

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jun 21 2019 11:21 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

JOSE VALDEZ-JIMENEZ

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, AND
THE HONORABLE MARK B. BAILUS
DISTRICT JUDGE

Respondents,

and

THE STATE OF NEVADA,

Real Party In Interest.

CASE NO: 76417

AARON WILLARD FRYE,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, AND
THE HONORABLE JERRY A. WIESE
DISTRICT JUDGE

Respondents,

and

THE STATE OF NEVADA,

Real Party In Interest.

CASE NO: 76845

NATHAN GRACE,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, AND
THE HONORABLE MICHAEL VILLANI
DISTRICT JUDGE

Respondents,

and

THE STATE OF NEVADA,

Real Party In Interest.

CASE NO: 76947

**REPLY TO OPPOSITION TO MOTION
TO DISMISS PETITIONERS FRYE AND GRACE**

The State objects to Petitioners' attempt to broaden the scope of this mandamus proceeding to encompass the alleged bail practices of the Eighth Judicial District Courts in general or the facts of other specific cases not before the Court as set forth in the Declaration of Christy L. Craig. This is not a class action lawsuit nor a petition for declaratory relief, but rather a mandamus action which is available for a particular kind of relief: namely, to compel the named district court judges in the performance of an act which the law especially enjoins as a duty. NRS 34.150 et seq. The narrow purpose of mandamus is not error correction or to rule upon issues of law in the abstract, but to compel judicial action in a particular case.

That specific remedy is no longer possible as to Petitioners Frye and Grace. If Judge Wiese, as it concerns Frye, and if Judge Villani, as it concerns Grace, neglected some duty of law pertaining to pretrial bail, such duty of law no longer exists by virtue of the guilty pleas. Frye and Grace are no longer entitled to pretrial bail. This Court will not render advisory opinions on moot or abstract questions. Decisions may be rendered only where actual controversies exist. Boulet v. City of Las Vegas, 96 Nev. 611, 614 P.2d 8 (1980).

The capable-of-repetition-yet-evading-review exception to mootness is not as broad as Petitioners' would have it. Personhood Nevada v. Bristol, 126 Nev. 599,

245 P.3d 572 (2010). The State disputes that the bail issue presented is of widespread importance. Rather, it is a pet issue of just two particular attorneys with a political agenda for bail reform who happen to represent all three petitioners in this case.¹ There is no indication that other parties or judges are in need of “guidance” from this Court as to bail matters in general. The facts of each case are unique and any ruling of this Court should be tailored to address those particular facts in Valdez-Jimenez’s case that are still in controversy. Petitioners Frye and Grace have not challenged the constitutionality of a statute in general as in Binegar, but the adequacy of their respective bail hearings and their individual ability to afford a particular amount of cash bail. See Binegar v. District Court, 112 Nev. 544, 548, 915 P.2d 889, 892 (1996) (challenging the constitutionality of a discovery statute). Such a determination is fact specific and without widespread application to other cases.

To date, Petitioner Valdez-Jimenez remains in pretrial custody and his case presents a live controversy in which to address pretrial bail issues on the merits should this Court be so inclined, which belies any claim that the issue will forever evade review. Although oral argument has been set for after the trial setting below,

¹ See also Raymond Sherard SC# 76398 and Joshua Black SC# 76472 for nearly identical petitions filed by the very same two attorneys which this Court denied as being moot.

there is no assurance that Valdez-Jimenez will actually go to trial in August and any suggestion that his case may become moot is speculative at this point in time.

WHEREFORE, the State respectfully requests that the Petitions by Frye and Grace be dismissed.

Dated this 21st day of June, 2019.

Respectfully submitted,

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

BY /s/ Steven S. Owens
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
Office of the District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155
(702) 671-2750

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on June 21, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

NANCY M. LEMCKE
CHRISTY L. CRAIG
Deputy Public Defenders

CHARLES LEWIS GERSTEIN, ESQ.
Pro Hac Vice
Civil Rights Corps.

STEVEN S. OWENS
Chief Deputy District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

HONORABLE MARK B. BAILUS
Eighth Judicial District Court, Dept. 18
Phoenix Building
330 S. Third Street, CTRM 110
Las Vegas, Nevada 89101

HONORABLE JERRY A. WIESE
Eighth Judicial District Court, Dept. 30
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101

HONORABLE MICHAEL P. VILLANI
Eighth Judicial District Court, Dept. XVII
Regional Justice Cnter
200 Lewis Avenue
Las Vegas, Nevada 89101

/s/ E. Davis

Employee, Clark County
District Attorney's Office

SSO/Andrea Orwoll/ed