

No. 18-8917

**ORIGINAL**

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED

APR 15 2019

OFFICE OF THE CLERK

**GILBERT DEMETRIUS AGUILAR**, PETITIONER  
(Your Name)

VS.

**TIMOTHY FILSON, et al.** — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

8TH judicial district court; the Supreme of Nevada; United States District Court, District of Nevada, Northern Division.

Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

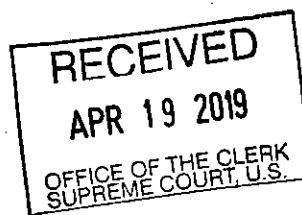
**UNITED STATES DISTRICT COURT, DISTRICT OF NEVADA, NORTHERN DIVISION.**

The appointment was made under the following provision of law: Criminal Justice Act of 1964., or

a copy of the order of appointment is appended.

*Gilbert Demetrius Aguilar #52207*

(Signature)



IN THE SUPREME COURT OF THE STATE OF NEVADA

GILBERT DEMETRIUS AGUILAR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50723

DAYOMASHELL DAVID AGUILAR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50736

**FILED**

SEP 05 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

These are proper person appeals from orders of the district court denying appellants' post-conviction petitions for writs of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. We elect to consolidate these appeals for disposition.<sup>1</sup>

On January 9, 1998, the district court convicted appellant Gilbert Aguilar, pursuant to a jury verdict, of conspiracy to commit murder, murder with the use of a deadly weapon, possession of a firearm by an ex-felon, discharging a firearm at or into a vehicle, and two counts of discharging a firearm at or into a structure. The district court sentenced Gilbert Aguilar as a habitual criminal to serve two consecutive terms of

<sup>1</sup>See NRAP 3(b).



life in the Nevada State Prison without the possibility of parole for the murder count. The district court also sentenced appellant to terms totaling 40 to 100 years for the remaining counts.

On that same date, the district court convicted appellant Dayomashell Aguilar, pursuant to a jury verdict, of conspiracy to commit murder, murder with the use of a deadly weapon, discharging a firearm at or into a vehicle, and two counts of discharging a firearm at or into a structure. The district court sentenced Dayomashell Aguilar to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole after 20 years for the murder with a deadly weapon conviction. The district court also sentenced appellant to terms totaling 11 to 28 years for the remaining counts.

This court dismissed both appellants' appeals from their judgments of conviction.<sup>2</sup> The remittitur issued on January 18, 2000.

On September 8, 2000, appellants each filed proper person post-conviction petitions for writs of habeas corpus in the district court. The State opposed the petitions. On December 6, 2000, Judge Donald Mosley took the petitions off calendar. On January 26, 2007, appellant Gilbert Aguilar filed a proper person petition for a writ of mandamus with this court in which he challenged the district court's decision to take his post-conviction petition for a writ of habeas corpus off calendar. On April 16, 2007, this court granted the petition and directed the district court to

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<sup>2</sup>Aguilar v. State, Docket Nos. 31595 and 31811 (Order Dismissing Appeals, December 20, 1999).

place both appellants' petitions back on calendar.<sup>3</sup> On September 7, 2007, Gilbert Aguilar filed a motion for the appointment of post-conviction counsel and accompanying affidavit of indigency. Pursuant to NRS 34.750, the district court declined to appoint counsel to represent appellants. On February 8, 2008, the district court denied appellants' petitions after conducting an evidentiary hearing. This appeal followed.

Our review of the record on appeal reveals that the district court abused its discretion in denying appellants' petitions without appointing counsel. NRS 34.750 provides for the discretionary appointment of post-conviction counsel and sets forth the following factors which the court may consider in making its determination to appoint counsel: the petitioner's indigency, the severity of the consequences to the petitioner, the difficulty of those issues presented, whether the petitioner is unable to comprehend the proceedings, and whether counsel is necessary to proceed with discovery. The determination of whether counsel should be appointed is not dependent upon whether a petitioner raises issues in a petition which, if true, would entitle the petitioner to relief.

In their petitions, appellants raised numerous claims of ineffective assistance of counsel. These claims included claims that counsel failed to investigate numerous State witnesses, interview numerous alibi witnesses, permitted the introduction of unreliable scientific and demonstrative evidence, failed to obtain physical evidence,

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<sup>3</sup>Aguilar v. District Court, Docket No. 48815 (Order Granting Petition, April 16, 2007).

and failed to litigate competency.<sup>4</sup> These claims arose out of a nine-day trial that occurred roughly ten years before the district court conducted the evidentiary hearing in the instant case. Further, the evidentiary hearing that was held did not fully address appellants' claims despite the fact that it purported to do so. Moreover, the structure of the hearing appeared to improperly restrict the appellants' examination of witnesses. In particular, the district court arbitrarily limited the duration of each examination and inappropriately guided the examination of each witness. In addition, Gilbert Aguilar moved for the appointment of counsel and claimed that he was indigent. Dayomashell Aguilar requested counsel at the evidentiary hearing. Both appellants had been granted permission to proceed in forma pauperis. The district court's failure to appoint post-conviction counsel deprived appellants of a meaningful opportunity to litigate their claims at the evidentiary hearing. As appellants are serving significant sentences, are indigent, have raised numerous claims that required the investigation of facts outside the record, and faced a significant impediment to litigating those claims with the district court's delay in resolving the petitions, we reverse the district court's denial of appellants' petitions and remand these matters for the appointment of counsel to assist appellants in the post-conviction proceedings.

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<sup>4</sup>We further note that appellants' petitions and accompanying memoranda totaled roughly 140 pages each. Further, each appellant relied on over 130 pages of exhibits each for their respective petitions.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that briefing and oral argument are unwarranted.<sup>5</sup> Accordingly, we

ORDER the judgments of the district court REVERSED AND REMAND these matters to the district court for proceedings consistent with this order.<sup>6</sup>

L. Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

Douglas, J.  
Douglas

cc: Hon. Donald M. Mosley, District Judge  
Gilbert Demetrius Aguilar  
Dayomashell David Aguilar  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>5</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>6</sup>We have considered all proper person documents filed or received in these matters. We conclude that appellants are only entitled to the relief described herein.

IN THE SUPREME COURT OF THE STATE OF NEVADA

GILBERT DEMETRIUS AGUILAR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57357

**FILED**

MAR 14 2011

FRANCIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Chadp*  
DEPUTY CLERK

ORDER OF LIMITED REMAND  
FOR APPOINTMENT OF COUNSEL

This is a proper person appeal from an order denying a post-conviction petition for a writ of habeas corpus. Appellant was represented by counsel in the proceedings in the district court. We remand this appeal to the district court for the limited purpose of securing counsel for appellant. The district court shall have 30 days from the date of this order to appoint counsel for appellant. Within 5 days from the date of appointment, the district court clerk shall transmit to the clerk of this court a copy of the district court's written or minute order appointing appellate counsel.

It is so ORDERED.

*D. Mosley*, C.J.

cc: Hon. Donald M. Mosley, District Judge  
Gilbert Demetrius Aguilar  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

ORDER FROM U.S. DISTRICT COURT GRANTING In Forma  
Pauperis Motion

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

8 GILBERT DEMETRTUS AGUILAR, )  
9 Petitioner, ) 3:12-CV-00397-RCJ-WGC  
10 vs. )  
11 RENEE BAKER, *et al.*, )  
12 Respondents. )  
ORDER

14                   Gilbert Aguilar, a prisoner at Ely State Prison, has filed an application to proceed *in*  
15 *forma pauperis* and has submitted a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. §  
16 2254. Based on the financial information provided with the application to proceed *in forma*  
17 *pauperis*, the Court finds that petitioner shall be permitted to proceed without paying the required  
18 filing fee. The petition shall now be filed and served on respondents.

19 A petition for federal habeas corpus should include all claims for relief of which  
20 petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever  
21 barred from seeking federal habeas relief upon that claim. *See* 28 U.S.C. §2254(b) (successive  
22 petitions). If petitioner is aware of any claim not included in his petition, he should notify the Court  
23 of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

24 IT IS THEREFORE ORDERED that the application to proceed *in forma pauperis*  
25 (ECF No. 1) is GRANTED.

26

**IT IS FURTHER ORDERED** that Clerk shall **FILE and ELECTRONICALLY SERVE** the petition (ECF No. 1-1 through 1-23) upon the respondents.

3 **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45)** days from  
4 entry of this order within which to answer, or otherwise respond to, the petition. In their answer or  
5 other response, respondents shall address any claims presented by petitioner in his petition as well as  
6 any claims presented by petitioner in any Statement of Additional Claims. Respondents shall raise  
7 all potential affirmative defenses in the initial responsive pleading, including lack of exhaustion and  
8 procedural default. **Successive motions to dismiss will not be entertained.** If an answer is filed,  
9 respondents shall comply with the requirements of Rule 5 of the Rules Governing Proceedings in the  
10 United States District Courts under 28 U.S.C. §2254. If an answer is filed, petitioner shall have  
11 **forty-five (45)** days from the date of service of the answer to file a reply.

12                   **IT IS FURTHER ORDERED** that, henceforth, petitioner shall serve upon the  
13 Attorney General of the State of Nevada a copy of every pleading, motion, or other document he  
14 submits for consideration by the Court. Petitioner shall include with the original paper submitted for  
15 filing a certificate stating the date that a true and correct copy of the document was mailed to the  
16 Attorney General. The Court may disregard any paper that does not include a certificate of service.  
17 After respondents appear in this action, petitioner shall make such service upon the particular Deputy  
18 Attorney General assigned to the case.

19                   **IT FURTHER IS ORDERED** that any state court record exhibits filed by  
20 respondents herein shall be filed with a separate index of exhibits identifying the exhibits by number  
21 or letter. The CM/ECF attachments that are filed shall further be identified by the number or  
22 numbers (or letter or letters) of the exhibits in the attachment. The hard copy of any additional state  
23 court record exhibits shall be forwarded – for this case – to the staff attorneys in Reno.

24 Dated this 6th day of September, 2012.

UNITED STATES DISTRICT JUDGE

ORDER FROM U.S. DISTRICT COURT GRANTING MY

MOTION FOR APPOINTMENT OF COUNSEL (F. B. I.)

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

GILBERT DEMETRIUS AGUILAR

Case No. 3:12-cv-00397-MMD-WGC

**Petitioner.**

## ORDER

Y

RENEE BAKER, et al.,

## Respondents.

Petitioner has filed a Motion for Appointment of Counsel (dkt. no. 16) and a Motion for Enlargement of Time to file his opposition to the motion to dismiss (dkt. no. 12). Previously, the Court denied petitioner's motion for counsel. See Order (dkt. no. 15). However, based upon the renewed motion and upon the arguments posed by respondents in their motion to dismiss, the Court has reconsidered the matter and counsel shall be appointed.

The petition filed in this action includes five claims and includes a large volume of exhibits. Petitioner faces multiple sentences including life without the possibility of parole. He alleges that he has been confined in segregated housing for some ten (10) years and has no access to legal assistance or materials. Moreover, respondents argue that various of petitioner's claims should be dismissed or restated because they are unclear and conclusory. These arguments confirm the petitioner's need for assistance.

Therefore, the pending motion to dismiss shall be denied without prejudice and the Federal Public Defender for the District of Nevada (FPD) shall be appointed to

1 represent petitioner. If the FPD is unable to represent petitioner, due to a conflict of  
2 interest or other reason, then alternate counsel for petitioner shall be located, and the  
3 Court will enter a separate order appointing such alternate counsel. In either case,  
4 counsel will represent petitioner in all future federal proceedings relating to this matter  
5 (including subsequent actions) and appeals therefrom, unless allowed to withdraw.

6 IT IS THEREFORE ORDERED that the motion to dismiss (dkt. no. 10) is  
7 DENIED WITHOUT PREJUDICE. Petitioner's Motion for an Enlargement of Time (dkt.  
8 no. 12) is DENIED as moot.

9 IT IS FURTHER ORDERED that petitioner's Motion for Appointment of Counsel  
10 (dkt. no. 16) is GRANTED. The Federal Public Defender is appointed to represent  
11 Petitioner.

12 IT IS FURTHER ORDERED that the Clerk shall ELECTRONICALLY SERVE the  
13 Federal Public Defender for the District of Nevada (FPD) a copy of this Order, together  
14 with a copy of the petition for writ of habeas corpus and its attachments (dkt. no. 8).  
15 The FPD shall have thirty (30) days from the date of entry of this Order to file a notice of  
16 appearance or to indicate to the Court its inability to represent petitioner in these  
17 proceedings.

18 IT IS FURTHER ORDERED that, after counsel has appeared for petitioner in this  
19 case, the Court will issue a scheduling order, which will, among other things, set a  
20 deadline for the filing of a First Amended Petition.

21  
22 DATED THIS 13<sup>th</sup> day of May 2013.

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MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE

U.S. DISTRICT COURT ORDER RELEAVING (F.P.D.)

AND APPOINTING C.J.A. CONFLICT COUNSEL

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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10 GILBERT DEMETRIUS AGUILAR,  
11 v. Petitioner,  
12 RENEE BAKER, et al.,  
13 Respondents.  
14

Case No. 3:12-cv-00397-MMD-WGC  
ORDER RELEAVING FPD AND  
APPOINTING CJA CONFLICT COUNSEL

15 The Court previously appointed the Federal Public Defender to represent the  
16 petitioner (dkt. no. 18).

17 The Federal Public Defender (herein "FPD") has identified a conflict of interest  
18 with the petitioner, and has indicated to the Court their inability to further represent the  
19 petitioner (dkt no. 19). The Court's Criminal Justice Act Designee has, however, located  
20 counsel, Mary Lou Wilson, who is willing to be appointed to represent the petitioner  
21 herein.

22 IT IS THEREFORE ORDERED that the FPD is hereby released as counsel.

23 IT IS FURTHER ORDERED that Mary Lou Wilson is hereby appointed to  
24 represent the petitioner herein. Ms. Wilson, is a Criminal Justice Act panel attorney for  
25 the United States District Court, District of Nevada. Ms. Wilson shall represent petitioner  
26 in all future proceedings in this Court relating to this matter (including subsequent  
27 actions) and appeals therefrom, pursuant to 18. U.S.C. Section 3006A (a)(2)(B), until  
28 allowed to withdraw.

1           IT IS FURTHER ORDERED that CJA counsel for petitioner shall meet with  
2 petitioner as soon as reasonably possible to: (a) review the procedures applicable in  
3 cases under 28 U.S.C. Section 2254; (b) discuss and explore with petitioner, as fully as  
4 possible, the potential grounds for habeas corpus relief in petitioner's case; and (c)  
5 advise petitioner that all possible grounds for habeas corpus relief must be raised at this  
6 time and that the failure to do so will likely result in the omitted grounds being barred  
7 from future review under the rules regarding abuse of writ.

8           IT IS FURTHER ORDERED that counsel for petitioner and counsel for  
9 respondents shall within forty-five (45) days file a joint statement describing what  
10 portions of petitioner's state court record have been obtained and what portions are  
11 missing. Counsel for respondents should make available to counsel for petitioner  
12 (photocopying costs at the latter's expense), as soon as reasonably possible, a copy of  
13 whatever portions of the state court record they possess regarding the judgment  
14 petitioner is challenging herein.

15           IT IS FURTHER ORDERED that counsel for petitioner shall file an amended  
16 petition for writ of habeas corpus within ninety (90) days, which shall include all known  
17 grounds for relief (both exhausted and unexhausted). Respondent shall have thirty (30)  
18 days after the filing of the amended petition within which to answer, or otherwise  
19 respond to, the amended petition.

20  
21           DATED THIS 15<sup>th</sup> day of May 2013.

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24             
25           MIRANDA M. DU  
26           UNITED STATES DISTRICT JUDGE  
27  
28

U.S. DISTRICT ORDER APPOINTING COUNSEL

THOMAS L. QUALLS INSTEAD OF MARY LOU WILSON

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

GILBERT DEMETRIUS AGUILAR,

Petitioner,

Case No. 3:12-cv-00397-MMD-WGC

## ORDER APPOINTING COUNSEL

TIMOTHY FILSON, et al.,

### Respondents.

14 In this habeas corpus action, Petitioner Gilbert Demetrius Aguilar was previously  
15 represented by court-appointed attorney Mary Lou Wilson. On July 10, 2018, the Court  
16 denied Aguilar's habeas petition and denied him a certificate of appealability, and  
17 judgment was entered. (See ECF No. 79 (Order entered July 10, 2018); (ECF No. 80  
18 (Judgment).) On October 12, 2018, Aguilar, acting *pro se*, filed an untimely notice of  
19 appeal (ECF No. 81). On December 21, 2018, the Ninth Circuit denied Aguilar's request  
20 for a certificate of appealability because his notice of appeal was untimely. (See ECF No.  
21 84 (Order entered December 21, 2018).) The court of appeals stated:

The court admonishes Wilson for her failure to notice a timely appeal. Wilson's performance falls below the level expected of counsel appointed to represent defendants and petitioners under the Criminal Justice Act. We refer this matter to the CJA panel administrator for the District of Nevada for appropriate action, including whether attorney Wilson should remain on the CJA panel and whether replacement counsel should be appointed to assist Aguilar with any post-judgment motions.

27 | (Id. at 2.)

28 //

1       On February 8, 2019, Wilson filed a motion requesting leave of court to withdraw  
2 from her representation of Aguilar “based upon the fact that counsel has resigned from  
3 the CJA panel.” (See ECF No. 86 at 1 (Motion for Withdrawal of Counsel).) The Court  
4 granted that motion on February 13, 2019, and ordered Wilson discharged from her  
5 representation of Aguilar. (ECF No. 87.)

6       On February 15, 2019, Aguilar, acting *pro se*, filed a Motion for Relief from  
7 Judgment. (ECF No. 89.)

8       The Court will now, by this order, appoint new counsel to represent Aguilar in this  
9 case, and will set a schedule for Aguilar’s new counsel to file a notice of appearance as  
10 his counsel.

11       The Court will also set a schedule for Aguilar’s new counsel to file any amended  
12 motion for relief from judgment and/or any other appropriate motion, or a notice that  
13 Aguilar will not make any new filing and will proceed with the motion for relief from  
14 judgment filed on February 15, 2019. The Court does not intend the setting of this deadline  
15 to have any effect on, or convey the Court’s opinion regarding, the timeliness, procedural  
16 propriety, or merits of any further action to be taken by Aguilar in this case.

17       It is therefore ordered that Thomas L. Qualls is appointed as counsel for Aguilar in  
18 this case.

19       It is further ordered that Mr. Qualls will have 15 days from the date of this order to  
20 file a notice of appearance as counsel for Aguilar.

21       It is further ordered that Mr. Qualls will have 60 days from the date of this order to  
22 file any amended motion for relief from judgment and/or any other appropriate motion, or  
23 a notice that Aguilar will not make any new filing and will proceed with the motion for relief  
24 from judgment filed on February 15, 2019.

25       ///

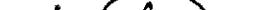
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27       ///

28       ///

1 It is further ordered that the Clerk of the Court is directed to serve a copy of this  
2 order on Thomas L. Qualls, 720 Tahoe Street, Reno, NV 89509, and a copy on the Aguilar  
3 at the address he included in the caption of his February 15, 2019, *pro se* filing.

4 DATED THIS 25<sup>th</sup> day of February 2019.

  
MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE