

APPENDIX A

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AUG 31 2023

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

CHRISTOPHER LENARD BLOCKSON,

No. 22-16910

Petitioner-Appellant,

D.C. No. 2:21-cv-00731-GMN-VCF
District of Nevada,
Las Vegas

v.

JERRY HOWELL, Warden; et al.,

ORDER

Respondents-Appellees.

Before: SCHROEDER and SANCHEZ, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 2) is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

All pending motions are denied as moot.

DENIED.

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHRISTOPHER LENARD BLOCKSON,

Petitioner,

V.

GABRIELLA NAJERA, *et al.*,

Respondents.

Case No. 2:21-cv-00731-GMN-VCF

ORDER

I. SUMMARY

This action is a pro se petition for writ of habeas corpus by Christopher Lenard Blockson, an individual incarcerated at Nevada's Southern Desert Correctional Center, in Indian Springs, Nevada. The case is before the Court for resolution on its merits. The Court will deny Blockson's petition and will deny him a certificate of appealability.

II. BACKGROUND

In 2018, Blockson was charged with cruelty to animals, ownership or possession of a firearm by a prohibited person, and discharge of a firearm from within a structure or vehicle. Information, Exh. 5 (ECF No. 36-5). On December 21, 2018, Blockson entered into a plea agreement and pled guilty in Nevada's Eighth Judicial District Court (Clark County) to cruelty to animals and ownership or possession of a firearm by a prohibited person. Guilty Plea Agreement, Exh. 7 (ECF No. 36-7); Transcript of Arraignment, December 21, 2018, Exh. 8 (ECF No. 36-8). The parties agreed to a sentence of 19 to 48 months in prison for the cruelty to animals and a consecutive 28 to 72 months in prison for the possession of a firearm by a prohibited person. *Ibid.* Blockson agreed to pay restitution and forfeit the firearm. *Ibid.* The State agreed not to make a federal referral and not to seek habitual criminal treatment. *Ibid.* The State also agreed to dismiss the charge of discharging a firearm from within a structure or vehicle. *Ibid.*

1 Blockson was sentenced on April 16, 2019. Transcript of Sentencing, April 16, 2019,
2 Exh. 13 (ECF No. 36-13). He was sentenced, consistent with the guilty plea agreement,
3 to 19 to 48 months in prison for the cruelty to animals and a consecutive 28 to 72
4 months in prison for the possession of a firearm by a prohibited person, which,
5 aggregated, amounted to 47 to 120 months in prison. *Ibid.* The judgment of conviction
6 was filed on April 22, 2019. Judgment of Conviction, Exh. 14 (ECF No. 36-14).

7 Blockson appealed from the judgment of conviction, but he subsequently
8 withdrew his appeal. See Notice of Appeal, Exh. 16 (ECF No. 36-16); Notice of
9 Withdrawal of Appeal, Exh. 45 (ECF No. 37-27); Order Dismissing Appeal, Exh. 46
10 (ECF No. 37-28).

11 On February 13, 2020, Blockson filed a pro se petition for writ of habeas corpus
12 in the state district court. Petition for Writ of Habeas Corpus (Post-Conviction), Exh. 50
13 (ECF No. 37-32). The state district court denied Blockson's petition on May 5, 2020.
14 Order, Exh. 53 (ECF No. 37-35). Blockson appealed. Notice of Appeal, Exh. 58 (ECF
15 No. 37-40); Appellant's Informal Brief, Exh. 65 (ECF No. 38-5) (Case No. 81360). The
16 Nevada Court of Appeals affirmed on March 5, 2021. Order of Affirmance, Exh. 75 (ECF
17 No. 38-15).

18 On December 18, 2020, Blockson filed a second petition for writ of habeas
19 corpus in the state district court. Petition for Writ of Habeas Corpus, Good and Work
20 Time, Meritorious Award Calculations, Exh. 68 (ECF No. 38-8). The state district court
21 denied that petition on February 27, 2021. Decision and Order, Exh. 73 (ECF No. 38-
22 13). Blockson appealed. Notice of Appeal, Exh. 76 (ECF No. 38-16) (Case No. 82646).
23 On October 7, 2021, the Nevada Court of Appeals affirmed. Order of Affirmance, Exh.
24 110 (ECF No. 39-25).

25 On March 25, 2021, Blockson filed, in the state district court, a motion to modify
26 or correct illegal sentence. Motion to Modify or Correct Illegal Sentence, Exh. 81 (ECF
27 No. 38-21). The state district court denied that motion on April 14, 2021. Order,

1 Exh. 86 (ECF No. 39-1). Blockson appealed. Notice of Appeal, Exh. 87 (ECF No. 39-2);
2 Appellant's Informal Brief, Exh. 96 (ECF No. 39-11) (Case No. 82860). On
3 August 30, 2021, the Nevada Court of Appeals affirmed, but remanded for entry of an
4 amended judgment correcting a clerical error. Order of Affirmance and Remanding to
5 Correct the Judgment of Conviction, Exh. 100 (ECF No. 39-15). The amended judgment
6 of conviction was filed on October 4, 2021. Amended Judgment of Conviction, Exh. 107
7 (ECF No. 39-22).

8 On August 13, 2021, Blockson filed, in the state district court, a motion to
9 overturn and vacate his conviction. Motion to Overturn and Vacate Conviction for
10 Outrageous Government Conduct and Recusal of Judge Weiss and District Attorney's
11 Office, Exh. 99 (ECF No. 39-14). The state district court denied that motion on
12 October 4, 2021. Order, Exh. 108 (ECF No. 39-23). Blockson appealed. Notice of
13 Appeal, Exh. 111 (ECF No. 40-1) (Case No. 83656). The Nevada Court of Appeals
14 dismissed that appeal. See Order Dismissing Appeal, Exh. 1 to Petitioner's Motion to
15 Expand Record (ECF No. 60).

16 Blockson initiated this federal habeas corpus action on May 3, 2021, by
17 submitting for filing a pro se petition for writ of habeas corpus (ECF No. 9). Blockson's
18 habeas petition sets forth three grounds for relief:

19 Ground 1: Blockson's sentence on the conviction of cruelty to animals
20 violates his federal constitutional right to due process of law because he
pled guilty to, and was convicted of, a misdemeanor, not a felony.

21 Ground 2: Blockson's conviction and sentence for cruelty to animals are
22 in violation of his federal constitutional right to due process of law because
"[t]he prosecutor maliciously rewrote the cruelty to animals statute."

23 Ground 3: Blockson's conviction and sentence are in violation of his
24 federal constitutional right to effective assistance of counsel because he
was not appointed counsel for his state post-conviction proceedings, and
he had limited access to the law library during those proceedings.

25
26 Petition for Writ of Habeas Corpus (ECF No. 9).

27 Respondents filed a motion to dismiss on February 4, 2022 (ECF Nos. 35 and 44
28 (corrected image)). In that motion, Respondents argued that Grounds 1, 2 and 3 of

1 Blockson's habeas petition are not cognizable in this federal habeas corpus action and
2 do not state claims upon which federal habeas relief could be granted; that Ground 2 is
3 procedurally defaulted and is barred by *Tollett v. Henderson*, 411 U.S. 258 (1973); and
4 that Ground 3 is unexhausted in state court. See Motion to Dismiss (ECF No. 44),
5 pp. 5–9. The Court granted the motion to dismiss in part, and denied it in part, in an
6 order entered on July 25, 2022 (ECF No. 55). The Court determined that Respondents'
7 arguments regarding Ground 1 were intertwined with the merits of the claim, such that
8 those arguments would be better addressed together with the merits of the claim after
9 full merits briefing; the Court, therefore, denied Respondents' motion to dismiss
10 Ground 1, without prejudice to Respondents making the same arguments with respect
11 to Ground 1 in their answer (along with their briefing of the merits of the claim). Order
12 entered July 25, 2022 (ECF No. 55), p. 4. The Court granted Respondents' motion to
13 dismiss Ground 2, and dismissed that claim, on the grounds that it is not cognizable in
14 this federal habeas corpus action, that it does not state a claim on which habeas corpus
15 relief could be granted, that it is barred by *Tollett*, and that it is barred by the procedural
16 default doctrine. *Id.* at 4–7. The Court granted Respondents' motion to dismiss Ground
17 3, and dismissed that claim, on the grounds that it is not cognizable in this federal
18 habeas corpus action, that it does not state a claim upon which federal habeas corpus
19 relief could be granted, and that Blockson conceded the claim is unexhausted and
20 abandoned it. *Id.* at 7–8.

21 Respondents filed their answer on October 24, 2022 (ECF No. 65) and Blockson
22 filed his reply on November 7, 2022 (ECF No. 72).

23 **III. DISCUSSION**

24 **A. Ground 1**

25 In Ground 1, Blockson claims that his sentence for cruelty to animals violates his
26 federal constitutional right to due process of law because he pled guilty to, and was
27 convicted of, a misdemeanor, not a felony. Petition for Writ of Habeas Corpus (ECF No.
28 9), pp. 3–4.

1 In fact, the Nevada statute under which Blockson pled guilty and was convicted
2 of cruelty to animals, Nev. Rev. Stat. § 574.100, plainly provides that a willful and
3 malicious violation of subsection (1)(a) of the statute is a felony:

4 NRS 574.100. Torturing, overdriving, injuring or abandoning animals;
5 failure to provide proper sustenance; requirements for restraining dogs
and using outdoor enclosures; horse tripping; penalties; exceptions

6 1. A person shall not:

7 (a) Torture or unjustifiably maim, mutilate or kill:

8 (1) An animal kept for companionship or pleasure, whether belonging to
9 the person or to another; or

10 (2) Any cat or dog;

11 * * *

12 6. A person who willfully and maliciously violates paragraph (a) of
13 subsection 1:

14 (a) Except as otherwise provided in paragraph (b), is guilty of a category D
15 felony and shall be punished as provided in NRS 193.130.

16 (b) If the act is committed in order to threaten, intimidate or terrorize
17 another person, is guilty of a category C felony and shall be punished as
18 provided in NRS 193.130.

19 Nev. Rev. Stat. § 574.100.

20 In the Information, the prosecution charged that Blockson "committed the [crime]
21 of Cruelty to Animals (Category D Felony - NRS 574.100.1a - NOC 55977)," and that he
22 "did willfully, unlawfully, maliciously and feloniously, torture or unjustifiably maim,
23 mutilate or kill a Pit Bull dog, by shooting and/or stabbing and/or cutting said dog, and/or
24 by failing to get medical treatment for said dog." Information, Exh. 5 (ECF No. 36-5),
25 pp. 1-2.

26 In the guilty plea agreement that he signed, Blockson agreed to plead guilty to
27 "Count 1 – Cruelty to Animals (Category D Felony - NRS 574.100.1a - NOC 55977)" ...
28 "as more fully alleged in the charging document attached hereto as Exhibit 1." Guilty
Plea Agreement, Exh. 7 (ECF No. 36-7), p. 1. The guilty plea agreement stated that
"[a]s to Count 1, the parties agree to a sentence of nineteen (19) to forty-eight (48)

1 months in the Nevada Department of Corrections." *Ibid.* The guilty plea agreement also
2 stated: "As to Count 1, I understand that as a consequence of my plea of guilty The
3 Court must sentence me to imprisonment in the Nevada Department of Corrections for
4 a minimum term of not less than one (1) year and a maximum term of not more than
5 four (4) years." *Id.* at 2. A copy of the Information was attached to the guilty plea
6 agreement as Exhibit 1. *Id.* (ECF No. 36-7 at 9–10).

7 At the hearing at which he entered his guilty plea, Blockson told the judge that he
8 read and understood the guilty plea agreement before he signed it. Transcript of
9 Arraignment, December 21, 2018, Exh. 8 (ECF No. 36-8), p. 5. Blockson also stated
10 that he understood that the range of punishment for Count 1 was one to four years. *Id.*
11 at 6. Blockson answered "[y]es, sir," when asked if, "on or about the fourth day of April
12 2018 in Clark County, Nevada, contrary to the laws of the State of Nevada, on Count
13 One, [he] did willfully, unlawfully, maliciously and feloniously torture or unjustifiably
14 maim, mutilate or kill a Pitbull dog by shooting or stabbing or cutting said dog and/or
15 failing to get medical treatment for said dog." *Id.* at 7–8.

16 At the sentencing hearing, there was no question raised regarding Blockson
17 being charged with and pleading guilty to a felony in Count 1. See Transcript of
18 Sentencing, April 16, 2019, Exh. 13 (ECF No. 36-13).

19 In his motion to modify and/or correct illegal sentence, Blockson did assert the
20 claim in Ground 1: that willful and malicious violation of Nev. Rev. Stat. § 574.100(1)(a)
21 is a misdemeanor, not a felony, and that his felony sentence is in violation of his
22 constitutional right to due process of law. See Motion to Modify and/or Correct Illegal
23 Sentence, Exh. 81 (ECF No. 38-21). The state district court denied the motion. Order,
24 Exh. 86 (ECF No. 39-1). The state district court stated:

25 If the Court considers the merits of the Petition, with regard to Ground 1, it
26 appears that the Petitioner is misinterpreting NRS 574.100. NRS
27 574.100(6) states in relevant part that a person who "willfully and
28 maliciously" violates NRS 574.100(1)(a) "is guilty of a category D felony."
The Petitioner's argument that he was not charged with a violation of NRS
574.100(1) is belied by the record, as the Information alleges this violation,

and indicates that he was being charged with the Category D felony portion of the statute.

* * *

Defendant has failed to meet his burden in establishing that his Due Process rights or any other rights were violated.

Id. at 6, 8. Blockson appealed, and the Nevada Court of Appeals' ruling, in its entirety, was as follows:

Christopher Lenard Blockson appeals from a district court order denying a motion to correct illegal sentence and a motion to appoint counsel filed on March 25, 2021. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

In his motion, Blockson claimed his sentence of 19 to 48 months in prison was improper because the sentence exceeds the permissible sentence for misdemeanor animal cruelty. A sentence "at variance with the controlling sentencing statute" is illegal. *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996) (quotation marks omitted). NRS 574.100(1)(a) prohibits cruelty to animals. A first-time violation of that section, without more, is a misdemeanor offense and subject to imprisonment for not more than six months. See NRS 574.100(7)(a)(1). However, if an offender "willfully and maliciously violates [NRS 574.100(1)(a)]," he "is guilty of a category D felony and shall be punished as provided in NRS 193.130." NRS 574.100(6)(a). And a category D felony is subject to a sentence of imprisonment of "a minimum term of not less than 1 year and a maximum term of not more than 4 years." NRS 193.130(2)(d).

In his motion, Blockson contended that, because his information, guilty plea agreement, and judgment of conviction refer only to section (1)(a) of NRS 574.100, he is entitled to be sentenced for a misdemeanor. While the documents mention only NRS 574.100(1)(a) in connection to that offense, the information and the guilty plea agreement described the offense as a category D felony, and the information further provides that Blockson committed the offense "willfully, unlawfully, maliciously, and feloniously." The plea agreement reflects both parties stipulated to a sentence of 19 to 48 months in prison. And during the plea canvass, Blockson stated he understood the possible sentencing range to be that for the felony and that he committed the offense "willfully, unlawfully, maliciously, and feloniously." Based on these facts, it is clear that Blockson pleaded guilty to, and was sentenced in accordance with, felony animal cruelty under NRS 574.100(6)(a). And because the district court imposed Blockson's sentence in accordance with NRS 574.100(6)(a), Blockson did not demonstrate that his sentence was illegal. Therefore, we conclude the district court did not err by denying this claim.

We note, however, that the judgment of conviction contains a clerical error. A judgment of conviction must include sentencing statutes. NRS 176.105(1)(c). Blockson's judgment of conviction did not refer to either NRS 574.100(6)(a) or NRS 193.130(2)(d). However, a clerical error "may be corrected by the court at any time." NRS 176.565. Accordingly,

1 we direct the district court, upon remand, to enter an amended judgment
2 of conviction that includes the proper sentencing statutes. We therefore
3 remand this matter to the district court for the limited purpose of correcting
4 the clerical error in the judgment of conviction.

5 Blockson also claimed that the State maliciously prosecuted him.
6 This claim fell outside the narrow scope of claims permissible in a motion
7 to modify or correct a sentence. See *Edwards*, 112 Nev. at 708, 918 P.2d
8 at 324. Therefore, we conclude the district court did not err by denying this
9 claim.

10 For the foregoing reasons, we

11 ORDER the judgment of the district court AFFIRMED AND
12 REMAND this matter to the district court for the limited purpose of
13 correcting the judgment of conviction. [Footnote: We conclude the district
14 court did not err by denying Blockson's motion for the appointment of
15 counsel.]

16 Order of Affirmance and Remanding to Correct the Judgment of Conviction, Exh. 100
17 (ECF No. 39-15).

18 Blockson's claim in Ground 1 in this case, in its entirety, is as follows:

19 I allege that my state court conviction and/or sentence are unconstitutional
20 in violation of my 14[th] Amendment right to due process of law based on
21 these facts: I received 19 to 48 months in prison on Count 1—cruelty to
22 animals—a category D felony in violation of NRS 574.100(1)(a). The
23 sentence is illegal on its face. There is no category D felony under NRS
24 574.100(1)(a). A violation of NRS 574.100(1)(a) is a misdemeanor and
25 shall be punished pursuant to NRS 574.100(7)(a-b) unless as otherwise
26 provided by NRS 574.100(6)(a-b). A court can correct an illegal sentence
27 at any time. [*Passanisi v. State*, 108 Nev. 318, 321, 831 P.2d 1371, 1372
28 (1992)]. "Motion[s] to correct an illegal sentence[s] evaluate whether the
sentence imposed on the defendant is at variance with the controlling
statute, or illegal in the sense that the court goes beyond its authority by
acting without jurisdiction or imposing a sentence in excess of the
statutory maximum provided" (quoting *Allen v. United States* 495 A.2d.
1145, 1149 (D.C. 1985)).

29 *Id.* at 3. Essentially, his claim is that "[t]here is no category D felony under NRS
30 574.100(1)(a)," and that, therefore, his felony sentence violates his federal constitutional
31 right to due process of law.

32 Blockson asserted this claim in state court in his March 25, 2021, motion to
33 modify or correct illegal sentence. See Motion to Modify or Correct Illegal Sentence,
34 Exh. 81 (ECF No. 38-21). Both the state district court and the Nevada Court of Appeals
35 rejected the claim, with extensive discussion of the state-law aspects of the claim but
36 with no substantive discussion of the federal constitutional aspect of the claim. See

1 Order, Exh. 86 (ECF No. 39-1); Order of Affirmance and Remanding to Correct the
2 Judgment of Conviction, Exh. 100 (ECF No. 39-15).

3 28 U.S.C. § 2254(d) (enacted as part of the Antiterrorism and Effective Death
4 Penalty Act of 1996 (AEDPA)) sets forth the standard of review generally applicable to
5 claims previously asserted and resolved on their merits in state court:

6 An application for a writ of habeas corpus on behalf of a person in
7 custody pursuant to the judgment of a State court shall not be granted with
8 respect to any claim that was adjudicated on the merits in State court
proceedings unless the adjudication of the claim —

9 (1) resulted in a decision that was contrary to, or
10 involved an unreasonable application of, clearly established
Federal law, as determined by the Supreme Court of the
United States; or

11 (2) resulted in a decision that was based on an
12 unreasonable determination of the facts in light of the
evidence presented in the State court proceeding.

13 28 U.S.C. § 2254(d). A state court decision is contrary to clearly established Supreme
14 Court precedent, within the meaning of 28 U.S.C. § 2254(d)(1), "if the state court
15 applies a rule that contradicts the governing law set forth in [the Supreme Court's]
16 cases" or "if the state court confronts a set of facts that are materially indistinguishable
17 from a decision of [the Supreme Court] and nevertheless arrives at a result different
18 from [the Supreme Court's] precedent." *Lockyer v. Andrade*, 538 U.S. 63, 73 (2003)
19 (quoting *Williams v. Taylor*, 529 U.S. 362, 405–06 (2000)). A state court decision is an
20 unreasonable application of clearly established Supreme Court precedent, within the
21 meaning of 28 U.S.C. § 2254(d)(1), "if the state court identifies the correct governing
22 legal principle from [the Supreme Court's] decisions but unreasonably applies that
23 principle to the facts of the prisoner's case." *Lockyer*, 538 U.S. at 75 (quoting *Williams*,
24 529 U.S. at 413). The "unreasonable application" clause requires the state court
25 decision to be more than incorrect or erroneous; the state court's application of clearly
26 established law must be objectively unreasonable. *Id.* (quoting *Williams*, 529 U.S. at
27 409). The analysis under section 2254(d) looks to the law that was clearly established
28 by United States Supreme Court precedent at the time of the state court's decision.

1 *Wiggins v. Smith*, 539 U.S. 510, 520 (2003). The Supreme Court has instructed that “[a]
2 state court’s determination that a claim lacks merit precludes federal habeas relief so
3 long as ‘fairminded jurists could disagree’ on the correctness of the state court’s
4 decision.” *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (citing *Yarborough v. Alvarado*,
5 541 U.S. 652, 664 (2004)); see also *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011)
6 (AEDPA standard is “a difficult to meet and highly deferential standard for evaluating
7 state-court rulings, which demands that state-court decisions be given the benefit of the
8 doubt” (internal quotation marks and citations omitted)). Where the state court
9 summarily denies a claim without discussion of the claim, a presumption exists that the
10 state court adjudicated the claim on the merits, unless “there is reason to think some
11 other explanation for the state court’s decision is more likely.” *Harrington*, 562 U.S. at
12 99–100. In such a case, applying § 2254(d)(1), the federal habeas court “must
13 determine what arguments or theories supported or … could have supported, the state
14 court’s decision; and then it must ask whether it is possible fairminded jurists could
15 disagree that those arguments or theories are inconsistent with the holding in a prior
16 decision of [the Supreme] Court.” *Id.* at 102.

17 The entire premise of Blockson’s claim—that “[t]here is no category D felony
18 under NRS 574.100(1)(a)”—is a matter of state law and is completely undermined by
19 the ruling of the Nevada Court of Appeals. A state court’s interpretation of state law
20 provides no basis for federal habeas relief. *Estelle v. McGuire*, 502 U.S. 62, 67–68
21 (1991). Accepting the Nevada Court of Appeal’s construction of Nev. Rev. Stat.
22 § 574.100 as authoritative, as it must, this Court determines that the premise of
23 Blockson’s federal constitutional claim fails: the crime Blockson pled guilty to and was
24 convicted of, malicious and willful cruelty to an animal under NRS 574.100(1)(a), is a
25 category D felony. Therefore, Blockson’s claim in Ground 1 is meritless. The Nevada
26 Court of Appeals’ denial of relief on the claim was not contrary to or an unreasonable
27 application of Supreme Court precedent and was not based on an unreasonable
28

1 determination of the facts in light of the evidence presented. The Court will deny
2 Blockson's habeas petition.

3 **B. Blockson's Motions**

4 On October 12, 2022, Blockson filed a motion to expand the record (ECF No.
5 60). In that motion, Blockson requests that the record be expanded to include the
6 Nevada Court of Appeals' order dismissing the appeal from the denial of his
7 August 13, 2021, Motion to Overturn and Vacate Conviction for Outrageous
8 Government Conduct and Recusal of Judge Weiss and District Attorney's Office. The
9 Court will grant Blockson's motion to expand the record and considers that order of the
10 Nevada Court of Appeals (Exh. 1 to Petitioner's Motion to Expand Record (ECF No.
11 60)) to be part of the record.

12 On October 12, 2022, Blockson also filed a motion for summary judgment
13 (ECF Nos. 61, 63), and he filed an amended motion for summary judgment on
14 October 18, 2022 (ECF No. 63). Respondents filed an opposition to that motion
15 (ECF No. 67) and Blockson filed a reply (ECF No. 71). The Court will deny Blockson's
16 motion for summary judgment.

17 On October 21, 2022, Blockson filed a "Motion to Authenticate Record on
18 Appeal" (ECF No. 64). Respondents filed an opposition to that motion (ECF No. 68) and
19 Blockson filed a reply (ECF No. 74). The Court will deny this motion.

20 On October 24, 2022, Blockson filed an "Emergency Plea for Physical Protection
21 from the State of Nevada" (ECF No. 66). On November 3, 2022, Respondents filed a
22 motion to strike that filing (ECF No. 69). The Court will deny Blockson's motion as well
23 as Respondents' motion to strike.

24 On November 18, 2022, Blockson filed a letter to the Clerk of the Court (ECF No.
25 70), requesting that the Clerk send him "numbered legal paper for the purpose of motion
26 [writing]." The Court will deny this motion.

27 ///

28 ///

1 **C. Certificate of Appealability**

2 The standard for the issuance of a certificate of appealability requires a
3 "substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c). The
4 Supreme Court has interpreted 28 U.S.C. § 2253(c) as follows:

5 Where a district court has rejected the constitutional claims on the
6 merits, the showing required to satisfy § 2253(c) is straightforward: The
7 petitioner must demonstrate that reasonable jurists would find the district
8 court's assessment of the constitutional claims debatable or wrong. The
9 issue becomes somewhat more complicated where, as here, the district
10 court dismisses the petition based on procedural grounds. We hold as
11 follows: When the district court denies a habeas petition on procedural
12 grounds without reaching the prisoner's underlying constitutional claim, a
13 COA should issue when the prisoner shows, at least, that jurists of reason
14 would find it debatable whether the petition states a valid claim of the
15 denial of a constitutional right and that jurists of reason would find it
16 debatable whether the district court was correct in its procedural ruling.

17 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see also *James v. Giles*, 221 F.3d 1074,
18 1077–79 (9th Cir. 2000).

19 Applying the standard articulated in *Slack*, the Court finds that a certificate of
20 appealability is unwarranted. The Court will deny Blockson a certificate of appealability.
21 (This does not, however, preclude Blockson from filing a notice of appeal in this case in
22 this Court, and thereby seeking a certificate of appealability from the court of appeals.)

23 **IV. CONCLUSION**

24 **IT IS THEREFORE ORDERED** that Petitioner's Motion to Expand Record (ECF
25 No. 60) is **GRANTED**.

26 **IT IS FURTHER ORDERED** that Petitioner's Motion for Summary Judgment
27 (ECF Nos. 61, 63) is **DENIED**.

28 **IT IS FURTHER ORDERED** that Petitioner's Motion to Authenticate Record on
Appeal (ECF No. 64) is **DENIED**.

29 **IT IS FURTHER ORDERED** that Petitioner's Emergency Plea for Physical
30 Protection from the State of Nevada (ECF No. 66) is **DENIED**.

31 **IT IS FURTHER ORDERED** that Respondents' Motion to Strike (ECF No. 69) is
32 **DENIED**.

1 **IT IS FURTHER ORDERED** that Petitioner's request for legal paper (ECF No.
2 70) is **DENIED**.

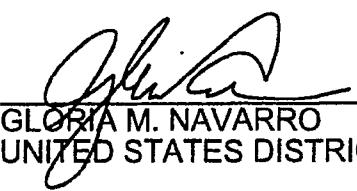
3 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus
4 (ECF No. 9) is **DENIED**.

5 **IT IS FURTHER ORDERED** that Petitioner is denied a certificate of appealability.

6 **IT IS FURTHER ORDERED** that the Clerk of the Court is directed to enter
7 judgment accordingly and close this case.

8 **IT IS FURTHER ORDERED** that, pursuant to Federal Rule of Civil Procedure
9 25(d), Gabriela Najera is substituted for William Hutchings as the respondent warden.
10 The Clerk of the Court is directed to update the docket to reflect this change.

11
12 DATED THIS 5 day of December, 2022.

13
14
15 
16 GLORIA M. NAVARRO
17 UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHRISTOPHER LENARD BLOCKSON,

Case No. 2:21-cv-00731-GMN-VCF

Petitioner,

1

WILLIAM HUTCHINGS, *et al.*,

Respondents.

ORDER

I. SUMMARY

This action is a pro se petition for writ of habeas corpus by Christopher Lenard Blockson, an individual incarcerated at Nevada's Southern Desert Correctional Center. The respondents have filed a motion to dismiss. The Court will grant the motion to dismiss in part and deny it in part and will dismiss two of Blockson's three claims for habeas corpus relief.

II. BACKGROUND

In 2018, Blockson was charged with cruelty to animals, ownership or possession of a firearm by a prohibited person, and discharge of a firearm from within a structure or vehicle. Information, Exh. 5 (ECF No. 36-5). On December 21, 2018, Blockson entered into a plea agreement and pled guilty in Nevada Eighth Judicial District Court (Clark County) to cruelty to animals and ownership or possession of a firearm by a prohibited person. Guilty Plea Agreement, Exh. 7 (ECF No. 36-7); Transcript of Arraignment, December 21, 2018, Exh. 8 (ECF No. 36-8). The parties agreed to a sentence of 19 to 48 months in prison for the cruelty to animals and a consecutive 28 to 72 months in prison for the possession of a firearm by a prohibited person. *Ibid.* Blockson agreed to pay restitution and forfeit the firearm. *Ibid.* The State agreed not to make a federal referral and not to seek habitual criminal treatment. *Ibid.* The State also agreed to

1 dismissal of the charge of discharging a firearm from within a structure or vehicle. *Id.*
2 Blockson was sentenced on April 16, 2019. Transcript of Sentencing, April 16, 2019,
3 Exh. 13 (ECF No. 36-13). He was sentenced, consistent with the guilty plea agreement,
4 to 19 to 48 months in prison for the cruelty to animals and a consecutive 28 to 72
5 months in prison for the possession of a firearm by a prohibited person, which,
6 aggregated, amounts to 47 to 120 months in prison. *Id.* The judgment of conviction was
7 filed on April 22, 2019. Judgment of Conviction, Exh. 14 (ECF No. 36-14).

8 Blockson appealed from the judgment of conviction, but he subsequently
9 withdrew his appeal. See Notice of Appeal, Exh. 16 (ECF No. 36-16); Notice of
10 Withdrawal of Appeal, Exh. 45 (ECF No. 37-27); Order Dismissing Appeal, Exh. 46
11 (ECF No. 37-28).

12 On February 13, 2020, Blockson filed a pro se petition for writ of habeas corpus
13 in the state district court. Petition for Writ of Habeas Corpus (Post-Conviction), Exh. 50
14 (ECF No. 37-32). The state district court denied Blockson's petition on May 5, 2020.
15 Order, Exh. 53 (ECF No. 37-35). Blockson appealed. Notice of Appeal, Exh. 58 (ECF
16 No. 37-40); Appellant's Informal Brief, Exh. 65 (ECF No. 38-5) (Case No. 81360). The
17 Nevada Court of Appeals affirmed on March 5, 2021. Order of Affirmance, Exh. 75 (ECF
18 No. 38-15).

19 On December 18, 2020, Blockson filed a second petition for writ of habeas
20 corpus in the state district court. Petition for Writ of Habeas Corpus, Good and Work
21 Time, Meritorious Award Calculations, Exh. 68 (ECF No. 38-8). The state district court
22 denied that petition on February 27, 2021. Decision and Order, Exh. 73 (ECF No. 38-
23 13). Blockson appealed. Notice of Appeal, Exh. 76 (ECF No. 38-16) (Case No. 82646).
24 On October 7, 2021, the Nevada Court of Appeals affirmed. Order of Affirmance, Exh.
25 110 (ECF No. 39-25).

26 On March 25, 2021, Blockson filed, in the state district court, a motion to modify
27 or correct illegal sentence. Motion to Modify or Correct Illegal Sentence, Exh. 81 (ECF
28 No. 38-21). The state district court denied that motion on April 14, 2021. Order,

1 Exh. 86 (ECF No. 39-1). Blockson appealed. Notice of Appeal, Exh. 87 (ECF No. 39-2);
2 Appellant's Informal Brief, Exh. 96 (ECF No. 39-11) (Case No. 82860). On
3 August 30, 2021, the Nevada Court of Appeals affirmed, but remanded for entry of an
4 amended judgment correcting a clerical error. Order of Affirmance and Remanding to
5 Correct the Judgment of Conviction, Exh. 100 (ECF No. 39-15). The amended judgment
6 of conviction was filed on October 4, 2021. Amended Judgment of Conviction, Exh. 107
7 (ECF No. 39-22).

8 On August 13, 2021, Blockson filed, in the state district court, a motion to
9 overturn and vacate his conviction. Motion to Overturn and Vacate Conviction for
10 Outrageous Government Conduct and Recusal of Judge Weiss and District Attorney's
11 Office, Exh. 99 (ECF No. 39-14). The state district court denied that motion on
12 October 4, 2021. Order, Exh. 108 (ECF No. 39-23). Blockson appealed. Notice of
13 Appeal, Exh. 111 (ECF No. 40-1) (Case No. 83656). It appears that Blockson's appeal
14 in that case remains pending.

15 Blockson initiated this federal habeas corpus action on May 3, 2021, by
16 submitting for filing a pro se petition for writ of habeas corpus (ECF No. 9). Blockson's
17 habeas petition sets forth three grounds for relief:

18 Ground 1: Blockson's sentence on the conviction of cruelty to animals
19 violates his federal constitutional right to due process of law because he
pled guilty to, and was convicted of, a misdemeanor, not a felony.

20 Ground 2: Blockson's conviction and sentence for cruelty to animals are
21 in violation of his federal constitutional right to due process of law because
"[t]he prosecutor maliciously rewrote the cruelty to animals statute."

22 Ground 3: Blockson's conviction and sentence are in violation of his
23 federal constitutional right to effective assistance of counsel because he
24 was not appointed counsel for his state post-conviction proceedings, and
he had limited access to the law library during those proceedings.

25 Petition for Writ of Habeas Corpus (ECF No. 9).

26 Respondents filed their motion to dismiss on February 4, 2022 (ECF Nos. 35 and
27 44 (corrected image)). In that motion, Respondents argue that Grounds 1, 2 and 3 of
28 Blockson's habeas petition are not cognizable in this federal habeas corpus action and

1 do not state claims upon which federal habeas relief could be granted; that Ground 2 is
2 procedurally defaulted and is barred by *Tollett v. Henderson*, 411 U.S. 258 (1973); and
3 that Ground 3 is unexhausted in state court. See Motion to Dismiss (ECF No. 44),
4 pp. 5–9. Blockson filed an opposition to the motion to dismiss on February 18, 2022
5 (ECF No. 45). Respondents filed a reply on June 20, 2022 (ECF No. 54).

6 **III. DISCUSSION**

7 **A. Ground 1**

8 In Ground 1, Blockson claims that his sentence for cruelty to animals violates his
9 federal constitutional right to due process of law because he pled guilty to, and was
10 convicted of, a misdemeanor, not a felony. Petition for Writ of Habeas Corpus (ECF No.
11 9), pp. 3–4.

12 Respondents argue in their motion to dismiss that Ground 1 is not cognizable in
13 this federal habeas corpus action and does not state a claim upon which federal habeas
14 relief could be granted. Motion to Dismiss (ECF No. 44), p. 5.

15 The Court determines that Respondents' arguments regarding Ground 1 are
16 intertwined with the merits of the claim, such that those arguments will be better
17 addressed after Respondents file an answer and Blockson files a reply, fully briefing the
18 merits of the claim. The Court will, therefore, deny Respondents' motion to dismiss
19 Ground 1, without prejudice to Respondents making the same arguments with respect
20 to Ground 1 in their answer (along with their briefing of the merits of the claim).

21 **B. Ground 2**

22 In Ground 2, Blockson claims that his conviction and sentence for cruelty to
23 animals are in violation of his federal constitutional right to due process of law because
24 “[t]he prosecutor maliciously rewrote the cruelty to animals statute.” Petition for Writ of
25 Habeas Corpus (ECF No. 9), pp. 5–6. In other words, as the Court understands this
26 claim, Blockson alleges that the State committed misconduct by mischaracterizing the
27 cruelty to animals statute or that the State maliciously prosecuted him. See *id.* Notably,
28

1 though, Blockson does not claim that his guilty plea was unknowing or involuntary. See
2 *id.* at 7 (stating, in Ground 3: "I do not wish to withdraw my plea. I wish to enforce it.").

3 Respondents argue in their motion to dismiss that Ground 2 is not cognizable in
4 this federal habeas corpus action and does not state a claim upon which federal habeas
5 relief could be granted; that it is procedurally defaulted; and that it is barred by *Tollett*.
6 Motion to Dismiss (ECF No. 44), p. 5.

7 Without a claim that his guilty plea was unknowing or involuntary, there is no
8 ground for a writ of habeas corpus based on prosecutorial misconduct or malicious
9 prosecution, such as that alleged by Blockson, which allegedly occurred prior to his
10 guilty plea. Blockson's allegations in Ground 2 do not state a claim upon which habeas
11 corpus relief could be granted. See *Tollett*, 411 U.S. at 266–67 ("When a criminal
12 defendant has solemnly admitted in open court that he is in fact guilty of the offense
13 with which he is charged, he may not thereafter raise independent claims relating to the
14 deprivation of constitutional rights that occurred prior to the entry of the guilty plea.").

15 Moreover, and in the alternative, the Court determines that Ground 2 is
16 procedurally defaulted, and that Blockson makes no showing to overcome the
17 procedural default. Blockson asserted this claim in state court in his first state habeas
18 action. Petition for Writ of Habeas Corpus (Post-Conviction), Exh. 50, p. 9 (ECF No. 37-
19 32, p. 11). On the appeal in that action, the Nevada Court of Appeals ruled on the claim
20 as follows:

21 These claims were outside the scope of a postconviction petition for a writ
22 of habeas corpus challenging a judgment of conviction entered pursuant
23 to a guilty plea because these claims did not allege that his plea was
involuntary or unknowingly entered or that his plea was entered without
the effective assistance of counsel. See NRS 34.810(1)(a). Therefore, we
conclude that the district court did not err by denying these claims.
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25 Order of Affirmance, Exh. 75, p. 1 (ECF No. 38-15, p. 2). Then, Blockson asserted this
26 claim again in his motion to modify or correct illegal sentence. Motion to Modify or
27 Correct Illegal Sentence, Exh. 81 (ECF No. 38-21, pp. 5–7). On the appeal regarding
28 the denial of that motion, the Nevada Court of Appeals ruled on the claim as follows:

1 Blockson also claimed that the State maliciously prosecuted
2 him. This claim fell outside the narrow scope of claims permissible in a
3 motion to modify or correct a sentence. See [*Edwards v. State*, 112 Nev.
704, 708, 918 P.2d 321, 324 (1996)]. Therefore, we conclude the district
court did not err by denying this claim.

4 Order of Affirmance and Remanding to Correct the Judgment of Conviction, Exh. 100,
5 p. 3 (ECF No. 39-15, p. 4). A federal court will not review a claim for habeas corpus
6 relief if the decision of the state court denying the claim rested on a state law ground
7 that is independent of the federal question and adequate to support the judgment.
8 *Coleman v. Thompson*, 501 U.S. 722, 730–31 (1991). The Court in *Coleman* stated the
9 effect of a procedural default as follows:

10 In all cases in which a state prisoner has defaulted his federal
11 claims in state court pursuant to an independent and adequate state
12 procedural rule, federal habeas review of the claims is barred unless the
13 prisoner can demonstrate cause for the default and actual prejudice as a
14 result of the alleged violation of federal law, or demonstrate that failure to
15 consider the claims will result in a fundamental miscarriage of justice.

16 *Coleman*, 501 U.S. at 750; see also *Murray v. Carrier*, 477 U.S. 478, 485 (1986). A
17 state procedural bar is “independent” if the state court explicitly invokes the procedural
18 rule as a separate basis for its decision. *McKenna v. McDaniel*, 65 F.3d 1483, 1488 (9th
19 Cir. 1995). A state court’s decision is not “independent” if the application of a state’s
20 default rule depends on a consideration of federal law. *Park v. California*, 202 F.3d
21 1146, 1152 (9th Cir. 2000). A state procedural rule is “adequate” if it is “clear,
22 consistently applied, and well-established at the time of the petitioner’s purported
23 default.” *Calderon v. United States Dist. Court (Bean)*, 96 F.3d 1126, 1129 (9th Cir.
24 1996) (citation and internal quotation marks omitted). A discretionary state procedural
25 rule can serve as an adequate ground to bar federal habeas review because, even if
26 discretionary, it can still be “firmly established” and “regularly followed.” *Beard v.*
27 *Kindler*, 558 U.S. 53, 60–61 (2009). Also, a rule is not automatically inadequate “upon a
28 showing of seeming inconsistencies” given that a state court must be allowed discretion
“to avoid the harsh results that sometimes attend consistent application of an unyielding
rule.” *Walker v. Martin*, 562 U.S. 307, 320 (2011). To demonstrate cause for a

prejudice

1 procedural default, the petitioner must "show that some objective factor external to the
 2 defense impeded" his efforts to comply with the state procedural rule. *Murray*, 477 U.S.
 3 at 488. For cause to exist, the external impediment must have prevented the petitioner
 4 from raising the claim. See *McCleskey v. Zant*, 499 U.S. 467, 497 (1991). With respect
 5 to the prejudice prong, the petitioner bears "the burden of showing not merely that the
 6 errors [complained of] constituted a possibility of prejudice, but that they worked to his
 7 actual and substantial disadvantage, infecting his entire [proceeding] with errors of
 8 constitutional dimension." *White v. Lewis*, 874 F.2d 599, 603 (9th Cir. 1989), citing
 9 *United States v. Frady*, 456 U.S. 152, 170 (1982). Here, the Nevada Court of Appeals
 10 ruled this claim procedurally barred by Nev. Rev. Stat. § 34.810(1)(a) on the appeal in
 11 Blockson's first state habeas action, and by rules established in the *Edwards* case on
 12 the appeal of the denial of Blockson's motion to modify or correct illegal sentence.
 13 There is no showing that those state-law procedural bars were other than independent
 14 and adequate; there is no showing of cause and prejudice; there is no showing of a
 15 miscarriage of justice. Therefore, Ground 2 is barred in this case by the procedural
 16 default doctrine, and this is an alternative ground for the dismissal of Ground 2.

17 The Court will grant Respondents' motion to dismiss Ground 2, and will dismiss
 18 that claim, on the grounds that it is not cognizable in this federal habeas corpus action,
 19 that it does not state a claim on which habeas corpus relief could be granted, that it is
 20 barred by *Tollett*, and that it is barred by the procedural default doctrine.

21 **C. Ground 3**

22 In Ground 3, Blockson claims that his conviction and sentence are in violation of
 23 his federal constitutional right to effective assistance of counsel because he was not
 24 appointed counsel for his state post-conviction proceedings, and because he had
 25 limited access to the law library during those proceedings. Petition for Writ of Habeas
 26 Corpus (ECF No. 9), pp. 7–8.

27 Respondents argue in their motion to dismiss that Ground 3 is not cognizable in
 28 this federal habeas corpus action, that it does not state a claim upon which federal

1 habeas relief could be granted, and that it is unexhausted in state court. Motion to
2 Dismiss (ECF No. 44), pp. 6, 8.

3 The Court agrees that Blockson's claims in Ground 3 are not cognizable in this
4 federal habeas corpus action. Claimed errors during state post-conviction proceedings
5 are not cognizable in federal habeas corpus proceedings under 28 U.S.C. § 2254. See
6 *Franzen v. Brinkman*, 877 F.2d 26 (9th Cir. 1989) (per curiam); see also *Gerlaugh v.*
7 *Stewart*, 129 F.3d 1027, 1045 (9th Cir. 1997); *Carriger v. Stewart*, 95 F.3d 755, 763 (9th
8 Cir. 1996), vacated on other grounds, 132 F.3d 463 (1997).

9 As for Respondents' other argument regarding Ground 3—that the claim is
10 unexhausted in state court—Blockson concedes that the claim is unexhausted, and he
11 states that he wishes to abandon the claim. See Opposition to Motion to Dismiss, p. 32
12 (ECF No. 45-1, p. 8) ("Petitioner concedes that ground three is unexhausted. I therefore
13 drop ground three.").

14 The Court will grant Respondents' motion to dismiss Ground 3, and will dismiss
15 that claim, on the ground that it is not cognizable in this federal habeas corpus action,
16 on the ground that it does not state a claim upon which federal habeas corpus relief
17 could be granted, and on the ground that Blockson concedes the claim is unexhausted
18 and abandons it.

19 **IV. CONCLUSION**

20 **IT IS THEREFORE ORDERED** that Respondents' Motion to Dismiss (ECF No.
21 44) is **GRANTED IN PART AND DENIED IN PART**. Grounds 2 and 3 of the Petition for
22 Writ of Habeas Corpus (ECF No. 9) are dismissed; in all other respects, the Motion to
23 Dismiss is denied.

24 **IT IS FURTHER ORDERED** that Respondents will have 90 days from the date of
25 this order to file an answer, responding to Ground 1 of the Petition for Writ of Habeas
26 Corpus.

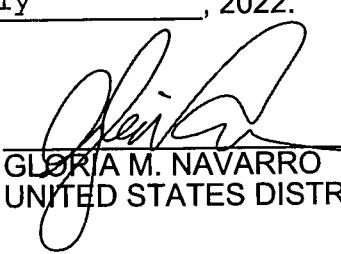
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1 **IT IS FURTHER ORDERED** that, in all other respects, the schedule for further
2 proceedings set forth in the order entered July 8, 2021 (ECF No. 8) will remain in effect
3 (Petitioner will have 60 days to file a reply to Respondents' answer).

4 **IT IS FURTHER ORDERED** that, pursuant to Federal Rule of Civil Procedure
5 25(d), William Hutchings is substituted for Jerry Howell as the respondent warden. The
6 Clerk of the Court is directed to update the docket to reflect this change.

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8 DATED THIS 25 day of July, 2022.

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11 GLORIA M. NAVARRO
12 UNITED STATES DISTRICT JUDGE
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**Additional material
from this filing is
available in the
Clerk's Office.**