

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERICK M. BROWN

Appellant,

VS.

THE STATE OF NEVADA,

Respondent.

No. 64992

District Court No. 03C189658

FILED

MAY 12 2014

**APPELLANT'S PRO SE PETITION FOR
REHEARING**

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

COMES NOW APPELLANT, ERICK M. BROWN (Appellant), by and through his proper person, and proceeding pro se, and hereby submits for consideration and review by this Court; the foregoing Appellant's Pro Se Petition For Rehearing (Petition), based upon this Court having Dismiss/Denied, etc. Appellants appeal filed/ dated the 13 day of March, 2014.

The proper person appeal was from the Order of the district court, denying Appellant's Motion decision ~~on~~ on the merits of Invalid laws of Nevada (Motion), from the 8TH Judicial District Court, for the County of Clark; District Court Judge Kathleen E. Delaney

This Petition is made and based upon all documents, exhibit's, papers and pleadings, having been filed with the district court pertain to the Motion, setting forth constitutional deprivations that, the Nevada Revised Statutes (NRS), are constitutionally invalid laws, contrary to the

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TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
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form and force of the paramount law of the State of Nevada, the Constitution of the State of Nevada. (Const. of Nev.).

This Court in its denial of Appellant's appeal stated, that, because no statute or court rule permits an appeal from an order denying a motion to dismiss for lack of subject matter jurisdiction, we lack jurisdiction. citing, *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990), accordingly appellant's appeal was denied.

POINTS AND AUTHORITIES.

ARGUMENT

This Court has multiple ways to provide Appellant review of the foregoing appeal, from the Order of the district court denying the Motion.

First, this Court in *Landreth v. Malik*, 127 Nev. Adv. Rep. 116, 251 P.3d 1163, 1166 (Nev. 2011), has determined that "subject matter jurisdiction" can be raised at any time." (Emphasis added), see also *People v. McMurty*, 122 P.3d 237, 241 (Colo. 2005); *Tiger v. State*, 900 P.2d 406, 412 (Okla. 1995), and *Am. Fire & Cas. Co. v. Finn*, 341 U.S. 6, 17-18 (1951).

That, Appellant's Motion in the district court is based upon two (2) premises, to which this Court can provide appellate review: (1) the Motion To Dismiss NRS 177.035 et seq.; and (2) the subject matter jurisdiction question, issue *Landreth*, 251 P.3d at 1166.

The Appellant's Motion contains two (2) provisions whereby this Court, has "jurisdiction" to provide appellate review from the denial from the district court.

Wherefore, based upon the 2 premises above articulated, and supporting argument this Court has jurisdiction to resolve, the appeal of the district court denying the motion to dismiss for lack of subject matter jurisdiction.

This Court is hereby alerted that Appellant's pleading's raises, a multitude of "constitutional" question's as concerns the paramount law, the Const. of Nev., which deserves the resolution of those question's, to determine whether a "statute" dictates over the paramount law? Appellant believe's that the matter should be resolved consistent to King v. Board of Regents, 65 Nev. 533, 556, 200 P.2d 221, 232 (1948); see 19 Nev. 391, 393-94, 12 P. 835, 837 (1887).

This Court has Sua sponte power to consider jurisdictional issues. Landreth, 251 P.3d at 166.

The failure to utilize this Court's Sua sponte power to consider, Appellant's lack of subject matter issue's, makes void the holdings in Landreth, 251 P.3d at 166 People, 122 P.3d at 241; Tiger, 900 P.2d at 412; and Am. Fire & Cas. Co., 341 U.S. at 17-18, that subject matter issue's "can be 'raised' at any time."

Appellant has raised subject matter issue's of constitutional magnitude, challenging the constitutionality of the NRS as being invalid laws, contrary the constitutional mandates of the Const. of Nev. its Article's (Art.), and without appellate review issue's of subject matter jurisdiction cannot be raised at any time. Landreth, 251 P.3d at 166, People, 122 P.3d at 241; Tiger, 900 P.2d at 412; and Am. Fire & Cas. Co., 341 U.S. at 17-18. (Emphasis added).

Wherefore, the failure to provide appellate review to Appellant's appeal, since subject matter jurisdiction ~~question's~~ **can be raised at any time**, *Landreth*, 251 P.3d at 166; *Tiger*, 900 P.2d at 412; is to deny Appellant, appellate review, which is to "deny Appellant Due Process and Equal Protection" of under the Fourteenth (14th), Amendment of the United States Constitution. See, *Cleburne v. Cleburne, Living Center Inc.*, 473 U.S. 432, 439 (1985); (treating Appellant differently than others similarly similarly situated); *Zimmerman v. Burch*, 494 U.S. 113, 125 (1990); citing *Daniels v. Williams*, 474 U.S. 327, 331 (1986); (substantive due process, which bars certain arbitrary government actions regardless of the fairness of the procedure used to implement them), (subject matter jurisdiction can ^{be raised} at any time, yet appellate review won't be allowed?); (it is a guarantee of fair procedure); (no specified procedural vehicle required to bring the matter to the courts attention); *Carey v. Piphus*, 435 U.S. 247, 259 (1978); and *Rochin v. California*, 342 U.S. 165, 169 (1952).

Whether procedural due process has been satisfied depends on a balance of three factors: (1) the private interest affected by the official action; (2) the risk of an improper deprivation of that private interest given the procedures used and any probable value of additional or different procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or different procedural requirements would necessitate. In re *Halverson*, 123 Nev. 493, 518, 169 P.3d 1161, 1178 (2007) (citing *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976)).

The United States and the Const. of Nev. provide that, "No person shall be... deprived of life, liberty, or property, without due process of law...." U.S. Const. Amend. V; Const. of Nev. Art. 1, § 8(5). The Due Process Clause of the Fifth Amendment to the United States Constitution is made applicable to the States by the Fourteenth Amendment. *State v. Clark*, 90 Nev. 144, 149 n.5, 520 P.2d 1361, 1364 n.5 (1974).

The Due Process Clause only applies where "the claimant has been (or is in jeopardy of being deprived) of some type of liberty interest." *Kelch v. Director*, 107 Nev. 827, 822 P.2d 1094 (1991) (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

"The touchstone of Due Process is protection of the individual against arbitrary action of government. *Zinerman*, 494 U.S. at 125; citing *Daniels*, 474 U.S. at 331; see also *Wolff v. McDonnell*, 418 U.S. 539, 558. The "right to be heard is a principle basic to our society." *Mathews*, 424 U.S. at 333 (quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring)). Ultimately, the fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews*, 424 U.S. at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

Due Process, unlike some legal rules is not a technical conception with fixed content unrelated to time, place and circumstances. *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961). Due Process is flexible and calls for procedural protections as the "particular situation demands." *Morrissey*, 408 U.S. at 481; see also *Buleigh v. State Bar*, 98 Nev. 140, 145, 643 P.2d 1201, 1204 (Nev. 1982).

Due to the deprivation of liberty suffered by Appellant, and the possible continued deprivation of liberty, due to the invalidness of the Nevada Revised Statutes (NRS), and the claim's of invalidness being of constitutional magnitude; i.e. contrary to the Const. of Nev. and violating Appellant's constitutional rights to the United States Constitution, this Court can exercise its Sua sponte power to review constitutional error on appeal. Landreth, 251 P.3d at 166. see also Bradly v. State, 102 Nev. 103, 716 P.2d 227 (Nev. 1986), (Court may review Sua sponte to prevent plain error).

Here the State of Nevada, this Court would violate its own law, procedural or otherwise, and Appellant's constitutional rights under the Const. of Nev. Art. 1, § 8, and the 14th Amendment to the U.S. Const., by failing to provide appellate review to the questions of subject matter jurisdiction; being raised at any time. Landreth, 251 P.3d at 166; Tiger, 900 P.2d at 412; Am. Fire & Cas. Co., 341 U.S. at 17-18.

Especially since no specified procedural vehicle is required to bring the issue(s), questions of subject matter jurisdiction to the court's attention. (Emphasis added). Great W. Casinos W., 88 Cal. Rptr. 2d at 886.

Here since no briefing has taken place, all factors cognizable have been overlooked, and extraordinary remedy is needed due to exceptional circumstances, to serve the interests of justice. Compare Cahill v. New York, New Haven & Hartford R.R. Co., 351 U.S. 183, 76 S.Ct. 758, 100 L.Ed. 1075 (1956); Nevius v. Sumner, 105 F.3d 453, 460-61 (9th Cir. 1996); compare also Snow v. State, 105 Nev. 522, 523, 779 P.2d 96, 97 (Nev. 1989);

Director, Dep't of Prisons v. Arndt, 98 Nev. 84, 85, 640 P.2d 1318, 1319 (1982); State ex rel. Osborn v. Fogliani, 82 Nev. 300, 417 P.2d 148 (1966).

Additionally, as stated above Appellant's contentions in the Motion(s) to the district court to dismiss, are grounded on constitutional questions, of which this Court has stated is obligated to consider them on appeal (Emphasis added). See, Hardison v. State, 84 Nev. 125, 128, 437 P.2d 868, 870 (1968), see also McCullough v. State, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (1983); Dias v. State, 95 Nev. 710, 713, 601 P.2d 706, 708 (1979).

Dispite the fact that there remains unresolved questions of fact, this Court does have the means to obtain jurisdiction, to resolve any and all questions of law Appellant has raised in the district court. Const. of Nev. Art. 6 § 4, State v. Millain, 3 Nev. 409 (1867), cited State v. Fitch, 65 Nev. 668, 680, 200 P.2d 991 (1948), or remand the matter back to the district court to resolve any and all factual issue's, since this Court is not a fact find tribunal. Zugel v. Miller, 659 P.2d 296, 297 (Nev. 1983); and Zobrist v. Sheriff, 96 Nev. 625, 614 P.2d 538 (1980).

Aside from all else, "due process" means fundamental fairness and substantial justice. Vaughn v. State, 3 Tenn. Crim. App. 54, 456 S.W.2d 879, 883.

CONCLUSION

Wherefore, based upon the above and foregoing and there being no specific procedural vehicle required to bring the matter to the court's attention, and to protect Appellant's "Due Process" rights, as well as the integrity of this Court's rulings; the Appellant respectfully requests that this Court will:

Abide by its obligation to consider Appellant's contentions that are grounded on constitutional questions; or that this Court will utilize its Sua sponte power to provide; appellate review to the questions of Subject Matter Jurisdiction which can be raised at any time, and review should be granted Ex abundanti Cautela.

Dated this 23 day of March 20 14.

Eric M. Brown

APPELLANT PRO SE

This Petition has been prepared by Inmate Advocate's [REDACTED], Legal Assistant/Paralegal, [REDACTED]
and Gary W. Walters, I.D.# 1022269.

This Petition is prepared to be utilized by all inmate's whom have completed, the Authorization Form pursuant to Operational Procedure (O.P.), 722 et seq.

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CERTIFICATE OF SERVICE BY MAILING

I, ERICK BROWN, hereby certify, pursuant to NRCP 5(b), that on this 23
day of March, 2014, I mailed a true and correct copy of the foregoing, "Appellant's
Pro Se Petition For Rehearing"
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

/

Supreme Court of Nevada
Office of the clerk
201 S. Carson Street Ste 201
Carson City NV 89701

/

/

CC:FILE

DATED: this 23 day of March, 2014.

ERICK M. BROWN
ERICK M. BROWN # 92713
Petitioner In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS: