

In the Supreme Court of the State of NEVADA

FRANK M. PECK,  
Appellant,  
v.

DC CASE NO. CR-96-P-2687  
Dept No. 6  
Docket No. ~~60878~~

The Second Judicial District Court  
of the State of NEVADA in and for  
the County of WASHOE; and the  
Honorable Brent T. Adams, District  
Judge, Respondents,  
And  
The State of NEVADA,  
Real Party in Interest.

**FILED**

JUL 03 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY DEPUTY CLERK

Petition for Writ of Mandamus

Comes now, the Appellant, FRANK M. PECK in proper person, hereinafter Mr. PECK respectfully moves this Honorable Court for a Writ of Mandate. NRS 34.150, 34.160, 34.170.

This Petition is made and based upon ALL PAPERS AND PLEADINGS ON FILE IN THIS CASE AS WELL AS THE ATTACHED POINTS AND AUTHORITIES AND AFFIDAVIT OF MR. PECK.

*Frank Peck*  
FRANK M. PECK in proper

RECEIVED  
DATE JUL 24, 2012  
JUL 02 2012  
TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

## Points AND Authorities

### Statement of Facts AND Procedural History

This Honorable Court Ordered the District Court to file findings of fact AND conclusions of law in its' April 16, 2012 Order Granting Petition for Writ of Mandamus. No. 60040.

On May 3, 2012 the lower court filed findings of fact AND conclusions of law AS ordered by this court. However, the District Court failed to address Mr. Peck's claims of ineffective Trial AND Appellate counsel mentioned in the lower courts February 10, 2012 Order.

"Mr. Peck's ineffective ASSISTANCE of Trial AND Appellate counsel claims mentioned in the lower courts February 10, 2012 Order ARE 'part AND parcel' of Mr. Peck's August 7th, 2008 Petition AND therefor should have BEEN included in the lower courts Findings of Fact AND conclusions of LAW filed ON MAY 3, 2012."

## LEGAL Argument

This writ shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It shall be issued upon affidavit, on the application of the party beneficially interested. NRS 34.170. Smith v. Eighth Judicial Dist Court ex rel. County of Clark, 107 Nev. 674, 818 P.2d 849, 1991 Nev. Lexis 159 (1991).

Writ of mandamus is available to control an arbitrary or capricious exercise of discretion. Such as the omission of Mr. Peck's ineffective assistance of counsel claims in the District Court's Order of May 3, 2012. Brewery Arts Ctr. v. State Bd. of Exmrs., 108 Nev. 1050, 843 P.2d 369, 1992 Nev. Lexis 196 (1992); Levinson v. Eighth Judicial Dist. Court ex rel. County of Clark, 109 Nev. 747, 857 P.2d 18, 1993 Nev. Lexis 110 (1993); Mays v. Eighth Judicial Dist. Court ex rel. County of Clark, 111 Nev. 1172, 901 P.2d 639, 1995 Nev. Lexis 122 (1995); Crotcher v. Eighth Judicial Dist. Court, 111 Nev. 1286, 903 P.2d 823, 1995 Nev. Lexis 144 (1995); Salaiscooper v. Eighth Judicial Dist. Court, 117 Nev. 892, 34 P.3d 509, 2001 Nev. Lexis 79 (2001).

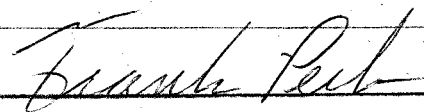
Mr. Peck has a clear right to have his ineffective assistance of counsel claims included in the District Courts findings of fact and conclusions of law that was filed on May 3, 2012. State ex rel. Coburn v. Mack, 26 Nev. 85, 63 P. 1125, 1901 Nev. Lexis 1 (1901); State ex rel. Blake v. Daugherty, 48 Nev. 299, 231 P. 384 (1924).

### Conclusion

Therefore, for these reasons this Honorable Court should Grant the instant Petition and Order the lower court to file findings of fact and conclusions of law on Mr. Peck's ineffective assistance of counsel claims that were dismissed in the lower courts February 10th, 2012 Order.

Dated this 24th day of June 2012.

Respectfully Submitted



Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV. 89070

Appellant in pro per

State of NEVADA ss  
County of Clark ss Affidavit of Frank M. Peck

I Frank M. Peck do hereby swear under penalty of perjury that:

1. I Am the Appellant in Nevada Supreme Court CASE NO. 60878.

2. All assertions in the attached Petition for Writ of Mandamus are true based upon personal knowledge and i am competent to testify to all matters contained therein.

3. The Petition for Writ of Mandamus is brought in good faith and for no improper reason.

4. Mr. Peck believes he is entitled to findings of fact and conclusions of law regarding his ineffective assistance of counsel claims as a matter of law.

Dated this 24th day of June 2012.

Signed under penalty of perjury NRS 208.165 & 28 USC § 1746.

*Frank Peck*

FRANK M. PECK 57106

HDSP Box 650

Indian Springs, NV. 89070

Appellant in pro per

## Certificate of service and Affirmation

Pursuant to NRS 239B.030 the Attached Petition for Writ of Mandamus does not contain social security numbers of any person and a true and correct copy was mailed this date to:

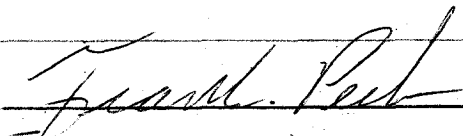
Attorney General  
100 N. Carson Street  
Carson City, NV. 89701

DDA Terrance McCarthy Esq.  
75 Court Street  
Reno, NV. 89501

Brent T. Adams, Dist Judge.  
75 Court Street  
Reno, NV. 89501

Dated this 27th day of June 2012.

Signed under penalty of perjury NRS 208.165<sup>3</sup>; 28 USC § 1746.

  
FRANK M. PECK 57106  
HDSP Box 650  
Indian Springs, NV. 89070  
Appellant in pro per.