

I. INDEX TO APPENDIX

Page No.

A.	Request for Filing Stay United States District Court	001
	Filed September 18, 2014	
B.	Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody (Not Sentenced to Death) United States District Court	002
	Filed September 18, 2014	
C.	Order United States District Court	024
	Filed November 25, 2014	

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
SEP 18 2014	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

Ronald Ross #1003485
P.O. Box 208 SBCC
Indian Spring, Nevada 89070
In Paper Person

United States District Court
District of Nevada

Ronald Ross,
Petitioner,

2:14-cv-1527-JCM-PAL

-VS-

Warden Williams,
Respondent, ✓

Request for Filing and Stay

In the instant matter, petitioner, Ronald Ross, fully acknowledges that the filing deadline under the AEDPA draws nigh and that due to the late hour of the filing of the petitioner's state writ, that at best, about 21 day remain for the filing of the 28 USC §2254 writ.

As access to the prison's Law Library requires a two week advanced request for an appointment, petitioner is unable to obtain forms, get photo-copies made, nor utilize this prison's so called legal mail system.

Petitioner does now submit a 28 USC §2254 form for filing and does now formally request that said writ be provisionally filed with a stay being issued to allow for the appropriate forms to be submitted and for leave to amend the writ within 45 days, as well as requesting this court to allow the Federal Public Defenders Office to represent him in these proceedings.

Petitioner incorporates by reference and fact, the attached Affidavit in support of this motion, and writ, with attached exhibits.

Dated this date, 14 September 2014.

Submitted
Ronald Ross
Ronald Ross
In Paper Person

Ronald Ross
Name
#1003485
Prison Number P.O. Box 203
Southern Desert Correctional Center
Place of Confinement Irwin Springs, Nevada 89076

FILED _____ RECEIVED _____
ENTERED _____ SERVED ON _____
COUNSEL/PARTIES OF RECORD
SEP 18 2014
CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY: _____ DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Ronald Ross, Petitioner,)
(Full Name))
vs.)
Warden Williams, SDCC, Respondent,)
(Name of Warden, Superintendent, jailor or)
authorized person having custody of petitioner))
and)
The Attorney General of the State of Nevada)

2:14-cv-1527-JCM-PAL

PETITION FOR A
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY
(NOT SENTENCED TO DEATH)

- Name and location of court, and name of judge, that entered the judgment of conviction you are challenging: District Court, Clark County, Nevada, 8th Judicial District, Dept. XVII Villani
- Full date judgment of conviction was entered: 12 / 5 / 08. (month/day/year)
- Did you appeal the conviction? Yes ___ No. Date appeal decided: 12 / 9 / 10.
Remittitur issued 12/01/10
- Did you file a petition for post-conviction relief or petition for habeas corpus in the state court? Yes ___ No. If yes, name the court and date the petition was filed: Clark County District Court, Dept. XVII 11 / 30 / 11. Did you appeal from the denial of the petition for post-conviction relief or petition for writ of habeas corpus? Yes ___ No. Date the appeal was decided: 7 / 22 / 14. Have all of the grounds stated in this petition been presented to the state supreme court? Yes ___ No. If no, which grounds have not? _____
Remittitur issued 8/18/14
- Date you are mailing (or handing to correctional officer) this petition to this court: 8 / 14 / 14.
Attach to this petition a copy of all state court written decisions regarding this conviction.

APP.003

6. Is this the first federal petition for writ of habeas corpus challenging this conviction? Yes
 No. If no, what was the prior case number? _____. And in what court was the prior action filed? _____.
- Was the prior action denied on the merits or dismissed for procedural reasons (check one). Date of decision: ____/____/____. Are any of the issues in this petition raised in the prior petition? Yes No. If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this successive petition? Yes No.
7. Do you have any petition, application, motion or appeal (or by any other means) now pending in any court regarding the conviction that you are challenging in this action? Yes No.
 If yes, state the name of the court and the nature of the proceedings: _____

8. Case number of the judgment of conviction being challenged: C236169
9. Length and terms of sentence(s): 10 to life / Habitual Criminal
10. Start date and projected release date: unknown
11. What was (were) the offense(s) for which you were convicted: Larceny, burglary (2 counts),
 Fraudulent use of credit card, theft and conspiracy to commit Larceny
12. What was your plea? Guilty Not Guilty Nolo Contendere. If you pleaded guilty or nolo contendere pursuant to a plea bargain, state the terms and conditions of the agreement: _____

13. Who was the attorney that represented you in the proceedings in state court? Identify whether the attorney was appointed, retained, or whether you represented yourself *pro se* (without counsel).

	Name of Attorney	Appointed	Retained	<i>Pro se</i>
arraignment and plea	_____	_____	_____	_____
trial/guilty plea	<u>Craig Jergensen, Clark County Public Defender</u>	<input checked="" type="checkbox"/>	_____	_____
sentencing	<u>" " " " " "</u>	_____	_____	_____
direct appeal	<u>David Westbrook, Clark County Public Defender</u>	<input checked="" type="checkbox"/>	_____	_____
1st post-conviction petition	<u>Matthew D. Cading, Private Counsel</u>	<input checked="" type="checkbox"/>	_____	_____
appeal from post conviction	<u>Matthew D. Cading, Private Counsel</u>	<input checked="" type="checkbox"/>	_____	_____
2nd post-conviction petition	_____	_____	_____	_____
appeal from 2nd post-conviction	_____	_____	_____	_____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 1

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my 5th Amendment right to Due Process,

based on these facts:

~~_____~~ Counsel was ineffective for failing to:

- 1) Secure a speedy trial
- 2) Failed to review evidence and adequately prepare
- 3) Failed to file pretrial motions
- 4) Failed to argue the prejudice of evidence lost prior to trial
- 5) Failed to prepare for jury selection
- 6) Failed to prepare for trial
- 7) Failed to retain defense experts
- 8) Failed to object to the State's use of expert witness

Thus denying me due process of law as relating to effective assistance of counsel and a fair trial

That evidentiary showing will be required as issue is a mixed question of law and fact, as well as the fact that the State of Nevada refused an Evidentiary hearing before issuing its ruling denying the State writ of Habeas Corpus.

Exhaustion of state court remedies regarding Ground 1:

APP.005

Case 2:14-cv-01527-JCM-PAL Document 1 Filed 09/18/14 Page 4 of 22

▶ **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

___ Yes No. If no, explain why not: Ineffective Assistance of Counsel must be raised on AN NRS 34 from habeas corpus post-conviction in Nevada

▶ **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes ___ No. If no, explain why not: _____

If yes, name of court: Dept XVII, Clark County District Court date petition filed 11 / 30 / 11

Did you receive an evidentiary hearing? ___ Yes No. Did you appeal to the Nevada Supreme Court? Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? Yes ___ No. If no, explain why not: _____

▶ **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

___ Yes ___ No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ___ / ___ / ___

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court? ___ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ___ Yes ___ No. If no, explain why not: _____

▶ **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? ___ Yes ___ No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is

unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 2

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my 6th Amendment right to Counsel, based on these facts:

- Trial Counsel and Appellate Counsel failed to address issues of constitutional magnitude. As trial counsel;
- 1) failed to secure a speedy trial
 - 2) failed to review evidence prior to trial and adequately prepare
 - 3) failed to file pretrial motions
 - 4) failed to address the prejudice of evidence lost prior to trial
 - 5) failed to prepare for a jury selection as attempted to force a deal
 - 6) failed to prepare for a trial
 - 7) failed to retain defense experts for a trial
 - 8) failed to object to the State's use of expert witnesses

This lack of due diligence and attention to the duties of office have caused the denial of counsel envisioned by the U.S. Constitution and our adversarial system of justice.

An evidentiary showing will be required as issue is a mixed question of law and fact, as well as the fact that the State of Nevada refused an evidentiary hearing before issuing its ruling denying the State writ of habeas corpus

Exhaustion of state court remedies regarding Ground 2:

- ▶ Direct Appeal:

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Yes No. If no, explain why not: Ineffective Assistance of Counsel must be raised in habeas corpus under Nevada Law

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: _____

If yes, name of court: Dept. XVII Clark County District Court date petition filed 11 / 30 / 11

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

► **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ____ / ____ / ____

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two

extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 3

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my

14^B Amendment right to Due Process and Equal Protection,

based on these facts:

Counsel was ineffective for failing to:

- 1) Secure a speedy trial
- 2) Failed to review evidence and adequately prepare
- 3) Failed to file pretrial motions
- 4) Failed to argue the prejudice of evidence lost prior to trial
- 5) Failed to prepare for jury selection
- 6) Failed to prepare for trial
- 7) Failed to retain defense experts
- 8) Failed to object to the States use of expert witness

This denying me the safeguards and protections of due process and the standards of equal protection under the Constitution and laws of the United States.

An evidentiary showing will be required as issue is a mixed question of law and fact, as well as the fact that the State of Nevada refused an Evidentiary hearing before issuing its ruling denying the State writ of Habeas Corpus.

Exhaustion of state court remedies regarding Ground 3:

Direct Appeal:

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

___ Yes ___ No. If no, explain why not: _____

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

___ Yes ___ No. If no, explain why not: _____

If yes, name of court: _____ date petition filed ___ / ___ / ____.

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme

Court? ___ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ___ Yes ___ No. If no, explain why not: _____

► **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

___ Yes ___ No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ___ / ___ / ____.

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme

Court? ___ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ___ Yes ___ No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? ___ Yes ___ No. If yes, explain: _____

WHEREFORE, petitioner prays that the court will grant him such relief to which he is entitled in this federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 by a person in state custody.

(Name of person who wrote this
complaint if not Plaintiff)

Ronald Ross
(Signature of Plaintiff)

14 September 2014
(Date)

(Signature of attorney, if any)

(Attorney's address & telephone number)

DECLARATION UNDER PENALTY OF PERJURY

I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.** See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Executed at Southern Desert Correctional Center on 14 September 2014.
(Location) (Date)

Ronald Ross
(Signature)

1003485
(Inmate prison number)

28 USC § 2254 Affidavit

of Ronald Ross

I, Ronald Ross, do hereby state, affirm, and declare, that the following is true to the best of my knowledge and belief.

- 1) That petitioner is proceeding in proper person.
- 2) That petitioner Ross makes application herein for writ of Habeas Corpus on his own behalf under 28 USC § 2254; that petitioner is imprisoned and restrained of his Liberty at the Southern Desert Correctional Center, Indian Springs, Nevada, by the State of Nevada, held by one Mr. Williams, Warden of said prison.
- 3) That by the actions and inactions of trial counsel and appellate counsel, I have been denied due process of law as well as being denied the effective assistance of counsel guaranteed by the United States Constitution under the 5th, 6th, and 14th Amendments at both the trial and direct appeal levels.
- 4) That on the date of 22 July 2014, the Nevada Supreme Court issued an Order of Affirmance denying the appeal of my state post-conviction writ of habeas corpus (see attached order).
- 5) That it is noticed that petitioner Ronald Ross is not listed on the distribution for the order of Affirmance.
- 6) That on the date of 18 August 2014, the Nevada Supreme Court issued the Remittitur for case no. 1632024
- 7) That it is noticed that petitioner Ronald Ross is not listed on the distribution for the Remittitur.
- 8) That petitioner's counsel on the appeal of the denial of the writ of habeas corpus, Matthew Corling, mailed petitioner both the order of Affirmance and Remittitur on or about the date of 2 September 2014, addressed as follows:

Ronald Ross (#1003485)
 HDSP
 P.O. Box 6520
 Indian Springs, Nevada 89070-0650

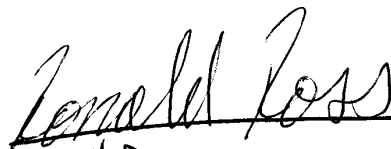
(1)

- 9) That on or about the date of 3 September 2014, the petitioner was transferred to the Southern Desert Correctional Center.
- 10) That the envelope which contained the order of Affirmance and the Remittitur is stamped "Received" on the date of 5 September 2014 "S.D.C.C." (see attached, back of envelope in Red Ink).
- 11) That petitioner did not sign for said envelope and documents until the date of 11 September 2014, proof of which is stamped on the front of the envelope "Received SDCC Law Library" (see attached, in Black and Blue Ink).
- 12) That counsel, Matthew Corling, has all of the petitioners case file and documents.
- 13) That petitioner has filled out the required form for the 28 USC §2254 Petition for a writ of Habeas Corpus by a person in state custody so as to complete the filing requirements, to the best of my ability.
- 14) That I am not an attorney.
- 15) That access to the prison's Law Library requires two weeks advance request and that petitioner cannot acquire the necessary forms required in order to obtain the financial documents so as to move this Court to proceed In Forma Pauperis and/or pay a filing fee in a timely fashion.
- 16) That petitioner does not possess the means necessary to hire an attorney by virtue of his imprisonment.
- 17) That at a minimum, had the petitioner been served a copy of the Remittitur by the Clerk of the Nevada Supreme Court, none of this would have been necessary, let alone the fact that the prison's Law Library Supervisor kept my legal mail for an additional 6 days before issuing it to me.

- 18) That due to the time constraint in complying with AEDPA Filing, coupled with the prison's purposeful hindrance and befuddlement in allowing access to the law library, petitioner is only able to provide the original and one carbon copy of his motion, affidavit, as well as only being able to provide the original documents being attached as exhibits.
- 19) That it is only by chance that petitioner was able to acquire a copy of the JS USC § 2254 form to use for filing.
- 20) That petitioner is placing this into an officer's hands for mailing on the evening of Sunday, 14 September 2014.
- 21) Petitioner prays that this Court take nothing by virtue of this matter and allow for the filing of said writ and all supporting documents.

Further your Affidavit Sayeth Nought.

Dated this date, 14 September 2014



Ronald Ross
Petitioner/Affiant

Attached Exhibits

- A) Order of Affirmance
- B) Remittitur
- C) Envelope from Counsel Matthew Carling
- D) Letter from Matthew Carling

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD ROSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63624

FILED

JUL 22 2014

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

On appeal from the denial of his November 30, 2011, petition, appellant argues that the district court erred in denying several of his claims of ineffective assistance of trial counsel. To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 697. We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, appellant argues that counsel was ineffective for failing to engage in pretrial discovery, because had counsel done so, he would have obtained the surveillance video from the shoe store. Appellant has failed to demonstrate deficiency or prejudice. The district court's finding that the video was destroyed before appellant was arrested or counsel was appointed is supported by substantial evidence in the record. Appellant thus failed to demonstrate that counsel's performance was deficient in not obtaining a video that had already been destroyed. Moreover, because several witnesses had viewed the video before it was destroyed in the store's ordinary course of business and testified that it depicted appellant purchasing merchandise with the stolen credit card, appellant cannot demonstrate a reasonable probability of a different outcome had the video been available. We therefore conclude that the district court did not err in denying this claim without an evidentiary hearing.

Second, appellant argues that counsel was ineffective for violating appellant's right to a speedy trial. Appellant has failed to demonstrate deficiency or prejudice. This court has previously held that appellant's right to a speedy trial was not violated, *Ross v. State*, Docket No. 52921 (Order of Affirmance, November 8, 2010), and that holding is the law of the case, *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Thus appellant cannot demonstrate that any action or inaction of counsel violated the right. Moreover, appellant's claim that he was prejudiced because the delayed trial resulted in the loss of the shoe store surveillance video was patently without merit where the video was destroyed before appellant was arrested and was thus unavailable for trial regardless of when it was held. We therefore conclude that the district court did not err in denying this claim without an evidentiary hearing.

Third, appellant argues that counsel was ineffective because a communication breakdown prevented appellant from being able to assist counsel in the preparation of his defense, including explaining his conduct or offering any potential alibis. Appellant has failed to demonstrate deficiency or prejudice. The only specific information appellant alleged was regarding his alibi for the theft at the Santa Fe casino, but the State moved to dismiss those charges before trial such that, even if his claims were true, appellant could not demonstrate a reasonable probability of a different outcome had there been better communication. Appellant otherwise failed to specify what explanation or alibi he would have given counsel or how it would have affected the outcome at trial. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding that a petitioner is not entitled to an evidentiary hearing where his claims are unsupported by specific factual allegations that, if true, would have entitled him to relief). We therefore conclude that the district court did not err in denying this claim without an evidentiary hearing.

Fourth, appellant argues that counsel was ineffective for failing to object to expert testimony pertaining to pickpockets and distraction thefts where the witness was not noticed as an expert.¹ Appellant has failed to demonstrate deficiency or prejudice. Appellant made only a bare allegation that the detective's testimony amounted to expert opinion. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6

¹Appellant's opening brief refers to transcript pages containing the testimony of Detective Rader. However, Detective Rader did not testify to the allegedly objectionable facts. Rather, Detective Flenner did, and appellant's petition and supplement below both raise this claim in conjunction with Detective Flenner. Accordingly, our analysis of this claim is in regard to the testimony of Detective Flenner.

(1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."). Further, even assuming that the detective did give expert testimony that was not noticed pursuant to NRS 174.234(2), appellant made no allegation that the omission was made in bad faith such that the district court would have excluded the testimony. See NRS 174.234(3)(b). We therefore conclude that the district court did not err in denying this claim without an evidentiary hearing.

Fifth, appellant argues that counsel was ineffective for failing to retain a defense expert to rebut the expert testimony of Detective Flenner. Appellant has failed to demonstrate deficiency or prejudice. Appellant, who acknowledges that Detective Flenner was not noticed as an expert witness, has failed to demonstrate that counsel was objectively unreasonable in failing to anticipate the testimony and retain a defense expert to meet it. Moreover, even had a defense expert testified that appellant's actions were also consistent with non-criminal activity, there was no reasonable probability of a different outcome where the victim testified that only appellant was close enough to her to take her wallet and appellant used the victim's stolen credit card shortly after the theft. We therefore conclude that the district court did not err in denying this claim without an evidentiary hearing.

Sixth, appellant argues that counsel was ineffective for failing to properly challenge the use of a preliminary-hearing transcript in lieu of live testimony at the trial and for not making an offer of proof as to what additional questions counsel would have posed to a live trial witness. Appellant's bare claim has failed to demonstrate deficiency or prejudice. Appellant did not specify what additional efforts the State should have

made to procure the witness, what additional questions counsel could have posed to a live witness, or how the results would have led to a reasonable probability of a different outcome at trial. We therefore conclude that the district court did not err in denying this claim without an evidentiary hearing.

Seventh, appellant argues that counsel was ineffective for failing to renew at trial his preliminary-hearing objection for violating the best evidence rule. Appellant's bare claim has failed to demonstrate deficiency or prejudice where he does not identify the objection that counsel should have renewed. To the extent appellant is claiming, as he did below, that counsel should have renewed an objection to testimony about the shoe store surveillance video on the grounds that it was not the best evidence, counsel made no such objection at the preliminary hearing that he could have renewed at trial. Moreover, even had counsel objected to testimony about the video, the law of the case is that the best-evidence-rule exception in NRS 52.255(1) was satisfied. *Ross v. State*, Docket No. 52921 (Order of Affirmance, November 8, 2010); *see also Hall*, 91 Nev. at 315-16, 535 P.2d at 798-99. Accordingly, there was no reasonable probability that the district court would have sustained the objection and, thus, of a different outcome at trial. We therefore conclude that the district court did not err in denying this claim without an evidentiary hearing.

Eighth, appellant argues that counsel was ineffective for failing to raise certain objections during the State's closing arguments and at sentencing and for failing to move post-verdict to dismiss the case for lack of evidence. These claims were not raised below, and we decline to consider them in the first instance on appeal. *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, 1012-13, 103 P.3d 25, 33 (2004).

Finally, appellant argues that the cumulative errors of trial counsel warrant a new trial. Appellant has identified no errors of counsel, so there are no errors to cumulate. We therefore conclude that the district court did not err in denying this claim.

For the foregoing reasons, we find appellant's claims to be without merit, and we

ORDER the judgment of the district court AFFIRMED.

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

Saitta, J.
Saitta

cc: Hon. Michael Villani, District Judge
Matthew D. Carling
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD ROSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 63624
District Court Case No. C236169

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: August 18, 2014

Tracie Lindeman, Clerk of Court

By: Sally Williams
Deputy Clerk

cc (without enclosures):

Hon. Michael Villani, District Judge
Matthew D. Carling ✓
Clark County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on _____.

District Court Clerk

**Law Offices
of
Matthew D. Carling, Esq.**

Phone: (435) 865-1200

51 East 400 North, Bldg. #1
Cedar City, Utah 84720
CedarLegal@gmail.com

Fax: (702) 446-8065

*Licensed in Utah & Nevada

September 2, 2014

PRIVILEGED AND CONFIDENTIAL

Ronald Ross (#1003485)
HDSP
P.O. Box 650
Indian Springs, Nevada 89070-0650

Ronald Ross v. Dwight Neven, Warden

Case No.: C236169
Dept. No.: XVII (Villani)

Dear Mr. Ross:

I am in receipt of the Supreme Court's Order of Affirmance. The Supreme Court issued a Remittitur on August 18, 2014. At this point it is in your best interested to file another Petition for Writ of Habeas Corpus in Federal District Court.

State Habeas Corpus

A petition must be filed within 1 year after entry of the Judgment of Conviction (JOC) or, if an appeal was taken form the JOC, within 1 year after the Nevada Supreme Court issues its Remittitur. (NRS 34.726(1)) The 1 year period begins to run from the entry of the JOC unless you file a timely direct appeal. Dickerson v. State, 114 Nev. 1084 (1998). All petitions must be timely filed, including second or successive petitions pursuant to NRS 34.810. Pellegrini v. State, 117 Nev. 860 (2001). A supplemental petition relates back to the date of filing of the original petition for purposes of NRS 34.726. State v. Powell, 122 Nev. 751, 138 P.3d 453 (2006).

Federal Habeas Corpus

The federal clock is the same clock as the state clock. There is NOT an additional year to file a federal habeas corpus petition. See Frye v. Hickman, 273 F.3d 1144 (9th Cir. 2001). A petition must be dismissed if delay in filing the petition prejudices the State in responding to the petition or in its ability to retry the petitioner. (NRS 34.800(1))

Habeas Corpus Timeline

The following is a timeline of events in your particular case:

APP.023

Matthew D. Carling, Esq.
51 East 400 North, Bldg. #1
Cedar City, UT 84720

LEGAL MAIL

SPC

|||||
Ronald Ross (#1003485)
HDSP
P.O. Box 650
Indian Springs, Nevada 89070-0650

RECEIVED
SEP 10 2014
SEP 10 2014
SEP 10 2014
SEP 10 2014

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RONALD ROSS,

Petitioner,

vs.

WARDEN WILLIAMS, et al.,

Respondents.

Case No. 2:14-cv-01527-JCM-PAL

ORDER

Petitioner has paid the filing fee. Petitioner also has submitted an application to proceed in forma pauperis (#5). The application is moot because petitioner already has paid the filing fee.

Petitioner has submitted a motion for appointment of counsel (#6). Petitioner is unable to afford counsel, and the issues presented warrant the appointment of counsel. See 18 U.S.C. § 3006A(a)(2)(B).

Petitioner has submitted a motion for an evidentiary hearing (#7); it is the same document as the motion for appointment of counsel. The court denies the motion because it cannot determine at this stage of the proceedings whether an evidentiary hearing is necessary or allowed.

Petitioner has submitted a request for filing and stay. The request is moot because the court is appointing counsel.

IT IS THEREFORE ORDERED that the clerk of the court file the petition.

IT IS FURTHER ORDERED that the clerk file the request for filing and stay.

IT IS FURTHER ORDERED that the request for filing and stay is **DENIED** as moot.

1 IT IS FURTHER ORDERED that the application to proceed in forma pauperis (#5) is
2 **DENIED** as moot.

3 IT IS FURTHER ORDERED that the motion for appointment of counsel (#6) is
4 **GRANTED**. The Federal Public Defender is provisionally appointed to represent petitioner.

5 IT IS FURTHER ORDERED that the motion for evidentiary hearing (#7) is **DENIED**.

6 IT IS FURTHER ORDERED that the Federal Public Defender shall have thirty (30) days
7 from the date that this order is entered to undertake direct representation of petitioner or to indicate
8 to the court his inability to represent petitioner in these proceedings. If the Federal Public Defender
9 does undertake representation of petitioner, he shall then have sixty (60) days to file an amended
10 petition for a writ of habeas corpus. If the Federal Public Defender is unable to represent petitioner,
11 then the court shall appoint alternate counsel.

12 IT IS FURTHER ORDERED that neither the foregoing deadline nor any extension thereof
13 signifies or will signify any implied finding of a basis for tolling during the time period established.
14 Petitioner at all times remains responsible for calculating the running of the federal limitation period
15 and timely asserting claims.

16 IT IS FURTHER ORDERED that the clerk shall add Catherine Cortez Masto, Attorney
17 General for the State of Nevada, as counsel for respondents.

18 IT IS FURTHER ORDERED that the clerk shall electronically serve both the Attorney
19 General of the State of Nevada and the Federal Public Defender a copy of the petition and a copy of
20 this order.

21 IT IS FURTHER ORDERED that respondents' counsel shall enter a notice of appearance
22 within twenty (20) days of entry of this order, but no further response shall be required from
23 respondents until further order of the court.

24 ///

25 ///

26 ///

27 ///

28 ///

