

ORIGINAL

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FILED

DEC 28 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY \_\_\_\_\_  
DEPUTY CLERK

IN THE NEVADA COURT OF APPEALS

JOSEPH WARREN, JR.,

Petitioner,

vs.

THE EIGHTH JUDICIAL  
DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR  
THE COUNTY OF CLARK; AND  
THE HONORABLE RICHARD  
SCOTTI, DISTRICT JUDGE,

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

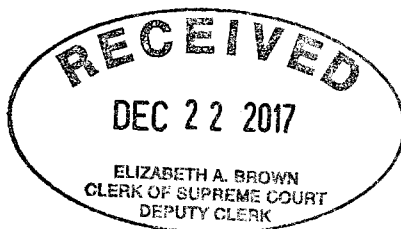
No. 73963

District Court No. C-17-323608-1

Dept. No. II

PETITIONER'S STATUS REPORT

Petitioner Joseph Warren, by and through his counsel JoNell Thomas and



2017 DEC 19 PM 12:21  
CLERK OF SUPREME COURT  
NEVADA  
CLERK

17-902735

Melinda Simpkins, files this Status Report in response to this Court's Order of November 28, 2017.

**There Have Been No Further Proceedings Following The District Court's Order**

On September 8, 2017, the district court entered its Order remanding this matter to the Justice Court. As of December 19, 2017, the State has not filed any documents or placed this case on calendar in Justice Court. See attached Declaration of Counsel. This is consistent with the fact that the State agreed the charges in this case would be dismissed as part of the negotiations in District Court Case No. C323426/Justice Court Case No. 17F04527X.

**The State's Appeal Was Moot During The District Court Proceedings**

The State's appeal in the district court was moot at the time the district court rendered its decision. Specifically, as explained to the Justice Court in Case No 17F04527X, the State agreed to dismiss the charges at issue here in the event that Judge Cadish denied the State's motion for leave to file an Information by affidavit. The State would not proceed on these charges and the State would not appeal Judge Cadish's ruling. App. 194-96. The State further agreed that Mr. Warren would then plead guilty to attempt sexual assault in Justice Court Case No. 17F04527X, the parties would stipulate to a sentence of two-to-five years, and would stipulate that the sentence would run concurrent with two other cases involving open and gross

lewdness. App. 194-96 (Reporter's Transcript of Unconditional Waiver of Preliminary Hearing, in Justice Court Case No. 17F04527X). On June 13, 2017, which was prior to the district court hearing in this case, Mr. Warren fulfilled his obligations under this agreement by entering his plea in the other case. App. 200. According to the terms of the State's agreement, as stated in open court, it was obligated to end its prosecution of this case. It did not, however, and instead continued its prosecution of the appeal in the district court.

In essence, the State sought an advisory decision from the district court even though the case was moot. A district court, sitting in its appellate capacity, had the duty to not render an advisory opinion, but to instead resolve actual controversies by an enforceable judgment. In re: Serota, 309 P.3d 1037, 1040 (Nev. 2013). See also State v. Viers, 86 Nev. 385, 386, 469 P.2d 53, 54 (1970) (finding that Nevada Constitution Article 6, Section 4 prohibits appellate jurisdiction over moot questions of law).

Based upon the State's agreement in the companion case, and Mr. Warren's compliance with the terms of that agreement, further prosecution of this matter was not allowed and the only available remedy in the district court should have been dismissal of the State's appeal. The district court erred in allowing the State to argue

the merits of its appeal, and in ruling in the State's favor, despite the lack of case or controversy.

**The Proper Remedy Is To Vacate The District Court's Order**

Where the district court had no jurisdiction over a matter, its order is void and of no effect. Harrah's Club v. Nevada State Gaming Control Bd., 104 Nev. 762, 764, 766 P.2d 900, 901 (1988). See also State, Dep't of Health and Human Serv.'s v. Samantha Inc., 133 Nev. \_\_\_, \_\_\_ P.3d \_\_\_ (Adv. Opn. 100, filed December 14, 2017) (en banc) (finding that the district court lacked jurisdiction to consider a matter, vacating the judgment of the district court, and remanding the matter to the district court with instructions grant a motion to dismiss). The proper remedy here is an order granting the writ, vacating the district court's order as void, and ordering the district court to dismiss the State's appeal as moot.


**CONCLUSION**

Petitioner Warren respectfully urges this Court to find that the district court exceeded its jurisdiction by hearing the State's appeal and by failing to dismiss the

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State's appeal despite the lack of case and controversy. A writ should issue which compels the district court to vacate its order and dismiss the State's appeal.

Dated this 19h day of December, 2017.



JoNell Thomas  
Melinda Simpkins

**DECLARATION OF COUNSEL**

JONELL THOMAS, makes the following declaration:

I am the Chief Deputy Special Public Defender representing Mr. Warren along with co-counsel MELINDA SIMPKINS in the instant matter.

1. At the time of Mr. Warren's Unconditional Waiver of Preliminary Hearing in Justice Court Case No. 17F04527X, the State agreed to dismiss the charges at issue here, in the event that Judge Cadish denied the State's motion for leave to file an Information by affidavit. The State further agreed it would not appeal Judge Cadish's ruling. On June 13, 2017, Mr. Warren entered his plea in his other case. According to the terms of the State's agreement, as stated in open court, the State was obligated to end its prosecution of this case. It did not, however, and instead continued its prosecution of the appeal in the district court.

2. The district court entered its Order remanding this matter to the Justice


Court on September 8, 2017.

3. As of the date of filing this Status Report, the State has not filed any documents or placed this case on calendar in Justice Court Case No. 17F03940X.

4. It is therefore requested that this Court grant the writ, vacate the district court's order as void, and order the district court to dismiss the State's appeal as moot.

I declare that I make this request in good faith and not for purposes of delay

Dated this 19th day of December, 2017.

  
JoNell Thomas  
Melinda Simpkins

### **CERTIFICATE OF SERVICE**

I hereby certify that on 12/19/17 a true and accurate copy of the foregoing Petitioner's Status Report was served on the following:


**BY U.S. MAIL, FIRST CLASS POSTAGE AFFIXED**

Jacob Villani, Chief Deputy District Attorney  
Genevieve Craggs  
District Attorney's Office  
200 Lewis Ave 3<sup>rd</sup> Floor  
Las Vegas, NV 89101

**BY HAND DELIVERY TO**

The Honorable Judge Robert Scotti  
200 Lewis Ave., 11th Floor, Dept. 2  
Las Vegas NV 89101

Dated: 12/19/17



JoNell Thomas  
Melinda E. Simpkins