

FILED

SEP 07 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Alvarado
DEPUTY CLERK

RENARD TRUMAN. POLK #1521718
Clark County Detention Center
330 South Casino Dr.
Las Vegas, NV 89101

NEVADA SUPREME
COURT

Polk, Renard T.
~Petitioner~
-vs-
Clark County 8th
District Court
~Respondant~

No. 38438
"Petition For
Writ of
Mandamus"

Case No. 00-C-166490-C

Comes Now, the Petitioner, Renard T. Polk represented
by stand-by counsel Christopher Oram and Prays this Honorable
Court pursuant to N.R.S. 34.140 -thru- 34.170 to issue a Writ of
Mandamus directing the 8th District Court:

1.) To grant the Habeas Corpus Relief sought in the 8th District
Court for reasons stated herein.

2.) Or hold an Evidentiary Hearing to substantiate the cons-
titutional allegations.

It is respectfully requested of this Court to grant this petition
for Writ of Mandamus for reasons listed below, before trial on October 9 2001.

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

Procedural Background.

01-15093

1 On about December of 2000 an O.R. Bail Reduction Motion was heard
2 in front of Joseph T. Bonaventure of the 8th Judicial District of Clark
3 County, but was denied based upon an incriminating and illegally obtained
4 statement produced by the Prosecutor after the Discovery Period, at which
5 time the Prosecutor told the courts no such statement existed.

6 Thereafter on August 8, 2001 a Writ of Habeas Corpus was heard
7 but also was denied on irrelevant legal argument and authority.

8 Notwithstanding the Writ of Habeas Corpus was heard under
9 the criminal case number, judge and prosecutor.

10 During the Hearing of the Writ the following issues were brought into
11 scope: 1.) Double Jeopardy. 2.) Federal Rules Criminal Procedure: rule 48(b)
12 Dismissal for Unnecessary Delay. 3.) Forced Anti-Psychotic Medication. 4.)
13 Egregious and Outrageous Government Conduct.

14 Upon the closing of the hearing of the Writ, the Petitioner made a
15 verbal motion for an Evidentiary Hearing to establish the claims made by the
16 Petitioner and Prosecutor.

17 This was also denied.

18
19 ~Argument~

20
21 The first issue argued at the Habeas hearing was that of Double
22 Jeopardy

23 On August 14 1999 the Petitioner turned himself in on what he
24 believed to be the charges at bar in the 8th District Court at which time he
25 was taken to the Juvenile Facility.

26 Thereafter upon a hearing the Petitioner was sentenced to an erroneous
27 "probation violation" and is only now becoming aware of this through extensive
28 research.

1 The Petitioner stipulates he was not on probation for the juvenile
2 court at that point in time.

3 Nevertheless during the Writ hearing the Petitioner was trying to
4 make the Honorable Judge aware that the court might be in possession
5 of some superfluous documents such as a Formal Probation Order and some
6 courts minutes.

7 Also if this still wasn't enough to pique the judges interest. "Have
8 the state produce the Parental Consent Decree and the Terms and Conditions
9 of Probation Delinquent Consent Decree, as stated in the Formal Probation Order."

10 If not, this would only further substantiate the Petitioner was not on
11 Probation.

12 Thereby requiring an Evidentiary Hearing.

13 That in relevance to the Fifth Amendment Double Jeopardy Clause and
14 N.R.S. 62.195.

15 This would be double punishment, being that the first was unjustified
16 because the Petitioner was violated for the, at bar in the 8th District Court of
17 Clark County, charges of which the juvenile courts accepted admission of
18 some facts pertaining to those charges. Then the Petitioner under the violation
19 because of the such, was sentenced erroneously.

20 However the Judge saw no double jeopardy.

21
22 Thereafter the [Post-Arrest / Pre-Prosecution Delay or Federal
23 Rules Criminal Procedure: rule 48 (b)] was argued and denied on irrelevant
24 legalities.

25 In accord to these cases several reasons or parameters are brought
26 into spectrum.

27 Which are 1.) Length of Delay. 2.) Reason for the Delay.
28 3.) Prejudice to the accused and constitutional violations.

1 So the Honorable Judge denied the Writ on the Length of the
2 Delay ' He felt everything ran normal course.

3 The argument in accord to this parameter is Marion v. U.S.
4 409 304 as the Courts held "Prejudice can result from the shortest and
5 most necessary delay."

6 So by the Honorable Judge denying the Writ on this aspect
7 would be frivolous in gesture, since each case has to be determined by its
8 circumstances.

9 Furthermore this parameter is used as a triggering mechanism and
10 when wieghing the other reasons.

11 So the "normal course" the Honorable Judge is referring to, was the
12 surrender of the Petitioner on August 14, 1999, then sentenced under a supposed
13 probation violation. To the re-arrest of the Petitioner on November 24 1999
14 for a G.T.A. charge shortly thereafter released.

15 And upon the third (3) arrest the state decides to file a
16 criminal complaint in the 8th Justice Court for the charges the Petitioner
17 now awaits trial on.

18 Eight (8) months of unnecessary delay.

19 The next parameter to consider is the Reason for the Delay
20 The Courts held that the Prosecutor is in the best position to give a
21 reason. However it was also noted if the delay was negligent or lack of
22 due diligence. (emphasis added) this reason would wiegh more heavily against
23 the state when the accused is housed its own facility. Tartaglia v. U.S. 791
24 P.2d 76 NV. '90

25 The Petitioner states the Prosecutor had lots of opportunities
26 to prosecute. The accused surrendered himself at first, then was arrested
27 and incarcerated a second time and upon the third arrest the state decides to
28 file a criminal complaint.

1 The Courts also concluded, "if the delay was used to gain a tactical
2 advantage over the accused would violate due process." (emphasis added)

3 State v. Autry 746 P.2d 639 Nev.; "Marion."

4 As stated the Petitioner gave a very incriminating statement
5 during the arbitrary juvenile proceedings. At which time the Petitioner
6 could have challenged the voluntariness of the statement, because at
7 that time the Petitioner's mental stability was in question. (To be further
8 expounded on in the next parameter.)

9 Also, after the Discovery Period and Hearing the Prosecutor introduced
10 that statement to procure a denial of Bail Reduction or O.R. Motion
11 filed, after telling the Court prior to that hearing the state had no such
12 statement.

13 Furthermore the Petitioner believes that the State would have
14 erroneously introduced the "non-existing" statement during trial further
15 compromising the accused rights.

16 So if this Honorable Court agrees the state has gained
17 at least one tactical advantage over the Petitioner and probably couldn't
18 give a reason for the delay.

19 Nevertheless if this is still insufficient to warrant a dismissal, there
20 is still yet one more parameter to consider.

21 Prejudice to the accused case and deprivation of constitutional rights.

22 Sheriff Clark County v. Berman 659 P.2d 298 Nev.

23 If the Courts are on the same accord the Petitioner has cited
24 two constitutional rights violations.

25 The next violation that took place during the delay, the state
26 was forcing the Petitioner to take Anti-Psychotic Medication, thereby
27 given rise to the Petitioner's mind frame.

28 At the Hearing of the Writ the Petitioner cited Geelan v. U.S.

1 520 F.2d 585 9th Cir '75 "When prosecution is delayed... determining Mens
2 Rea (emphasis added) is increased. Passage of time makes.. any fact more difficult to
3 prove. When the fact is as subtle as a mind state, the difficulty is immeasurably
4 enhanced."

5 The Petitioner's relevant argument is recently the Courts permitted
6 insanity as a defense once again, Further more in Pre-Prosecution delay
7 cases there seems to be alot of emphasis on lost evidence, lost testimonies,
8 and dead/unavailable witness. The Petitioner states he's lost expert Psychiatric
9 testimony occasioned by the delay.

10 Notwithstanding the state would be in total agreement if it were
11 asked, "that would any psychiatric testimony now establish?" any thing. The answer would be no.

12 Also the Petitioner could not possibly put on an insanity defense
13 now since hes one in a million people who actually recover to a place of
14 mental stability and if the courts jokingly agrees comes across more eloquently
15 than most (20) twenty year olds filing motions and hopefully interpreting law.

16 Not to mention a Petrotelli Motion was granted to show common
17 scheme, plan, and mind frame, of which prior bad acts the Petitioner has never
18 been convicted.

19 How is the Prosecutor permitted an element of the law?
20 Yet the accused is asserting this is the aspect that has been prej-
21 udice and compromised.

22 The Petitioner mind state had to be in question during the
23 delay if hed been through the mental health system and upon the first
24 incarceration after the accused gave an incriminating the facility was forcing
25 medication upon the Petitioner.

26 Also cases in the area of forced medication involve numerous
27 constitutional aspects, especially that of a pre-trial detainee.

28 The Petitioner is not insinuating during the delay he was a

1 pre-trial detainee, however he is trying to give this Court a broader
2 spectrum of the outlook and issues involved.

3 In the Riggins v. Nevada 504 U.S. 127 '92 case it was cited as a
4 liberty interest. Would the same apply here?

5 The state knowing full well they would later prosecute charges that
6 had supposedly been adjudicated in the Juvenile Courts after memory has
7 dulled, perception impaired and mental capacity shot.

8 In the Klien v. Rennie 462 F.Supp 1131 as a First Amendment issue
9 right to privacy. The right to mentation and not having the government
10 interfere with a person's mental process.

11 After the first release of the Petitioner who would have been at
12 fault had another crime been committed the State or the mentally unstable
13 accused?

14 Nevertheless the Petitioner feels this is an equal protections issue
15 since he has been denied aspects of common law a normal minded person
16 is entitled to.

17 So, the Petitioner feels he's met other standards most prosecution
18 delay cases could not, such as non-speculative testimonial prejudice and
19 negligence by the State in filing charges.

20 However in the least this would require an Evidentiary Hearing.
21 Lastly, the Writ brought into scope Egregious and Outrageous Govern-
22 ment Conduct.

23 That if the Courts are in conformity to this Writ's analysis
24 and Petitioner's arduous attempt to cite case law and legal argument
25 the violations sustained herein would massively violate due process principles.

26 What is more, during the arbitrary juvenile proceedings upon being
27 booked in a detective came and questioned the Petitioner after properly
28 Mirandizing him, However prior to giving the "incriminating statement" the

1 Petitioner asked why was he at the juvenile facility at which time
2 the Detective told him for the charges he now awaits trial on in 8th
3 District Court of Clark County. Not for an erroneous probation violation.

4 as the Courts stated in [Hillis v. U.S. 946 P.2d 1092] It may
5 some day be presented with a situation in which the conduct of the law
6 enforcements agents is so outrageous that due process principles would
7 absolutely bar the government from invoking judicial process (103 Nev 54) to
8 obtain a conviction. The Petitioner stipulates aside from everything stated
9 herein this could possibly be one of those instances.

10 11 Conclusion

12
13 So, in closing if this Honorable Court perceive a dismissal is in
14 order. The Petitioner would ask the Courts to mandate an Evidentiary
15 Hearing to check the validity of such allegations and if in fact the
16 stipulation are true, warrant the 8th District Court of Clark County
17 to dismiss the information with extreme prejudice.

18 Nevertheless if this is not in the Courts interest at least allow
19 the Writ of Habeas Corpus to be heard by a civil judge, under a civil
20 case number and prosecutor.

21 The Petitioner has a civil action filed in its premature stages
22 and the 8th District Court is totally avoiding the civil aspect by not
23 allowing the Petitioner to Factually asses and substantiate legalities
24 and the Federal Courts will do nothing until certain aspects are established

25 The Petitioner is truly sorry for any inconvenience he has caused
26 the Courts or if the Writ is Frivolous in application.

27 The Petitioner is not trying to compromise the Courts economy
28 but the actions or lack thereof of the Petitioner's counsel has

1 caused him to seek redress on his own and is undermining those
2 concepts of fair play and decency that lie at the base of our judicial
3 system.

4 As quoted from the Habeas Corpus, "The accused surrendered
5 himself to bring about expedient justice, not to sustain constitutional violations
6 and mental anguish." The Law of Submission.

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8
9
10
11
12 Dated this _____ day of _____ 20__

13
14
15
16 I _____ do by
17 adhere under the penalty of perjury the
18 above _____ is
19 true correct and accurate to the best of
20 my limited knowledge.

21
22
23 Respectfully Submitted

24
25 Renard T. Polk
26
27
28

District Court
Clark County, Nevada

IN THE MATTER
OF
HABEAS CORPUS

Case No. _____

Dept No _____

Docket No. _____

RENARD T. POLK

Motion of Pre-trial Writ of Habeas Corpus for
Dismissal of the Information.

Comes Now the defendant Renard Truman Polk asking this Honorable Court to grant this Motion pursuant to: Federal Rules Criminal Procedures Rule 48(b) "Dismissal for Unnecessary Delay". Double Jeopardy. Outrageous Government Conduct. Forced Administration of Anti-Psychotic Medication. Other various Due Process violations stated herein. This motion is prepared in Good-Faith as to make this Honorable Court aware of the manifest injustice defendant has sustained.

Defendant is truly sorry that this Honorable Court had to receive a motion submitted of his own means, as this Honorable Court was once aware of the conflict between Counsel and Defendant. So, Defendant submits this motion in an effort to allocate relief that has not been sought by counsel and hopes this Court will by no means condone such indecency on the issues brought forth herein.

-Statement of Facts-

SEP 06 2001

HANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

Aug 14 '99 Defendant called Metro Dispatch in order to turn in a warrant that he believed was issued for his arrest

on about March 12 '99. When officers finally arrived Defendant commented as to what facility Defendant was being taken to at which time officers told Defendant, "Juvenile". Defendant then asked why? Since Defendant was well over (18) eighteen years of age. The officers gave no comment.

After being booked a Detective asked Defendant, "if he would like to give a statement?" Defendant consented, but prior to being Mirandized Defendant again asked, "Why he was at the Juvenile Facility." Detective plainly told Defendant for the charges he now faces in this Honorable Court. Defendant then proceeded to give an incriminating statement.

When Defendant was finally brought before the Juvenile Magistrate there was neither an Ad-Litem Guardian or Prosecutor present. The Judge then sentenced Defendant to 30 (thirty) days county time. (Defendant is just now becoming aware of the fact that it was for a probation violation, however Defendant was not on probation.) Upon the 30 (thirty) day false imprisonment Defendant was forced to take anti-psychotic medication even after Defendant signed a waiver of the such. Thereby giving rise to Defendants mental state.

Approximately (3) three months after release Defendant was cited for a Grand Theft Auto charge. State made no effort to prosecute charges at bar. (5) Five additional months passed from the release of Defendant for subsequent G.T.A. charges to the filing of a criminal complaint for the charges at bar in this Honorable Court. Thereafter during a hearing for an O.R. Bail Reduction motion. Prosecutor used the involuntary and illegally obtained statement to procure a denial of the O.R. motion, properly denied by your Honor, even after the discovery period and hearing, telling this Honorable Court that they had no such statement.

~ Argument and Points and Authorities ~

First Defendant would like to bring to this Courts attention the

Double Jeopardy Clause Guaranteed by the Fifth Amendment and N.R.S. 62.195 subsection 2(c) which states: Criminal proceedings and other juvenile proceedings based upon the same offense in the petition alleging delinquency or an offense based upon the same conduct are barred if the Courts have begun taking evidence or accepts a child admission of the facts alleged in the petition. No child may prosecuted as a juvenile and later as an adult....

So as this Honorable Court can see the Defendant was placed in jeopardy once by the Juvenile Courts usurping jurisdiction and punishment. By accepting Defendants admission of facts to secure a probation violation, considering the fact that the defendant was neither on probation and Juvenile courts had no jurisdiction over Defendant. Thereby barring second prosecution by Double Jeopardy Standards and N.R.S. 62.195.

Furthermore to justify such an endemic constitutional allegation as that would in the least require an Evidentiary Hearing.

Next Defendant would like to bring into view the issue of Federal Rules for Criminal Procedures Rule 48(b) which is constituted under the Fifth Amendment Due Process Clause: "Dismissal for Unnecessary Delay."

Bringing this under a Pre-Arrest Delay situation and the relevant things to consider are, "Length of the Delay, reason for the Delay and prejudice to the defendant."

Hence the First (1) thing to consider is the, "Length of the delay." In pre-arrest situations the Courts concluded, "the statute of limitations does not fully defines one's rights and that the Due Process Clause of the Fifth Amendment would require dismissal...if it were shown at trial... delay caused substantial prejudice to the accused rights to a fair trial and that the delay was an intentional device to gain tactical advantage over the accused." State v. Autry 746 P.2d 637 '89 The Courts also held in Marion v. U.S. 404 U.S. 309 "Actual prejudice

1 can result from the shortest and most necessary delay." So as this
2 Court can see this parameter is used as a triggering mechanism or
3 a mechanism used when weighing the other reasons and parameters.

4 So in essence it's been (28) twenty-eight months from the
5 commencement of the alleged offense to the proposed trial date.

6 (9) months of inexcusable delay, being the arrest release and re-arrest on
7 subsequent G.T.A. charge (arrest and release being the arbitrary juvenile proceeding-
8 s) to the arrest of Defendant for charges at bar.

9 The next parameter to be considered is the, "Reason for the
10 delay." The Courts concluded that the "prosecutor is in the best position
11 to give a reason for the delay." However the Courts also stipulated "if the
12 defendant can prove the delay was a device used to gain tactical
13 (recklessly or intentionally) would violate Due Process" *Marion v. U.S.* 404 U.S. 397
14 *State v. Autry* 746 P.2d 637.

15 Defendant stipulates that state has gained a tactical advantage, by taking
16 advantage of the defendant's mental state at the time the arbitrary
17 juvenile proceedings were taking place. Defendant wasn't trying to evade
18 justice by turning himself in but rather wanted it brought about expeditiously.

19 Further stated in the case of *Tartaglia v. State* 791 P.2d 76 N.M. '90 "The
20 reason for delay will weigh more heavily against state, where the state
21 fails to locate a defendant who's imprisoned in its own facility."

22 Defendant stipulates state had ample opportunity to prosecute during the
23 30 (thirty) day false imprisonment and the citing and detention for the
24 G.T.A. charge.

25 The other tactical advantage state gained during the delay was
26 that of the incriminating statement, that statement could have been thrown
27 out back in the juvenile courts, being that it was illegally obtained and
28 Defendant at that time could have challenged the voluntariness of that

statement. Not to mention as your Honor observed during the discovery period and hearing. The state blatantly told this Honorable Court that no such statement existed and that their office had no such statement. Then the day prior to the hearing of an O.R. Bail reduction motion, the same day the prosecutor becomes aware of the motion, the statement mysteriously appears. Defendant also believes that had that statement not been used to secure the denial of the O.R. Bail reduction motion, the state would have erroneously introduced it at the time of trial.

So clearly state has gained numerous tactical advantages over defendant, thereby violating Defendants Due Process rights would at this time require a dismissal for such constitutional violations thus far.

The last parameter to consider is the, "Prejudice to the defendants case and deprivation of constitutional rights." Sheriff Clark County v. Berman 659 P.2d 298 Nev 83, pg. 300 [2-4].

Defendant has already stipulated two constitutional violations so far being the Double Jeopardy and False Imprisonment. Defendant now states that during the delay and (30) day false imprisonment state was forcing the defendant to take anti-psychotic medication. Aside from the constitutional issues, state has prejudice his defense and sentencing guidelines.

Where defendant could have argued an Insanity or Diminished Capacity defense and substantially brought down the statutory sentencing parameters. However courts stated in William v. U.S. 102 U.S. App D.C. 51, 250 F.2d 17, 22-23. Thereafter reguoted in U.S. v. Geelan 520 F.2d 585 9th Cir. 75. "When prosecution is delayed.... determining criminal responsibility at the time of crime is increased. Passage of time makes proof any fact more difficult. When the fact is as subtle as a mind state, the difficulty is incasurably enhanced."

So as this Honorable Court can see factual determinations were required in order to challenge the validity of the due process violations.

1 So to even speculate as to how those proceedings would have turned out
2 would be frivolous in gesture. Furthermore by state forcing the defendant to
3 take anti-psychotic medication has violated his First Amendment right Rennie v.
4 Klien 462 F.Supp 1131, 1142-1143 "to freedom of speech and expression including
5 both the right to communicate and mentation." (emphasis added) Protecting one's
6 mental process from governmental interference. In Riggins v. Nevada 112 S. Ct. 1810
7 92 as a liberty interest. Defendant stipulates he was never free from
8 custody, that the state not only still had Defendant in physical custody
9 by having the charges now at bar in this Honorable Court hanging over
10 the defendant's head, but mentally as well. Knowing that the state would later
11 prosecute charges at bar after perception has been dulled by the anti-psychotic
12 medication, memory impaired, and mental capacity shot. In hope Defendant would
13 either forget about the arbitrary proceedings or be unable to prepare a defense.

14 So as this Honorable Court can clearly see there's been
15 manifest injustice sustained by the defendant. That there are still numerous
16 Due Process Violations the the defendant didn't allocate into this motion as
17 not to seem long winded and felt these are the most pertinent issues.

18 Defendant now quotes what the Courts held in the case of Hillis v.
19 U.S. 746 P.2d 1092 Nev '87 "It may some day be presented with a situation
20 in which the conduct of law enforcement agents is so outrageous that due
21 process principles would absolutely bar the government from invoking judicial
22 process 103 Nev. 534 to obtain a conviction." Defendant stipulates this is one of
23 those situations.

24 ~ Conclusion ~

25 In closing Defendant that this Honorable Court grant this
26 motion or in the least hold an Evidentiary Hearing to check the validity
27 of such serious allegations. To ignore such detrimental issues would further
28 manifest injustice and undermine those fundamental concepts of fair play

1 and decency that lie at the base of our judicial system and as the
2 Constitution has guaranteed since it was framed.

3 The defendant was n't trying to evade justice during the delay, but
4 surrendered himself and the one thing most career criminals covet "thier freedom".
5 That even in nature you learn when a lower species in the "pecking order" or
6 food chain has taken a submissive position, the other animal will not attack
7 because the lesser species has declared inadequacy and for the superior animal
8 to attack would only be an exaltation and superiority power display.

9 Defendant turned himself in order to obtain leniency, not to sustain
10 any conflict between governaental agents, manifest constitutional violations
11 and mental anguish. Defendant feels this case needs immediate resolution and
12 to further ignore such egggregious conduct by the "state" and defendant's counsel
13 would be absolutely uncivilized.

14
15
16
17 Dated this _____ day of _____ 20____.

18 I _____, do

19 solemnly swear, under the penalty of perjury, that
20 the above _____ is accurate,
21 correct and true to the best of my knowledge.

22
23 Respectfully submitted
24 Renard T. Polk

25
26 Defendant

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

RENARD TRUMAN POLK,
Petitioner,
vs.

Supreme Court No. 38438

District Court Case No. C166490

THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE COUNTY OF
CLARK, AND, THE HONORABLE JOSEPH T.
BONAVENTURE, DISTRICT JUDGE,
Respondents,
THE STATE OF NEVADA,
Real Party in Interest.

RECEIPT FOR DOCUMENTS

TO: Attorney General
Clark County District Attorney
Renard Truman Polk #1521718
Shirley Parraguirre , Clark Co. Clerk

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

09/07/01 Filing Fee Waived: Criminal.

09/07/01 Filed Proper Person Petition for Writ.
Petition for Writ of Mandamus.

DATE: September 07, 2001

Janette M. Bloom, Clerk of Court

By: _____


Deputy Clerk