District Court Case No: A-25-927708-W

Supreme Court Docket No: 91804

Electronically Filed
Jan 16 2026 01:43 PM
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOMINICK ATKINS,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
DOMINICK ATKINS #1287120,
PROPER PERSON
P.O. BOX 1989
ELY, NV 89301

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

A-25-927708-W Dominick Atkins, Plaintiff(s) vs. State of Nevada, Defendant(s)

I N D E X

VOLUME:	PAGE NUMBER:
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A-25-927708-W Dominick Atkins, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

I N D E X

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Case No. 2A-CR-[illegible]

Dept. No. _____

FILED 40

SEP 10 2025

CLERK OF COURT

IN THE _____ JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF _____.

_____,
Petitioner,

v.

_____,
Respondent.

A-25-927708-W
Dept 27

PETITION FOR WRIT OF HABEAS CORPUS (POSTCONVICTION)

INSTRUCTIONS:

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you're not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.

(6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

RECEIVED

SEP 07 2025

CLERK OF THE COURT

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: [illegible]

2. Name and location of court which entered the judgment of conviction under attack: 2nd JUDICIAL DISTRICT COURT CLARK COUNTY

3. Date of judgment of conviction: July 23rd 2014

4. Case number:

5. (a) Length of sentence: [illegible]

(b) If sentence is death, state any date upon which execution is scheduled:

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes ____ No ✓

If "yes", list crime, case number and sentence being served at this time:

7. Nature of offense involved in conviction being challenged: [illegible]

8. What was your plea? (check one):

(a) Not guilty ____ (b) Guilty ✓ (c) Nolo contendere ____

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty was negotiated, give details: I did not want to go to trial so I negotiated a deal [illegible]

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

(a) Jury ____ (b) Judge without a jury ✓

11. Did you testify at the trial? Yes ____ No ✓

12. Did you appeal form the judgment of conviction? Yes ____ No ✓

13. If you did appeal, answer the following:

(a) Name of Court:

(b) Case number or citation:

(c) Result:

(d) Date of result:_____

(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not:_____

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

Yes _____ No ✓

16. If your answer to No. 15 was "yes", give the following information:

(a)(1) Name of court:_____

(2) Nature of proceeding:_____

(3) Grounds raised:_____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes _____ No ✓

(5) Result:_____

(6) Date of result:_____

(7) If known, citations of any written opinion or date of orders entered pursuant to such result:_____

(b) As to any second petition, application or motion, give the same information:

(1) Name of court:_____

(2) Nature of proceeding:_____

(3) Grounds raised:_____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes _____ No _____

(5) Result:_____

(6) Date of result:_____

(7) If known, citations of any written opinion or date of orders entered pursuant to such a result:_____

(c) As to any third or subsequent additional applications or motions, give the same Information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes _____ No _____

Citation or date of decision:_____

(2) Second petition, application or motion? Yes _____ No _____

Citation or date of decision:_____

(3) Third or subsequent petitions, applications or motions? Yes _____ No _____

Citation or date of decision:_____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)_____

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same:_____

(b) The proceedings in which these grounds were raised:_____

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) _____

18. If any of the grounds listed in No.'s 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)__

19. Are you filing this petition more than one year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)_____

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes _____ No ✓

If yes, state what court and case number:_____

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal:_____

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes _____ No ✓

If yes, specify where and when it is to be served, if you know:_____

23. State concisely every ground on which you claim that you are being held unlawfully. summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

GROUND (one) Violation of the 5th, 6th, 8th and 14th Amendment rights of the United States Constitution and the Nevada Constitution Article 1 sections 3, 6 and 8 and Article 1 section 21

SUPPORTING FACTS: [illegible] Mr. Atkins is in custody in violation of the 5th, 6th, 8th and 14th ~~Amst~~ Amendment rights of the United States Constitution and the Nevada Constitution Article 1 sections 3, 6, and 8 and Article 4 section 21 because defense counsel rendered ineffective assistance prejudicing the defendant and creating a reasonable probability that the result of sentencing would have been different had counsel acted reasonably.

Counsels performance was deficient, falling below an objective standard of reasonableness, because defense counsel failed to inform the court at sentencing of Mr. Atkins high level of presentence confinement credits in the amount of 121 days (4 months, which Mr. Atkins [illegible] to have served in confinement time, which counsel did not ask at sentencing in order that Mr. Atkins would receive all the credits that is entitled to. Counsel has a duty to make sure his client gets all the credits that are available to the client before the sentence is imposed. Counsels performance was below an objective standard because adequate counsel is

[illegible] Mr. Athins was convicted of Colo. R. 2d 1 and served 176 days
[illegible] out of jail which then Mr. Athins liberty was restricted
by the imposition of house arrest. [illegible]
restricted of his liberty by having to give [illegible]
[illegible] family, [illegible] counseling, and court
appearance. Mr. Athins also was restricted when he
traveled to California to a family members funeral
[illegible] was restricted on his liberty
[illegible] but the district court imposed additional conditions to
house arrest but [illegible] was
never before conviction and or sentence was imposed
on Mr. Athins [illegible]
[illegible] electronic device approved by the division [illegible]
[illegible] supervise a defendant who is ordered
to be placed on residential confinement or house arrest.
The device may be capable of using the Global Positioning
System, but will be minimally intrusive and limited to
capability to record [illegible]
[illegible] the defendant [illegible]
limited to the transmission [illegible]
[illegible] reports or records of the defendants
[illegible]

transmitting oral or wire communications or any activity
sound or information concerning the defendants activities.
[illegible]
"confinement" [illegible]
[illegible]
to allow credit for the time the defendant
the amount of time which the defendant has actually
spent in confinement before conviction. Pursuant to
NRS 176.055 Parole and Probation views "residential
confinement" as "confinement." also [illegible]
(5) As used in this section "imprisonment" means confinement in
jail or an institutional facility or treatment center or
other facility or place in which persons [illegible]
[illegible]
have been sentenced and being detained.
The time credited to Mr. Milano during sentencing was
142 days in confinement at [illegible]
Center [illegible], but Mr. Milano did not receive credit
for the other 121 days of residential confinement or
[illegible] which should have been calculated at
sentencing. Mr. Milano counsel or prosecutors or the
courts, which is also ineffective assistance [illegible]
the process, such a violation of his [illegible]
[illegible] Fifth and Fourteenth Amendment.

Mr. Atkins alleges that the issues in this case are complex and require an evidentiary hearing. Mr. Atkins is unable to factually develop and adequately present the [illegible] of the issues [illegible]

[illegible] Mr. Atkins alleges that the cumulative errors resulting in the violation of Mr. Atkins's Sixth, Eighth and Fourteenth Amendment rights [illegible]

[illegible]

[illegible] Mr. Atkins can [illegible]

[illegible]

The cumulative effect of the errors [illegible]

[illegible]

In [illegible] any one of the errors [illegible] vacation of the judgment of conviction. The totality of the errors, even if considered individually harmless, substantially and injuriously affected the fairness of the proceedings and prejudiced Mr. Atkins.

The writ should be granted as the [illegible] decision by the state court would be contrary to, or an unreasonable application of established federal [illegible]

4

would involve an unnecessable determination of the facts.

1. Issue a writ of habeas corpus to have him brought before the court so that he may be discharged from his unconstitutional confinement.

2. Conduct an evidentiary hearing at which proof may be offered concerning the allegations in this petition and any defenses that may be raised by respondent; and

3. Grant such other and further relief as it may deem proper and just.

Dated this 11th day of April, 2025.

By: [signature]

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

EXECUTED at Ely State Prison, on the 17th day of the month of April, of the year 2021.

Signature of petitioner

Ely State Prison
Post Office Box 1989
Ely, Nevada 89301-1989

Signature of Attorney (if any)

Attorney for petitioner

Address

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

Petitioner

Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, _____, hereby certify pursuant to N.R.C.P. 5(b), that on this 11th day of the month of April, of the year 201[illegible] I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:

_____
Respondent prison or jail official

_____
_____
Address

Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717

_____
District Attorney of County of Conviction

_____
_____
Address

_____
Signature of Petitioner

AFFIRMATION PURSUANT TO NRS 239B.030

I, Dominick Atkins, NDOC# 125722,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE ATTACHED DOCUMENT ENTITLED Petition for writ of Habeas Corpus (Post-conviction),

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 1 DAY OF April, 20 .

SIGNATURE: Dominick Atkins

INMATE PRINTED NAME: Dominick Atkins

INMATE NDOC # 125722

INMATE ADDRESS: ELY STATE PRISON
P. O. BOX 1989
ELY, NV 89301

STEVEN D. GRIERSON, Clerk of the Court
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS, NV 89155-1160

RETURN SERVICE REQUESTED

RTS
Inm Released
09/05/25

Dominick Atkins #1287120
ESP
P.O. Box 1989
Ely, NV 89301

390 893 89301 N2-95

5023250721-202830916

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Dominick Atkins 1287120 SA16
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P.O. Box 1989
ELY, NV. 89301

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Clerk of the Court
of Clark County
200 Lewis Avenue
Las Vegas, NV. 89155

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DISTRICT COURT
CLARK COUNTY, NEVADA

Dominick Atkins,

Petitioner,

vs.

State of Nevada / Warden of Ely,

Respondent,

Case No: A-25-927708-W
Department 27

ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on September 10, 2025. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

November 13, 2025 at 9:30 am

Calendar on ~~the _____ day of _____, 20____, at the hour of~~

~~_____ o'clock for further proceedings.~~

Dated this 11th day of September, 2025

A87 7FF 13E2 2E4E
Erika Mendoza
District Court Judge

District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Dominick Atkins, Plaintiff(s)	CASE NO: A-25-927708-W
vs.	DEPT. NO. Department 27
State of Nevada, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

Electronic service was attempted through the Eighth Judicial District Court's electronic filing system, but there were no registered users on the case.

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 9/12/2025

Dominick Atkins

#1287120
ESP
PO Box 1989
Ely, NV, 89301

Electronically Filed
10/16/2025 2:16 PM
Steven D. Grierson
CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565
ANN DUNN
Chief Deputy District Attorney
Nevada Bar #14511
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-250
Attorney for Plaintiff
PH: (702) 671-2500
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DAInfo@clarkcountydanv.gov
Attorney for the Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

DOMINICK ATKINS,
#7133700,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: **A-25-927708-W**
C-24-381434-1

DEPT NO: **XXVII**

STATE'S RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

DATE OF HEARING: **NOVEMBER 13, 2025**
TIME OF HEARING: **9:30 A.M.**

The State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through ANN DUNN, Chief Deputy District Attorney, hereby submits the attached Points and Authorities in this State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction).

This Response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On March 14, 2024, Dominick Atkins (hereinafter "Petitioner") was charged by way of Amended Information with ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category B Felony).

On March 19, 2024, Petitioner was arraigned, and he pleaded guilty pursuant to a Guilty Plea Agreement, which was filed that same day. The terms of the Guilty Plea Agreement stipulated that the parties would stipulate to a sentence of three (3) to ten (10) years in the Nevada Department of Corrections, and that the negotiation was contingent on the Court following the negotiation.

On June 10, 2024, Petitioner filed a Motion to Modify Terms of House Arrest, requesting to travel to California for a funeral. On June 18, 2024, the District Court granted the motion.

On July 23, 2024, Petitioner was adjudged guilty, ordered to pay a variety of fees, and sentenced to a minimum of THREE (3) years and a maximum of TEN (10) years in the Nevada Department of Corrections (NDC) with ONE HUNDRED SEVENTY (170) DAYS credit for time served. The Court ordered a special sentence of Lifetime Supervision imposed to commence upon release from any term of probation, parole, or imprisonment, with Petitioner required to register as a sex offender in accordance with NRS 179D.460 within 48 hours upon release.

On September 20, 2024, the Judgment of Conviction was filed.

On September 10, 2025, Petitioner filed the instant Petition for Writ of Habeas Corpus (hereinafter "Petition"). The State's response follows.

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STATEMENT OF FACTS

The District Court relied on the following synopsis from the Presentence Investigation Report when sentencing Petitioner:

> On September 23, 2023, officers received a child molestation report from minor victim #1's (DOB: 12-30-09) mother. Her mother reported that her son had walked in on the defendant Dominick Rolland Atkins hovering over victim #1 in a sexual manner. It was later determined that minor victim #2 (DOB: 12-13-10) had disclosed the defendant had sexually abused her a year prior but the victims' mother did not have anything to make her believe victim #2 was telling the truth.
>
> An interview with victim #1 was conducted. She told officers that the defendant had returned to her home with food for her and her brother. She was in her mother's bedroom sitting on the bed when the defendant came into the room and pushed her back on the bed, pinning her arms. He then pulled his penis out the top of his shorts and pulled down her shorts. Mr. Atkins then pulled her underwear to the side and inserted his penis into her vagina for a few seconds. The victims' brother walked into the room and the defendant quickly pulled up his pants. Victim #1 recalled the physical touch of the defendant's penis on her vagina as it was her first time and it hurt.
>
> Officers interviewed victim #2. She told officers that approximately two or three years ago after walking Fremont with her family they returned to their apartment. She and the defendant were laying down on her mother's bed under the covers while her sister was on the floor. While lying there the defendant put his hand down victim #2's pants and began rubbing her vagina over her underwear. She recalled this occurring for approximately one minute until she pushed the defendant away and went to her room. She attempted to disclose the incident to her mother, but her mother confronted her with the defendant via Facetime. Mr. Atkins cried and denied the allegations on the Facetime call. Victim #2 went back to her room and cried because no one believed her.
>
> Officers spoke with the victims' brother. He told officers he had gone to say hello to the defendant when he walked in and saw him standing over victim #1 with an erection. He noticed victim #1 was pinned down by the defendant and appeared to look nervous. He recalled the defendant apologizing and asked to speak to their mother about the situation. When he asked the defendant what he was doing, the defendant asked for forgiveness and admitted he was wrong.
>
> The victims' mother told officers that the defendant had been attempting to contact her. He threatened to get intoxicated and run his car off a cliff. He admitted to her what he had done was wrong and that he would turn himself in, once he submitted his retirement in California.

//

//

> On October 8, 2023, officers conducted a traffic stop on a speeding vehicle. A records check revealed that defendant had a warrant for his arrest. Mr. Atkins was arrested and transported to the Clark County Detention Center where he was booked accordingly.

Presentence Investigation Report, prepared June 24, 2024, pg. 4-5.

ARGUMENT

I. PETITIONER IS NOT ENTITLED TO PRESENTENCE CREDIT FOR TIME SERVED FROM HOUSE ARREST.

NRS 176.055 governs the award of presentence credit for time served; specifically, subsection 1 provides that:

> 1. Except as otherwise provided in subsection 2, whenever a sentence of imprisonment in the county jail or state prison is imposed, the court may order that credit be allowed against the duration of the sentence, including any minimum term or minimum aggregate term, as applicable, thereof prescribed by law, for the amount of time which the defendant has *actually spent in confinement before conviction*, unless the defendant's confinement was pursuant to a judgment of conviction for another offense. Credit allowed pursuant to this subsection does not alter the date from which the term of imprisonment is computed.

(Emphasis added).

A defendant is **not** entitled to presentence credit for time spent on house arrest or electronic monitoring. State v. Second Jud. Dist. Ct. ex rel. Cnty. of Washoe, 121 Nev. 413, 418–19, 116 P.3d 834, 837 (2005) ("house arrest does not constitute time "actually spent in confinement" for which the duration of a sentence may be credited"). The Nevada Supreme Court noted that even though the appellant-defendant was restricted by imposition of house arrest, this confinement was not equivalent to incarceration in county jail. Id. at 418. Specifically, the appellant was "free to leave her home on advance notice for matters such as grocery shopping, employment, laundry, medical appointments, counseling, and court appearances." Id. The Court highlighted that appellant "was even permitted to travel to California to get married" and "allowed to reside in her own home and enjoy all of its comforts." Id. Thus, house arrest was characterized as "merely a reasonable condition imposed upon [her] release on bail." Id.

Here, Petitioner argues that his confinement is unconstitutional because his attorney failed to inform the Court at sentencing that Petitioner had "high level house arrest confinement credits in the amount of 121 days or 4 months." Petition at 5. Specifically, Petitioner claims that "defense counsel said he would get credit for the high level house arrest confinement time, which counsel did not [talk] about at sentencing in order that [Petitioner] would receive all the credits that is available to him at the time." Petition at 5. This underlying claim of entitlement to credit for time served based on house arrest is not permissible under Nevada law.

Like the defendant in State v. Second Jud. Dist., Petitioner enjoyed the comforts of residing at his own home under house arrest while released on bail. Petitioner indicated that he had to "give notice in advance for matters such as grocery shopping, employment, laundry, medical appointments, counseling, and court [appearances]." Petition at 6. Petitioner would not have been allowed to do many of these things if he was confined at the Clark County Detention Center. Also, similar to the defendant in Second Jud. Dist., Petitioner was granted specific permission by the Court to cross state lines to attend his brother's funeral. See Motion to Modify House Arrest, filed 06/10/24; see also Motion, filed 06/18/2024. Any referenced house arrest restrictions were a reasonable condition imposed upon Petitioner, who had been released on bail. See Criminal Bindover – Confidential, filed 03/14/2024.

In addition, Petitioner incorrectly bases his argument on the definition of imprisonment within NRS 484C.394. Petition at . Petitioner claims "...also Pursuant to NRS 484C.394 (8) As used in this section 'imprisonment' means confinement or other facility or under house arrest with electronic monitoring, provided the person under confinement or house arrest is in fact being detained." Petition at 7. This cited statute falls under Chapter 484C, Driving Under the Influence of Alcohol or a Prohibited Substance, Nevada 24/7 Sobriety and Drug Monitoring Program. This statute is not applicable to Petitioner. He was sentenced under NRS 201.230(2) Attempt Lewdness with a Child Under the Age of 14. The proper sentencing statute is NRS 176.055 Credit against Sentence of Imprisonment.

//

Petitioner is not entitled to credit for time served based on house arrest under Nevada law. Therefore, this claim should be denied.

II. COUNSEL WAS NOT INEFFECTIVE FOR NOT MAKING A FUTILE MOTION FOR ADDITIONAL CREDIT FOR TIME SERVED AT SENTENCING.

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).

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Counsel cannot be ineffective for failing to make futile objections or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does not mean that the court should "second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Id. To be effective, the constitution "does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade." United States v. Cronic, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

"There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." Strickland, 466 U.S. at 689, 104 S. Ct. at 689. "Strategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Strategic decisions—including whether to hire an expert—are entitled to a "strong presumption" of reasonableness. Dunn v. Reeves, 141 S. Ct. 2405, 2410 (2021). Even if there is reason to think that counsel's conduct "was far from exemplary," a court still may not grant relief if "[t]he record does not reveal" that counsel took an approach that no competent lawyer would have chosen. Id.

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Even if a defendant can demonstrate that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89, 694, 104 S. Ct. at 2064-65, 2068).

The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant part, "[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed." (emphasis added).

When a conviction is the result of a guilty plea, a defendant must show that there is a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687-89, 694, 104 S. Ct. at 2064–65, 2068). Ultimately, while it is counsel's duty to candidly advise a defendant regarding a plea offer, the decision of whether or not to accept a plea offer is the defendant's. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163 (2002).

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[W]here defendant has pleaded guilty, only claims that may be raised thereafter [in a habeas proceeding] are those involving voluntariness of plea itself and effectiveness of counsel. Gonzales v. State, 137 Nev. 398, 402, 492 P.3d 556, 561 (2021) (affirming Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996)). However, a guilty plea does not waive a claim of ineffective assistance of counsel at sentencing within a post-conviction habeas corpus petition. Gonzales, 137 Nev. 398, 403.

Here, Petitioner fails to prove ineffective assistance of counsel at sentencing or plea entry. Counsel cannot be ineffective for failing to make futile arguments. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. As discussed *supra*, in Section I, Nevada law does not permit presentence house arrest to count for credit for time served. Hence, Petitioner's counsel could not be ineffective for not making this argument at sentencing. The Court should note that Petitioner did receive one hundred seventy (170) days credit for time served for the time he actually spent confined in the Clark County Detention Center, which counted toward his minimum three (3) year sentence. Thus, Petitioner's claim of ineffectiveness based on counsel's not making the argument that house arrest counting toward credit for time served is unfounded.

When a conviction is the result of a guilty plea, a defendant must show that there is a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill, 474 U.S. at 59; see also Kirksey, 112 Nev. at 988. To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland, 466 U.S. at 686. Under the Strickland test, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. Id.

Here, Petitioner was originally charged with Lewdness with a Child Under the Age of 14 (Category A Felony) and Sexual Assault Against Child Under 14 (Category A Felony) on March 14, 2024. See Criminal Bindover, filed 03/14/2024. The statutory penalties for both

crimes are considerable: life imprisonment with a minimum of ten years for the former and life imprisonment with minimum of 35 for the latter. See NRS 201.230(2); NRS 200.366(3)(c). Petitioner is currently serving a sentence of three (3) to ten (10) years for Attempt Lewdness with a Child Under 14. There is no reason to believe that but for counsel failing to mention house arrest at sentencing, Petitioner would not have accepted the plea deal and instead gone to trial. In fact, Petitioner admits in Question 9 of his Petition that "I did not want to go to trial so I negotiated a deal for the 3 to 10 sentence." Petition at 2.

Petitioner fails to show deficiency of counsel or subsequent prejudice. Because counsel cannot be ineffective for not making a futile argument, Petitioner has failed to show that counsel's performance was deficient. Moreover, because Petitioner entered a guilty plea, he must show a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Here, it is unbelievable that Petitioner would have turned down an incredibly advantageous plea deal over approximately 126 days credit for time served.[1] Petitioner fails to overcome the Means presumption of effectiveness or meet either prong of Strickland, and this Petition should be denied.

III. PETITIONER IS NOT ENTITLED TO THE APPOINTMENT OF COUNSEL OR AN EVIDENTIARY HEARING

Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada Supreme Court similarly observed that "[t]he Nevada Constitution…does not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision as being coextensive with the Sixth Amendment to the United States Constitution." McKague specifically held that with the exception of NRS 34.820(1)(a) (entitling appointed counsel when petitioner is under a sentence of death), one does not have "any constitutional or statutory right to counsel at all" in post-conviction proceedings. Id. at 164, 912 P.2d at 258.

[1] Petitioner posted bail on March 20, 2024, at which time he was eligible for house arrest. He was sentenced on July 23, 2024. That is a duration of 126 days between posting bail and sentencing.

However, the Nevada Legislature has given courts the discretion to appoint post-conviction counsel so long as "the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily." NRS 34.750.

NRS 34.750 reads:

> A petition may allege that the Defendant is unable to pay the costs of the proceedings or employ counsel. If the court is satisfied that the allegation of indigency is true and the petition *is not dismissed summarily*, the court may appoint counsel to represent the petitioner. In making its determination, the court may consider, among other things, the severity of the consequences facing the petitioner and whether:
>
> (a) The issues presented are difficult;
>
> (b) The petitioner is unable to comprehend the proceedings; or
>
> (c) Counsel is necessary to proceed with discovery.

(Emphasis added). Under NRS 34.750, it is clear that the court has discretion in determining whether to appoint counsel.

NRS 34.770 determines when a petitioner is entitled to an evidentiary hearing. It reads:

> 1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent unless an evidentiary hearing is held.
>
> 2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, *he shall dismiss the petition without a hearing.*
>
> 3. If the judge or justice determines that an evidentiary hearing is required, he shall grant the writ and shall set a date for the hearing.

(Emphasis added). The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that "[a] defendant seeking post-conviction

relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to hold an evidentiary hearing simply to make a complete record. See State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) ("The district court considered itself the 'equivalent of . . . the trial judge' and consequently wanted 'to make as complete a record as possible.' This is an incorrect basis for an evidentiary hearing.").

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

Here, Petitioner seeks the appointment of counsel to assist him with an evidentiary hearing. Petition at 8. However, this Petition is suitable only for summary denial. Petitioner is not entitled to credit for time served from presentence house arrest, and he cannot show ineffective assistance of counsel for failing to make this futile argument.

Indeed, his Petition does not present difficult issues and leaves nothing to consider, because his sole complaint is not permissible under Nevada Law. Though Petitioner argues that he "is unlearned and unfamiliar with the complexities of Nevada State law," he clearly understands these proceedings enough to cite Nevada statutes and present a timely petition to this Court. Petition at 8. Moreover, he has failed to show he is unable to comprehend the proceedings. Finally, there is no need for additional discovery in this case. Therefore, his request for counsel should be denied.

Similarly, Petitioner has failed to establish he is entitled to an evidentiary hearing. His sole complaint against his attorney is something his attorney could not have asked for under Nevada law. There is no need to expand the record on this purely legal question, and Petitioner's request for an evidentiary hearing should be denied.

CONCLUSION

Based on the foregoing, the State respectfully requests Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) be DENIED.

DATED this 16th day of October, 2025.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565

BY */s/ Ann Dunn*
ANN DUNN
Chief Deputy District Attorney
Nevada Bar #14511

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 16th day of OCTOBER 2025, to:

DOMINICK ATKINS, BAC#1287120
ELY STATE PRISON
P.O. BOX 1989
ELY, NV 89301

BY */s/ Howard Conrad*
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

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CLERK OF THE COURT

FCCO
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Attorney for the Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

DOMINICK ATKINS,
#7133700,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: **A-25-927708-W**
C-24-381434-1

DEPT NO: **XXVII**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: **NOVEMBER 13, 2025**
TIME OF HEARING: **9:30 AM**

THIS CAUSE having presented before the Honorable ERIKA MENDOZA, District Judge, on the 13th day of November, 2025; Petitioner not present, IN PROPER PERSON; Respondent represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ALEXANDER E. QUAGGE, Deputy District Attorney; and having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

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FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On March 14, 2024, Dominick Atkins (hereinafter "Petitioner") was charged by way of Amended Information with ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category B Felony).

On March 19, 2024, Petitioner was arraigned, and he pleaded guilty pursuant to a Guilty Plea Agreement, which was filed that same day. The terms of the Guilty Plea Agreement stipulated to a sentence of three (3) to ten (10) years in the Nevada Department of Corrections, contingent to the Court accepting the negotiation.

On June 10, 2024, Petitioner filed a Motion to Modify Terms of House Arrest, requesting to travel to California for a funeral. On June 18, 2024, the District Court granted the motion.

On July 23, 2024, Petitioner was adjudged guilty, ordered to pay a variety of fees, and sentenced to a minimum of THREE (3) years and a maximum of TEN (10) years in the Nevada Department of Corrections (NDC) with ONE HUNDRED SEVENTY (170) DAYS credit for time served. The Court ordered a special sentence of Lifetime Supervision imposed to commence upon release from any term of probation, parole, or imprisonment, with Petitioner required to register as a sex offender within 48 hours upon release in accordance with NRS 179D.460.

On September 20, 2024, the Judgment of Conviction was filed.

On September 10, 2025, Petitioner filed the instant Petition for Writ of Habeas Corpus (hereinafter "Petition"). On October 16, 2025, the State filed its Response to Atkins' Petition for Writ of Habeas Corpus (Post-Conviction). On November 13, 2025, the Court denied the Petition. The Court stated its Findings, Conclusions, and Order based on the written pleadings, which are as follows:

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FACTS

The District Court relied on the following synopsis from the Presentence Investigation Report when sentencing Petitioner:

> On September 23, 2023, officers received a child molestation report from minor victim #1's (DOB: 12-30-09) mother. Her mother reported that her son had walked in on the defendant Dominick Rolland Atkins hovering over victim #1 in a sexual manner. It was later determined that minor victim #2 (DOB: 12-13-10) had disclosed the defendant had sexually abused her a year prior but the victims' mother did not have anything to make her believe victim #2 was telling the truth.
>
> An interview with victim #1 was conducted. She told officers that the defendant had returned to her home with food for her and her brother. She was in her mother's bedroom sitting on the bed when the defendant came into the room and pushed her back on the bed, pinning her arms. He then pulled his penis out the top of his shorts and pulled down her shorts. Mr. Atkins then pulled her underwear to the side and inserted his penis into her vagina for a few seconds. The victims' brother walked into the room and the defendant quickly pulled up his pants. Victim #1 recalled the physical touch of the defendant's penis on her vagina as it was her first time and it hurt
>
> Officers interviewed victim #2. She told officers that approximately two or three years ago after walking Fremont with her family they returned to their apartment. She and the defendant were laying down on her mother's bed under the covers while her sister was on the floor. While lying there the defendant put his hand down victim #2's pants and began rubbing her vagina over her underwear. She recalled this occurring for approximately one minute until she pushed the defendant away and went to her room. She attempted to disclose the incident to her mother, but her mother confronted her with the defendant via Facetime. Mr. Atkins cried and denied the allegations on the Facetime call. Victim #2 went back to her room and cried because no one believed her.
>
> Officers spoke with the victims' brother. He told officers he had gone to say hello to the defendant when he walked in and saw him standing over victim #1 with an erection. He noticed victim #1 was pinned down by the defendant and appeared to look nervous. He recalled the defendant apologizing and asked to speak to their mother about the situation. When he asked the defendant what he was doing, the defendant asked for forgiveness and admitted he was wrong.
>
> The victims' mother told officers that the defendant had been attempting to contact her. He threatened to get intoxicated and run his car off a cliff. He admitted to her what he had done was wrong and that he would turn himself in, once he submitted his retirement in California.

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> On October 8, 2023, officers conducted a traffic stop on a speeding vehicle. A records check revealed that defendant had a warrant for his arrest. Mr. Atkins was arrested and transported to the Clark County Detention Center where he was booked accordingly.

Presentence Investigation Report, prepared June 24, 2024, pg. 4-5.

ANALYSIS

I. PETITIONER IS NOT ENTITLED TO PRESENTENCE CREDIT FOR TIME SERVED FROM HOUSE ARREST.

NRS 176.055 governs the award of presentence credit for time served; specifically, subsection 1 provides that:

> 1. Except as otherwise provided in subsection 2, whenever a sentence of imprisonment in the county jail or state prison is imposed, the court may order that credit be allowed against the duration of the sentence, including any minimum term or minimum aggregate term, as applicable, thereof prescribed by law, for the amount of time which the defendant has *actually spent in confinement before conviction*, unless the defendant's confinement was pursuant to a judgment of conviction for another offense. Credit allowed pursuant to this subsection does not alter the date from which the term of imprisonment is computed.

(Emphasis added).

A defendant is **not** entitled to presentence credit for time spent on house arrest or electronic monitoring. State v. Second Jud. Dist. Ct. ex rel. Cnty. of Washoe, 121 Nev. 413, 418–19, 116 P.3d 834, 837 (2005) ("house arrest does not constitute time "actually spent in confinement" for which the duration of a sentence may be credited"). The Nevada Supreme Court noted that even though the appellant-defendant was restricted by imposition of house arrest, this confinement was not equivalent to incarceration in county jail. Id. at 418. Specifically, the appellant was "free to leave her home on advance notice for matters such as grocery shopping, employment, laundry, medical appointments, counseling, and court appearances." Id. The Court highlighted that appellant "was even permitted to travel to California to get married" and "allowed to reside in her own home and enjoy all of its comforts." Id. Thus, house arrest was characterized as "merely a reasonable condition imposed upon [her] release on bail." Id.

Here, Petitioner argued that his confinement is unconstitutional because his attorney failed to inform the Court at sentencing that Petitioner had "high level house arrest confinement credits in the amount of 121 days or 4 months." Petition at 5. Specifically, Petitioner claimed that "defense counsel said he would get credit for the high level house arrest confinement time, which counsel did not [talk] about at sentencing in order that [Petitioner] would receive all the credits that is available to him at the time." Petition at 5. This underlying claim of entitlement to credit for time served based on house arrest is not permissible under Nevada law.

Like the defendant in State v. Second Jud. Dist., Petitioner enjoyed the comforts of residing at his own home under house arrest while released on bail. Petitioner indicated that he had to "give notice in advance for matters such as grocery shopping, employment, laundry, medical appointments, counseling, and court [appearances]." Petition at 6. Petitioner would not have been allowed to do many of these things if he was confined at the Clark County Detention Center. Also, similar to the defendant in Second Jud. Dist., Petitioner was granted specific permission by the Court to cross state lines to attend his brother's funeral. See Motion to Modify House Arrest, filed 06/10/24; see also Motion, filed 06/18/2024. Any referenced house arrest restrictions were a reasonable condition imposed upon Petitioner, who had been released on bail. See Criminal Bindover – Confidential, filed 03/14/2024.

Petitioner is not entitled to credit for time served based on house arrest under Nevada law. Therefore, the Court denies this claim.

II. COUNSEL WAS NOT INEFFECTIVE FOR NOT MAKING A FUTILE MOTION FOR ADDITIONAL CREDIT FOR TIME SERVED AT SENTENCING.

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).

Counsel cannot be ineffective for failing to make futile objections or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does not mean that the court should "second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against

allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Id. To be effective, the constitution "does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade." United States v. Cronic, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

"There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." Strickland, 466 U.S. at 689, 104 S. Ct. at 689. "Strategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Strategic decisions—including whether to hire an expert—are entitled to a "strong presumption" of reasonableness. Dunn v. Reeves, 141 S. Ct. 2405, 2410 (2021). Even if there is reason to think that counsel's conduct "was far from exemplary," a court still may not grant relief if "[t]he record does not reveal" that counsel took an approach that no competent lawyer would have chosen. Id.

Even if a defendant can demonstrate that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89, 694, 104 S. Ct. at 2064-65, 2068).

The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked"

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[W]here defendant has pleaded guilty, only claims that may be raised thereafter [in a habeas proceeding] are those involving voluntariness of plea itself and effectiveness of counsel. Gonzales v. State, 137 Nev. 398, 402, 492 P.3d 556, 561 (2021) (affirming Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996)). However, a guilty plea does not waive a claim of ineffective assistance of counsel at sentencing within a post-conviction habeas corpus petition. Gonzales, 137 Nev. 398, 403.

Here, Petitioner fails to prove ineffective assistance of counsel at sentencing or plea entry. Counsel cannot be ineffective for failing to make futile arguments. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. As discussed *supra*, in Section I, Nevada law does not permit presentence house arrest to count for credit for time served. Hence, Petitioner's counsel could not be ineffective for not making this argument at sentencing. The Court should note that Petitioner did receive one hundred seventy (170) days credit for time served for the time he actually spent confined in the Clark County Detention Center, which counted toward his minimum three (3) year sentence. Thus, Petitioner's claim of ineffectiveness based on

counsel's not making the argument that house arrest counting toward credit for time served is unfounded.

Petitioner failed to show deficiency of counsel or subsequent prejudice. Because counsel cannot be ineffective for not making a futile argument, Petitioner has failed to show that counsel's performance was deficient, and therefore the Petition is denied.

III. PETITIONER IS NOT ENTITLED TO THE APPOINTMENT OF COUNSEL OR AN EVIDENTIARY HEARING

Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada Supreme Court similarly observed that "[t]he Nevada Constitution…does not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision as being coextensive with the Sixth Amendment to the United States Constitution." McKague specifically held that with the exception of NRS 34.820(1)(a) (entitling appointed counsel when petitioner is under a sentence of death), one does not have "any constitutional or statutory right to counsel at all" in post-conviction proceedings. Id. at 164, 912 P.2d at 258.

However, the Nevada Legislature has given courts the discretion to appoint post-conviction counsel so long as "the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily." NRS 34.750.

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(Emphasis added). Under NRS 34.750, it is clear that the court has discretion in determining whether to appoint counsel.

NRS 34.770 determines when a petitioner is entitled to an evidentiary hearing. It reads:

> 1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent unless an evidentiary hearing is held.
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(Emphasis added). The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that "[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to hold an evidentiary hearing simply to make a complete record. See State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) ("The district court considered itself the 'equivalent of . . . the trial judge' and consequently wanted 'to make as complete a record as possible.' This is an incorrect basis for an evidentiary hearing.").

Further, the United States Supreme Court has held that an evidentiary hearing is not required simply because counsel's actions are challenged as being unreasonable strategic decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge post hoc rationalization for counsel's decision-making that contradicts the available evidence of counsel's actions, neither may they insist counsel confirm every aspect of the strategic basis

for his or her actions. Id. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Id. (citing Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the *objective* reasonableness of counsel's performance, not counsel's *subjective* state of mind. 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

Here, Petitioner seeks the appointment of counsel to assist him with an evidentiary hearing. Petition at 8. However, this Petition is suitable only for summary denial. Petitioner is not entitled to credit for time served from presentence house arrest, and he failed to show ineffective assistance of counsel for failing to make this futile argument.

Indeed, his Petition does not present difficult issues and leaves nothing to consider, because his sole complaint is not permissible under Nevada Law. Though Petitioner argues that he "is unlearned and unfamiliar with the complexities of Nevada State law," he clearly understands these proceedings enough to cite Nevada statutes and present a timely petition to this Court. Petition at 8. Moreover, he has failed to show he is unable to comprehend the proceedings. Finally, there is no need for additional discovery in this case. Therefore, his request for counsel is denied.

Similarly, Petitioner has failed to establish he is entitled to an evidentiary hearing. His sole complaint against his attorney is something his attorney could not have asked for under Nevada law. There is no need to expand the record on this purely legal question, and Petitioner's request for an evidentiary hearing is denied.

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ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus shall be and is DENIED.

Dated this 26th day of November, 2025

Erika Mendoza

7FE E30 8BBC 7047
Erika Mendoza
District Court Judge

STEVEN B. WOLFSON
DISTRICT ATTORNEY
Nevada Bar No.1565

BY */s/ Alexander E. Quagge*
ALEXANDER E. QUAGGE
Deputy District Attorney
Nevada Bar #13938

hjc/SVU

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Dominick Atkins, Plaintiff(s)	CASE NO: A-25-927708-W
vs.	DEPT. NO. Department 27
State of Nevada, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

Electronic service was attempted through the Eighth Judicial District Court's electronic filing system, but there were no registered users on the case. The filer has been notified to serve all parties by traditional means.

Electronically Filed
12/1/2025 12:03 PM
Steven D. Grierson
CLERK OF THE COURT

NEFF

DISTRICT COURT
CLARK COUNTY, NEVADA

DOMINICK ATKINS,

Petitioner,

vs.

STATE OF NEVADA; ET AL.,

Respondent,

Case No: A-25-927708-W

Dept No: XXVII

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

PLEASE TAKE NOTICE that on November 26, 2025, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on December 1, 2025.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Shaun Salcedo
Shaun Salcedo, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 1 day of December 2025, I served a copy of this Notice of Entry on the following:

☑ By e-mail:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☑ The United States mail addressed as follows:
Dominick Atkins # 1287120
P.O. Box 1989
Ely, NV 89301

/s/ Shaun Salcedo
Shaun Salcedo, Deputy Clerk

Electronically Filed
11/26/2025 1:15 PM
CLERK OF THE COURT

FCCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565
ANN DUNN
Chief Deputy District Attorney
Nevada Bar #14511
200 Lewis Avenue
Las Vegas, NV 89155
PH: (702) 671-2500
FAX: (702) 868-2412
DAInfo@clarkcountydanv.gov
Attorney for the Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

DOMINICK ATKINS,
#7133700,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: **A-25-927708-W**
C-24-381434-1

DEPT NO: **XXVII**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: **NOVEMBER 13, 2025**
TIME OF HEARING: **9:30 AM**

THIS CAUSE having presented before the Honorable ERIKA MENDOZA, District Judge, on the 13th day of November, 2025; Petitioner not present, IN PROPER PERSON; Respondent represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ALEXANDER E. QUAGGE, Deputy District Attorney; and having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

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FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On March 14, 2024, Dominick Atkins (hereinafter "Petitioner") was charged by way of Amended Information with ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category B Felony).

On March 19, 2024, Petitioner was arraigned, and he pleaded guilty pursuant to a Guilty Plea Agreement, which was filed that same day. The terms of the Guilty Plea Agreement stipulated to a sentence of three (3) to ten (10) years in the Nevada Department of Corrections, contingent to the Court accepting the negotiation.

On June 10, 2024, Petitioner filed a Motion to Modify Terms of House Arrest, requesting to travel to California for a funeral. On June 18, 2024, the District Court granted the motion.

On July 23, 2024, Petitioner was adjudged guilty, ordered to pay a variety of fees, and sentenced to a minimum of THREE (3) years and a maximum of TEN (10) years in the Nevada Department of Corrections (NDC) with ONE HUNDRED SEVENTY (170) DAYS credit for time served. The Court ordered a special sentence of Lifetime Supervision imposed to commence upon release from any term of probation, parole, or imprisonment, with Petitioner required to register as a sex offender within 48 hours upon release in accordance with NRS 179D.460.

On September 20, 2024, the Judgment of Conviction was filed.

On September 10, 2025, Petitioner filed the instant Petition for Writ of Habeas Corpus (hereinafter "Petition"). On October 16, 2025, the State filed its Response to Atkins' Petition for Writ of Habeas Corpus (Post-Conviction). On November 13, 2025, the Court denied the Petition. The Court stated its Findings, Conclusions, and Order based on the written pleadings, which are as follows:

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FACTS

The District Court relied on the following synopsis from the Presentence Investigation Report when sentencing Petitioner:

> On September 23, 2023, officers received a child molestation report from minor victim #1's (DOB: 12-30-09) mother. Her mother reported that her son had walked in on the defendant Dominick Rolland Atkins hovering over victim #1 in a sexual manner. It was later determined that minor victim #2 (DOB: 12-13-10) had disclosed the defendant had sexually abused her a year prior but the victims' mother did not have anything to make her believe victim #2 was telling the truth.
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> An interview with victim #1 was conducted. She told officers that the defendant had returned to her home with food for her and her brother. She was in her mother's bedroom sitting on the bed when the defendant came into the room and pushed her back on the bed, pinning her arms. He then pulled his penis out the top of his shorts and pulled down her shorts. Mr. Atkins then pulled her underwear to the side and inserted his penis into her vagina for a few seconds. The victims' brother walked into the room and the defendant quickly pulled up his pants. Victim #1 recalled the physical touch of the defendant's penis on her vagina as it was her first time and it hurt
>
> Officers interviewed victim #2. She told officers that approximately two or three years ago after walking Fremont with her family they returned to their apartment. She and the defendant were laying down on her mother's bed under the covers while her sister was on the floor. While lying there the defendant put his hand down victim #2's pants and began rubbing her vagina over her underwear. She recalled this occurring for approximately one minute until she pushed the defendant away and went to her room. She attempted to disclose the incident to her mother, but her mother confronted her with the defendant via Facetime. Mr. Atkins cried and denied the allegations on the Facetime call. Victim #2 went back to her room and cried because no one believed her.
>
> Officers spoke with the victims' brother. He told officers he had gone to say hello to the defendant when he walked in and saw him standing over victim #1 with an erection. He noticed victim #1 was pinned down by the defendant and appeared to look nervous. He recalled the defendant apologizing and asked to speak to their mother about the situation. When he asked the defendant what he was doing, the defendant asked for forgiveness and admitted he was wrong.
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> The victims' mother told officers that the defendant had been attempting to contact her. He threatened to get intoxicated and run his car off a cliff. He admitted to her what he had done was wrong and that he would turn himself in, once he submitted his retirement in California.

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> On October 8, 2023, officers conducted a traffic stop on a speeding vehicle. A records check revealed that defendant had a warrant for his arrest. Mr. Atkins was arrested and transported to the Clark County Detention Center where he was booked accordingly.

Presentence Investigation Report, prepared June 24, 2024, pg. 4-5.

ANALYSIS

I. PETITIONER IS NOT ENTITLED TO PRESENTENCE CREDIT FOR TIME SERVED FROM HOUSE ARREST.

NRS 176.055 governs the award of presentence credit for time served; specifically, subsection 1 provides that:

> 1. Except as otherwise provided in subsection 2, whenever a sentence of imprisonment in the county jail or state prison is imposed, the court may order that credit be allowed against the duration of the sentence, including any minimum term or minimum aggregate term, as applicable, thereof prescribed by law, for the amount of time which the defendant has *actually spent in confinement before conviction*, unless the defendant's confinement was pursuant to a judgment of conviction for another offense. Credit allowed pursuant to this subsection does not alter the date from which the term of imprisonment is computed.

(Emphasis added).

A defendant is **not** entitled to presentence credit for time spent on house arrest or electronic monitoring. State v. Second Jud. Dist. Ct. ex rel. Cnty. of Washoe, 121 Nev. 413, 418–19, 116 P.3d 834, 837 (2005) ("house arrest does not constitute time "actually spent in confinement" for which the duration of a sentence may be credited"). The Nevada Supreme Court noted that even though the appellant-defendant was restricted by imposition of house arrest, this confinement was not equivalent to incarceration in county jail. Id. at 418. Specifically, the appellant was "free to leave her home on advance notice for matters such as grocery shopping, employment, laundry, medical appointments, counseling, and court appearances." Id. The Court highlighted that appellant "was even permitted to travel to California to get married" and "allowed to reside in her own home and enjoy all of its comforts." Id. Thus, house arrest was characterized as "merely a reasonable condition imposed upon [her] release on bail." Id.

Here, Petitioner argued that his confinement is unconstitutional because his attorney failed to inform the Court at sentencing that Petitioner had "high level house arrest confinement credits in the amount of 121 days or 4 months." Petition at 5. Specifically, Petitioner claimed that "defense counsel said he would get credit for the high level house arrest confinement time, which counsel did not [talk] about at sentencing in order that [Petitioner] would receive all the credits that is available to him at the time." Petition at 5. This underlying claim of entitlement to credit for time served based on house arrest is not permissible under Nevada law.

Like the defendant in State v. Second Jud. Dist., Petitioner enjoyed the comforts of residing at his own home under house arrest while released on bail. Petitioner indicated that he had to "give notice in advance for matters such as grocery shopping, employment, laundry, medical appointments, counseling, and court [appearances]." Petition at 6. Petitioner would not have been allowed to do many of these things if he was confined at the Clark County Detention Center. Also, similar to the defendant in Second Jud. Dist., Petitioner was granted specific permission by the Court to cross state lines to attend his brother's funeral. See Motion to Modify House Arrest, filed 06/10/24; see also Motion, filed 06/18/2024. Any referenced house arrest restrictions were a reasonable condition imposed upon Petitioner, who had been released on bail. See Criminal Bindover – Confidential, filed 03/14/2024.

Petitioner is not entitled to credit for time served based on house arrest under Nevada law. Therefore, the Court denies this claim.

II. COUNSEL WAS NOT INEFFECTIVE FOR NOT MAKING A FUTILE MOTION FOR ADDITIONAL CREDIT FOR TIME SERVED AT SENTENCING.

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).

Counsel cannot be ineffective for failing to make futile objections or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does not mean that the court should "second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against

allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Id. To be effective, the constitution "does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade." United States v. Cronic, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

"There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." Strickland, 466 U.S. at 689, 104 S. Ct. at 689. "Strategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Strategic decisions—including whether to hire an expert—are entitled to a "strong presumption" of reasonableness. Dunn v. Reeves, 141 S. Ct. 2405, 2410 (2021). Even if there is reason to think that counsel's conduct "was far from exemplary," a court still may not grant relief if "[t]he record does not reveal" that counsel took an approach that no competent lawyer would have chosen. Id.

Even if a defendant can demonstrate that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89, 694, 104 S. Ct. at 2064-65, 2068).

The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked"

allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant part, "[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed." (emphasis added).

When a conviction is the result of a guilty plea, a defendant must show that there is a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687-89, 694, 104 S. Ct. at 2064–65, 2068). Ultimately, while it is counsel's duty to candidly advise a defendant regarding a plea offer, the decision of whether or not to accept a plea offer is the defendant's. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163 (2002).

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counsel's not making the argument that house arrest counting toward credit for time served is unfounded.

Petitioner failed to show deficiency of counsel or subsequent prejudice. Because counsel cannot be ineffective for not making a futile argument, Petitioner has failed to show that counsel's performance was deficient, and therefore the Petition is denied.

III. PETITIONER IS NOT ENTITLED TO THE APPOINTMENT OF COUNSEL OR AN EVIDENTIARY HEARING

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(Emphasis added). The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that "[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to hold an evidentiary hearing simply to make a complete record. See State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) ("The district court considered itself the 'equivalent of . . . the trial judge' and consequently wanted 'to make as complete a record as possible.' This is an incorrect basis for an evidentiary hearing.").

Further, the United States Supreme Court has held that an evidentiary hearing is not required simply because counsel's actions are challenged as being unreasonable strategic decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge post hoc rationalization for counsel's decision-making that contradicts the available evidence of counsel's actions, neither may they insist counsel confirm every aspect of the strategic basis

for his or her actions. Id. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Id. (citing Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the *objective* reasonableness of counsel's performance, not counsel's *subjective* state of mind. 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

Here, Petitioner seeks the appointment of counsel to assist him with an evidentiary hearing. Petition at 8. However, this Petition is suitable only for summary denial. Petitioner is not entitled to credit for time served from presentence house arrest, and he failed to show ineffective assistance of counsel for failing to make this futile argument.

Indeed, his Petition does not present difficult issues and leaves nothing to consider, because his sole complaint is not permissible under Nevada Law. Though Petitioner argues that he "is unlearned and unfamiliar with the complexities of Nevada State law," he clearly understands these proceedings enough to cite Nevada statutes and present a timely petition to this Court. Petition at 8. Moreover, he has failed to show he is unable to comprehend the proceedings. Finally, there is no need for additional discovery in this case. Therefore, his request for counsel is denied.

Similarly, Petitioner has failed to establish he is entitled to an evidentiary hearing. His sole complaint against his attorney is something his attorney could not have asked for under Nevada law. There is no need to expand the record on this purely legal question, and Petitioner's request for an evidentiary hearing is denied.

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ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus shall be and is DENIED.

Dated this 26th day of November, 2025

Erika Mendoza

7FE E30 8BBC 7047
Erika Mendoza
District Court Judge

STEVEN B. WOLFSON
DISTRICT ATTORNEY
Nevada Bar No.1565

BY */s/ Alexander E. Quagge*
ALEXANDER E. QUAGGE
Deputy District Attorney
Nevada Bar #13938

hjc/SVU

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Dominick Atkins, Plaintiff(s)	CASE NO: A-25-927708-W
vs.	DEPT. NO. Department 27
State of Nevada, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

Electronic service was attempted through the Eighth Judicial District Court's electronic filing system, but there were no registered users on the case. The filer has been notified to serve all parties by traditional means.

Electronically Filed
12/15/2025 2:24 PM
Steven D. Grierson
CLERK OF THE COURT

Case No A-25-927708-W Dept No XV

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF Clark

Dominick Atkins

Petitioner Plaintiff,

vs.

State of Nevada

Respondent Defendant.

NOTICE OF APPEAL

Notice is hereby given that Dominick Atkins, Petitioner Defendant above named, hereby appeals to the Court of Appeals for the State of Nevada from the final judgment order(of Denial of Petition for writ of Habeas Corpus

Entered in this action on the 4th day of December, 2025

Dated this 4th day of December, 2025.

Dominick Atkins

NDOC # 1287120
Appellant Pro Per
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

CERTIFICATE OF SERVICE BY MAIL

I, Dominick Atkins, hereby certify pursuant to Rule 5(b) of the NRCP, that on this 4th day of December, 20 25, I served a true and correct copy of the above-entitled Notice of Appeal postage prepaid and addressed as follows:

200 Lewis Avenue 3rd Flr
Las Vegas NV 89155 Unc
Clerk of the Court

Clark County District Attorneys Office
330 S. Third St.
Las Vegas, NV. 89101

Signature Dominick Atkins

Print Name Dominick Atkins
Ely State Prison
P O Box 1989
Ely, Nevada 89301-1989

AFFIRMATION PURSUANT TO NRS 239B.030

I, Dominick Atkins, NDOC# 1287120,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE

ATTACHED DOCUMENT ENTITLED Notice of appeal

,

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY

PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 4th DAY OF December, 20 25.

SIGNATURE: Dominick Atkins

INMATE PRINTED NAME: Dominick Atkins

INMATE NDOC # 1287120

INMATE ADDRESS: ELY STATE PRISON
P. O. BOX 1989
ELY, NV 89301

Donald [illegible] 1287128 7827
EL[illegible] Prison
P.O. Box [illegible]
EL[illegible]

LAS VEGAS NV 890
11 DEC 2025 PM 5 L



Clerk of the Court
200 Lewis Avenue 3rd Floor
Las Vegas NV 89155

89101-630000

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ELY STATE PRISON
DEC 09 2025
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12/16/2025 1:37 PM
Steven D. Grierson
CLERK OF THE COURT

ASTA

District Court Case No: A-25-927708-W

Dept No: XXVII

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

DOMINICK ATKINS,

Plaintiff(s),

vs.

STATE OF NEVADA; WARDEN OF ELY,

Defendant(s),

CASE APPEAL STATEMENT

1. Name of appellant(s) filing this case appeal statement:
   Dominick Atkins

2. Identify the judge issuing the decision, judgment or order appealed from:
   Erika Mendoza

3. Identify each appellant and the name and address of counsel for each appellant. If an appellant(s) is self-represented, identify the name and address of appellant(s):

   Dominick Atkins

   Dominick Atkins #1287120
   P.O. Box 1989

Ely, NV 89301

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel). For self-represented respondents, identify the name and address of each respondent:

State of Nevada

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

Warden of Ely

Unknown

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the District Court granted that attorney permission to appear under SCR 42: **N/A**

6. If appellant was represented by counsel in the District Court, indicate whether counsel was ☐ appointed or ☐ retained or ☒ N/A

7. If appellant is represented by counsel on appeal, is counsel ☐ appointed or ☐ retained or ☒ N/A

8. Has appellant been granted leave to proceed informa pauperis?

☐ Yes: identify the date of entry of the District Court order granting such leave:
(copy of order to follow by mail)
***Expires 1 year from date filed*

☒ No: Has appellant filed an application to proceed in forma pauperis?
☒ No.
☐ Yes: identify date the application was filed:

If application was denied, indicate date of order denying:
(copy of order to follow by mail.)

9. Indicate the date the proceedings commenced in the District Court (e.g., date complaint, indictment, information, or petition was filed): **September 10, 2025**

10. Provide a brief description of the nature of the action and result in the District Court, including the type of judgment or order being appealed and the relief granted by the District Court: **Civil Writ of Habeas Corpus**

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court or Court of Appeals and, if so, the caption and appellate court docket number of the prior proceedings:

Docket No.	**Case Caption**
N/A	N/A

12. Does this appeal raise issues involving child custody, the guardianship of a minor, parenting time, or visitation?
☐ Yes: Is this the primary issue on appeal? ☐ Yes ☐ No
☒ No

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement: **unknown**

Dated This 16 day of December 2025.

Steven D. Grierson, Clerk of the Court

/s/ Shaun Salcedo
Shaun Salcedo, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Dominick Atkins

Electronically Filed
01/05/2026 1:21 PM
CLERK OF THE COURT

OSCC

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * *

DOMINICK ATKINS, PLAINTIFF(S) VS. STATE OF NEVADA, DEFENDANT(S)	CASE NO.: A-25-927708-W DEPARTMENT 27

CIVIL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,

IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Default Judgment
- ☐ Judgment on Arbitration
- ☐ Stipulated Judgment
- ☒ Summary Judgment
- ☐ Involuntary Dismissal
- ☐ Motion to Dismiss by Defendant(s)
- ☐ Stipulated Dismissal
- ☐ Voluntary Dismissal
- ☐ Transferred (before trial)
- ☐ Non-Jury – Disposed After Trial Starts
- ☐ Non-Jury – Judgment Reached
- ☐ Jury – Disposed After Trial Starts
- ☐ Jury – Verdict Reached
- ☐ Other Manner of Disposition

Dated this 5th day of January, 2026

Erika Mendoza

948 EE2 AF8A 5746
Erika Mendoza
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Dominick Atkins, Plaintiff(s)	CASE NO: A-25-927708-W
vs.	DEPT. NO. Department 27
State of Nevada, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order to Statistically Close Case was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 1/5/2026

Steven Wolfson	motions@clarkcountyda.com

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	COURT MINUTES	November 13, 2025

A-25-927708-W Dominick Atkins, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

November 13, 2025 **9:30 AM** **Petition for Writ of Habeas Corpus**

HEARD BY: Mendoza, Erika **COURTROOM:** RJC Courtroom 05A

COURT CLERK: Rebecca Plunkett

RECORDER: Brynn White

REPORTER:

PARTIES PRESENT: Quagge, Alexander E Attorney

JOURNAL ENTRIES

- COURT STATED ITS FINDINGS AND ORDERED, Petition for Writ of Habeas Corpus DENIED pursuant to statute cited by the court.

CLERK'S NOTE: A copy of this Minute Order was mailed to: Dominick Atkins #1287120, Ely State Prison, P.O. Box 1989, Ely, NV, 89301. rp/ 11/17/25

Certification of Copy and Transmittal of Record

State of Nevada
County of Clark } **SS:**

Pursuant to the Supreme Court order dated December 30, 2025, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 67.

DOMINICK ATKINS,

Plaintiff(s),

vs.

STATE OF NEVADA; WARDEN OF ELY,

Defendant(s),

Case No: A-25-927708-W

Dept. No: XXVII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 16 day of January 2026.

Steven D. Grierson, Clerk of the Court

/s/ Cierra Borum
Cierra Borum, Deputy Clerk