

APPENDIX A

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUSTIN ODELL LANGFORD,  
Appellant,  
vs.  
RENEE BAKER, WARDEN,  
Respondent.

No. 83032-COA

**FILED**

NOV 17 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

**ORDER OF AFFIRMANCE**

Justin Odell Langford appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 9, 2021, and a supplemental petition filed on February 25, 2021. Eighth Judicial District Court, Clark County; Jasmin D. Lilly-Spells, Judge.

Langford claims the district court erred by denying his petition as procedurally barred. Langford filed his petition more than three years after issuance of the remittitur on direct appeal on July 24, 2017. See *Langford v. State*, No. 70536, 2017 WL 2815087 (Nev. June 27, 2017) (Order of Affirmance). Thus, Langford's petition was untimely filed. See NRS 34.726(1). Moreover, Langford's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.<sup>1</sup>

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<sup>1</sup>See *Langford v. State*, Nos. 75825, 76075, 2019 WL 1440980 (Nev. Mar. 29, 2019) (Order of Affirmance). Langford also filed postconviction petitions for a writ of habeas corpus in the district court on November 19, 2018, and November 19, 2019, but he did not appeal from the district court orders denying those petitions.

*See* NRS 34.810(1)(b)(2); NRS 34.810(2). Langford's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

First, Langford claimed he had good cause because the trial court lacked jurisdiction, the Nevada Revised Statutes were not properly enacted, the jurors were not properly sworn, and the State committed fraud upon the court and falsely prosecuted him. These claims have already been considered and rejected. *See Langford v. State*, Nos. 75825, 76075, 2019 WL 1440980 (Nev. Mar. 29, 2019) (Order of Affirmance); *Langford v. State*, No. 80972-COA, 2020 WL 6130668 (Nev. Ct. App. Oct. 16, 2020) (Order of Affirmance). The doctrine of the law of the case prevents further consideration of these issues. *See Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797 798-99 (1975). “The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings.” *Id.* at 316, 535 P.2d at 799. Therefore, we conclude the district court did not err by rejecting these good-cause claims.

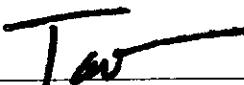
Second, Langford appeared to claim he had good cause because counsel did not send him his full case file. Counsel's failure to send a petitioner his case file does not constitute good cause because it does not “prevent [the petitioner] from filing a timely petition.” *Hood v. State*, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995). Langford failed to demonstrate that counsel's alleged failure to send Langford his case file prevented him from filing a timely petition, and thus, Langford did not demonstrate good cause. Therefore, we conclude the district court did not err by rejecting this good-cause claim.

Langford also claims on appeal that the district court erred by conducting a hearing concerning the petition without his being present. A criminal defendant does not have an unlimited right to be present at every proceeding. *See Gallego v. State*, 117 Nev. 348, 367-68, 23 P.3d 227, 240 (2001), abrogated on other grounds by *Nunnery v. State*, 127 Nev. 749, 776 n.12, 263 P.3d 235, 253 n.12 (2011). A “defendant must show that he was prejudiced by the absence.” *Kirksey v. State*, 112 Nev. 980, 1000, 923 P.2d 1102, 1115 (1996). The record indicates the hearing at issue was not an evidentiary hearing, no testimony or argument was presented, and the district court merely announced it denied Langford’s petition. Because the arguments Langford contends he would have raised at the hearing were in his petition, he does not demonstrate he was prejudiced by his absence from the relevant hearing. Accordingly, we conclude the district court did not err in this regard.<sup>2</sup> Therefore, we

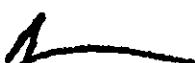
ORDER the judgment of the district court AFFIRMED.



Gibbons, C.J.



Tao, J.



Bulla, J.

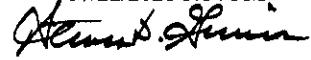
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<sup>2</sup>Langford also claims the district court erred by allowing the State to file a late response and by misidentifying the respondent. Even assuming the State’s response was late or the respondent was misidentified, Langford fails to demonstrate he was prejudiced because his claims were procedurally barred. *See NRS 178.598* (“Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.”).

cc: Hon. Jasmin D. Lilly-Spells, District Judge  
Justin Odell Langford  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

APPENDIX B

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CLERK OF THE COURT

1 FFCO  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 ALEXANDER CHEN  
6 Chief Deputy District Attorney  
7 Nevada Bar #010539  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Respondent

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 **JUSTIN LANGFORD,**  
15 **#2748452,**

16 Petitioner,

17 CASE NO: **A-18-784811-W**  
18 **C-14-296556-1**

19 -vs-

20 **THE STATE OF NEVADA,**

21 DEPT NO: **XXIII**

22 Respondent.

23 **FINDINGS OF FACT, CONCLUSIONS OF**  
24 **LAW AND ORDER**

25 DATE OF HEARING: **MAY 19, 2021**

26 TIME OF HEARING: **11:00 AM**

27 THIS CAUSE having presented before the Honorable JASMIN LILLY-SPELLS,  
28 District Judge, on the 19th day of May, 2021; Petitioner not present, proceeding IN PROPER  
1 PERSON; Respondent represented by STEVEN B. WOLFSON, Clark County District  
2 Attorney, by and through JAY RAMAN, Chief Deputy District Attorney; and having  
3 considered the matter, including briefs, transcripts, and documents on file herein, the Court  
4 makes the following Findings of Fact and Conclusions of Law:

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6 //

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## **FINDINGS OF FACT, CONCLUSIONS OF LAW**

## **STATEMENT OF THE CASE**

On March 14, 2014, JUSTIN ODELL LANGFORD (hereinafter "Petitioner") was charged by way of Information with the following: COUNTS 1, 2, 6, 7, 8, 10, 11, and 12 – Lewdness With A Child Under The Age Of 14 (Category A Felony - NRS 201.230); COUNTS 3, 4, and 5 – Sexual Assault With A Minor Under Fourteen Years Of Age (Category A Felony - NRS 200.364, 200.366); and COUNT 9 – Child Abuse, Neglect, or Endangerment (Category B Felony - NRS 200.508(1)).

On March 7, 2016, a jury trial convened and lasted nine days. On March 17, 2016, the jury returned a guilty verdict as to COUNT 2, and not guilty as to all other Counts.

On May 10, 2016, Petitioner was sentenced to Life with a possibility of parole after a term of 10 years have been served in the Nevada Department of Corrections (“NDOC”). Petitioner received eight hundred forty-one (841) days credit for time served. The Judgment of Conviction was filed on May 17, 2016.

On June 1, 2016, Petitioner filed a Notice of Appeal from his conviction. On June 27, 2017, the Nevada Supreme Court affirmed the Judgment of Conviction. Remittitur issued July 28, 2017.

On July 19, 2017, Petitioner filed a Motion to Modify And/Or Correct Sentence (“Motion to Modify”), Motion for Sentence Reduction (“Motion for Reduction”), Motion for Production of Documents, Papers, Pleadings, and Tangible Property of Petitioner, a Motion for Transcripts at the State’s Expense and Memorandum of Point and Authorities in Support of Request for Transcripts at State’s Expense, a Motion to Obtain a Copy of a Sealed Record, and a Motion to Withdraw Counsel. The State filed its Response to Petitioner’s Motion to Modify and/or Correct Sentence and Motion for Sentence Reduction on August 2, 2017.

On August 10, 2017, the Court denied Petitioner's Motion for Sentence Reduction, granted Petitioner's Motion for Production of Documents, Papers, Pleadings, and Tangible Property of Petitioner, denied Petitioner's Motion for Transcripts at State's Expense, granted Petitioner's Motion to withdraw Counsel, granted Petitioner's Motion to Obtain Copy of a

1 Sealed Record, and denied Petitioner's Motion to Modify/Correct Illegal Sentence.

2 On October 10, 2017, Petitioner filed a Motion to Claim and Exercise Rights  
3 Guaranteed by the Constitution for the United States of America and Require the Presiding  
4 Judge to Rule upon this Motion, and All Public Officers of this Court to Uphold Said Rights  
5 and an affidavit in support of that Motion. He also filed a Motion to Reconsider Transcripts  
6 at State's Expense, a Motion to Compel Court Orders, and a Motion to Reconsider Motions  
7 for Correction of Illegal Sentence and Sentence Reduction. The State responded to the  
8 Motion to Reconsider Motions for Correction of Illegal Sentence and Sentence Reduction on  
9 October 30, 2017. On October 31, 2017, the Court denied all of Petitioner's Motions, and the  
10 order was filed on November 7, 2017.

11 On November 27, 2017, Petitioner filed a Motion for Ancillary Services and a Motion  
12 for Transcripts and Other Court Documents and State's Expense. The State filed its  
13 Opposition to Petitioner's Motion for Ancillary Services on December 13, 2017. The Court  
14 denied Petitioner's Motions on December 19, 2017, and the order was filed on December 29,  
15 2017.

16 On December 29, 2017, Petitioner filed a "Notice of Understanding of Intent and  
17 Claim of Right as well as a Notice of Denial of Consent." He additionally filed a Petition for  
18 Writ of Habeas Corpus (Post-Conviction), Memorandum in Support of Petition, Motion for  
19 Appointment of Counsel, and Request for Evidentiary Hearing. The State responded to  
20 Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction), Memo in Support, Motion  
21 to Appoint Counsel, and Motion for Evidentiary Hearing on February 20, 2018.

22 On March 7, 2018, Petitioner filed a Motion for Summary Judgment on Petition for  
23 Writ of Habeas Corpus (Post-Conviction) Due to Respondent's Silence, and on March 15,  
24 2018, he filed a Motion to Strike State's Response [to Petitioner's Petition]. In both of those,  
25 he alleged that since the State did not respond by February 19, 2018 (45 days from the order  
26 to respond), its Response should be disregarded. Pursuant to Eighth Judicial District Court  
27 Rule 1.14(b), "If any day on which an act required to be done by any one of these rules falls  
28 on a Saturday, Sunday or legal holiday, the act may be performed on the next succeeding

1 judicial day.” February 19, 2018 was a legal holiday; thus, the State properly filed its  
2 Response on the next succeeding judicial day, February 20, 2018.

3 On March 15, 2018, Petitioner filed a Motion for Stay of Sentence. The State  
4 responded on April 2, 2018. That motion was denied on April 5, 2018. On March 30, 2018,  
5 Petitioner filed a Motion to Modify and/or Correct Illegal Sentence and “Judicial Notice of  
6 Lack of Jurisdiction” claiming that the District Court lacked subject matter jurisdiction to  
7 sentence him.

8 On April 24, 2018, Petitioner filed a Pro Per Petition for Writ of Habeas Corpus. On  
9 March 7, 2018, Petitioner filed a Motion for Summary Judgment on Writ of Habeas Corpus  
10 (Post-Conviction). On May 1, 2018 the court issued an Order denying Petitioner’s Motion.

11 On June 1, 2018, the court entered and order denying Petitioner’s Motion to Modify  
12 and/or Correct Illegal Sentence and “Judicial Notice of Lack of Jurisdiction. The court also  
13 entered its Findings of Fact, Conclusions of Law, and Order. On July 2, 2018 this case was  
14 reassigned to Department 15.

15 On August 28, 2018 Petitioner filed a Motion to Recuse and Application for Bail. The  
16 State filed its Response on October 8, 2018. On August 31, 2018, Petitioner filed a Post-  
17 Conviction Petition Requesting a Genetic Marker Analysis. The State filed its Opposition on  
18 September 17, 2018. The court denied Petitioner’s Motions on October 9, 2018 and filed its  
19 Order on November 6, 2018.

20 On November 19, 2018, Petitioner filed a Petition for Writ of Habeas Corpus. The  
21 State filed its Response on January 17, 2019. The court denied Petitioner’s Petition and filed  
22 its Findings of Fact, Conclusions of Law and Order on March 11, 2019.

23 On March 28, 2019, Petitioner filed a Motion to Compel Production of Documents  
24 Pursuant to 5 U.S.C.S. 552-Freedom of Information Act. The court denied Petitioner’s  
25 Motion on April 25, 2019. The court filed its Order on May 17, 2019.

26 On August 28, 2019, Petitioner filed a Motion to Amend Judgment. The court granted  
27 the Motion on September 19, 2019, directing the Clerk’s Office to file an Amended  
28 Judgment of Conviction with no change to the language, but amending the nature of the

1 closure of the case to reflect that the case was closed after a jury-trial conviction. The  
2 Amended Judgment of Conviction was filed on September 23, 2019.

3 On September 25, 2019, Petitioner filed a Motion to Amend Judgment of Conviction  
4 to Include All Jail Time Credits. The State filed its Opposition on October 16, 2019. The  
5 court granted the Motion on October 17, 2019, finding that Petitioner was entitled to eight  
6 hundred fifty-nine (859) days credit for time served. The Second Amended Judgment of  
7 Conviction was filed on October 23, 2019.

8 On November 19, 2019, Petitioner filed a Petition for Writ of Habeas Corpus and  
9 Motion to Compel Production of Transcripts. Petitioner filed an Addendum to Motion to  
10 Compel Production of Transcripts on December 2, 2019.

11 On December 5, 2019, Petitioner filed a Motion to Hold Monique McNeill, Esq.,  
12 Attorney of Record in Contempt for Failing to Forward Copy of Case File. On December 6,  
13 2019, Petitioner filed a Petition for Writ of Habeas Corpus Ad Testificandum/Alternatively a  
14 Telephone Hearing. On December 10, 2019, the court granted the Motion to Compel  
15 Production of Transcripts and denied Petitioner's Petition as moot. The Findings of Fact,  
16 Conclusions of Law, and Order was filed on December 23, 2019.

17 On January 7, 2020, the court held a hearing on Petitioner's Motion to Hold Monique  
18 McNeill, Esq., Attorney of Record in Contempt for Failing to Forward Copy of Case File.  
19 The court continued the matter to allow Ms. McNeill to file an Opposition and appear at the  
20 hearing. The court issued a Notice of Hearing for the Motion and continued the hearing to  
21 January 30, 2020.

22 On January 30, 2020, Ms. McNeill did not appear at the hearing, and the court  
23 ordered an Order to Show Cause as to why Ms. McNeill should not be held in contempt for  
24 failure to provide Petitioner with the file and for her failure to appear for the hearing.

25 On February 18, 2020, Ms. McNeill appeared at the Show Cause hearing and told the  
26 court she had provided Petitioner with his file on four (4) different occasions. The court held  
27 that cause had been shown, and Ms. McNeill would not be held in contempt of court. The  
28

1 court also denied Petitioner's Motion to Hold Monique McNeill, Esq., Attorney of Record in  
2 Contempt for Failing to Forward Copy of Case File.

3 On February 25, 2020, Petitioner filed a Petition for Writ of Habeas Corpus Ad  
4 Testificandum. The same day, Petitioner also filed a Motion to Correct Illegal Sentence. The  
5 State filed its Opposition to Petitioner's Motion to Correct Illegal Sentence on March 10,  
6 2020. On March 16, 2020, Petitioner filed a Memorandum of Law. On March 17, 2020, the  
7 district court denied Petitioner's Motion. The Order was filed on March 26, 2020.

8 On March 30, 2020, Petitioner filed a Notice of Appeal, appealing the denial of  
9 Petitioner's Motion to Correct Illegal Sentence. On April 24, 2020, the Nevada Supreme  
10 Court dismissed Petitioner's appeal because Petitioner had no right to appeal the district  
11 court's decision. Remittitur issued on May 21, 2020.

12 On May 29, 2020, Petitioner filed another Motion to Compel Production of Court  
13 Documents by Clerk of the Court. The district court denied Petitioner's Motion on July 2,  
14 2020.

15 On February 9, 2021, Petitioner filed the instant Petition for Writ of Habeas Corpus  
16 (Post-Conviction) (hereinafter "Petition"), Motion for Appointment of Attorney, and Request  
17 for Evidentiary Hearing. Petitioner filed an Addendum to Petition for Writ of Habeas Corpus  
18 Pursuant to the all Writs Act on February 25, 2021. On March 8, 2021, Petitioner filed an Ex  
19 Parte Motion to Shorten Time Pursuant to EDCR 5.513 and a Motion to Continue. On March  
20 17, 2021, Petitioner filed a Request for Judicial Notice and Judicial Action to be Taken,  
21 Motion for an Order to Produce Prisoner, and Motion for Discovery/Motion for Order to  
22 Show Cause. The State filed its Response on April 5, 2021. Following a hearing on May 19,  
23 2021, this Court finds and concludes as follows:

25 **STATEMENT OF THE FACTS**

26 On June 21, 2014, the minor victim H.H. (DOB: 06/22/2001) disclosed that she had  
27 been sexually abused by her stepfather, Petitioner. The abuse began when she was eight (8)  
28 years old. While at Petitioner's residence in Searchlight, Nevada, Petitioner would call H.H.

1 into his bedroom and have H.H. take off her clothes. Petitioner would make H.H. lie on the  
2 bed and he would rub baby oil on H.H.'s legs. Petitioner then placed his private parts in  
3 between her legs and rubbed himself back and forth until he ejaculated. H.H. stated that  
4 Petitioner placed a white hand towel on the bed and had the victim lie on the towel during  
5 the molestation incidents. He would then use the towel to clean up the baby oil. The abuse  
6 continued until the victim reported the abuse in January 2014.

7 H.H. testified of several instances of sexual abuse committed by Petitioner. H.H.  
8 described instances including Petitioner sucking on her breasts, putting his penis in her anus,  
9 putting his penis into her mouth more than once, touching her genital area with his hands and  
10 his penis, and fondling her buttocks and/or anal area with his penis.

11 On January 21, 2014, the Las Vegas Metropolitan Police Department served a search  
12 warrant on Petitioner's residence in Searchlight. Officers recovered a white hand towel that  
13 matched the description given by H.H. in the exact location H.H. described. The police also  
14 recovered a bottle of baby oil found in the same drawer as the hand towel and bedding.  
15 These items were tested for DNA. Several stains on the white towel came back consistent  
16 with a mixture of two individuals. The partial major DNA profile contributor was consistent  
17 with Petitioner. The partial minor DNA profile was consistent with victim H.H. The  
18 statistical significance of both partial profiles was at least one in 700 billion.

## 19 AUTHORITY

### **20 I. THIS PETITION IS TIME-BARRED AND SUCCESSIVE.**

21 Petitioner's instant Petition for Writ of Habeas Corpus was not filed within one year  
22 of the filing of the Judgment of Conviction. Thus, the Petition is time-barred. Pursuant to  
23 NRS 34.726(1):

24 Unless there is good cause shown for delay, a petition that  
25 challenges the validity of a judgment or sentence must be filed  
26 within 1 year of the entry of the judgment of conviction or, if an  
27 appeal has been taken from the judgment, within 1 year after the  
Supreme Court issues its remittitur. For the purposes of this  
subsection, good cause for delay exists if the petitioner demonstrates  
to the satisfaction of the court:

28 (a) That the delay is not the fault of the petitioner; and

(b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

The Nevada Supreme Court has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

The one-year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite evidence presented by the defendant that he purchased postage through the prison and mailed the petition within the one-year time limit.

Additionally, NRS 34.810(2) reads:

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

(emphasis added).

Second or successive petitions are petitions that either fail to allege new or different grounds for relief and the grounds have already been decided on the merits or that allege new or different grounds but a judge or justice finds that the petitioner's failure to assert those grounds in a prior petition would constitute an abuse of the writ. Second or successive petitions will only be decided on the merits if the petitioner can show good cause and prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994); see also Hart v. State, 116 Nev. 558, 563–64, 1 P.3d 969, 972 (2000) (holding that “where a defendant previously has sought relief from the judgment, the defendant’s failure to identify all grounds for relief in the first instance should weigh against consideration of the successive motion.”)

1       The Nevada Supreme Court has stated: “Without such limitations on the availability  
2 of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse  
3 post-conviction remedies. In addition, meritless, successive and untimely petitions clog the  
4 court system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d  
5 at 950. The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly  
6 require a careful review of the record, successive petitions may be dismissed based solely on  
7 the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In  
8 other words, if the claim or allegation was previously available with reasonable diligence, it  
9 is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,  
10 497–98 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112  
11 P.3d at 1074.

12       In the instant case, Remittitur from Petitioner’s direct appeal issued on July 28, 2017.  
13 Petitioner filed the instant Petition on February 9, 2021 – four years since the Remittitur.  
14 Thus, the instant Petition is time-barred. This Petition is also successive as Petitioner  
15 previously filed multiple post-conviction Petitions with the district court. Absent a showing  
16 of good cause to excuse this delay, the instant Petition is dismissed.

17 **II. APPLICATION OF THE PROCEDURAL BARS IS MANDATORY**

18       The Nevada Supreme Court has held that the district court has a *duty* to consider  
19 whether a defendant’s post-conviction petition claims are procedurally barred. State v.  
20 Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The  
21 Riker Court found that “[a]pplication of the statutory procedural default rules to post-  
22 conviction habeas petitions is mandatory,” noting:

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

26       Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district  
27 court] when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme  
28

1 Court has granted no discretion to the district courts regarding whether to apply the statutory  
2 procedural bars; the rules *must* be applied.

3 This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013).  
4 There the Court ruled that the defendant's petition was "untimely, successive, and an abuse  
5 of the writ" and that the defendant failed to show good cause and actual prejudice. Id. at 324,  
6 307 P.3d at 326. Accordingly, the Court reversed the district court and ordered the  
7 defendant's petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322–  
8 23. The procedural bars are so fundamental to the post-conviction process that they must be  
9 applied by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at  
10 1074. Therefore, application of the procedural bars is mandatory.

11 **III. PETITIONER CANNOT ESTABLISH GOOD CAUSE**

12 A showing of good cause and prejudice may overcome procedural bars. However,  
13 Petitioner cannot demonstrate good cause to explain why his Petition was untimely.

14 "To establish good cause, appellants must show that an impediment external to the  
15 defense prevented their compliance with the applicable procedural rule. A qualifying  
16 impediment might be shown where the factual or legal basis for a claim *was not reasonably*  
17 *available at the time of default.*" Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003)  
18 (emphasis added). The Court continued, "appellants cannot attempt to manufacture good  
19 cause[.]" Id. at 621, 81 P.3d at 526. Rather, to find good cause, there must be a "substantial  
20 reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503,  
21 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Any  
22 delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

23 A petitioner raising good cause to excuse procedural bars must do so within a  
24 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34  
25 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see  
26 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably  
27 available to the petitioner during the statutory time period did not constitute good cause to  
28 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good

1 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S.  
2 446, 453 120 S. Ct. 1587, 1592 (2000).

3 Further, to establish prejudice, the defendant must show “not merely that the errors  
4 of [the proceedings] created possibility of prejudice, but that they worked to his actual and  
5 substantial disadvantage, in affecting the state proceedings with error of constitutional  
6 dimensions.” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting  
7 United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

8 In the instant case, Petitioner cannot demonstrate good cause to overcome the  
9 mandatory procedural bars because he cannot demonstrate that this claim was not reasonably  
10 available at the time of default. Clem, 119 Nev. at 621, 81 P.3d at 525. Petitioner fails to  
11 address good cause and does not explain why he is now raising this issue four years later.  
12 Petitioner fails to state any claims in his Petition and simply makes incoherent and vague  
13 arguments about treason and the Constitution. Because Petitioner cannot establish good  
14 cause to explain why his Petition was untimely, the Petition is denied as time barred.

15 **IV. PETITIONER IS NOT ENTITLED TO POST-CONVICTION COUNSEL**

16 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in  
17 post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991).  
18 In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada Supreme  
19 Court similarly observed that “[t]he Nevada Constitution ... does not guarantee a right to  
20 counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right to  
21 counsel provision as being coextensive with the Sixth Amendment to the United States  
22 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)  
23 (entitling appointed counsel when petitioner is under a sentence of death), one does not have  
24 “[a]ny constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at  
25 164, 912 P.2d at 258.

26 The Nevada Legislature has, however, given courts the discretion to appoint post-  
27 conviction counsel so long as “the court is satisfied that the allegation of indigency is true  
28 and the petition is not dismissed summarily.” NRS 34.750. NRS 34.750(1) reads:

1 [a] petition may allege that the Defendant is unable to pay the costs  
2 of the proceedings or employ counsel. If the court is satisfied that the  
3 allegation of indigency is true and the petition *is not dismissed summarily*, the court may appoint counsel at the time the court  
orders the filing of an answer and a return. In making its  
determination, the court may consider whether:

4 (a) The issues are difficult;  
5 (b) The Defendant is unable to comprehend the proceedings;  
6 or  
7 (c) Counsel is necessary to proceed with discovery.

8 (emphasis added). Accordingly, under NRS 34.750, it is clear that the Court has discretion in  
9 determining whether to appoint counsel.

10 More recently, the Nevada Supreme Court examined whether a district court  
11 appropriately denied a defendant's request for appointment of counsel based upon the factors  
12 listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In  
13 Renteria-Novoa, the petitioner had been serving a prison term of eighty-five (85) years to  
14 life. Id. at 75, 391 P.3d at 760. After his judgment of conviction was affirmed on direct  
15 appeal, the defendant filed a pro se postconviction petition for writ of habeas corpus and  
16 requested counsel be appointed. Id. The district court ultimately denied the petitioner's  
17 petition and his appointment of counsel request. Id. In reviewing the district court's decision,  
18 the Nevada Supreme Court examined the statutory factors listed under NRS 34.750 and  
19 concluded that the district court's decision should be reversed and remanded. Id. The Court  
20 explained that the petitioner was indigent, his petition could not be summarily dismissed, and  
21 he had in fact satisfied the statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor,  
22 the Court concluded that because petitioner had represented he had issues with understanding  
23 the English language which was corroborated by his use of an interpreter at his trial, that was  
24 enough to indicate that the petitioner could not comprehend the proceedings. Id. Moreover,  
25 the petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85)  
26 year sentence—were severe and his petition may have been the only vehicle for which he  
27 could raise his claims. Id. at 76-77, 391 P.3d at 761-62. Finally, his ineffective assistance of  
28

1 counsel claims may have required additional discovery and investigation beyond the record.

2 Id.

3 Pursuant to NRS 34.750, Petitioner has not demonstrated that counsel should be  
4 appointed. Petitioner's request is suitable only for summary denial as he has failed to provide  
5 any specific facts to support his bare and naked request. Hargrove, at 502, 686 P.2d at 225.  
6 Similarly, unlike in Renteria-Novoa, Petitioner's Petition is summarily dismissed for several  
7 reasons, including, but not limited to, his Petition is time-barred, successive, and his claim is  
8 waived as meritless.

9 Petitioner fails to address what he specifically needs counsel for in his untimely post-  
10 conviction Petition. As discussed supra, Section IV., aside from being barred, Petitioner's  
11 allegations are bare and naked allegation without support from the record and have already  
12 been denied multiple times by the district courts. Therefore, this Court declines to appoint  
13 counsel because nothing raised in his post-conviction Petition warrants appointing an  
14 attorney and there is no constitutional right to counsel in post-conviction proceedings.  
15 Coleman, 501 U.S. 722, 111 S. Ct. 2546.

16 **VI. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

17 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It  
18 reads:

19 1. The judge or justice, upon review of the return, answer and all  
20 supporting documents which are filed, shall determine whether an  
evidentiary hearing is required. A petitioner must not be discharged  
21 or committed to the custody of a person other than the respondent  
*unless an evidentiary hearing is held.*

22 2. If the judge or justice determines that the petitioner is not entitled  
23 to relief and an evidentiary hearing is not required, he shall dismiss  
the petition without a hearing.

24 3. If the judge or justice determines that an evidentiary hearing is  
25 required, he shall grant the writ and shall set a date for the hearing.

26 The Nevada Supreme Court has held that if a petition can be resolved without  
27 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.  
28 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A

1 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual  
2 allegations, which, if true, would entitle him to relief unless the factual allegations are  
3 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove, 100  
4 Nev. at 503, 686 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not  
5 entitled to an evidentiary hearing on factual allegations belied or repelled by the record”). “A  
6 claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the  
7 time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to  
8 hold an evidentiary hearing simply to make a complete record. See State v. Eighth Judicial  
9 Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered  
10 itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a  
11 record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

12 Further, the United States Supreme Court has held that an evidentiary hearing is not  
13 required simply because counsel’s actions are challenged as being unreasonable strategic  
14 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not  
15 indulge post hoc rationalization for counsel’s decision making that contradicts the available  
16 evidence of counsel’s actions, neither may they insist counsel confirm every aspect of the  
17 strategic basis for his or her actions. Id. There is a “strong presumption” that counsel’s  
18 attention to certain issues to the exclusion of others reflects trial tactics rather than “sheer  
19 neglect.” Id. (citing Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls  
20 for an inquiry in the *objective* reasonableness of counsel’s performance, not counsel’s  
21 *subjective* state of mind. 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994) (emphasis added).

22 Here, there is no reason to expand the record because Petitioner fails to present  
23 specific factual allegations that would entitle him to relief. Marshall, 110 Nev. at 1331, 885  
24 P.2d at 605. There is nothing else for an evidentiary hearing to determine. Petitioner’s claims  
25 are barred and bare and naked. There is no need to expand the record because Petitioner’s  
26 claims are meritless and can be disposed of on the existing record. Therefore, an evidentiary  
27 hearing is not warranted.

28 ///

## **ORDER**

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and is DENIED. Dated this 22nd day of July, 2021

**Dated this 22nd day of July, 2021**

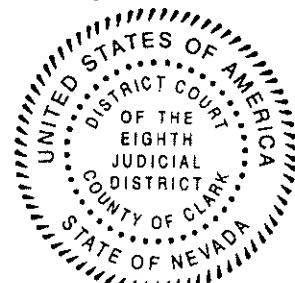
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

**C0A 3D8 E20E 1DC2  
Jasmin Lilly-Spells  
District Court Judge**

BY ALEXANDER CHEN  
Chief Deputy District Attorney  
Nevada Bar #010539

hjc/SVU

July 26, 2021



CERTIFIED COPY  
ELECTRONIC SEAL (NRS 1.190(3))

CSERV

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Justin Langford, Plaintiff(s)

CASE NO: A-18-784811-W

VS.

DEPT. NO. Department 23

Warden Renee Baker,  
Defendant(s)

**AUTOMATED CERTIFICATE OF SERVICE**

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 7/22/2021

maria.case-bateson maria.case-bateson@clarkcountyda.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 7/23/2021

Justin Langford #1159546  
1200 Prison Road  
Lovelock, NV, 89419

Steven Wolfson Juvenile Division - District Attorney's Office  
601 N Pecos Road  
Las Vegas, NV, 89101

APPENDIX C

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN ODELL LANGFORD,  
Appellant,  
vs.  
RENEE BAKER, WARDEN,  
Respondent.

No. 83032

FILED

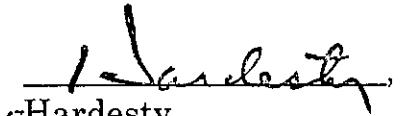
DEC 17 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

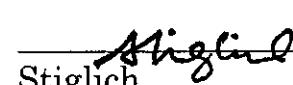
**ORDER DENYING PETITION FOR REVIEW**

Review denied. NRAP 40B.

It is so ORDERED.<sup>1</sup>

  
Hardesty, C.J.

  
Parraguirre

  
Stiglich, J.

  
Cadish

  
Pickering, J.

  
Herndon

cc: Justin Odell Langford  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

<sup>1</sup> The Honorable Abbi Silver, Justice, did not participate in the decision of this matter.