

LESTER L. TELLIS
 Name
24522
 Prison Number
ECP STATE PRISON
 Place of Confinement

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
JUN 25 2010	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: <u>WJM</u>	DEPUTY

Copy Ret'd

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LESTER L. TELLIS, Petitioner,)
 (Full Name))
 vs.)
BILL DONAT, Respondent,)
 (Name of Warden, Superintendent, jailor or)
 authorized person having custody of petitioner))
 and)
The Attorney General of the State of Nevada)

3:10-cv-00387

CASE NO. _____
 (T _____ Clerk)

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

- Name and location of court, and name of judge, that entered the judgment of conviction you are challenging: NOT CHALLENGING CONVICTION. CHALLENGING PRISON DISCIPLINARY HEARING.
- Full date judgment of conviction was entered: 03/27/08. (month/day/year)
- Did you appeal the conviction? Yes ___ No. Date appeal decided: 06/06/08.
- Did you file a petition for post-conviction relief or petition for habeas corpus in the state court? Yes ___ No. If yes, name the court and date the petition was filed: SEVENTH JUDICIAL DISTRICT, WHITE PINE COUNTY 05/09/08. Did you appeal from the denial of the petition for post-conviction relief or petition for writ of habeas corpus? Yes ___ No. Date the appeal was decided: 03/02/10. Have all of the grounds stated in this petition been presented to the state supreme court? Yes ___ No. If no, which grounds have not? _____
- Date you are mailing (or handing to correctional officer) this petition to this court: ___ / ___ / ___.
Attach to this petition a copy of all state court written decisions regarding this conviction.

6. Is this the first federal petition for writ of habeas corpus challenging this conviction? Yes
 ___ No. If no, what was the prior case number? N/A. And in what court was
 the prior action filed? N/A

Was the prior action ___ denied on the merits or ___ dismissed for procedural reasons (check
 one). Date of decision: ___/___/____. Are any of the issues in this petition raised in the
 prior petition? ___ Yes ___ No. If the prior case was denied on the merits, has the Ninth
 Circuit Court of Appeals given you permission to file this successive petition? ___ Yes ___ No.

7. Do you have any petition, application, motion or appeal (or by any other means) now pending in
 any court regarding the conviction that you are challenging in this action? ___ Yes No.
 If yes, state the name of the court and the nature of the proceedings: N/A

8. Case number of the judgment of conviction being challenged: N/A

9. Length and terms of sentence(s): 18 months Dis. Sent + Loss 450 days Credits.

10. Start date and projected release date: _____

11. What was (were) the offense(s) for which you were convicted: MT-19 - Sexual Assault,
 MT-25 - Threats; and, MT-30 - Sexually Stimulating Activity.

12. What was your plea? ___ Guilty Not Guilty ___ Nolo Contendere. If you pleaded guilty
 or nolo contendere pursuant to a plea bargain, state the terms and conditions of the agreement:
N/A

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

	Name of Attorney	Appointed	Retained	<i>Pro se</i>
arraignment and plea	_____	___	___	___
trial/guilty plea	_____	___	___	___
sentencing	_____	___	___	___
direct appeal	_____	___	___	___
1st post-conviction petition	_____	___	___	___
appeal from post conviction	_____	___	___	___
2nd post-conviction petition	_____	___	___	___
appeal from 2nd post-conviction	_____	___	___	___

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

GROUND 1

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my SIXTH and FOURTEENTH Amendment right to the U.S. Constitution, based on these facts:

A. THE PROCEDURES FOLLOWED BY NEVADA STATE PRISON IN CARSON CITY, DENIED PETITIONER OF COUNSEL REQUIRED BY THE SIXTH AND FOURTEENTH AMENDMENT, UNLAWFUL IMPRISONMENT HIS DUE-PROCESS OF LAW.

On the date of 1-18-2008, CCS Anita Habberfield approached AWO Watson with an anonymous Kite that was placed under her Office door in Unit 9. The kite stated that Lester Tellis was in D-Wing taking a shower with Shawn Jacobson, the previous day. The kite wanted to allude that Petitioner was having sexual intercourse with Shawn Jacobson. The allegation kite stated that they had also had sex in the room with the door window covered up. (See Notice of Charges, Exhibit # 1.)

On 1-28-2008 there was a disciplinary hearing of the charges: M-T 19- sexual assault, M-T 25- Threats; and, M-T 30, Sexually Stimulating Activities. Petitioner was found guilty of all charges and Petitioner was sentenced to: 18 months of Disciplinary Segregation/lockup in Unit 13

Exhaustion of state court remedies regarding Ground 1:

and loss of Commissary for 60 days;
loss of Phone for 30 days (see, Exhibit # 1-A);
and a referral for loss of Stat time
credits. (See, Exhibit # 1-B).

Petitioner requested a review of
the taped hearing for purpose of the
appeal dated 1-30-2008. (See, Exhibit
1-C).

On 2-22-2008, Warden Bitt Donat
upheld the Grievance (See, Exhibit # 1-C)
because hearing officer Branham, denied
Petitioner of counsel and witnesses. (See,
Exhibit # 1-D).

On March 27, 2008, a Disciplinary was
held by officer: Adolph Stankus. (See,
Exhibit # 2).

Petitioner was suppose to have his
Disciplinary Rehearing within 30 days from
the date the appeal was upheld. Yet,
it was held in 35 days, 5 days late.

Petitioner was never notified in writing
nor at the disciplinary rehearing who the
person was that wrote the anonymous
kite, or why he didn't tell the
housing officer that Petitioner was in

an unauthorized area, so that he (the officer) could be a witness, and have evidence that Petitioner was in an unauthorized area.

Every Unit wing has a camera with video footage. Petitioner was entitled to have that video footage showing him in D-wing, on 1-17-2008. And, he should be on video for the 5 or 6 times it was alleged that he had been in that wing over a 10 month period.

Petitioner requested a lie detector test for himself and the alleged victim Shaun Jacobson, to prove that he is innocent because he was in the gym all morning playing chess. That, he was in the gym all afternoon with his brother Capin Yellis and Phillip Myers, watching basketball until lock-up on that day, 1-17-2008.

On 1-22-2008 Petitioner asked for DNA test when he learned he was being accused of having raped someone on 1-17-2008.

Petitioner also requested a DNA test from Medical on 1-31-2008. (See Exhibit 3(b))

#2-A). On 2-4-2008, Petitioner again wrote Medical about the DNA test. (See Exhibit # 2-B). And, also, on 4-1-2008, Petitioner wrote Medical about his blood, that was taken on 1-31-2008 for testing, what the outcome was. (See Exhibit # 2-C).

B. NEVADA STATE PRISON IN CARSON CITY DENIED PETITIONER OF HIS CONSTITUTIONAL RIGHT TO WITNESSES.

Petitioner has a conditional right to call witnesses to testify at a Disciplinary Hearing. Sec AR 207, 1.3.5.7, ~~AT~~ PAGE 11 of 31. Where it states, "if the inmate pleads 'not guilty' they shall be given a qualified opportunity to call witnesses in their own behalf."

AR 207, 1.3.5.7, AT page 12 of 31, said the Disciplinary Hearing Officer may take the testimony of any witness (employee or inmate) over the telephone, that has the capability for all present at the hearing to hear the questions and answers.

BOTH Hearing Officers denied Petitioner's

witnesses on the basis that all but one refused to testify, without allowing Petitioner to be present and hear their refusal.

A Court has held, Petitioner's right to call witnesses was not adequately protected... because the hearing officer's failure to personally communicate with witnesses, "to verify that they were refusing to testify or to ascertain their reason for refusing" See *Hill v. Selsky*, 19 A.D.3d 64, 995 N.Y.S.2d 494 (N.Y. Ct. App. Div. 3rd Dept. 2005).

The New York Supreme Court held that a prison disciplinary hearing officer erred in refusing to personally interview potential witnesses, the Court ordered expungement of all references to the disciplinary hearing proceedings and restoration of lost good time credits. *Id.* (See, Exhibit ~~F~~ H).

A Minnesota Court invalidates the "some evidence" standard of proof as inappropriate at the fact finding level. (See, *Carillo v. Fabian*, 701 N.W.2d 763 (Minn.

2005) and, (See, Exhibit # I).

C. NEVADA STATE PRISON IN CARSON CITY DOES NOT RESPOND IN TIME FRAME REQUIRED BY THE CONSTITUTION FOR DISCIPLINARY REHEARING.

ON 3-27-2008, AUGUST STANKUS, conducted a Disciplinary Hearing of Petitioner. That hearing was suppose to take place within 30 days from the date the appeal was granted. Yet, it was not held until 35 days later, and I was not notified in writing nor at the Hearing of the reason for the delay (See, AR 707 (04), a page 12 of 38, 1.3.4.1 and 1.3.4.2 (Charges shall be heard no later than 30 days)).

The Court is asked to find that N. S. P. subjected Petitioner to impermissible delay in bringing Petitioner before the disciplinary rehearing within the required time period, of 30 days. Based upon the violation of Petitioner's Sixth and Fourteenth Amendment

rights, to the U.S. Constitution, the conviction must be dismissed.

In Colorado, On Appeal, the Court agreed with Judge Kobowitz's findings on the use of C.I.'s, citing the oft-used *Mariani v. CDOC*, 956 P.2d 625 (Colo. App. 1997), in that both confidential testimony and confidential documents are subject to the same standards of reliability and procedures used.

Most importantly, regarding remedies, the Court sided with Judge Kobowitz in that the CDOC does not get "another bite at the apple" (quoted from his earlier district court rulings, in similar cases) when it violates prisoners' disciplinary rights. The appellate panel concluded that the specific CDOC language, which reads, "when a conviction is reversed on an appeal, or for administrative reasons, an expungement order shall be completed." (See Exhibit # J).

At the 3-27-2008 Rehearing, Petitioner pointed out that the "victim" was a psych patient, that he asked for

DNA testing, that he could not prove his innocence without it, and that charging employee AWO Adam Watson said they took both inmates to medical ~~on~~ the day after the incident, 1-18-2008, which never happened, because on 1-18-2008, Petitioner was taken to lock-up in Unit 13-A-32. Petitioner's blood was taken by a nurse in Unit 13, on 1-31-2008. (See, Exhibit # 2-A)

Petitioner has proof regarding the times and dates, if he has hepatitis + HCV. (See, Exhibit # 2-C) wouldn't the alleged victim, Shawn Jacobson, also have it if he did these immoral acts? AWO Watson alleged he investigated the claim made by the "anonymous kite" and it was determined that Lester Tellis had forced Shawn Jacobson into having sexual intercourse with him approximately 5 or 6 times over the course of the previous 10 months. Where did AWO Adam Watson get his so called information. It was never revealed to Petitioner nor was he asked about

any anonymous kite. (See, Exhibit #1)
Petitioner appealed his first level
grievance to the NDOC Director on
4-18-2008. On 6-6-2008, Director's
Office denied Petitioner's appeal.

Petitioner has three (3) written
Statements on his behalf, one of
which is from Todd C. Rogers # 32854
(See, Exhibit # 2-E). Another was
from Shawn Jacobson's roommate,
John Bowyer # 70163 (See, Exhibit
2-F). And, one from Steven
L. Hamilton # 94499. (See, Exhibit # 2-G).
Therefore, the conviction is voidable.

• **Direct Appeal:**

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

Yes ___ No. If no, explain why not: Disciplinary Appeal was made to prison officials through grievance procedure as required by AR 207

First Post Conviction:

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

Yes ___ No. If no, explain why not: N/A

If yes, name of court: 9th Jud, White Pine County date petition filed 05/09/08

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

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

• **Second Post Conviction:** N/A

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

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

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

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

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

• **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes ___ No. If yes, explain: Prison grievance procedures, Disc Hearing Of 1-28-2008 - No.

2006-26-78527) (Disc. Hearing of 3-27-2008 - No. 2006-27-04712).

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

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

GROUND 2

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

Exhaustion of state court remedies regarding Ground 2:

Direct Appeal:

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

Yes No. If no, explain why not: _____

▶ **First Post Conviction:**

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

Yes No. If no, explain why not: _____

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

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

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

▶ **Second Post Conviction:**

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

Yes No. If yes, explain why: _____

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

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

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

▶ **Other Proceedings:**

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

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

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

GROUND 3

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

Lined area for providing facts supporting Ground 3.

Exhaustion of state court remedies regarding Ground 3:

▸ Direct Appeal:

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

Yes No. If no, explain why not: _____

▶ **First Post Conviction:**

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

Yes No. If no, explain why not: _____

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

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

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

▶ **Second Post Conviction:**

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

Yes No. If yes, explain why: _____

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

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

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

▶ **Other Proceedings:**

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

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

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

Dexter Ellis
(Signature of Plaintiff)

6/20/2010
(Date)

(Signature of attorney, if any)

(Attorney's address & telephone number)

DECLARATION UNDER PENALTY OF PERJURY

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

Executed at _____ on _____
(Location) (Date)

Dexter Ellis
(Signature)

24522
(Inmate prison number)

ORIGINAL



Case No. HC-0809015

Dept No. 1

FILE
2009 MAY 19 PM 2:41

BY *K. Manzone*
DEPUTY

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

LESTER TELLIS,

Petitioner,

-vs-

BILL DONAT, Warden,

Respondent.

**ORDER DISMISSING PETITION
FOR WRIT OF HABEAS CORPUS**

On February 13, 2009, the Court entered an order granting Petitioner leave to supplement or amend his petition to allege and provide evidence that as a result of his disciplinary hearing he suffered a loss of good time. Since then Petitioner has filed various motions, but not provided the requested information. Without an adverse impact on a liberty interest, this proceeding merely challenges his condition of confinement, which is not permissible.¹

Good cause appearing,

¹Bowen v. Warden, 100 Nev. 489 (1984).

SEVENTH JUDICIAL DISTRICT COURT
STEVE L. DOBRESCU
DISTRICT JUDGE
DEPARTMENT 1
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



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2 IT IS HEREBY ORDERED that Petitioner's Petition for Writ of Habeas
Corpus is **DISMISSED**.

3 DATED this 19TH day of May, 2009.

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DISTRICT JUDGE

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SEVENTH JUDICIAL DISTRICT COURT
STEVE L. DOBRESCU
DISTRICT JUDGE
DEPARTMENT 1
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



IN THE SUPREME COURT OF THE STATE OF NEVADA

LESTER TELLIS,
Appellant,

vs.

WARDEN, NEVADA STATE PRISON,
BILL DONAT,
Respondent.

No. 54010

FILED

DEC 11 2009

FRANIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

We have reviewed the record on appeal and we conclude that the district court did not err in dismissing appellant's petition for the reasons stated in the attached order. Therefore, briefing and oral argument are not warranted in this case. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

[Signature: Cherry]

Cherry J.

[Signature: Saitta]

Saitta J.

[Signature: Gibbons]

Gibbons J.

cc: Hon. Steve L. Dobrescu, District Judge
Lester Lee Tellis
Attorney General Catherine Cortez Masto/Ely
White Pine County Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

LESTER TELLIS,
Appellant,
vs.

WARDEN, NEVADA STATE PRISON, BILL DONAT,
Respondent.

Supreme Court No. 54010

District Court Case No. HC0809015

REMITTITUR

TO: JoAnn Malone, White Pine County Clerk

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

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

DATE: March 2, 2010

Tracie Lindeman, Clerk of Court

By: *A. Inoop*
Deputy Clerk

cc (without enclosures):
Hon. Steve L. Dobrescu, District Judge
Attorney General/Ely
Lester Lee Tellis

RECEIPT FOR REMITTITUR

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

County Clerk

10-04665

ORIGINAL



Case No. HC-0809015

Dept No. 1

FILE

2009 MAY 19 PM 2:41

ADMITTED TO CLERK
BY K. Manjome
DEPUTY

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-vs-

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Good cause appearing,

¹Bowen v. Warden, 100 Nev. 489 (1984).

SEVENTH JUDICIAL DISTRICT COURT
STEVE L. DOBRESCU
DISTRICT JUDGE
DEPARTMENT 1
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



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3 DATED this 19TH day of May, 2009.

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DISTRICT JUDGE

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SEVENTH JUDICIAL DISTRICT COURT
STEVE L. DOBRESCU
DISTRICT JUDGE
DEPARTMENT 1
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



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BILL DONAT,
Respondent.

No. 54010

FILED

DEC 11 2009

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CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

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ORDER the judgment of the district court AFFIRMED.

[Signature: Cherry]
_____, J.
Cherry

[Signature: Saitta]
_____, J.
Saitta

[Signature: Gibbons]
_____, J.
Gibbons

cc: Hon. Steve L. Dobrescu, District Judge
Lester Lee Tellis
Attorney General Catherine Cortez Masto/Ely
White Pine County Clerk

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