

IN THE SUPREME COURT OF NEVADA

In Re: The State of Nevada ex rel.,
Renard T. Polk et al.,
Petitioners(s)

FILED

OCT 24 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY
DEPUTY CLERK

vs.

No. 71983

Renee Baker et al.,
Timothy Filson et al.,
Mary Holthus et al.,
Douglas Smith et al.,
Abbi Silver et al.,
Jerome Tao et al.,
Micheal Gibbons et al.,
Louisa Garcia et al.,
Respondent(s)

PETITION FOR REVIEW.

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In Pro Se

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Attorney

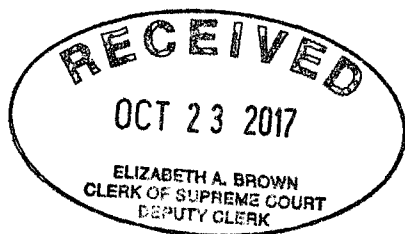


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Argument Summary:

(I.) State criminal justice system's bureaucrats' refusal, failure or forestalling to obey and strictly adhere to duly issued writs of habeas corpus constitutes contempt violating the Full Faith and Credit and Contracts articles warranting damages and the petitioner's immediate release from the custody of the Nevada Department of Corrections under the Substantive Due Process and Equal Protections clauses of the United States Constitution, pg. 12

(II.) The lower court's misconstruction of the petitioner's motion to correct an illegal sentence as one seeking modification constitutes executor de son tort violating the ban on involuntary servitude warranting reversal and remand under the Procedural Due Process and Equal Protections

clauses of the United States Constitution, pg. 14

(III.) Limiting the scope of a motion to correct an illegal sentence to that denominated in the title as opposed to the requested relief constitutes a failure to make a return on judicial office violating public trust, the separation of powers doctrine and the prohibition on emoluments warranting reversal, remand and the removal of the judicial functionary from office under the Substantive Due Process, Equal Protections, Access to the Courts and the Right to Petition the Government clauses of the United States Constitution, pg. 14

(IV.) Transferring the instant appeal to the Nevada Court of Appeals after ordering the trial court record transmitted for review creates an unconstitutional irrebuttable mandatory conclusive presumption of procedural exactitude, jurisdictional requisites, mootness and attorney professionalism constituting legal fraud violating the ban on unlawful bills of pains and penalties, star chambers and ex post facto laws and the right to a full, fair and public trial and hearing under the Due Process, Equal Protections, Access to the Courts, Confrontation and Fair Trial clauses of the

United States Constitution, pg.

(V.) The Nevada Court of Appeals' refusal, failure, deferral, foregoing or forestalling to engage in, address or take cognizance of the prospective injurious or harmful effect and impact of the criminal justice system's bureaucrats' adverse decision or action to disobey duly issued writs of habeas corpus on behalf of the petitioner constitutes a failure to make a return on judicial office violating public trust, the ban on bills of pains and penalties, star chambers, ex post facto laws, the impairment of contractual obligations and the unlawful suspension of the privilege of writ of habeas corpus under the Warrants, Substantive and Procedural Due Process, Access to the Courts, Contracts, Full Faith and Credit, Separation of Powers and Supremacy clauses of the United States Constitution, pg. 15

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TABLE OF AUTHORITIES

Caselaw:

Airlone v. Higgette 112 S.Ct. 2608
Adamson v. California 332 US 46
Bailey v. Alabama 219 US 219
Blair v. Crawford 275 F.3d 1156
Fletcher v. Peck 25 US 213
Goldberg v. Kelly 372 US 144
Goldman v. Bryant 764 P.2d 1296
Galloway v. Truesdell 422 P.2d 237
Marbury v. Madison 5 US 137
Morgan v. US 58 S.Ct. 773
Plant v. Farm 115 S.Ct. 1447
Turner v. Safely 482 US 517
Scarborough v. Travelers 718 P.2d 702
In Re: Oliver 333 US 257
Liljeberg v. Health Servs. Acq. Corp. 486 US 847
Brown v. Poole 337 F.3d 1155

Act(s):

Uniform Habeas Corpus Act
Debtors' Jail Act of 1826
Judicature Act of 1743
Juvenile Justice Reform Act

Codes (statutes):

Title 5 United States Code 501

Title 5 United States Code 701

Title 5 United States Code 702

Title 28 United States Code 2243

Nevada Revised Statute 48.085

Nevada Revised Statute 34.270

Nevada Revised Statute 34.670

Nevada Revised Statute 34.500

Rules:

Nevada Rules of Appellate Procedure 40B

Nevada Rules Civil Procedure 1

Constitutions:

United States Constitution Article I section 10

United States Constitution Article III section 2

United States Constitution Article IV section 1

United States Constitution Article VI section 1

United States Constitution Amendment I

United States Constitution Amendment IV

United States Constitution Amendment V

United States Constitution Amendment VI

United States Constitution Amendment XIII

United States Constitution Amendment XIV

Nevada Constitution Article I section 8

Nevada Constitution Article I section 15

Nevada Constitution Article I section 17

Nevada Constitution Article 1 section 18

Nevada Constitution Article 6 section 4

Nevada Constitution Article 6 section 6

Nevada Constitution Article 15 section 4

ROOTING STATEMENT

This appeal was presumptively transferred to the Nevada Court of Appeals due to the fact the action involved an administrative agency appeal.

However, the Nevada Supreme Court should have retained the matter because it involves issues of first impression regarding the common law and constitutional right, privilege and inalienable entitlement to the writ of habeas corpus, judicial review, execution, compulsory process, access to the courts, to petition the government for a redress of grievances and a fair and public hearing.

Likewise, the matter is of statewide importance as the issues demonstrate an inconsistency of published decisions conflicting with those of the Nevada Supreme Court and the United States Supreme Court, respectively with the Nevada Court of Appeals.

The issues involve the divestiture of fundamental

interests by the resurrection of practices long banned by the constitution of the United States and Nevada.

JURISDICTIONAL STATEMENT

Whereby the Nevada Supreme Court should have exercised original jurisdiction to retain the instant appeal.

Even so, the basis of this appeal originated by right from the denial of the petitioner's motion to correct an illegal sentence on November 28, 2016 and the instant petition for review followed the affirmance on October 11, 2017

Further lending support for this court to exercise original jurisdiction and plenary authority resides in the fact the lower trial court resolved genuine issues of material facts without having acquired personal jurisdiction of the petitioner.

QUESTIONS PRESENTED FOR REVIEW

(A.) whether the lower trial court's decision to deny the petitioner's motion to correct an illegal sentence is contrary to or involves an unreasonable application of clearly established federal law or it otherwise

abused its discretion in granting the chief deputy district attorneys' opposition to deny the requested relief on the motion to correct an illegal sentence?

(B.) whether the Nevada Court of Appeals' decision to affirm the lower trial court's denial of the petitioner's motion to correct an illegal sentence is contrary to or involves an unreasonable application of clearly established federal law, or it otherwise clearly and plainly erred in utilizing an improper and incorrect standard of review for deciding the appeal?

PROCEDURAL STATEMENT

On November 4, 2016 the petitioner was permitted to file a motion to correct an illegal sentence challenging the conditions under which he was being confined.

The lower trial court scheduled a hearing thereon for which the petitioner was not in attendance on November 28, 2016.

On the aforementioned date the lower trial court mischaracterized or converted the petitioner's motion from seeking vacatur to one seeking modification.

With the motion misdesignated the court then resolved material facts outside the presence of

the presence of the petitioner the lower trial court denied the motion to correct an illegal sentence.

A timely notice of appeal was filed and an appeal was docketed December 22, 2016.

Initially the appeal was retained by the Nevada Supreme Court wherein it was directed on March 16, 2017 to the trial court to transmit the complete record on appeal.

Having issued the aforementioned functional certiorari the Nevada Supreme Court then assigned or transferred the appeal to the Nevada Court of Appeals on August 30, 2017.

Notwithstanding in absence of the trial record and an opening brief from the petitioner the Nevada Court of Appeals then went on to decide the matter on October 11, 2017.

The petitioner thereafter received the order purportedly affirming the lower trial court's decision on October 13, 2017.

Accordingly this petition for review follows.

STATEMENT OF FACTS

Beginning on or about July 4, 2004 the Eighth Judicial District Court, Clark County,

Nevada issued an order for writ of habeas corpus having found cause apparent scheduling the petitioners return and a hearing thereon to determine the legality of the petitioner's detention.

With the hearing date scheduled for approximately September 8, 2004 the petitioner made attempts to secure his presence on the aforementioned hearing. Ranging from filing motions to transport and internal prison grievances, but to no avail.

Despite initially providing a continuance as a result of the petitioner's absence for September 14, 2004 once the matter came on hearing again pursuant to the aforesaid date the lower trial court denied the petitioner's release without the deputy district attorney's answer to the habeas corpus petition being served thereon, the presence of counsel or Petitioner and in excess of the court's previous order and authority under statutory and constitutional provisions.

Sometime thereafter an amended judgment of conviction was filed with the lower trial court's clerk's office in place of the superseded judgment of conviction in accordance with the issued writ of habeas corpus recommitting and functionally

resentencing the petitioner to the Nevada Department of Corrections.

These types of occurrences have happened on several occasions. The last being on February 18, 2014.

REASONS FOR REVIEW

Although this court already issued the functional equivalent of a certiorari on the previously cited date but failed to review the matters related, essentially in contempt of its own order, the petitioner provides the following argument for review though its mandatory for the foregoing and following reasons.

The proposition of disobeyed writs of habeas corpus has not been, but should be addressed as a matter of first impression in this State because the decision to deny release based on judicial abdication due to the type of application filed and presented to the judge conflicts with decisions issued by the United States Supreme Court which is of fundamental importance with respect to civil liberties statewide.

In that, pursuant to Title 28 United States Code 2243, and the Uniform Habeas Corpus Act,

judicial precedent codified provides that when a successful habeas petitioner has been denied or the strictures of court order not adhered to not only is the available remedy thereafter release but the aggrieved party is entitled to damages. Scatterlee v. Wolfenberger 453 F.2d 362 (6th Cir. 2006)

Despite the Nevada Court of Appeals blind recital that the petitioner's habeas corpus relief was "dismissed" the lower trial court in truth granted the writ.

On five (5) occasions the lower trial court issued writs of habeas corpus for the petitioner's return, which the appeals court would have been judicially cognizant of had the record been brought before it.

Nevada Revised Statute 34.770 states in pertinent part:

"[I]f the petitioner is not entitled to relief then the court SHALL DISMISS the petition without a hearing." (emphasis added.) id. 34.770 (c)

However, should the court find contrawise then the court SHALL GRANT the writ and set a date for the hearing." id. 34.770 (b)

With the scheduling of the "hearing" it is implied the petitioner is "entitled" to relief or release.

This fundamental issue is why the petitioner is not only seeking review per se, but enforcement of the peremptory effect of habeas corpus.

Though the judges of this state have sought to curtail the paramount office of habeas corpus through varying degrees of judicial abdication.

Either by reclassifying or recharacterizing the aggrieved party's submissions inconsistent with the holder's intent resulting in "peonage" and "involuntary servitude." United States Constitutional Amendment XIII, Bailey v. Alabama 219 US 219 (1911)

Or, by interrupting the execution and conclusion of judicial process derailing proceedings as a third-party intervenor once commenced citing to emendatory concerns long expired over the interim to abate review irrespective of the mandatory encumbrance or presumption to decide cases and controversies United States Constitution Article III section 2; Title 5 United States Codes 506, 701 and 702, Title 28 United States Code 1441; Nevada Constitution Article 6 sections 4 and 6; Goldman v. Bryant

764 P.2d 1296 (1988)

Or, even worse by retrospectively (actively) resurrecting divestitures bypassed or no longer applicable to the proceedings categorizing them as fatal jurisdictional defects to nullify relief.

Scarabough v. Travelers 718 P.2d 702, Fletcher v. Peck 25 US 213, In Re: Oliver 333 US 257

All of which conduct has long been banned by every case cited in this petition, but not formally adopted or sanctioned in this state.

The same prohibitions which were issued in the cited United States Supreme Court cases which the courts of this state are in conflict with.

And, where it is prohibited it is VOID whatever the context with which you frame the conduct.

This is of great statewide importance because empowered by court order or mandatory government-al directive a victim of domestic violence can shield his- or herself from criminal liability by obtaining a restraining order in advance, an officer of the peace can have his actions justified for killing an individual if executing an arrest warrant in good-faith and the diplomat can absolve itself of responsibility by standing immunity

Contraindicatively, the inmate empowered by virtue of court order remains held as a Kidnapp victim under a foreign an unwarranted authority and jurisdiction.

Even when the order is directed to the very custody itself.

Then when the inmate seeks to enforce it the most reprehensible actions are committed to disregard the order.

The same conduct which eventuated constitutional conventions and war.

Speaking of war anarchy would erupt in every prison of this state were inmates informed that their imprisonments were no longer enforceable, forget valid.

Moreover, that they could not be held accountable for their actions were they to assail an officer or escape in seeking to extricate themselves from an unlawful detention.

Simply because they were attempting to relieve themselves of a decreed illegal confinement.

No officers, personnel's, staff's or official's insurance would afford that kind of coverage, not to mention their lives would be put at risk.

whereby this courts equitable relief is warranted.
In all good-conscience this court cannot allow
this type of prohibited conduct to persist.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE the petitioner prays this court;

(1.) issue an alias order directing review
reacquiring and exercising original or plenary
jurisdiction to see that equitable justice is done,

(2.) issue a show cause order and mandatory
directive for the respondents failure to obey court
order,

(3.) issue an order directing the Nevada Depart-
ment of corrections to release the petitioner forth-
with from Ely State Prison, and

(4.) Any other relief deemed just, proper
and equitable.

Dated this 18th day of October 2017.

Verification

151. R. Polk

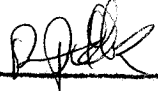
Renard T. Polk

CERTIFICATE OF MAILING

I Polk R do hereby certify that a true and correct copy of the foregoing petition for review was delivered to an employee at the Ely State Prison this 18th day of Oct. 2017 for the purpose of being conveyed by mail to the following locations

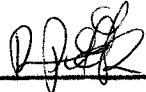
• Mary Holthos
200 Lewis Ave
Las Vegas, NV 89155

• Nevada Supreme Court
Clerk's office
201 South Carson St.
Carson City, NV 89702

151. 
Renard Polk

CERTIFICATE OF COMPLIANCE

I Polk R do hereby certify that the foregoing complies with Nevada Rules Civil/Appellate Procedure 28 to the best of my ability.

151. 
Renard Polk