

**IN THE COURT OF APPEALS OF THE STATE OF NEVADA**

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WILLIS T. BROWN,  
Petitioner,  
vs.

THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF CLARK, AND THE  
HONORABLE WILLIAM D. KEPHART,  
DISTRICT JUDGE

Respondents,

And

THE STATE OF NEVADA,

Real Party in Interest.

Electronically Filed  
Aug 04 2017 12:46 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

CASE NO: 72950

**ANSWER TO PETITION FOR WRIT OF CERTIORARI, MANDAMUS  
AND/OR, IN THE ALTERNATIVE, WRIT OF PROHIBITION**

COMES NOW the State of Nevada, Real Party In Interest, by STEVEN B. WOLFSON, Clark County District Attorney, through his Deputy, CHARLES THOMAN, and submits this Answer to Petition for Writ of Certiorari, Mandamus And/Or, In the Alternative, Writ of Prohibition, in obedience to this Court's order filed June 15, 2017, in the above-captioned case. This Answer is based on the following memorandum and all papers and pleadings on file herein.

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Dated this 4<sup>th</sup> day of August, 2017.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar # 001565

BY */s/ Charles Thoman*

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CHARLES THOMAN  
Deputy District Attorney  
Nevada Bar #012649  
Office of the Clark County District Attorney

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **ISSUE PRESENTED**

Whether the district court arbitrarily and capriciously abused its discretion when it denied Petitioner Willis Brown's ("Petitioner") motion pursuant to Widdis v. Second Judicial Dist. Court, 114 Nev. 1224, 96 P.2d 1165 (1998).

### **PROCEDURAL HISTORY**

On November 8, 2016, the State filed an Information charging Petitioner with three counts of Lewdness with a Child Under the Age of 16 (Category B Felony – NRS 201.230—NOC 58747); and two counts of Lewdness with a Child Under the Age of 14 (Category A Felony – NRS 201.230—NOC 50975). 1 Petitioner's Appendix ("PA) 199.

On January 19, 2017, Petitioner filed a Petition for Writ of Habeas Corpus. 1

PA 5. The State filed its Return on March 3, 2017. 1 PA 202. Petitioner filed a Traverse on March 14, 2017. 1 PA 227. On March 20, 2017, the district court denied the Petition, finding there was “sufficient evidence to hold [Petitioner] to trial with regard to all” counts. 2 PA 247, 268. The Order Denying Defendant’s Petition for Writ of Habeas Corpus was filed March 31, 2017. 2 PA 270.

On April 11, 2017, Petitioner filed a Motion for Expert Services Pursuant to Widdis, which the district court denied on April 24, 2017. 2 PA 300, 323-24. The written Order Denying Motion for Expert Services Pursuant to Widdis was filed May 2, 2017. 2 PA 325.

On May 4, 2017, Petitioner, through counsel, filed the instant Petition for Writ of Certiorari, Mandamus, and/or, in the Alternative, Writ of Prohibition, in which he challenged the district court’s denial of the Petition for Writ of Habeas Corpus and Motion for Expert Services Pursuant to Widdis. On June 15, 2017, the Court asked for the State to respond only to Petitioner’s Widdis claim.

On June 26, 2017, the district court put the case back on calendar to further elucidate its findings. The State’s Answer follows.

### **STATEMENT OF FACTS**

Twelve-year-old H.H. lived in Las Vegas, Nevada with her aunt and uncle while she was in the sixth grade. While she lived in Nevada, she attended the Boys and Girls Club in the Southern Highlands neighborhood of Clark County. H.H.

visited the club almost every day during the school year and summer, except when her aunt was off from work.

H.H. met Petitioner at the Boys and Girls Club. She would talk to him if she saw him outside of his office, but would only go into his office if she was in trouble for taking food or talking back. When H.H. was in Petitioner's office, he closed the door. Petitioner would touch H.H. on the thigh when he went to hug her, which made her uncomfortable. After Petitioner hugged her, he brushed his hands up and touched the side of her breast. H.H. told A.W. and J.L. about her interaction with Petitioner.

Fifteen-year-old J.L. testified that she also attended and volunteered at the Southern Highlands Boys and Girls Club. When she returned from Hawaii in July 2016, Petitioner started acting different and asked her questions about her sexual history and preferences. The questioning occurred in his office with the door closed. Petitioner also asked J.L. for a hug, which she obliged. Although J.L. had previously hugged Petitioner, on this occasion, he touched her butt.

A couple days later, J.L. was in the Club's kitchen. Petitioner was coming into the kitchen and asked J.L. to hold the door open for him. Once Petitioner was in the kitchen, he asked J.L. for another hug, during which he touched her butt with both of his hands. J.L. felt uncomfortable and told her boyfriend.

Fifteen-year-old A.W. attended the same Southern Highlands Boys and Girls Club as H.H. and J.L. A.W. also met Petitioner at the Club. On August 6, 2016, A.W.

arrived at the Club when it first opened at 7 A.M.; Petitioner was already there and sitting behind a desk. A.W. talked to Petitioner, who told her she had amazing legs and asked if he could touch them. A.W. thought it was odd but acquiesced. Petitioner touched A.W.'s leg from her inner thigh down to her ankle, telling her that her legs were soft and cool. Petitioner then asked A.W. to come into his office, where he closed the door.

In the office, Petitioner asked A.W. about her sexual history and preferences. He also told her he worked at other Boys and Girls Clubs and that girls had thrown themselves at him. A.W. left Petitioner's office and told her J.L. about the interaction. Later that week, A.W. told her counsel, who notified police.

## **ARGUMENT**

### **I**

#### **EXTRAORDINARY RELIEF IS NOT WARRANTED**

Mandamus is an extraordinary remedy, and it is within the discretion of this Court to determine whether these petitions will be considered. Poulos v. Dist. Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982). A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control a manifest abuse of discretion or an arbitrary or capricious exercise of discretion. NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603–04, 637 P.2d 534, 536 (1981).

However, “[w]rit relief is not proper to control the judicial discretion of the district court, ‘unless discretion is manifestly abused or is exercised arbitrarily or capriciously.’” State v. Dist. Court (Anzalone), 118 Nev. 140, 147, 42 P.3d 233, 237-238 (2002) (quoting Newman, 97 Nev. at 604, 637 P.2d at 536). “A manifest abuse of discretion is a clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule.” State v. Dist. Court (Armstrong), 127 Nev. 927, 932, 267 P.3d 777, 780 (2011) (internal quotations omitted).

Here, because the district court made specific findings on the record that Petitioner was not indigent for purposes of hiring an expert, it properly exercised its discretion and complied with its judicial duty. See Widdis, 114 Nev. at 1230, 968 P.3d at 1169; see also NRS 34.160. Accordingly, this Court’s intervention is not warranted.<sup>1</sup>

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<sup>1</sup> Although Petitioner has styled his Petition as seeking either a writ of certiorari, mandamus, and/or prohibition, he fails to articulate the standards for writs of certiorari or prohibition, nor does he argue accordingly. A “writ of prohibition is the counterpart of the writ of mandamus and is available to ‘arrest the proceedings of any tribunal ... when such proceedings are without or in excess of the jurisdiction such tribunal.’” Anzalone, 118 Nev. at 146-47, 42 P.3d at 237 (quoting NRS 34.320). Similarly, a writ of certiorari is available where “an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer and there is no appeal, nor, in the judgment of the court, any plain, speedy and adequate remedy” at law. Salaiscooper v. Dist. Court, 117 Nev. 892, 901, 34 P.3d 509, 515 (2001). As there is no allegation the district court exceeded its jurisdiction, a writ of certiorari or prohibition is inapplicable.

Petitioner complains that the district court erred in denying his Motion for Expert Services Pursuant to Widdis. Petition (“Pet.”) 48-49. However, in Widdis, this Court explained that before ruling on a motion for seeking an expert witness at public expense, the district court must make a determination as to whether: (1) the defendant is indigent; *and*, (2) the expert is reasonably necessary for the defense. See id. at 1230, 968 P.2d at 1169. Here, the district court reviewed Petitioner’s financial affidavit and determined that he was not indigent. 2 PA 323-24. Indeed, the district court found:

I have to look at everything in the totality as to whether or not your client is truly indigent in order to fit the scenario under Widdis and -- or the standard. And I just don’t see it here.

I don’t reach that based on -- I mean he’s employed. He -- it appears that he has to probably adjust his expenses. But for the State to be paying for his investigator fees under these circumstances, I don’t think Widdis truly could -- is saying that that’s a mandatory requirement. And so I’m just making a finding based on his affidavit that he’s not indigent in order to fit that.

2 PA 323-24.

At the June 26, 2017, hearing, the district court further expounded the reasons for denying Petitioner’s Widdis motion:

[A]t the hearing it became very clear that the Petitioner’s financial position had changed considerably between the time of his first request for Court appointed services and application declaring indigency before the Honorable Justice of the Peace Cynthia Cruz.

In his first application before Judge Cruz Petitioner represented to be unemployed with no source of income. And I draw attention to the actual application. It appeared that he Defendant was released on house arrest.

Secured a bond for \$75,000 and secured services of retained counsel. How much that was I have no idea, but it was never indicated on his application that he owed anything towards any of that.

In the Petitioner's motion for expert services pursuant to Widdis filed in this Court on April 11, 2017, he attached a second application for the Court appointed counsel for Widdis fees. In review of the attached application to this Court, the Petitioner's financial situation improved substantially. Petitioner was now fully employed. He had no further debt for legal fees. He had secured his release from custody with posting the \$75,000 bond. And he was paying house arrest fees.

It was interesting to the Court as his previous application claimed that he was unemployed with no source of income; however, he was able to secure, and I believe it possibly based on the representation in the motion towards the Supreme Court was that the -- I mean before this Court is that he had exhausted his resources from his family to pay for his attorney. So he had resources. And his application also revealed that his debt ratio decreased by almost 50% between the time of his first application and his subsequent application....

Petitioner also had failed to show how an investigator needed for assisting his counsel would have been included within -- wouldn't have been included within his legal fees.... Petitioner has represented a cursory at most need and therefore failed to present a sufficient showing of his need for the requested services at public's expense at this stage in the proceedings.

Respondent's Appendix 2-4.

Because the district court reviewed Petitioner's pleadings and financial affidavits and considered his need, the denial of the Motion for Expert Services Pursuant to Widdis was not an abuse of discretion.<sup>2</sup>

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<sup>2</sup> To the extent that Petitioner argues that the district court abused its discretion because "there was no apparent rationale" provided in the written Order, the State notes that Petitioner drafted and filed the Order denying his Motion. See Pet. 36.



Further, the district court was not bound by the decisions of the justice court. Nev. Const. Art. 6, § 6 (justice courts are inferior tribunals to the district courts). Moreover, Petitioner's reliance on the justice court's determination of indigency is misplaced because Petitioner was in a different financial situation at the time he was before the justice court. Pet. 49. When Petitioner was in justice court, he was unemployed. 2 PA 308-09. By the time Petitioner was bound over to the district court, he was employed and had saved money and cut expenses. 2 PA 320-21. As Petitioner's financials had changed, the justice court's determination held little persuasive value. Accordingly, Petitioner's request for relief should not be granted.

### **CONCLUSION**

Despite Petitioner's protestations, the district court in this case did exactly what was required under the law—review his pleadings and financial affidavit and make specific findings as to his indigency and need for an expert. As the court duly determined that Petitioner was not indigent, the denial of the Motion for Expert Services Pursuant to Widdis was neither an arbitrary, nor capricious act without any basis in the law. Accordingly, Petitioner's Petition for Writ of Certiorari, Mandamus, and/or, in the Alternative, Writ of Prohibition should be denied.

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Dated this 4<sup>th</sup> day of August, 2017.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY */s/ Charles Thoman*

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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on August 4, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT  
Nevada Attorney General

GARY A. MODAFFERI, ESQ.  
Counsel for Appellant

CHARLES THOMAN  
Deputy District Attorney

I further certify that service of the above and foregoing was made this 4<sup>th</sup> day of August, 2017, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

JUDGE WILLIAM D. KEPHART  
Eighth Judicial District Court, Dept. XIX  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89101

BY /s/ E. Davis  
Employee, District Attorney's Office

CT/Michael Schwartz/ed