

IN the Supreme Court of the State of Nevada

FRANK M. PECK

Petitioner / Plaintiff,

v.

The Second Judicial District

Court of the State of Nevada. In and

For the County of Washoe

Respondent / Defendant,

CASE No. CR-06-2580

Dept No. 6

Docket No. ~~54168~~

54875

FILED

NOV 04 2009

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

Petition for Writ of MANDAMUS

Comes Now, Petitioner / Plaintiff, Frank M. Peck, proper, respectfully moves this Honorable Court to issue a Petition for Writ of MANDAMUS directing the lower Court to address and rule on Petitioner / Plaintiff's post-trial Motions so Petitioner's appellate Counsel can raise respective issues on Direct Appeal.

This Motion is made and based pursuant to the supporting points and authorities attached hereto, NRS 34.150 through NRS 34.310, NRAP. rule 21, as well as all papers, pleadings and documents on file herein.

RECEIVED
NOV 04 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

09-26956

Points and Authorities

Statement of Facts

ON November 8, 2006 Petitioner WAS indicted for Count 1 Sexual Assault.

ON May 1, 2009 the district Court granted Petitioner's Motion to proceed prose.

ON May 12, 2009 Petitioner WAS convicted.

BETWEEN May 12, 2009 AND July 12 2009, Petitioner filed numerous Motions Prior to sentencing.

Motions that petitioner has filed ARE integral to petitioners Direct Appeal AND require attention and disposition prior to Direct Appeal.

Petitioner has filed, among other Motions, for waiver for failure to object to DNA Evidence and Motion to Compel release of information to Defendant regarding DNA Expert and investigator AS Defendant has right to know what involvement, if any, these individuals had with his case.

LEGAL ARGUMENT

As of this writing the District Court has NOT Addressed ANY of Petitioners Motions or the States Response to Defendants Motions.

A writ of mandamus may issue to contrall arbitrary or capricious exercise of discretion, SEE BAINES V. Eighth Jud Dist. Court 748 P2d 483, 103 NEV. 679 (1987).

A writ of Mandamus is issued to compel performance of an act which the Law especially enjoins as a duty resulting from an office, trust or station, SEE LEWIS V. STEWART 619 P2d 1212, 96 NEV 846 (1980).

It has also been held that a writ of Mandamus is proper when the Petitioner RAISES URGENT AND important issues of Law requiring clarification by the Supreme Court SEE FALCKE V. Douglas County 3 P3d 661 NEV (2000).

This Court has also held that the action being sought to be compelled must be one already required by Law. SEE MINERAL COUNTY V. STATE DEPT. OF CONSERVATION AND NATURAL RESOURCES, 20 P3d 800, NEV (2001).

CONCLUSION

PETITIONER VOLUNTARILY GIVES AND PRAYS THAT THIS COURT WILL EXERCISE ORIGINAL JURISDICTION UNDER NRS 34.320, 34.330, 34.160 AND 34.170 AND COMPEL THE LOWER COURT TO ADDRESS AND RULE ON PETITIONER'S MOTIONS AS REQUIRED BY LAW. SO PETITIONER CAN BRING RESPECTIVE ISSUES ON DIRECT APPEAL.

DATED THIS 31ST DAY OF OCTOBER 2009.

Frank Peck Prose

Certificate of Service / Affirmation

PURSUANT TO NRS 239.B.030 AND NRCP 5(B) THAT I AM THE PETITIONER IN THE FOREGOING PETITION FOR WRIT OF MANDAMUS AND THAT ON THIS 31ST DAY OF OCTOBER 2009 MAILED A TRUE AND CORRECT COPY THAT DOES NOT CONTAIN SOCIAL SECURITY NUMBERS OF ANY PERSON TO:

District Attorney
75 Court St
Reno, NV. 89501

FRANK PECK PROSE
PETITIONER

**SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

FRANK MILFORD PECK,
Petitioner,

vs.

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.

Supreme Court No. 54875

District Court Case No. CR062580

RECEIPT FOR DOCUMENTS

TO: Brent T. Adams , District Judge
Frank Milford Peck #57106
Attorney General Catherine Cortez Masto/Carson City and Catherine
Cortez Masto, Attorney General
Washoe County District Attorney Richard A. Gammick and Gary H.
Hatlestad, Deputy District Attorney

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

11/04/09 Filing Fee Waived: Criminal.

11/04/09 Filed Proper Person Petition for Writ.
Petition for Writ of Mandamus.

DATE: November 04, 2009

Tracie Lindeman, Clerk of Court