining "Public officer"); 1963 Nev. Stat., ch. 403, preface, at 1011 (providing that the act serves to abolish the statute revision commission and to assign its duties to the Legislative Counsel Bureau). Moreover, the Legislature enacts the actual laws of Nevada, while the Legislative Counsel Bureau-which succeeded the statute revision commission-codifies and classifies

APPENDIX E5

those laws as the Nevada Revised Statutes, grouping laws of similar subject matter together in a logical order, but not itself exercising the legislative function. *See* NRS 220.110; NRS 220.120(3); NRS 220.170(3); 1963 Nev. Stat., ch. 403, preface, at 1011. Taylor accordingly has not shown that the statute revision commission improperly encroached upon the powers of another branch of government, violating the separation of powers. *See Comm'n on Ethics v. Hardy*, 125 Nev. 285, 291-92, 212 P.3d 1098, 1103 (2009) ("The purpose of the separation of powers doctrine is to prevent one branch of government from encroaching on the powers of another branch."). The district court therefore did not err in denying this claim.

Lastly, Taylor argues cumulative error. Even assuming that multiple deficiencies in counsel's performance may be cumulated to demonstrate prejudice in a postconviction context, *see McConnell v. State*, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009), Taylor has not demonstrated multiple instances of deficient performance to cumulate.

Having considered Taylor's contentions and concluded that they do not warrant relief, we

ORDER the judgment of the district court AFFIRMED.

/s/ Parraguirre, J.

Parraguirre

/s/ Hardesty, J.

Hardesty

/s/ Cadish, J.

Cadish

Footnotes

1

Taylor argues that the district court denied this and other claims without an evidentiary hearing. The record belies this contention, as an evidentiary hearing was held and postconviction counsel had the opportunity to ask trial counsel about this omission or any other claim raised in the pleadings.

2

Taylor does not argue that appellate counsel should have raised a claim on this basis.

3

Taylor did not contemporaneously object to Rogers' representation while Phillips was unavailable.

4

The Carpenter decision was entered after Taylor's conviction had become final, and thus, his claim based on *Carpenter* could not have been raised on direct appeal. *See* NRS 34.810(1)(b), (3).

APPENDIX E6

281 P.3d 1193 (Table)
Unpublished Disposition
Supreme Court of Nevada.

Lance G. KRIG, Appellant,
v.
The STATE of Nevada, Respondent.

No. 50976.
|
Feb. 2, 2009.

Attorneys and Law Firms

Paul E. Wommer

Attorney General Catherine Cortez Masto/Carson City

Clark County District Attorney David J. Roger

ORDER OF AFFIRMANCE

*1 This is an appeal from a judgment of conviction, pursuant to a plea in accordance with *North Carolina v. Alford,* 400 U.S. 25 (1970), of a single count of coercion. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Lance Krig to serve a term of 12 to 48 months in prison.

On appeal, Krig claims that the district court erred in denying his pretrial motion to dismiss for lack of subject matter jurisdiction. Specifically, Krig argues that the statutes under which he was charged and convicted [1] are unconstitutional, as they each lack the enacting clause mandated by Article 4, Section 23 of the Nevada Constitution. This argument is without merit.

The enacting clause of the Nevada Constitution states, "The enacting clause of every law shall be as follows: 'The people of the State of Nevada represented in Senate and Assembly, do enact as follows,' and no law shall be enacted except by bill." Nev. Const. art 4, § 23. This court has interpreted the enacting clause to require that all laws express upon their face "the authority by which they were enacted." *State of Nevada v. Rogers,* 10 Nev. 250, 261, 1875 WL 4032, at *7 (1875). Krig asserts that the laws under which he was charged and convicted, as compiled in the Nevada Revised Statutes, lack this enacting clause and are therefore unconstitutional.

However, Krig fails to recognize that each of the acts creating and last amending the statutes at issue, as published in the Advanced Sheets of Nevada Statutes (Statutes of Nevada), begins with the phrase "THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS." 1997 Nev. Stat., ch. 313, at 1174; 1995 Nev. Stat., ch. 293, at 508; 2007 Nev. Stat., ch. 528, at 3245; 1995 Nev. Stat., ch. 443, at 1167. Thus, the statutes under which Krig was charged and convicted comply with the constitutional mandate of Article 4, Section 23. *See Ledden v. State,* 686 N.W.2d 873, 876–77 (Minn.2004) (holding that, where appellant argued that his convictions were unconstitutional because statutes under which he was charged did not contain constitutionally required enacting clauses, appellant's convictions were not unconstitutional as acts creating and amending laws began with required phrase); *State v. Wittine,* No. 90747, 2008 WL 4813830, * 4 (Ohio Ct.App. Nov. 6, 2008) (holding that omission of constitutionally required enacting clauses in Ohio Revised Code "in no way affects the validity of the statutes themselves" where clauses were contained in senate bill enacting laws).

APPENDIX F

Further, Krig's argument conflates the laws of Nevada with the codified statutes. The Nevada Revised Statutes "constitute the official codified version of the Statutes of Nevada and may be cited as prima facie evidence of the law." NRS 220.170(3). The Nevada Revised Statutes consist of enacted laws which have been classified, codified, and annotated by the Legislative Counsel. *See* NRS 220 .120. The actual laws of Nevada are contained in the Statutes of Nevada, which as mentioned above, do contain the mandatory enacting clauses. Moreover, NRS 220.110, which sets forth the required contents of the Nevada Revised Statutes, does not mandate that the enacting clauses be republished in the Nevada Revised Statutes. Thus, we conclude that the fact that the Nevada Revised Statutes do not contain enacting clauses does not render the statutes unconstitutional. Therefore, Krig's convictions are not constitutionally deficient. Accordingly, we

*2 ORDER the judgment of conviction AFFIRMED.

All Citations

281 P.3d 1193 (Table), 2009 WL 1491110

Footnotes

1 The amended criminal information charged Krig with two counts of sexual assault in violation of NRS 200.364 and NRS 200.366, and one count of attempted sexual assault in violation of NRS 200.364, NRS 200.366 and NRS 193.330. The second amended information, to which Krig pleaded guilty, charged Krig with one count of coercion in violation of NRS 207.190.

End of Document

APPENDIX F2

PATRICK DOYLE OLSON, Appellant, vs. THE STATE OF NEVADA, Respondent.
COURT OF APPEALS OF NEVADA
2017 Nev. App. Unpub. LEXIS 699; 133 Nev. 1058
No. 72337
October 11, 2017, Filed

Notice:

NOT DESIGNATED FOR PUBLICATION. PLEASE CONSULT THE NEVADA RULES OF APPELLATE PROCEDURE FOR CITATION OF UNPUBLISHED OPINIONS.PUBLISHED IN TABLE FORMAT IN THE NEVADA REPORTER.

Judges: Silver, C.J., Tao, J., Gibbons, J.

Opinion

ORDER OF AFFIRMANCE

Patrick Doyle Olson appeals from a district court order dismissing the postconviction petition for a writ of habeas corpus he filed on November 4, 2016.1 Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Olson did not file a direct appeal and his habeas petition was filed more than three years after the judgment of conviction was entered on April 30, 2013; consequently, Olson's petition was untimely filed and procedurally barred absent a demonstration of good cause-cause for the delay and undue prejudice. *See* NRS 34.726(1).

Olson claimed he had good cause to overcome the procedural bar because his claims were based on newly discovered evidence that the bill creating the Nevada Revised Statutes was not properly enacted into law and because subject matter jurisdiction can be raised at any time. Olson argued that the bill was flawed and unconstitutional because the procedural requirements for enacting a bill into law were not followed, justices of the Nevada Supreme Court improperly participated in the legislative process, and the law does not contain an enacting clause.

Olson has failed to demonstrate good cause because his claims regarding the Nevada Revised Statutes were available to be raised in a timely petition and ignorance of the law is not an impediment external to the defense. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003); *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). Olson also failed to demonstrate his claims regarding the Nevada Revised Statutes implicated the jurisdiction of the district court. *See* Nev. Const. art. 6, § 6; NRS 171.010; *United States v. Cotton*, 535 U.S. 625, 630, 122 S. Ct. 1781, 152 L. Ed. 2d 860 (2002) ("[T]he term jurisdiction means . . . the courts' statutory or constitutional *power* to adjudicate the case." (internal quotation marks omitted)).

Olson confuses Nevada's actual laws with Nevada's codified statutes. The Nevada Revised Statutes "constitute the official codified version of the Statutes of Nevada and may be cited as prima facie

APPENDIX G

evidence of the law." NRS 220.170(3). The Nevada Revised Statutes consist of enacted laws which have been classified, codified, and annotated by the Legislative Counsel. *See* NRS 220.120. The actual laws of Nevada are contained in the Statutes of Nevada.2

Having concluded Olson failed to demonstrate good cause to overcome the procedural bar and the district court did not err by dismissing his petition as procedurally barred, we

ORDER the judgment of the district court AFFIRMED.3

/s/ Silver, C.J.

Silver

/s/ Tao, J.

Tao

/s/ Gibbons, J.

Gibbons

Footnotes

1

This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

2

The law creating the Nevada Revised Statutes contains an enacting clause and is found in the 1957 Statutes of Nevada, in chapter 2, on page 1.

3

To the extent Olson claims he is actually innocent, we decline to consider his claim because it was not raised in his petition or considered by the district court in the first instance. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 103 P.3d 25 (2003).

APPENDIX G2

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

Defendant.

CASE NO.

DEPT. NO. VIII

JUDGMENT OF CONVICTION

Redacted

Insert Personal Case History Here

APPENDIX H

Redacted

Insert Personal Case History Here

APPENDIX H2

Resolutions and Memorials

Senate Concurrent Resolution No. 1–Committee on Judiciary

FILE NO. 1

SENATE CONCURRENT RESOLUTION–Providing that the official engrossed copy of Senate Bill No. 2 may be used as the enrolled bill.

WHEREAS, The provisions of sec. 8 of chapter 3, Statutes of Nevada 1949, as amended by chapter 385, Statutes of Nevada 1955, provide that the official engrossed copy of a bill may by resolution be used as the enrolled bill; now, therefore, be it

Resolved by the Senate of the State of Nevada, the Assembly concurring, That the official engrossed copy of Senate Bill No. 2 shall be used as the enrolled bill as provided by law.

Assembly Concurrent Resolution No. 1–Committee on Judiciary

FILE NO. 2

ASSEMBLY CONCURRENT RESOLUTION–Expressing congratulations and gratitude to Russel West McDonald upon completion and enactment of Nevada Revised Statutes.

WHEREAS, The 48th session of the legislature of the State of Nevada, by unanimous vote of the members thereof, has enacted into law the Nevada Revised Statutes as the law of the State of Nevada to supersede all prior laws of a general, public and permanent nature; and

WHEREAS, Nevada Revised Statutes constitutes a complete revision and reorganization of all general statutes enacted during the 95 years that Nevada has existed as a state and territory, and is the first such revision in the history of our state; and

WHEREAS, The preparation of Nevada Revised Statutes was a monumental undertaking requiring a degree of intelligence, knowledge, technical ability and dedication possessed by few men; and

WHEREAS, The State of Nevada was fortunate that the Justices of the Supreme Court of the State of Nevada, in their capacity as the Statute Revision Commission, were able to secure as director of the commission Russell West McDonald, a native-born Nevadan, educated in the public schools of our state, a Rhodes scholar and a graduate of Stanford Law School, who was eminently qualified in all respects to perform the tremendous task imposed upon him; and

WHEREAS, The enactment of Nevada Revised Statutes marks the culmination of nearly 6 years of exceptionally devoted public service on the part of Russell West McDonald as statute reviser and legislative bill drafter; now, therefore, be it

Resolved by the Assembly of the State of Nevada, the Senate concurring, That the legislature of the State of Nevada hereby extends to Russell West McDonald its most hearty congratulations upon the completion and enactment of Nevada Revised Statutes and expresses to him its gratitude and that of the people of the State of Nevada for the years of selfless, dedicated and devoted effort which he has contributed in the public service to the preparation of Nevada Revised Statutes; and be it further

APPENDIX I

LEGISLATIVE COUNSEL'S PREFACE

History and Objectives of the Revision

Nevada Revised Statutes is the result of the enactment, by the 45th Session of the Legislature of the State of Nevada, of chapter 304, Statutes of Nevada 1951 (subsequently amended by chapter 280, Statutes of Nevada 1953, and chapter 248, Statutes of Nevada 1955), which created the Statute Revision Commission and authorized the Commission to undertake, for the first time in the state's history, a comprehensive revision of the laws of the State of Nevada of general application. Although revision was not commenced until 1951, the need for statutory revision had been recognized as early as 1865 when an editorial published in the *Douglas County Banner* stated:

> One subject which ought to engage the early, and serious consideration of the Legislature, about to convene, and one which should be acted upon without delay, is the revision and codification of the laws of Nevada. Amendment has been added to amendment, in such manner as to leave, in many instances, the meaning of the Legislature, that last resort of the jurist, in determining the application of the law, more than doubtful * * *. The most serviceable members of the Legislature will be those gentlemen who will do something toward reducing to order our amendment-ridden, imperfectly framed and jumbled up statutes at large.

From 1861 to 1951 the Legislature made no provisions for statutory revision, although during that period 8,423 acts were passed by the Legislature and approved by the Governor. During the period from 1873 to 1949 eight compilations of Nevada statutes were published. "Compiling" must be distinguished from "revising." Ordinarily, the "compiling" of statutes involves the following steps: Removing from the last compilation the sections that have been specifically repealed since its publication; substituting the amended text for the original text in the case of amended sections; inserting newly enacted sections; rearranging, to a limited extent, the order of sections; and bringing the index up to date.

"Revising" the statutes, on the other hand, involves these additional and distinguishing operations: (1) The collection into chapters of all the sections and parts of sections that relate to the same subject and the orderly arrangement into sections of the material assembled in each chapter. (2) The elimination of inoperative or obsolete, duplicated, impliedly repealed and unconstitutional (as declared by the Supreme Court of the State of Nevada) sections and parts of sections. (3) The elimination of unnecessary words and the improvement of the grammatical structure and physical form of sections.

The revision, instead of the recompilation, of the statutes was undertaken, therefore, first, to eliminate sections or parts of sections which, though not specifically repealed, were nevertheless ineffective and, second, to clarify, simplify, classify and generally make more accessible, understandable and usable the remaining effective sections or parts of sections.

With respect to the accomplishment of the second purpose of revision specified above, the following revisions, in addition to those mentioned elsewhere in this preface, were made:

1. Long sections were divided into shorter sections. The division of long sections facilitates indexing and reduces the complications and expense incident to future amendment of the statutes.
2. Whole sections or parts of sections relating to the same subject were sometimes combined.
3. Sentences within a section, and words within a sentence, were rearranged, and tabulations were employed where indicated.
4. Such words and phrases as "on and after the effective date of this act," "heretofore," "hereinafter," "now," and "this act" were replaced by more explicit words when possible.
5. The correct names of officers, agencies or funds were substituted for incorrect designations.

APPENDIX J

The general types of revisions to be made by the reviser, as well as the broad policies governing the work of revision, were determined by the Statute Revision Commission at frequent meetings. Precautions were taken to ensure the accomplishment of the objectives of the program without changing the meaning or substance of the statutes.

Upon completion of the revision of the text of the statutes in December 1956, the Commission turned to the solution of a vital problem: Would it recommend the enactment of the revised statutes or would it request the Legislature merely to adopt the revised statutes as evidence of the law? The Commission concluded that the enactment of the revised statutes as law, rather than the mere adoption thereof as evidence of the law, would be the more desirable course of action. Accordingly, *Nevada Revised Statutes* in typewritten form was submitted to the 48th Session of the Legislature in the form of a bill providing for its enactment as law of the State of Nevada. This bill, Senate Bill No. 2 (hereafter referred to in this preface as "the revision bill"), was passed without amendment or dissenting vote, and on January 25, 1957, was approved by Governor Charles H. Russell.

On July 1, 1963, pursuant to the provisions of chapter 403, Statutes of Nevada 1963, the Statute Revision Commission was abolished, and its powers, duties and functions were transferred to the Legislative Counsel of the State of Nevada.

METHOD AND FORM OF PUBLICATION

As required by NRS 220.120, all volumes are "bound in loose-leaf binders of good, and so far as possible, permanent quality." The use of the loose-leaf method makes it possible to keep *Nevada Revised Statutes* up to date, without using pocket parts or supplements or completely reprinting and rebinding each volume, simply by the insertion of new pages. As required by NRS 220.160, replacement and supplementary pages to the statute text made necessary by the session of the Legislature are prepared as soon as possible after each session. Complete reprintings of *Nevada Revised Statutes* were made in 1967, 1973 and 1979, and after each regular session beginning in 1985. Replacement pages are additionally provided periodically between legislative sessions as necessary to update the annotations to NRS, including federal and state case law. Occasionally these replacement pages will contain material inadvertently omitted in the codification of NRS and the correction of manifest clerical errors, as well as sections or chapters of NRS which have been recodified pursuant to chapter 220 of NRS for clarification or to alleviate overcrowding.

The outside bottom corner of each page of NRS contains a designation which indicates the reprint or group of replacement pages with which the page was issued. A designation consisting of four numerals contained in parentheses means that the page was issued as part of a reprint of NRS immediately following the legislative session held in the year indicated by the four numerals. For example, the designation "(2019)" means that the page was issued as part of the reprint of NRS immediately following the 80th Legislative Session which was held in 2019. A designation consisting of four numerals contained in parentheses immediately followed by the capitalized letter "R" and a numeral means that the page was issued as part of a group of replacement pages in the year indicated by the four numerals in parentheses. The numeral following the "R" indicates the number of the group of replacement pages. The groups begin with the number one and increase sequentially by one number so that the later group will always have a higher number. For example, the designation "(2019) R1" means that the page was part of the first group of replacement pages issued in 2019. Similarly, the designation "(2019) R4" means that the page was part of the fourth group of replacement pages issued in 2019.

APPENDIX J2

#
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Appellant In Pro Se

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

* * * * *

_____, Appellant,

-vs-

TIM GARRETT, Warden, et al, Respondents.

C.A. Case No. _____

D.C. Case No. _____

APPLICATION FOR CERTIFICATE OF APPEALABILITY

Appellant, _____, in pro se, moves this Court for a Certificate of Appealability following the District Court's denial of same. This application is made and based upon 28 U.S.C. § 2253; all papers, pleadings and documents herein and in the lower court record; and the following points and authorities.

POINTS AND AUTHORITIES

On October 12th, 2023, the District Court entered its ORDER dismissing/denying Appellant's § 2254 petition. (Check if applicable) ____:

On _____, 20___, the lower court denied Appellant's Motion to Alter or Amend/Reconsider. The lower court denied a Certificate of Appealability ("COA"). This request is timely submitted in accordance with Ninth Circuit Rule 22-1.

Title 28 U.S.C. § 2253 governs this question. This Court has interpreted this statute as requiring a petitioner to first make application to the lower

APPENDIX K

court. Ninth Circuit Rule 22-1(d) requires that, following the district court's denial of a COA, Appellant may move this Court for such. Id.

In order for a COA to lie, Appellant need only make a substantial showing of the denial of a constitutional right, and that "'reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further."'" Miller-El v. Cockrell, 537 U.S. 322, 123 S.Ct. 1029, 1039 (2003)(citations omitted). A COA does not require a showing that the appeal will succeed, as a claim can be debatable even though every jurist of reason might agree, after a COA has been granted and the case has received full consideration, that a petitioner will not prevail. Id. In short, Appellant need show that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Id., 537 U.S. 322, 123 S.Ct. at 1040.

Citing Miller-El, this Court has declared that the showing that must be made to obtain a COA is less than that required to obtain habeas relief. Allen v. Ornoski, 435 F.3d 946, 951 (9th Cir. 2006). In fact, this Court previously held that the AEDPA's "substantial showing" requirement for a COA is satsified where a petitioner demonstrates the "relatively low" showing that "the issues are debatable among jurists of reason; that a court could resolve the issues [differently]; or that the questions are adequate to deserve encouragement to proceed further." Williams v. Woodford, 306 F.3d 665, 681 (9th Cir. 2002). This Court need only take a quick look at the face of the petition to determine if it facially alleges the denial of a constitutional right, with any claims satisfying this modest standard of necessity receiving a COA. Morris v. Woodford, 229 F.3d 775, 781 (9th Cir. 2000). Any doubts as to whether the petitioner has met this standard are to be resolved in his favor. Valerio v. Crawford, 306 F.3d 742, 767 (9th Cir. 2002).

 APPENDIX K2

Under these standards, Appellant's claims within the petition and the manner of the district court's disposition thereof qualify for a COA. The lower court's record demonstrates that ___ all grounds ___ Grounds _____ _____ qualify for a COA under the above-cited authorities.

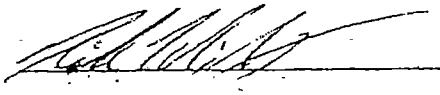
(Check if applicable) ✓ See attached page(s) for more detailed arguments as to why a COA should issue on the claims and/or how the lower court's adjudication thereof was erroneous.

Indeed, the Grounds within the petition facially allege the denial of a constitutional right, jurists of reason would debate the issues and whether the lower court erred in resolving the issues and/or would debate whether that court could have resolved the issues differently, and the questions are adequate to deserve encouragement to proceed further.

CONCLUSION

For the reasons set forth above, Appellant respectfully requests this Court to issue a COA as to ___ all grounds ___ Grounds _____ and the district court's adjudication thereof.

Dated this 31st day of October, 2023.



Lovelock Correctional Center
1200 Prison Road
Lovelock Nevada 89419
Appellant In Pro Se

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APPENDIX K3

ADDITIONAL ARGUMENT for COA

1. Jurisdictional issues may be raised at Any time pursuant to Fed. R. Crim. Proc. 12(b)(2), Fed. R. Civ. Proc. 12(b)(1) and 12(h)(3). The substantive issue of this COA is a Jurisdictional matter. Where the Court at the State Level, did Not have Subject Matter Jurisdiction, to convict and/or Sentence the Petitioner. The US Dist. Court was wrong in its determination of the Constitutional claim. Judge Du's misquoting of Reed v. Ross, 468 US 1, should have read "Where a Constitutional claim is so novel that its legal basis is not reasonably available At the time of a State Court proceeding, a defendant has cause for his failure to raise the claim in accordance with applicable State proceedings".

The US Dist Court was wrong in its determination of this case. Petitioner challenged the Constitutionality of a Jurisdictional Error (lack of Subject Matter). In addition, procedural defaults/bars and time constraints DO NOT apply to Jurisdictional challenges. As explained in Kelly v. US, 29 F.3d 1107, 1113-1114 (7th Cir. 1994) "When challenging a Jurisdictional Error, the defendant need NOT show cause and prejudice..." quoting an unpublished decision in US v. Broadwell, Lexis 6346 (4th Cir. 1992). The State Dist Court applied a voided procedural statute against Petitioner, exceeding the Court's Statutory limit, causing the State Court to procedurally default, rendering the proceedings unfair. A substantive Court procedure, in violation of Petitioner's Due Process, where the color of process manifested a complete disregard of that essential and fundamental Right. Such plain Error, for lack of Subject Matter Jurisdiction, is NOT a simple error. The State Court applied a unconstitutional voided procedural statute, and deprived Petitioner of his 5th, 6th and 14th Constitutional Right.

According to Judge Du's orders, the New Constitution, Article 6 §6 provides the Dist. Courts Jurisdiction of the Dist. Court, allowing for the issuance of Writs, of Socks. Nevertheless, it DOES NOT provide the overreach of Statutory limits. The Statutory authority for New Revised Statute 171.010 is VOID, an Act that is Factual and proven with Statutes of Nevada, Senate Bill 2, 1957. NRS 171.010 is applied on Court procedures, and provides criminal Jurisdiction. This Statute would give Subject Matter Jurisdiction (criminal liability), however, it is void by repeal. If the Dist Court ONLY needed the New Constitution, there would be No Need for a Statute, on the Dist. Court's procedures. The US Supreme Court, on McGirt v. Oklahoma, 140 S.Ct. 2452 July 9th, 2020, suggested that "Well known" procedural obstacles could prevent challenges to State convictions but... It appears that

There maybe little bar to state Habeas relief because, "issues of Subject Matter Jurisdiction are NEVER waived and can therefore be raised on a Collateral appeal." The New Supreme Court's discussion of Motions to Correct Illegal Sentences (and like Appeals) in Edwards emphasizes that these Motions are free from the various constraints and time restricting access to other appeals. In particular these Motions are exempt from the limitation on habeas petitions and Motions to Correct an Illegal Sentence are Not subject to the time bars and procedural hurdles hindering other types of appeals." Colley v. Bayer, 408 F.3d 1279, 1287 (9th Cir. 2005). As noted, the Court has an independent duty to assure itself that its Jurisdiction: ... as a result, parties can raise Jurisdictional defect at anytime. Kelly at 113, quoting Landreth v. Malik, 127 Nev. 175, 179 (2011); Barber v. State, 131 Nev. 1065, 1069 (2015)

In 1957, the 48th Legislature passed Senate Bill 2, which created and Enacted the New Revised Statutes (NRS), and VOIDED/repealed All laws and Statutes, to supersede those prior to 1957. The fatal defects found on NRS 171.010's History, it was created in 1911, restated in 1912 and Lastly in 1929. It was NEVER added, amended, reenacted or re-enacted in the 1957 and beyond NRS scheme, by the Legislature - EVER. SB2, describes a certain criteria that allowed some former laws to be carried over. However, NRS 171.010, previously known as - NCL § 10705 - DOES NOT fall into these categories. NRS 171.010 is a procedural Statute, that is inconsistent with the fundamental demands of Fair procedure. Knowing the State Court applied it unconstitutionally against the Appellant in the case, depriving him of the fundamental fairness, guarantee as an particularity of a "Court proceeding", being presented to Appellant's Due Process, that is protected by the US Constitution, 5th, 6th and 14th Amendments Rights.

The issues concerning the State Dist. Court's lack of Subject Matter Jurisdiction, the want or excess of power of the Court, as defined by Statute (NRS 171.010), or rules/procedures developed and followed under the doctrine of Stare Decisis, are grounds for relief. The unlawful application of a voided NRS 171.010 is a Factual plain error, that was Not reasonably available at the time of the Court proceedings, and is cognizable as a valid violation of Constitutional Magnitude, that raises to the level of a fundamental procedural defect, on behalf of the State Court, inherently resulting in a Complete miscarriage of Justice, which overcomes any time bars.

///

APPENDIX K5

Due to the Jurisdictional issues presented in this Petition for COA, Reasonable jurist would find it debatable or wrong, as to the Constitutionality of this Novel claim, and the denial of a Constitutional Right.

CONCLUSION

For the foregoing reasons contained herein, Appellant respectfully Petitions this Honorable Court, for a Certificate Of Appealability, to be granted in good faith and just cause.

Dated this 31st day of October, 2023.

LCC
1200 Prison Rd.
Lovelock, NV 89419
Appellant/Petitioner in Pro Se.

APPENDIX K6

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

_____ — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

PROOF OF SERVICE

I, _____, do swear or declare that on this date, July 22nd, 2024, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC, 20530-0001.
Aaron D. Ford, Attorney General, 100 N. Carson St. Carson City, NV 89701

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 22nd, 2024

_____
(Signature)