

**FILED**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HENRY ALTAMIRANO,

Petitioner - Appellant,

v.

TIM GARRETT, Warden and NEVADA  
OFFICE OF THE ATTORNEY  
GENERAL,

Respondents - Appellees.

No. 23-3953

D.C. No. 3:23-cv-00266-MMD-CSD  
District of Nevada,  
Reno

ORDER

Before: FRIEDLAND and MENDOZA, Circuit Judges.

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

Any pending motions are denied as moot.

**DENIED.**

Appendix A

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

HENRY ALTAMIRANO,

Petitioner,

v.

JUDGMENT IN A CIVIL CASE

WARDEN TIM GARRETT, *et al.*,

Case No. 3:23-cv-00266-MMD-CSD

Respondents.

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

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

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

**IT IS ORDERED AND ADJUDGED** that this action is dismissed without prejudice.

**IT IS FURTHER ORDERED** that Petitioner is denied a certificate of appealability, as jurists of reason would not find the Court's dismissal of the petition as untimely to be debatable or wrong.

**IT IS FURTHER ORDERED** that judgment is hereby entered accordingly, and this case is closed.

Date: November 9, 2023



CLERK OF COURT

*Dee Klop*

Signature of Clerk or Deputy Clerk

Appendix B

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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6 HENRY ALTAMIRANO,

Case No. 3:23-cv-00266-MMD-CSD

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Petitioner,

## ORDER

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## Respondents.

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## I. SUMMARY

12 This habeas matter is before the Court on Petitioner Henry Altamirano's Response  
13 (ECF No. 7) to the Court's Order to Show Cause as to why the petition should not be  
14 dismissed as untimely (ECF No. 5). Also before the Court are Petitioner's Motions for  
15 Judicial Notice. (ECF Nos. 11, 12.) For the reasons discussed below, the Court dismisses  
16 the petition for writ of habeas corpus with prejudice as untimely and denies Petitioner's  
17 motions as moot.

18 || II. BACKGROUND

19 Petitioner challenges a conviction and sentence imposed by the Eighth Judicial  
20 District Court for Clark County. *State of Nevada v. Altamirano*, Case No. C-16-314317-1.  
21 On October 31, 2017, the state court entered a judgment of conviction for one count of  
22 lewdness with a child under the age of fourteen and one count of attempted sexual assault  
23 of a minor under fourteen years of age. The state court sentenced Petitioner to life with  
24 the possibility of parole after ten years for the lewdness with a child under the age of  
25 fourteen conviction and a term of 96 to 240 months in prison for the attempted sexual  
26 assault of a minor under fourteen conviction. Petitioner filed an untimely notice of appeal  
27 and the Nevada appellate court dismissed for lack of jurisdiction.

28

## Appendix B1

1       On October 13, 2022, Petitioner filed a motion to correct illegal sentence. The state  
2 district court denied his motion to correct illegal sentence and the Nevada Court of  
3 Appeals affirmed the denial of relief. Petitioner did not file a state habeas petition. On  
4 June 12, 2023, Petitioner filed his federal habeas petition. (ECF No. 1-1.)

5       **III. DISCUSSION**

6       The Antiterrorism and Effective Death Penalty Act ("AEDPA") establishes a one-  
7 year limitation period for state prisoners to file a federal habeas petition pursuant to 28  
8 U.S.C. § 2254. The one-year limitation period, i.e., 365 days, begins to run from the latest  
9 of four possible triggering dates, with the most common being the date on which the  
10 petitioner's judgment of conviction became final by either the conclusion of direct  
11 appellate review or the expiration of the time for seeking such review. *Id.* § 2244(d)(1)(A).  
12 For a Nevada prisoner who pursues a direct appeal, his conviction becomes final when  
13 the 90-day period for filing a petition for certiorari in the United States Supreme Court  
14 expires after a Nevada appellate court enters judgment or the Nevada Supreme Court  
15 denies discretionary review. See *Harris v. Carter*, 515 F.3d 1051, 1053 n.1 (9th Cir. 2008);  
16 *Shannon v. Newland*, 410 F.3d 1083, 1086 (9th Cir. 2005); Sup. Ct. R. 13.

17       The AEDPA limitations period is tolled while a "properly filed" state post-conviction  
18 proceeding or other collateral review is pending. 28 U.S.C. § 2244(d)(2). However, an  
19 untimely state petition is not "properly filed" and thus does not toll the federal statute of  
20 limitations. *Pace v. DiGuglielmo*, 544 U.S. 408, 417 (2005).

21       No statutory tolling is allowed for the period of time between finality of a direct  
22 appeal and the filing of a petition for post-conviction relief or other collateral review in  
23 state court because no state court proceeding is pending during that time. *Nino v. Galaza*,  
24 183 F.3d 1003, 1006-07 (9th Cir. 1999); *Rasberry v. Garcia*, 448 F.3d 1150, 1153 n.1 (9th  
25 Cir. 2006). Additionally, no statutory tolling is allowed for the period between the finality  
26 of a post-conviction appeal and the filing of a federal petition. *Nino*, 183 F.3d at 1007.

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28       ///

1       When a state appellate court dismisses a direct appeal as untimely, the date of  
2 finality is the date on which the time for filing a timely appeal expired, *i.e.*, 30 days from  
3 entry of the judgment of conviction. *Randle v. Crawford*, 604 F.3d 1047, 1054-55 (9th Cir.  
4 2010) (rejecting petitioner's argument that the "conclusion of direct review" in his case  
5 occurred on the date the Nevada Supreme Court dismissed his direct appeal as untimely).

6       The show cause order explained that because Petitioner did not file a timely notice  
7 of appeal after the state district court entered the judgment of conviction, Petitioner's  
8 conviction became final when the time expired for filing a notice of appeal with the Nevada  
9 appellate courts on November 30, 2017. (ECF No. 5 at 3.) The AEDPA limitations period  
10 began to run the day after time expired for Petitioner to file a timely appeal. Absent  
11 another basis for tolling or delayed accrual, the limitations period expired 365 days later  
12 on November 30, 2018.

13       Accordingly, absent another basis for tolling or delayed accrual, Petitioner filed his  
14 petition four years and six months after the limitations period expired. Even if the Court  
15 assumes, without deciding, that the limitations period tolled during the pendency of  
16 Petitioner's motion to correct illegal sentence, Petitioner did not file his motion to correct  
17 illegal sentence until October 13, 2022—nearly four years after the limitations period  
18 expired. Given these facts, the Court ordered Petitioner to show cause why this action  
19 should not be dismissed with prejudice as untimely. (ECF No. 5.)

20       In his response to the order to show cause, Petitioner provides that he did not  
21 initiate a direct appeal, but appealed the denial of his motion to correct illegal sentence in  
22 November 2022. (ECF No. 7 at 1-2.) He further provides that because he is challenging  
23 the jurisdiction of the state court, the grounds are not subject to the one-year limitation  
24 period. (*Id.* at 2.) Petitioner cites to *Kelly v. U.S.*, 29 F.3d 1107 (7th Cir. 1994), arguing  
25 that when challenging jurisdiction error, the defendant need not show cause and  
26 prejudice. (*Id.*) The petitioner in *Kelly*, however, challenges his sentence under 28 U.S.C.  
27 § 2255 because the district court did not make specific findings of fact required under the  
28 Federal Rules of Criminal Procedure. 29 F.3d at 1108. Here, Petitioner is challenging a

1 state court conviction and sentence under 28 U.S.C. § 2254. Petitioner's argument to  
2 avoid the application of the limitation period based on lack of jurisdiction is without merit.

3 Petitioner alleges no other basis for tolling, equitable or statutory, or delayed  
4 accrual of any of his claims. Petitioner does not argue that he is actually innocent.  
5 Accordingly, the petition, filed more than four years after the expiration of the AEDPA  
6 statute of limitations, is untimely and must be dismissed.

7 **IV. CONCLUSION**

8 It is therefore ordered that the petition (ECF No. 1-1) is dismissed with prejudice  
9 as untimely. The Clerk of Court is directed to file the petition.

10 It is further ordered that Petitioner's motions for judicial notice (ECF Nos. 11, 12)  
11 are denied as moot.

12 It is further ordered that Petitioner is denied a certificate of appealability, as jurists  
13 of reason would not find the Court's dismissal of the petition as untimely to be debatable  
14 or wrong.

15 The Clerk of Court is further directed to enter final judgment accordingly and close  
16 this case.

17 DATED THIS 9<sup>th</sup> Day of November 2023.



18  
19 MIRANDA M. DU  
20 CHIEF UNITED STATES DISTRICT JUDGE  
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Appendix B4

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HENRY ALTAMIRANO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85708-COA

**FILED**

MAY 30 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Henry Altamirano appeals from an order of the district court denying a motion to correct an illegal sentence filed on October 13, 2022. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

In his motion and supporting memorandum, Altamirano claimed that the Statutes of Nevada were repealed and the Nevada Revised Statutes were not properly created by the Legislature. Altamirano also appeared to argue that his conviction was invalid because the Nevada Revised Statutes do not contain enacting clauses as required by the Nevada Constitution. Altamirano contended that the sentencing court had no authority or jurisdiction to convict him or impose his sentence because the Nevada Revised Statutes were not valid.

A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). "A motion to correct an illegal sentence presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in

Appendix C

23-116817

proceedings that occur prior to the imposition of sentence.” *Id.* (internal quotation marks omitted).

Altamirano’s claim did not implicate the jurisdiction of the courts. *See* Nev. Const. art. 6, § 6; *United States v. Cotton*, 535 U.S. 625, 630 (2002) (“[T]he term jurisdiction means . . . the courts’ statutory or constitutional *power* to adjudicate the case.” (internal quotation marks omitted)); *Landreth v. Malik*, 127 Nev. 175, 183, 251 P.3d 163, 168 (2011) (“Subject matter jurisdiction is the court’s authority to render a judgment in a particular category of case.” (internal quotation marks omitted)). Moreover, Altamirano did not demonstrate that the Statutes of Nevada were repealed and no longer effective. We note the Statutes of Nevada contain the laws with the enacting clauses required by the constitution. The Nevada Revised Statutes simply reproduce those laws as classified, codified, and annotated by the Legislative Counsel. *See* NRS 220.110; NRS 220.120. Because Altamirano’s claims did not implicate the jurisdiction of the courts, he failed to demonstrate the sentencing court was without jurisdiction to convict him or impose a sentence.

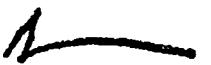
In addition, the sentencing court imposed a term of life in prison with the possibility of parole after 10 years for the conviction of lewdness with a child under the age of 14 and a term of 96 to 240 months in prison for the conviction of attempted sexual assault of a minor under 14 years of age. And Altamirano’s consecutive sentences fell within the parameters of the relevant statutes. *See* NRS 176.035(1); NRS 193.153(1)(a)(1); 2015 Nev. Stat., ch. 399, § 8, at 2235-36 (NRS 200.366); NRS 201.230(2). Altamirano thus did not demonstrate that the sentences imposed were in excess of the statutory maximum. Accordingly, we conclude the district court did not err by denying the motion.

## Appendix C1

Altamirano also contends that the district court erred by permitting the State to untimely file its opposition to his motion, permitting his documents to be received before being file-stamped on a later date, and failing to ensure that hearings occurred in a timely manner. Altamirano also contends he is entitled to relief due to cumulative effects of these errors. Because we conclude that the district court properly denied Altamirano's motion to correct an illegal sentence, any errors concerning these issues were harmless. We therefore conclude Altamirano is not entitled to relief. *See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.")* Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Kathleen E. Delaney, District Judge  
Henry Altamirano  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

Appendix C2

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

Plaintiff,

-VS-

13 HENRY ALTAMIRANO,  
#1805659

CASE NO: C-16-314317-1

DEPT NO: XXV

Defendant.

**ORDER DENYING DEFENDANT'S MOTION TO CORRECT ILLEGAL  
SENTENCE**

DATE OF HEARING: November 7, 2022

TIME OF HEARING: NOVEMBER 7, 1968  
TIME OF HEARING: 9:30 A.M.

19       THIS MATTER having come on for hearing before the above entitled Court on the  
20 7th day of November, 2022, the Defendant not being present, , the Plaintiff being represented  
21 by STEVEN B. WOLFSON, District Attorney, through KRISTINA RHOADES, Chief  
22 Deputy District Attorney, without argument, based on the pleadings and good cause appearing  
23 therefor,

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27. || III

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\CLARKCOUNTYDA.NET\CRM\ CASE2\2016\029\84\201602984C-ORDR-(HENRY ALTAMIRANO)-002.DOCX

## Appendix D

1 IT IS HEREBY ORDERED that the Defendant's Motion to Correct Illegal Sentence,  
2 shall be, and it is DENIED. The Court is persuaded by the arguments in the State's Opposition  
3 that there is no, in fact, illegal sentence imposed. Further, motion indicates Nevada Revised  
4 Statutes are not valid or they were used improperly in this case and are belied by the record  
5 and belied by the legal statutes and laws as we know them to be. There was a procedural  
6 argument made by the State that these arguments should have been raised on direct appeal,  
7 which was not filed, and the Court is also persuaded that procedural bar also applies. State to  
8 prepare order and include procedurally it is barred based on failure to raise on direct appeal  
9 and substantively barred because it is not a legally valid argument.

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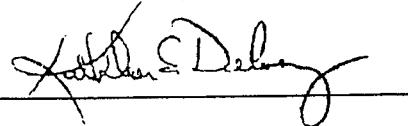
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Dated this 12th day of December, 2022



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

FEA D93 D184 936F  
Kathleen E. Delaney  
District Court Judge

BY

  
KRISTINA RHOADES  
Chief Deputy District Attorney  
Nevada Bar #012480

#### CERTIFICATE OF SERVICE

I certify that on the 2nd day of December, 2022, I mailed a copy of the foregoing  
Order to:

HENRY ALTAMIRANO, BAC #1187289  
LOVELOCK CORRECTIONAL CENTER  
1200 PRISON ROAD  
LOVELOCK, NEVADA 89419

BY

  
Secretary for the District Attorney's Office

16F00869X/ckb/L4

Appendix D1

[Rev. 3/1/2019 5:31:34 PM]

## LAWS OF THE STATE OF NEVADA

↓1957 Statutes of Nevada, Page 1↓

## LAWS OF THE STATE OF NEVADA

Passed at the  
 FORTY-EIGHTH SESSION OF THE LEGISLATURE  
 1957

Senate Bill No. 1—Senator Johnson

## CHAPTER 1

AN ACT creating a legislative fund.

[Approved January 23, 1957]

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

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

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

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

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

"Senate Bill No. 2—Committee on Judiciary" ←

The foundation  
of argument

## CHAPTER 2

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

[Approved January 25, 1957]

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

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

↓1957 Statutes of Nevada, Page 2 (CHAPTER 2, SB 2)↓

new "laws" of  
Nevada

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

Appendix E

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

SEC. 4. Construction of Act.

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

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

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

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

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

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

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

- (a) Any special, local or temporary laws.
- (b) Any law making an appropriation.
- (c) Any law affecting any bond issue or by which any bond issue may have been authorized.
- (d) The running of the statutes of limitations in force at the time this act becomes effective.
- (e) The continued existence and operation of any department, agency or office heretofore legally established or held.
- (f) Any bond of any public officer.

↓1957 Statutes of Nevada, Page 3 (CHAPTER 2, SB 2)↓

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

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

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

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

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

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

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

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

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

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

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

# Appendix E I

# NEVADA STATUTES

## Title 14. Procedure in Criminal Cases.

### Chapter 171. Proceedings to Commitment.

#### 171.010. Jurisdiction of offense committed in state.

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

*"pre- 1957 statutes"*

**HISTORY:**

CrPA 1911, § 58; RL 1912, § 6908; CL 1929, § 10705.

These 3 supporting Nevada Statutes have been repealed by 1957 Senate Bill 2, Section 3. Nevada's "jurisdiction over crimes" is void and null.

#### NOTES TO DECISIONS

##### Jurisdiction over foreign nationals.

While the phrase ". . . whether an inhabitant of this state, or any other state, or of a territory or district of the United States, . . ." does not specifically refer to inhabitants of foreign countries, it is elucidative and descriptive of the term "every person" rather than a legislative expression to exclude those classes of persons not specifically mentioned; therefore, a state court had the jurisdiction to try a nonresident alien who committed a crime while in this state. *Paulette v. State*, 92 Nev. 71, 545 P.2d 205, 1976 Nev. LEXIS 518 (Nev. 1976).

Foreign nationals who commit a crime while in this state are subject to criminal prosecution under this section. *Theriault v. State*, 92 Nev. 185, 547 P.2d 668, 1976 Nev. LEXIS 561 (Nev. 1976), overruled. *Alford v. State*, 111 Nev. 1409, 906 P.2d 714, 111 Nev. Adv. Rep. 163, 1995 Nev. LEXIS 161 (Nev. 1995), overruled in part, *Bigpond v. State*, 128 Nev. 108, 270 P.3d 1244, 128 Nev. Adv. Rep. 10, 2012 Nev. LEXIS 27 (Nev. 2012).

Where the incident took place on land owned by the United States Bureau of Land Management, but there was no retention of jurisdiction by the United States over the land and there was no evidence that this state had ever ceded exclusive jurisdiction over the lands to the United States, the district court had jurisdiction. *Pendleton v. State*, 103 Nev. 95, 734 P.2d 693, 1987 Nev. LEXIS 1602 (Nev. 1987).

##### Forgery.

Nevada courts have jurisdiction over crimes committed in the state unless the offense is, by law, cognizable exclusively in the courts of the United States." Because forgery is prohibited by Nevada law, a

## LOCAL JURISDICTION OF PUBLIC OFFENSES

**NRS 171.010 Jurisdiction of offense committed in State.** Every person, whether an inhabitant of this state, or any other state, or of a territory or district of the United States, is liable to punishment by the laws of this state for a public offense committed therein, except where it is by law cognizable exclusively in the courts of the United States.  
[1911 Cr. Prac. § 58; RL § 6908; NCL § 10705]

## NEVADA CASES:

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

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

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

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

Jurisdiction over crimes committed on land owned by Federal Government. Where an incident for which the defendant was accused of felony driving while intoxicated (see former NRS 484.379; cf. NRS 484C.110), occurred on land owned by the Federal Government, the courts of this State had jurisdiction to try the case because NRS 171.010 gives district court jurisdiction over crimes committed in a county except where the United States has exclusive jurisdiction, the Nevada Admission Acts revealed no retention of jurisdiction by the United States over the land in question, there was no affirmative cessation of jurisdiction by Nevada and affirmative acceptance by the United States and NRS 328.10 requires recording in the office of the county recorder to effectuate cessation of jurisdiction. *Pendleton v. State*, 103 Nev. 95, 734 P.2d 693 (1987)

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

## ATTORNEY GENERAL'S OPINIONS.

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

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

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JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C-16-314317-1

-VS-

DEPT. NO. XXV

HENRY ALTAMIRANO

#1805659

Defendant.

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a  
plea of guilty to the crime of COUNT 1 – LEWDNESS WITH A CHILD UNDER THE  
AGE OF 14 (Category A Felony) in violation of NRS 201.230; and COUNT 2 –  
ATTEMPT SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE  
(Category B Felony) in violation of NRS 200.364, 200.366, 193.330; thereafter, on the  
27<sup>th</sup> day of September, 2017, the Defendant was present in court for sentencing with  
counsel Jonathan McArthur, Esq., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in  
addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee  
including testing to determine genetic markers plus \$3.00 DNA Collection Fee, the

*Appendix G*

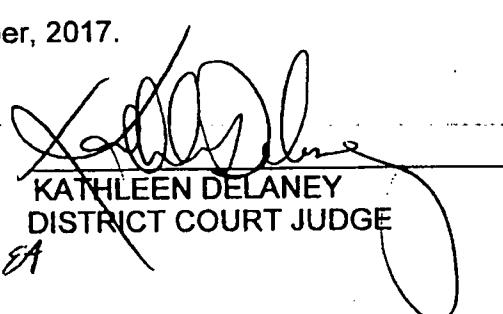
1 Defendant is sentenced to the Nevada Department of Corrections (NDC) as follows:  
2 COUNT 1 - a MAXIMUM of LIFE with a MINIMUM Parole Eligibility of TEN (10)  
3 YEARS; and COUNT 2 - a MAXIMUM of TWO HUNDRED AND FORTY (240)  
4 MONTHS with a MINIMUM Parole Eligibility of NINETY-SIX (96) MONTHS,  
5 CONSECUTIVE to COUNT 1; with FOUR HUNDRED AND SIXTY-FOUR (464) DAYS  
6 credit for time served. The AGGREGATE TOTAL sentence is EIGHTEEN (18)  
7 YEARS to LIFE with the possibility of parole after EIGHTEEN (18) YEARS.  
8

9 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION  
10 is imposed to commence upon release from any term of imprisonment, probation or  
11 parole. In addition, before the Defendant is eligible for parole, a panel consisting of  
12 the Administrator of the Mental Health and Development Services of the Department  
13 of Human Resources or his designee; the Director of the Department of Corrections or  
14 his designee; and a psychologist licensed to practice in this state; or a psychiatrist  
15 licensed to practice medicine in Nevada must certify that the Defendant does not  
16 represent a high risk to re-offend based on current accepted standards of assessment.  
17

18 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender  
19 in accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any  
20 release from custody.  
21

22 DATED this 30<sup>th</sup> day of October, 2017.

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KATHLEEN DELANEY  
DISTRICT COURT JUDGE  
EA

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

Lance G. KRIG, Appellant,

v.

The STATE of Nevada, Respondent

No. 50976.

Feb. 2, 2009.

**Attorneys and Law Firms**

Paul E. Wommer

Attorney General Catherine Cortez Masto/Carson City

Clark County District Attorney David J. Roger

**ORDER OF AFFIRMANCE**

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

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

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

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

**Appendix H**

Further, Krig's argument conflates the laws of Nevada with the codified statutes. The Nevada Revised Statutes "constitute the official codified version of the Statutes of Nevada and may be cited as prima facie evidence of the law." NRS 220.170(3). The Nevada Revised Statutes consist of enacted laws which have been classified, codified, and annotated by the Legislative Counsel. See NRS 220.120. The actual laws of Nevada are contained in the Statutes of Nevada, which as mentioned above, do contain the mandatory enacting clauses. Moreover, NRS 220.110, which sets forth the required contents of the Nevada Revised Statutes, does not mandate that the enacting clauses be republished in the Nevada Revised Statutes. Thus, we conclude that the fact that the Nevada Revised Statutes do not contain enacting clauses does not render the statutes unconstitutional. Therefore, Krig's convictions are not constitutionally deficient. Accordingly, we

\*2 ORDER the judgment of conviction AFFIRMED.

All Citations

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

Footnotes

This interpretation of the "NRS" contradicts 1957 Senate Bill 2, Section 1, Altamirano was sentenced to prison on "evidence of law" rather than "actual law"

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

End of Document

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## Appendix H1

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

Notice:

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

Editorial Information: Prior History

Taylor v. State, 132 Nev. 309, 371 P.3d 1036, 2016 Nev. LEXIS 335, 2016 WL 1594007 (Apr. 21, 2016)  
Judges: Parraguirre, J., Hardesty, J., Cadish, J.

Opinion

ORDER OF AFFIRMANCE

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

To demonstrate ineffective assistance of counsel, a petitioner must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness and that prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*); see also *Kirksey v. State*, 112 Nev. 980, 998, 928 P.2d 1102, 1113 (1996) (applying *Strickland* to claims of ineffective assistance of appellate counsel). The petitioner must demonstrate the underlying facts by a preponderance of the evidence; *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004), and both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697. For purposes of the deficiency prong, counsel is strongly presumed to have provided adequate assistance and exercised reasonable professional judgment in all significant decisions. *Id.* at 690. We defer to the district court's factual findings that are supported by substantial evidence and not clearly wrong, but review its application of the law to those facts *de novo*. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

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

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

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

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

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

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

Having considered Taylor's contentions and concluded that they do not warrant relief, we ORDER the judgment of the district court AFFIRMED.

/s/ Parraguirre, J.

Parraguirre

/s/ Hardesty, J.

Hardesty

/s/ Cadish, J.

Cadish

Footnotes

1

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

2

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

3

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

4

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

PATRICK DOYLE OLSON, Appellant, vs. THE STATE OF NEVADA, Respondent.

COURT OF APPEALS OF NEVADA

2017 Nev. App. Unpub. LEXIS 699; 133 Nev. 1058

No. 72337

October 11, 2017, Filed

**Notice:**

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

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

Opinion

**ORDER OF AFFIRMANCE**

Patrick Doyle Olson appeals from a district court order dismissing the postconviction petition for a writ of habeas corpus he filed on November 4, 2016. 1 Eighth Judicial District Court, Clark County; Michael Villani, Judge.

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

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

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

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

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

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

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

/s/ Silver, C.J.

Silver

/s/ Tao, J.

Tao

/s/ Gibbons, J.

Gibbons

Footnotes

1

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

2

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

3

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

Appendix J 1

nvcases

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## LEGISLATIVE COUNSEL'S PREFACE

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### History and Objectives of the Revision

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

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

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

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

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

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

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

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

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

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

## METHOD AND FORM OF PUBLICATION

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

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

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## NUMBERING OF PAGES

The pages of each chapter of NRS are numbered independently of the other chapters with Arabic numerals at the center of the bottom of each page. Each page number consists of one to three numerals or numerals and a letter to the left of a hyphen and one or more numerals to the right of the hyphen. The numerals or numerals and letter to the left of the hyphen indicate the NRS chapter number. The number to the right of the hyphen indicates the sequential order of the page within the chapter. For example, the designation "616D-14" would appear on the fourteenth page of chapter 616D of NRS. On rare occasions, an abundance of replacement pages may cause the use of decimal points and additional numbers immediately following the page number to the right of the hyphen. The numbers following the decimal point are consecutively ordered. For example, the designation "616D-14.2" would appear in chapter 616D of NRS following the page numbered "616D-14.1" which would follow the fourteenth page of the chapter.

## LEGISLATIVE HISTORY

→ The legislative history for each section of *Nevada Revised Statutes* enacted as a part of the revision bill, up to the time of enactment, has been inserted in brackets immediately following the section. Each legislative history contains a reference to the section, chapter and year of the Statutes of Nevada from which the section of NRS is derived, together with references to subsequent amendments and, when applicable, section numbers in prior compilations.

Certain abbreviations have been employed by the reviser in order to shorten the bracketed material:

- B—Bonnfield and Healy, *The Compiled Laws of the State of Nevada* (1873)
- BH—Baily and Hammond, *The General Statutes of the State of Nevada* (1885)
- C—Cutting, *Compiled Laws of Nevada* (1900)
- RL—*Revised Laws of Nevada* (1912)
- 1919 RL—*Revised Laws of Nevada* (1919)
- NCL—*Nevada Compiled Laws* (1929)
- 1931 NCL—*Nevada Compiled Laws 1931—41 Supplement* (1941)
- 1943 NCL—*Nevada Compiled Laws 1943—49 Supplement* (1949)

In the case of the Civil Practice Act, Criminal Practice Act and Crimes and Punishments Act of 1911, which were omitted from Statutes of Nevada 1911 as authorized by chapter 84, Statutes of Nevada 1911, the reviser has employed the following abbreviations in the legislative history:

- 1911 CPA—Civil Practice Act of 1911
- 1911 C&P—Crimes and Punishments Act of 1911



November 5, 2020

In response to your request we have provided:

The 1997 and 1999 versions of NRS 201.230.

1997:

**NRS 201.230 Lewdness with child under 14 years; penalty.** A person who willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$10,000.

→ [1911 C&P § 195 1/2; added 1925, 17; A 1947, 24; 1943 NCL § 10143]—  
→ (NRS A 1961, 92; 1967, 477; 1973, 96, 255, 1406; 1977, 867, 1632; 1979, 1430; 1983, 207; 1991, 1009; 1995, 1200; 1997, 1722, 2502, 3190)

1999:

**NRS 201.230 Lewdness with child under 14 years; penalty.** A person who willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$10,000.

[1911 C&P § 195 1/2; added 1925, 17; A 1947, 24; 1943 NCL § 10143]—(NRS A 1961, 92; 1967, 477; 1973, 96, 255, 1406; 1977, 867, 1632; 1979, 1430; 1983, 207; 1991, 1009; 1995, 1200; 1997, 1722, 2502, 3190; 1999, 470, 472)

The other item, Chapter 2, *Statutes of Nevada 1957*, is Senate Bill (S.B.) 2 from 1957. The legislative history for S.B. 2 (which includes Ch. 2, *Statutes of Nevada 1957*) is already available from your law library via LexisNexis.

Appendix L

1 This material fact was actually disclosed in Petitioner's Writ  
2 of Habeas Corpus Petition (See ECF No. 1 at 41). The only  
3 Notice of Appeal on record was filed on 11/15/2022 which  
4 was timely filed after the district court denied Petitioner's  
5 Motion To Correct Illegal Sentence and Supporting Memorandum  
6 on 11/7/2022 (See Exhibit 1, District Court Docket, and  
7 Exhibit 2, Notice of Appeal).

8 Furthermore, the Nevada Supreme Court / Court of Appeals  
9 actually dismissed Petitioner's Appeal based on the merits  
10 rather than lack of jurisdiction (See Exhibit 3, Order of Affirmance)

11 The Petitioner's Supreme Court "Appellant's Opening Brief"  
12 implicated the district court's jurisdiction in the very first  
13 ground of his argument (See Exhibit 4, Appellant's Opening Brief)

14 This argument was made and based upon Nevada's own  
15 established caselaw, Edwards v. State, 112 Nev. 704 (1996) and/or  
16 the provisions of NRS 176.555 (The court may correct an illegal  
17 sentence at any time).

18 The grounds in this Petition challenge the jurisdiction of  
19 Nevada courts to utilize the Nevada Revised Statutes (a.k.a. "NRS")

20 These grounds are not subject to the one-year limitation period  
21 as explained in Kelly v. US, 29 F.3d 1107, 1113-1114 (7<sup>th</sup> Cir. 1994)

22 "When challenging a jurisdiction error the defendant need not show  
23 cause and prejudice...;" quoting an unpublished opinion US v. Broadwell,  
24 LEXIS 6366 (9<sup>th</sup> Cir. 1992), The court's jurisdiction cannot be waived.

25 See Freytag v. Commissioner of Int. Revenue, 501 US 868 (1991) (discussing  
26 the "non-waivability" of lack of subject-matter jurisdiction).

27 Arguments attacking a court's subject-matter jurisdiction can  
28 neither be waived nor forfeited. Class v. US, 138 S. Ct. 798, 200

1 L. Ed. 2d 37 (2018). Rule 12 (h) (3) of the Federal Rules of  
2 Civil Procedure further addresses the lack of Subject-Matter  
3 Jurisdiction: "If the court determines at any time that it  
4 lacks subject-matter jurisdiction, the court must dismiss the  
5 action". In addition, the motion vehicle used in the Petitioner's  
6 post-conviction petition in the state court is also exempted from  
7 time limitations "motions to correct an illegal sentence are not  
8 subject to the time bars and procedural hurdles limiting other  
9 types of appeals." Collier v. Bayer, 408 F. 3d 1279, 1287 (9<sup>th</sup> Cir. 2005).

10 Every Nevada court has an independent duty to assure  
11 itself that its jurisdiction is properly had, and as a result parties  
12 can raise jurisdictional defect at any time. Kelly at 113, quoting  
13 Landreth v. Malik, 127 Nev. 175, 179 (2011); Barber v. State, 131  
14 Nev. 1065, 1069 (2015). Ineffective assistance of counsel is a  
15 ground, for example, which would trigger the one-year  
16 limitation period. A Due Process claim (5<sup>th</sup> and 14<sup>th</sup> U.S.  
17 Constitutional violation) as demonstrated by Petitioner's Habeas  
18 Petition would not trigger a time bar (supra).

19 This is the Petitioner's initial Federal post-conviction review,  
20 not a successive petition, and is entitled to bring a claim to  
21 Federal Court to determine whether or not he is being held  
22 unconstitutionally in violation of his Due Process rights as  
23 guaranteed by the Fifth and Fourteenth Amendments to  
24 the U.S. Constitution. To dismiss Petitioner's Habeas action  
25 with prejudice as untimely would be a fundamental  
26 miscarriage of justice.

27        ///

Appendix M2

28        ///

Appendix M2

## CONCLUSION

2 Based on the Papers, Points, and Authorities herein  
3 contained, it is respectfully requested that Petitioner's  
4 habeas action should not be dismissed with prejudice as  
5 untimely.

7 Dated this 2<sup>nd</sup> day of August, 2023.

Respectfully submitted:

Deeay Cll

Henry Altamirano #1187289

Petitioner In Pro Se

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## Appendix M3