

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERICK M. BROWN

Petitioner,

VS.

Case No. ~~47856~~
District Court
District Court C-189658

SUPREME COURT OF NEVADA,
IN and for the COUNTY OF CARSON,
OFFICE OF THE CLERK, D. Richards
DEPUTY CLERK, and the STATE OF
NEVADA, Real Party interest,

Respondent. /

FILED

MAY 04 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

PETITION FOR WRIT OF MANDAMUS

COMES NOW, PETITIONER, ERICK M. BROWN (Petitioner), by and through his proper person, and submits for filing the foregoing "Petition For Writ of Mandamus," (Writ), in the above-entitled cause of action.

This Writ is made and based upon all documents, papers, pleadings, and exhibit's, etc., FILED in this court on MAR 20 2018; MAR th, 2018; and Returned UNFILED APR 13 2018, in Case No. 47856, District Court Case No. C-189658

This Writ is also made and based upon the provisions of the Constitution of the State of Nevada (Const. of Nev.), Article (Art.), 6, §4, and the Nevada Rules of Appellate Procedure (NRAP), Rule 21(a).

Petitioner respectfully requests consolidation of the cases above iterated, due to the issues, matters being the same, and judicial economy of resources, time, etc., are better served as to the States resources as concerns this matter.

This Writ is further made and based upon the accompanying

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

Points And Authorities, and argument of Petitioner in support of this Writ.

Dated this 16th day of April 2018.

Erick M. Brown
ERICK M. BROWN
PETITIONER PRO SE

I.

INTRODUCTION

"A writ of mandamus is available to compel the performance of an act that the law requires ... or to control an arbitrary or capricious exercise of discretion." *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 179 P.3d 556, 558 (2008). "An arbitrary or capricious exercise of discretion is one founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law." *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011) (citation omitted) (internal quotations marks omitted). "[W]here there is [no] plain, speedy and adequate remedy in the ordinary course of law," extraordinary relief may be available. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

II.

PARTIES

Petitioner is currently incarcerated in the Nevada Department of Corrections (NDOC), Indian Springs Nevada Southern Desert Correctional Center (SDCC).

Respondents include the Supreme Court of Nevada, D. Richards (Richards) Deputy Clerk, and the State of Nevada, Real Party

in interest.

There are no known additional parties to this action.

III.

JURISDICTION

The Sup. Ct. of Nev. has original jurisdiction, pursuant to the Const. of Nev. Art. 6, § 4, and NRAP Rule 21(a), to review and issue writs of mandamus to public officials, an act required to be performed from duty resulting from office and required by law.

IV.

STATEMENT OF FACTS

On MAR 20 2018, caused to be FILED a Motion To Recall Remittitur (Motion), in both above stated cases, 47856

On MAR 29 2018, Chief Justice Michael Douglas (C.J. Douglas), caused to be FILED ORDER DENYING MOTION. C.J. Douglas' Order reads in part: No good cause appearing, the motion is denied.

On April 6th, 2018, Petitioner caused to be mailed for filing pursuant to NRAP Rule 40(a), and NRAP Rule 27(c), a Petition For Panel Rehearing, to have the "MAR 29, 2018 Order Denying Motion," to be heard, reviewed by a panel pursuant to again NRAP Rule 27(c).

On April 13, 2018, Deputy Clerk Richards caused to be mailed to Petitioner a missive, informing Petitioner in no uncertain terms that the "Petition For Panel Rehearing" would not be filed. (See attached Exhibit "1" missive of D. Richards, Deputy Clerk).

This Writ now follows, requesting relief.

V.

CONTENTIONS

The refusal to file the pleadings was error. The Clerk had

a ministerial duty to accept and file proper documents, before forwarding to the court

Petitioner pursuant to NRAP Rule 40(a), timely submitted his Petition For Panel Rehearing, in both cases, again 47856 and (See Exhibit "2" Case No. 47856 Petition For Panel Re-hearing, and Exhibit " " Case No. Petition For Panel Re-hearing).

Again, on April 13th, 2018, Deputy Clerk Richards Returned to Petitioner Unfiled these pleadings, being confused as to what Petitioner is seeking "Rehearing" on.

Petitioner is not seeking rehearing from the "Direct Appeal," of Case No. 47856, yet the Order Denying Motion of MAR 29 2018.

Petitioner as a matter of law, is entitled to have the pleadings filed. It was an abuse of discretion by Deputy Clerk Richards to not file the pleading. Petitioner was very clear in the Petition For Panel Rehearing that, Petitioner was seeking rehearing of the MAR 29 2018 Order Denying Rehearing.

VI.

PRAYER FOR RELIEF

(1) That this Honorable Court issue an Order granting Petitioner's Writ;

(2) That Petitioner's Petition For Panel Rehearing, is sufficient for filing;

(3) Preservation of Petitioner's Constitutional Rights under the First Amendment of the United States Constitution to access the courts;

(4) That for the purpose of limitation of NRAP Rule 40(a), Petitioner's Petition For Panel Rehearing, are deemed timely filed

when they were first submitted to the Clerk's Office for filing.

(5) The Clerk of the Court, has a ministerial duty, as an official, to accept and file documents that are in proper form before submitting to the court for review and decision, and must not exercise any judicial discretion;

(6) That, Deputy Clerk Richards incur the cost of copying and mailing expenses, incurred by Petitioner for this Writ, and to resubmit the Petition(s) for Panel Rehearing for Case No. 47856 and, should Petitioner prevail on this Writ.

(7) And such further relief that this court deems just, fit, and proper.

VII.

POINTS AND AUTHORITIES

For the aforementioned contentions at paragraph V, and incorporated, and set forth herein, as though fully stated and reiterated, Petitioner seeks relief via this Writ in accordance with the Const. of Nev. Art. 6, § 4, and NRAP 21(a).

Petitioner submitted to the court for filing, proper document titled: "Petition For Panel Rehearing," this pleading was returned "unfiled." This action by Deputy Clerk Richards is unappealable.

Upon receipt of proper documents, by the Clerk's Office, the Clerk, one who is enjoined by duty resulting from office, had a mandated ministerial obligation to file documents submitted to the Court, absent any judicial discretion. The Deputy Clerk Richards had "no" authority to return the pleadings "unfiled." Additionally, Deputy Clerk Richards had "no" judicial discretion to not submit the pleadings for judicial review. At the very least, Deputy Clerk Richards duty was to "file" the pleadings, and make an

accurate recording. See, Compare: *Bowman v. Eighth Judicial Dist. Court*, 102 Nev. 474, 477, 728 P.2d 433, 435 (1986).

"A writ of mandamus is available to compel the performance of an act that the law requires... or to control an arbitrary or capricious exercise of discretion." *Int'l Game Tech., Inc.*, 124 Nev. 193, 179 P.3d at 558. "An arbitrary or capricious exercise of discretion is one founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law." *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. at 931-32, 267 P.3d at 780 (2011) (citation omitted) (internal quotations marks omitted).

The failure of Deputy Clerk Richards to file the "Petition for Panel Re-hearing," was an arbitrary or capricious exercise of discretion, or to the established rules of law. *State v. Eighth Judicial Dist. Court (Armstrong)*, supra, see also *Bowman*, 102 Nev. at 477, 728 P.2d at 435.

Petitioner has no plain, speedy and adequate remedy in the ordinary course of law, as there is no appeal, etc., against the arbitrary, etc., action of Deputy Clerk Richards. Extraordinary relief should be made available. *Smith*, 107 Nev. at 677, 818 P.2d at 851.

Petitioner has the right to access the courts pursuant to the First (1st), Amendment of the United States Constitution. *Bounds v. Smith*, 430 U.S. 817 (1977).

CONCLUSION

Wherefore, based upon the above and foregoing, Petitioner does respectfully request that the foregoing Writ be granted, as Petitioner is entitled to relief, and has no other plain, speedy, and adequate remedy in the ordinary course of law.

Dated this 16th day of April 2018.

Erick M. Brown
ERICK M. BROWN
PETITIONER PRO SE

VERIFICATION WITHOUT NOTARY

I, Erick M. Brown, Petitioner, under penalty of perjury, states, I am incarcerated in the Nevada Department of Corrections (NDOC), currently confined at Southern Desert Correctional Center (SDCC), I am the person named in the foregoing Writ, that I have read the same and knows the contents thereof; that statements made herein are true and correct, except for those matters stated upon information and belief; that as to such matters I believe them to be true.

Executed at Southern Desert Correctional Center facility on
this 16th day of April 2018.

Erick M. Brown
ERICK M. BROWN
PETITIONER PRO SE

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SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
ELIZABETH A. BROWN, CLERK
201 SOUTH CARSON STREET, SUITE 201
CARSON CITY, NEVADA 89701-4702

Telephone
(775) 684-1600

April 13, 2018

Erick Brown
Inmate ID: 92713
Southern Desert Correctional Center
PO Box 208
Indian Springs, NV 89070

Re: BROWN (ERICK) VS. STATE, Supreme Court Case No. 47856

Dear Mr. Brown:

We are returning, unfiled, the "Petition for Panel Rehearing" received in this office on April 12, 2018 in the above-entitled matter.

A decision was filed in this case on September 13, 2007 and the remittitur issued on October 9, 2007. Therefore, this court no longer has jurisdiction over this matter. I am enclosing a copy of the final decision and a copy of the docket sheet for this case.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Richards".

D. Richards
Deputy Clerk

Enclosures

petitioner
copy!

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERICK M. BROWN,

Appellant,

No. 47856

vs.

THE STATE OF NEVADA,

Respondent. /

**RETURNED
UNFILED**

APR 13 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY DEPUTY CLERK

PETITION FOR PANEL REHEARING

COMES NOW Appellant, ERICK M. BROWN (Appellant),
by and through his proper person, and hereby submits for filing
the foregoing "Petition For Panel Rehearing," (Petition).

The foregoing Petition is made and based upon all docu-
ments, papers, pleadings, and exhibit's filed with this court by
Appellant on the 20 day of March, 2018.

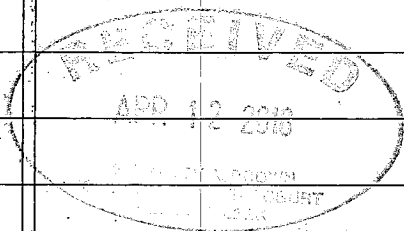
The foregoing Petition is also made and based upon the
Nevada Rules of Appellate Procedure (NRAP), Rule 40(a), and the
accompanying Points and Authorities, argument of Appellant
briefly stating with particularity the points of law and
facts which in the opinion of Appellant the court has over-
looked or misapprehended.

Additionally, this Petition is made pursuant to NRAP 27(c),
the action of a single justice may be reviewed by the court.

Respectfully submitted

Dated this 6 day of April

2018



Erick M. Brown
APPELLANT PRO SE

CERTIFICATE OF SERVICE BY MAILING

I, ERICK M. BROWN, hereby certify, pursuant to NRCP 5(b), that on this 16
day of April, 2018, I mailed a true and correct copy of the foregoing, "

Petition for Writ of Mandamus"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

District Attorney
Clark County, Nevada
200 Lewis Ave
P.O. Box 552212
Las Vegas, NV 89155-2212

Attorney General
State of Nevada
555 E. Washington Ave
Ste 3900
Las Vegas, NV 89101

CC:FILE

DATED: this 16 day of April, 2018.

Erick M. Brown
ERICK M. BROWN # 92713
Petitioner /In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS: