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IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN FLOYD VOSS,

No. 74227

Petitioner,

VS.

THE SECOND JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA, IN AND FOR

THE COUNTY OF WASHOE

Respondent.

and

THE STATE OF NEVADA,

Real Party In Interest

FILED

OCT 30 2018

ELIZABETH A. BROWN

CLERK OF SUPREME COURT

DEPUTY CLERK

PETITION FOR REVIEW

(Expedited Review Requested)

STEVEN FLOYD VOSS # 52094

Northern Nevada Correctional Center

Post Office Box # 7000

Carsen City, Nevada 89702-7000

Petitioner In Pro Per,

RECEIVED

OCT 29 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

18-42590

MEMORANDUM OF POINTS AND AUTHORITIES

I. Nature of Petition:

Through the instant Petition the Petitioner seeks this Court's review of the August 15, 2018 Order Granting Petition of the Court of Appeals of the State of Nevada, and that Court's entry of a Writ of Mandamus instructing the District Court to conduct resentencing proceedings relative to Case No. CR96-1581, and to enter an Amended Judgment of Conviction, as previously ordered by the District Court on August 9, 2001 within an Order (Writ of Habeas Corpus).

II. Statement of Relevant Facts:

On October 17, 2017 the Petitioner then still in state custody pursuant to the District Court's November 27, 1996 Judgment of Conviction had ^{on} filed a Petition for Extraordinary Relief Writ in this Court. Said Petition was subsequently on October 26, 2017 transferred to the Court of Appeals. On the face of his Petition the Petitioner, in pertinent part, had specifically requested relief as follows:

"that an Order of Remand be entered to the District Court, with instructions

1 to formally vacate its November 27, 1996
2 Judgment of Conviction (attached Exhibit #3),
3 pursuant to said Court's August 9, 2001
4 (Writ of Habeas Corpus) Findings of Fact -
5 Conclusions of Law, And Judgment (attached
6 Exhibit #2) filed in Case No. CR96-P-1581,
7 and that said Judgment of Conviction be
8 vacated with prejudice to the filing of
9 an Amended Judgment of Conviction. Where,
10 the remedy contemplated by the
11 aforementioned Writ of Habeas Corpus is no
12 longer available to the Petitioner due to
13 the passage of time." See, Petition For
14 Extraordinary Relief Writ, at Page 2, Line 19,
15 through Page 3, Line 1.

16 On January 22, 2018 the Court of Appeals entered
17 an Order Directing Answer from the State,
18 and on February 21, 2018 the State filed their
19 Answer To Petition For Extraordinary Relief.

20 On August 15, 2018 the Court of Appeals had
21 entered an Order Granting Petition and a
22 Writ of Mandamus directing the District Court to
23 conduct resentencing proceedings and enter an
24 Amended Judgment of Conviction. This, despite
25 the fact that the Petitioner had not requested
26 relief in the form of a resentencing or an
27 Amended Judgment of Conviction.

III. Argument:

A. The relief which the Court of Appeals endeavours to advance via its August 15, 2018 Order Granting Petition and Writ of Mandamus, was not requested by the Petitioner, and, in fact, is not relief at all.

As noted above by the Petitioner within his Statement of Relevant Facts the Petitioner had made a very specific request for relief. He in no manner had requested that he be resentenced or that an Amended Judgment of Conviction be entered. The Petitioner's request for relief was predicated not only upon the fact that he had not received the Resentencing Proceeding ordered by the 2001 Post-Conviction Court, but also upon the undeniable fact that the relief contemplated by said Post-Conviction Court was that through a Resentencing the Petitioner would receive the benefit of fair and proportionate sentencing of which he had not previously received from the Trial Court; and that the relief contemplated by the Post-Conviction Court was no longer available due to the overwhelmingly excessive delay in conducting Resentencing Proceedings.

1 The Court of Appeals' decision and writ
2 of Mandamus do not function to advance
3 the remedy contemplated by the Post-Conviction
4 Court. But instead merely demands literal
5 performance of the District Court 2001 Order
6 "Writ of Habeas Corpus". Therefore, the
7 decision and writ of Mandamus do not
8 effectuate a meaningful outcome.
9 Whereas, the relief granted by the Court
10 of Appeals is not relief at all, it does
11 not place the Petitioner in a situation which
12 is better or more favorable to the Petitioner
13 than the situation he was in prior to the
14 Court of Appeals entry of its August 15, 2018
15 Order Granting Petition and Writ of Mandamus;
16 or even place Petitioner in a situation
17 which is better or more favorable than that
18 which he was in prior to the District Court's
19 2001 granting of a Writ of Habeas Corpus.

20 Therefore, since the writ of Mandamus
21 fails to provide the Petitioner with any
22 meaningful relief the writ of Mandamus
23 should be recalled, as moot.

24
25 B. The Order Granting Petition and Writ
26 of Mandamus do not function to advance a
27 remedy that is legally available.
28

The remedy of conducting a Resentencing Proceeding and the entry of an Amended Judgment of Conviction, is not an available and legally viable remedy in the instant case. Whereas, the Petitioner observes the following facts:

(1) The District Court's August 9, 2001 Writ of Habeas Corpus had vitiated and invalidated the District Court's November 27, 1996 Judgment of Conviction (See, Order Granting Petition, at Page 2, Line 15-16):

"there is currently no valid judgment of conviction entered in CR 96-1581." ;

(2) The Petitioner began to serve the term of imprisonment imposed on November 27, 1996 when the original Judgment of Conviction was reduced to writing, signed by Judge Stone, and entered by the Court clerk, with credit for pre-trial detention;

(3) Following the August 9, 2001 entry of a Writ of Habeas Corpus and upto and including the present date, the November 27, 1996 Judgment of Conviction has never been vacated or amended ;

(4) From _____, 1996 when the Nevada ~~of~~ Department of Prisons (Now, Nevada Department of Corrections), had assumed custody of the Petitioner pursuant to the District Court's November 27, 1996

1 Judgment of Conviction , through March 4, 2012
2 when the Petitioner had expired the last of
3 the six (6) sentences imposed via the November 27,
4 1996 Judgment of Conviction and the Petitioner
5 was discharged from said Judgment by the
6 Nevada Department of Corrections ; the Petitioner
7 had been continually been restrained of his
8 liberty pursuant to the November 27, 1996 Judgment
9 of Conviction .

10 Therefore, it is clear that the Petitioner
11 was made to serve to completion and discharge
12 the decidedly "onerous" sentences imposed
13 pursuant to the November 27, 1996 Judgment of
14 Conviction , despite its invalidation by the
15 entry of the District Court's August 9, 2001
16 Writ of Habeas Corpus . Because, the accrual
17 of time toward the discharge of the sentences
18 imposed pursuant to the November 27, 1996 Judgment
19 of Conviction were not tolled by the entry of
20 the August 9, 2001 Writ of Habeas Corpus . Such
21 fact which is clear from the decision of the
22 Court of Appeals. See, Order Granting Petition
23 at Page 3 , footnote 2 ;

24 " Voss shall be credited with all time he has
25 served pursuant to the invalid judgment of
26 conviction entered in CR96-1581 . "

1 Because, the Petitioner has already served
2 to completion and discharge each of the
3 SIX (6) sentences imposed pursuant to the
4 November 27, 1996, now decidedly Invalid Judgment
5 of Conviction; the District Court no longer
6 maintains jurisdiction to conduct Re-Sentencing
7 Proceedings or to amend its prior November 27,
8 1996 Judgment of Conviction. Thus, the
9 Order Granting Petition and writ of Mandamus
10 entered by the Court of Appeals seeks to
11 advance a remedy which is utterly unavailable
12 due to jurisdictional defect. The remedy
13 is, therefore, meaningless because it is not
14 subject to enforcement by the District Court.

15 Therefore, the only remedy available
16 at present juncture, as eluded to by the
17 petitioner, is to:

18 "formally vacate [the] November 27, 1996
19 Judgment of Conviction ... with prejudice
20 to the filing of an Amended Judgment
21 of Conviction ... where the remedy
22 contemplated by the aforementioned writ
23 of Habeas Corpus is no longer available."

24 And because pursuant to NRS 176.105 when
25 for any reason a Judgment of Conviction cannot
26 be entered (an alternative judgment, such
27 as a Judgment of Acquittal, for example, must
28 be entered,

IV. Conclusion:

Given the aforementioned facts and arguments, the Order Granting Petition and Writ of Mandamus entered by the COURT OF APPEALS are erroneous and an abuse of that Court's discretion. Therefore, it is contingent upon this Court to exercise its supervisory jurisdiction at this juncture, to cause the recall of the clearly erroneous Writ of Mandamus entered by the Court of Appeals, and to preempt the District Court from acting with want of jurisdiction by complying with said Writ of Mandamus. Where, any exercise contemplated to draw the Petitioner into the District Court's adjudicative means would be an ultra vires action, and any proceeding or Judgment would be coram non iudice and void.

Because, the November 27, 1996 Judgment of Conviction has been found to be invalid it must be vacated; and because an amendment of such Judgment is no longer legally feasible at present juncture due to the Petitioner serving to completion and discharge each of the sentences imposed pursuant to the November 27, 1996 Judgment of Conviction, said Judgment must be vacated with

1 prejudice.

2 Therefore, the Petitioner submits that
3 the proper Judgment and culmination
4 of proceedings in Case No. CR96-1581 would
5 be the entry of a Judgment of Acquittal
6 because, any legally viable Judgment
7 entered at this juncture would function
8 as a Judgment of Acquittal. Therefore,
9 it would serve no legitimate purpose to
10 label the Judgment otherwise.

11

12 V. Verification:

13

14 Under penalty of perjury, I STEVEN
15 FLOYD VOSS, do hereby verify that I have
16 read the content of the foregoing,
17 Petition For Review, and that same is true
18 and correct of my own personal information,
19 knowledge and belief.

20 DATED this 24th day of October 2018.

21

22

By: Steven Voss

23

STEVEN FLOYD VOSS,
24 Petitioner, in Pro. Per.

25

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CERTIFICATE OF SERVICE VIA U.S. MAIL

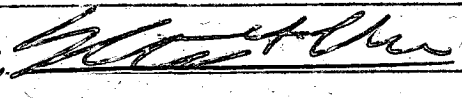
I, STEVEN FLOYD VOSS, do hereby
certify, that on this 24th day of October 2008,
that I mailed a true and correct copy
of the foregoing, Petition For Review, addressed
to:

TERRANCE P. MCCARTHY, ESQ (DDA)

% Washoe County District Attorney

Post Office Box # 11130

Reno, Nevada 89520-0027

By: 
STEVEN FLOYD VOSS

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