IN THE SUPREME COURT OF THE STATE OF NEVADA

SIAOSI VANISI,

Petitioner,

v.

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE, AND THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE,

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

_____/

No. 45061

FILED

APR 18 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
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DEPUTY CLERK

RESPONSE TO "EMERGENCY MOTION FOR STAY OF LOWER COURT PROCEEDINGS"

Petitioner Vanisi has filed a petition for writ of mandamus, seeking an order compelling the district court to indefinitely stay the post-conviction habeas corpus action that Vanisi himself initiated. In conjunction with that petition, Vanisi has filed an "emergency" application for an order staying the proceedings pending resolution of the mandamus action. The State notes that the "emergency" arose on March 14, 2005, nearly a month before the mandamus action was filed. The hearing on the post-conviction habeas corpus action is currently scheduled for May 2, 2005. The State has no way of predicting if Vanisi will attempt to avoid that date.

The State will respond to the mandamus petition when (and if) directed to do so by this Court. This pleading is merely a response to application for a stay.

The basis of the mandamus petition and the motion for a stay are grounded in the assertion that Vanisi is presently incompetent to maintain the lawsuit that he initiated.

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There are several reasons why the proceedings should not be stayed. Each goes to the likelihood of prevailing on the mandamus petition. First, the district court evaluated the evidence of Vanisi's alleged incompetence, gave it the consideration it deserved and found that Vanisi is presently competent. Appendix in Support of Application for Writ of Mandate and/or Writ of Prohibition at 251-253. Where the trial court is presented with conflicting evidence concerning competency, and resolves that conflict based on the weight of the evidence, this Court will not disturb the findings of the trial court. Calambro by and Through Calambro v. District Court, 114 Nev. 961, 971, 964 P.2d 794 (1998). Because the petition for mandamus simply asks this Court to substitute its judgment for the judgment of the trier of fact, the likelihood of prevailing is minimal and thus there is no need for a stay.

In addition, the State continues to assert that the alleged present incompetence of a post-conviction petitioner who is represented by counsel (or a next friend, or a guardian ad litem) is of no legal moment. A post-conviction action can proceed without the participation of the incompetent prisoner. See Calambro, supra. The alleged incompetency has the legal effect of allowing the lawsuit to be initiated by someone other than the prisoner, but once someone successfully invokes the jurisdiction of the court, the action can be heard even if the real party in interest, the prisoner, is incompetent. Id.

If Vanisi were incompetent, and if there were a legal effect to being incompetent, the sole legal effect would be to excuse a future successive petition raising the claims that were withheld due to his present incompetence. That rule is implied but not clearly stated in Ford v. Warden, 111 Nev. 872, 879-880, 901 P.2d 123, 127-28 (1995) and in Pellegrini v. State, 117 Nev. 860, 890, 34 P.3d 519, 539 (2001). However, the State contends that the alleged present incompetence of a represented prisoner who is able to invoke the jurisdiction of the court does not prevent litigation of the claims raised in the petition and in the supplement filed by counsel.

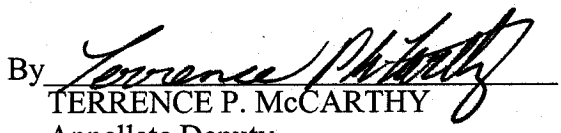
Finally, the State contends that no writ will lie because Vanisi has an adequate remedy at law. If the court erred in finding that he is competent, that finding can be reviewed on appeal. See Doggett v. Warden, 93 Nev. 591, 572 P.2d 207 (1977)(reviewing findings regarding past incompetence). Generally, the Court will decline to consider extraordinary relief when there is an adequate remedy at

law. NRS 34.170. Therefore, there is no need to stay the proceedings in the district court.

Therefore, the state Suggests that this Court deny the emergency application for a stay of proceedings. Nevertheless, the State will still urge the Court to consider (and deny) the petition for writ of mandamus as expeditiously as possible.

DATED: April 15, 2005.

RICHARD A. GAMMICK
DISTRICT ATTORNEY

By 
TERRENCE P. McCARTHY
Appellate Deputy

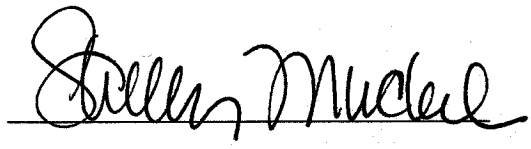
CERTIFICATE OF MAILING

Pursuant to NRAP Rule 25, I hereby certify that I am an employee of the Washoe County District Attorney's Office and that on this date, I deposited for mailing at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Scott W. Edwards, Esq.
729 Evans Avenue
Reno, NV 89512

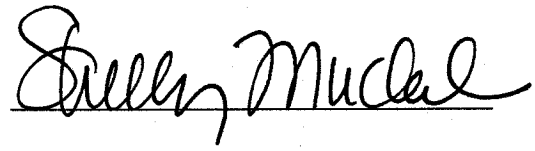
Thomas L. Qualls, Esq.
216 E. Liberty Street
Reno , NV 89501

DATED: April 15, 2005.



CERTIFICATE OF SERVICE

Pursuant to NRAP Rule 25, I hereby certify that I am an employee of the Washoe County District Attorney's Office and that on this date, I forwarded a true copy of the foregoing document, through the Washoe County Interagency Mail, addressed to:

Hon. Connie J. Steinheimer
Second Judicial District Court
Department 4
75 Court Street
Reno, NV 89501

DATED: April 15, 2005.