

IN THE SUPREME COURT OF THE STATE OF NEVADA

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.

Electronically Filed
Jul 17 2019 12:01 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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
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: 76845

CASE NO: 76947

MOTION TO DISMISS PETITIONER VALDEZ-JIMENEZ

The instant proceeding is a mandamus petition filed approximately one year ago seeking an order vacating the bail setting below in a criminal case and releasing the defendant from custody, or at a minimum ordering a new bail hearing as constitutionally required. The case is fully briefed, has been consolidated with two other similar cases (Frye and Grace), and has been expedited. The case as to Petitioner Valdez-Jimenez is currently set for oral argument before this Court on September 4, 2019.

Meanwhile, when it was learned that Petitioners Frye and Grace had since pleaded guilty below, the State filed a motion to dismiss as to them on June 12, 2019. That motion is opposed and remains pending with the Court. Recently, on June 25, 2019, Petitioner Valdez-Jimenez also pleaded guilty in his criminal case below. See Exhibit 1 (GPA). As a result, the federal court dismissed Valdez-Jimenez's pretrial habeas petition as moot.¹ See Exhibit 2. The State now moves to dismiss as moot the petition filed in this Court by Valdez-Jimenez seeking a remedy from pretrial confinement.

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¹ The State previously alerted this Court to the existence of the federal habeas litigation by Notice filed on June 4, 2019. The federal habeas case concerned the same bail issues before this Court in the instant mandamus case.

POINTS AND AUTHORITIES

There is no constitutional or statutory right to bail after a guilty plea. See NRS 178.484 (recognizing the “[r]ight to bail before conviction”); NRS 176.015(1) (providing the district court with discretion to grant bail pending sentencing); Bergna v. State, 120 Nev. 869, 872, 102 P.3d 549, 551 (2004) (recognizing that there is no constitutional right to bail after conviction).

This court's duty is to decide actual controversies and not to give opinions on moot questions. Personhood Nevada v. Bristol, 126 Nev. ___, 245 P.3d 572, 574 (2010). The question of mootness is one of justiciability. This Court's duty is not to render advisory opinions but, rather, to resolve actual controversies by an enforceable judgment. NCAA v. University of Nevada, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981). Thus, a controversy must be present through all stages of the proceeding, *see* Arizonans for Official English v. Arizona, 520 U.S. 43, 67, 117 S.Ct. 1055 (1997); Lewis v. Continental Bank Corp., 494 U.S. 472, 476-78, 110 S.Ct. 1249 (1990), and even though a case may present a live controversy at its beginning, subsequent events may render the case moot. University Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004); Wedekind v. Bell, 26 Nev. 395, 413-15, 69 P. 612, 613-14 (1902).

Mootness is a jurisdictional issue that must be addressed at the threshold. See Foster v. Carson, 347 F.3d 742, 745 (9th Cir. 2003). For a case to fall within this

Court's limited judicial power, "it is not enough that there may have been a live case or controversy when the case was decided by the court whose judgment we are reviewing." Burke v. Barnes, 479 U.S. 361, 363, 107 S.Ct. 734 (1987). Rather, a live case or controversy must be "extant at all stages of review." Steffel v. Thompson, 415 U.S. 452, 459 n.10, 94 S.Ct. 1209 (1974). Otherwise, the case is moot and must be dismissed. See Paulson v. City of San Diego, 475 F.3d 1047, 1048 (9th Cir. 2007). An appeal is moot "when, by virtue of an intervening event, a court of appeals cannot grant any effectual relief whatever in favor of the appellant." United States, v. Strong, 489 F.3d 1055, 1059 (9th Cir. 2007), *citing* Calderon v. Moore, 518 U.S. 149, 150, 116 S.Ct. 2066 (1996).

In his mandamus petition, Valdez-Jimenez claimed that the capable-of-repetition-yet-evading-review exception to the mootness doctrine should apply due to the short duration of the challenged action and the likelihood of the issue arising again in the future. See Valdez-Jimenez Petition, pp. 10-11, *citing* Personhood Nevada v. Bristol, 126 Nev. —, —, 245 P.3d 572, 574 (2010). This exception to mootness is not as broad as Petitioner would have it. 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.² There is no indication that other parties or judges are in need of “guidance” from this Court as to bail matters in general. Petitioner has not challenged the constitutionality of a statute in general as in Binegar, but the adequacy of his respective bail hearing and his 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) (After guilty verdict, exception to mootness applied where constitutionality of a discovery statute was challenged). Such a determination is fact specific and without widespread application to other cases.

Finally, it is well-settled law that when a defendant pleads guilty, the only claims that may be raised thereafter are those involving the voluntariness of the plea itself, or that the plea was entered without effective assistance of counsel. Kirksey v. State, 112 Nev. 980, 999, 923 P.2d 1102, 1114 (1996), *citing* Warden, Nevada State Prison v. State, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984). “[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” Id. (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)). By pleading

² 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.

guilty, Petitioner Valdez-Jimenez has waived or forfeited his right to pursue a remedy for perceived errors occurring before the entry of his guilty plea.

WHEREFORE, the State respectfully requests that the Petitions by Valdez-Jimenez be dismissed.

Dated this 17th day of July, 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 July 17, 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

DAVID H. BASHFORD, ESQ.
Attorney for Amici Curiae

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. 17
Regional Justice Center
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CHARLES LEWIS GERSTEIN, ESQ.
Pro Hac Vice
Civil Rights Corps.
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J. BRADLEY ROBERTSON
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Bradley Arant Boult Cummings LLP
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Washington, D. C. 20036

////

/s/ E. Davis

Employee, Clark County
District Attorney's Office

SSO//ed

EXHIBIT 1

EXHIBIT 1

ORIGINAL

1 GPA
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 SHANON CLOWERS
6 Chief Deputy District Attorney
7 Nevada Bar #010008
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JUN 25 2019

BY 
LAUREN KIDD, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 JOSE VALDEZ-JIMENEZ, aka,
13 Jose Antonio Valdezjimenez, #7521605

14 Defendant.

CASE NO: C-18-332277-1

DEPT NO: XXIX

15 GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty to: BURGLARY (Category B Felony - NRS 205.060 -
17 NOC 50424), as more fully alleged in the charging document attached hereto as Exhibit "1".

18 My decision to plead guilty is based upon the plea agreement in this case which is as
19 follows: both parties stipulate to a sentence of three (3) to ten (10) years in the Nevada
20 Department of Corrections. The State agrees not to seek habitual criminal treatment. Lastly,
21 the State agrees not to refile in Case No. 18FH1588X or theft related crimes from January
22 2018 through May 2018.

23 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
24 and/or impounded in connection with the instant case and/or any other case negotiated in
25 whole or in part in conjunction with this plea agreement.

26 I understand and agree that, if I fail to interview with the Department of Parole and
27 Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate,
28 by affidavit review, confirms probable cause against me for new criminal charges including

C-18-332277-1
GPA
Guilty Plea Agreement
4846020



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1 reckless driving or DUI, but excluding minor traffic violations, the State will have the
2 unqualified right to argue for any legal sentence and term of confinement allowable for the
3 crime(s) to which I am pleading guilty, including the use of any prior convictions I may have
4 to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without
5 the possibility of parole, life with the possibility of parole after ten (10) years, or a definite
6 twenty-five (25) year term with the possibility of parole after ten (10) years.

7 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
8 plea agreement.

9 CONSEQUENCES OF THE PLEA

10 I understand that by pleading guilty I admit the facts which support all the elements of
11 the offense(s) to which I now plead as set forth in Exhibit "1".

12 I understand that as a consequence of my plea of guilty The Court must sentence me to
13 imprisonment in the Nevada Department of Corrections for a minimum term of not less than
14 ONE (1) year and a maximum term of not more than TEN (10) years. The minimum term of
15 imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment. I
16 understand that I may also be fined up to \$10,000.00. I understand that the law requires me to
17 pay an Administrative Assessment Fee.

18 I understand that, if appropriate, I will be ordered to make restitution to the victim of
19 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
20 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
21 reimburse the State of Nevada for any expenses related to my extradition, if any.

22 I understand that I am eligible for probation for the offense to which I am pleading
23 guilty. I understand that, except as otherwise provided by statute, the question of whether I
24 receive probation is in the discretion of the sentencing judge.

25 I understand that I must submit to blood and/or saliva tests under the Direction of the
26 Division of Parole and Probation to determine genetic markers and/or secretor status.

27 I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,
28 Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or

1 Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation
2 and may receive a higher sentencing range.

3 I understand that if more than one sentence of imprisonment is imposed and I am
4 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
5 the sentences served concurrently or consecutively.

6 I understand that information regarding charges not filed, dismissed charges, or charges
7 to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

8 I have not been promised or guaranteed any particular sentence by anyone. I know that
9 my sentence is to be determined by the Court within the limits prescribed by statute.

10 I understand that if my attorney or the State of Nevada or both recommend any specific
11 punishment to the Court, the Court is not obligated to accept the recommendation.

12 I understand that if the offense(s) to which I am pleading guilty was committed while I
13 was incarcerated on another charge or while I was on probation or parole that I am not eligible
14 for credit for time served toward the instant offense(s).

15 I understand that if I am not a United States citizen, any criminal conviction will likely
16 result in serious negative immigration consequences including but not limited to:

- 17 1. The removal from the United States through deportation;
- 18 2. An inability to reenter the United States;
- 19 3. The inability to gain United States citizenship or legal residency;
- 20 4. An inability to renew and/or retain any legal residency status; and/or
- 21 5. An indeterminate term of confinement, with the United States Federal
22 Government based on my conviction and immigration status.

23 Regardless of what I have been told by any attorney, no one can promise me that this
24 conviction will not result in negative immigration consequences and/or impact my ability to
25 become a United States citizen and/or a legal resident.

26 I understand that the Division of Parole and Probation will prepare a report for the
27 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
28 sentencing, including my criminal history. This report may contain hearsay information

1 regarding my background and criminal history. My attorney and I will each have the
2 opportunity to comment on the information contained in the report at the time of sentencing.
3 Unless the District Attorney has specifically agreed otherwise, the District Attorney may also
4 comment on this report.

5 WAIVER OF RIGHTS

6 By entering my plea of guilty, I understand that I am waiving and forever giving up the
7 following rights and privileges:

- 8 1. The constitutional privilege against self-incrimination, including the right
9 to refuse to testify at trial, in which event the prosecution would not be
10 allowed to comment to the jury about my refusal to testify.
- 11 2. The constitutional right to a speedy and public trial by an impartial jury,
12 free of excessive pretrial publicity prejudicial to the defense, at which
13 trial I would be entitled to the assistance of an attorney, either appointed
14 or retained. At trial the State would bear the burden of proving beyond
15 a reasonable doubt each element of the offense(s) charged.
- 16 3. The constitutional right to confront and cross-examine any witnesses who
17 would testify against me.
- 18 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 19 5. The constitutional right to testify in my own defense.
- 20 6. The right to appeal the conviction with the assistance of an attorney,
21 either appointed or retained, unless specifically reserved in writing and
22 agreed upon as provided in NRS 174.035(3). I understand this means I
23 am unconditionally waiving my right to a direct appeal of this conviction,
24 including any challenge based upon reasonable constitutional,
25 jurisdictional or other grounds that challenge the legality of the
26 proceedings as stated in NRS 177.015(4). However, I remain free to
27 challenge my conviction through other post-conviction remedies
28 including a habeas corpus petition pursuant to NRS Chapter 34.

22 VOLUNTARINESS OF PLEA

23 I have discussed the elements of all of the original charge(s) against me with my
24 attorney and I understand the nature of the charge(s) against me.

25 I understand that the State would have to prove each element of the charge(s) against
26 me at trial.

27 I have discussed with my attorney any possible defenses, defense strategies and
28 circumstances which might be in my favor.

1 All of the foregoing elements, consequences, rights, and waiver of rights have been
2 thoroughly explained to me by my attorney.

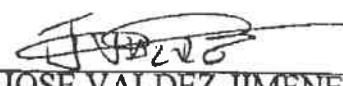
3 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
4 that a trial would be contrary to my best interest.

5 I am signing this agreement voluntarily, after consultation with my attorney, and I am
6 not acting under duress or coercion or by virtue of any promises of leniency, except for those
7 set forth in this agreement.


8 I am not now under the influence of any intoxicating liquor, a controlled substance or
9 other drug which would in any manner impair my ability to comprehend or understand this
10 agreement or the proceedings surrounding my entry of this plea.

11 My attorney has answered all my questions regarding this guilty plea agreement and its
12 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

13 DATED this 25th day of June, 2019.

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16 JOSE VALDEZ-JIMENEZ, aka,
17 Jose Antonio Valdezjimenez
18 Defendant

19 AGREED TO BY:

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21 SHANON CLOWERS
22 Chief Deputy District Attorney
23 Nevada Bar #010008
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1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court
3 hereby certify that:

- 4 1. I have fully explained to the Defendant the allegations contained in the
5 charge(s) to which guilty pleas are being entered.
6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.
8 3. I have inquired of Defendant facts concerning Defendant's immigration status
9 and explained to Defendant that if Defendant is not a United States citizen any
10 criminal conviction will most likely result in serious negative immigration
11 consequences including but not limited to:
12 a. The removal from the United States through deportation;
13 b. An inability to reenter the United States;
14 c. The inability to gain United States citizenship or legal residency;
15 d. An inability to renew and/or retain any legal residency status; and/or
16 e. An indeterminate term of confinement, by with United States Federal
17 Government based on the conviction and immigration status.

18 Moreover, I have explained that regardless of what Defendant may have been
19 told by any attorney, no one can promise Defendant that this conviction will not
20 result in negative immigration consequences and/or impact Defendant's ability
21 to become a United States citizen and/or legal resident.

- 22 4. All pleas of guilty offered by the Defendant pursuant to this agreement are
23 consistent with the facts known to me and are made with my advice to the
24 Defendant.
25 5. To the best of my knowledge and belief, the Defendant:
26 a. Is competent and understands the charges and the consequences of
27 pleading guilty as provided in this agreement,
28 b. Executed this agreement and will enter all guilty pleas pursuant hereto
voluntarily, and
c. Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time I consulted with the Defendant as
certified in paragraphs 1 and 2 above.

29 Dated: This 26th day of June, 2019.

30 
31 DEFENSE ATTY. NAME

32 rmj/L-3

1 **AIND**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 SHANON CLOWERS
6 Chief Deputy District Attorney
7 Nevada Bar #010008
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOSE VALDEZ-JIMENEZ, aka,
Jose Antonio Valdezjimenez #7521605

Defendant.

CASE NO: C-18-332277-1

DEPT NO: XXIX

SECOND AMENDED
INDICTMENT

STATE OF NEVADA }
COUNTY OF CLARK } ss.

The Defendant above named, JOSE VALDEZ-JIMENEZ, aka, Jose Antonio Valdezjimenez, accused by the Clark County Grand Jury of the crime(s) of BURGLARY (Category B Felony - NRS 205.060 - NOC 50424), committed at and within the County of Clark, State of Nevada, on or between February 23, 2018 and April 12, 2018, as follows: did, willfully, unlawfully, and feloniously enter, with intent to commit larceny, that certain building

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EXHIBIT "1"

1 occupied by VICTORIA'S SECRET, located at 4300 Meadows Lane, Las Vegas, Clark
2 County, Nevada.

3 DATED this 19th day of June, 2019.

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

7 BY


8 SHANON CLOWERS
9 Chief Deputy District Attorney
10 Nevada Bar #010008

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27 17BGJ120X/18F08807X/rmj/L3
28 LVMPD EV# 180305099986
(TK10)

EXHIBIT 2

EXHIBIT 2

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSE VALDEZ-JIMENEZ,

Petitioner,

v.

SHERIFF JOSEPH LOMBARDO,

Respondent.

Case No. 2:19-cv-00581-RFB-VCF

**ORDER GRANTING MOTION TO
DISMISS (ECF Nos. 25, 27) AND
DISMISSING ACTION**

This action is a petition for a writ of habeas corpus, under 28 U.S.C. § 2241, by Jose Valdez-Jimenez, who was a pretrial detainee at the Clark County Detention Center, in Las Vegas, Nevada, when he initiated the action. See Petition for Writ of Habeas Corpus (ECF No. 1), p. 2. Valdez-Jimenez claimed that his federal constitutional rights were violated with respect to the setting of bail. See *id.*

On June 25, 2019, the respondents filed a motion to dismiss (ECF Nos. 25, 27), requesting that the action be dismissed because Valdez-Jimenez has now pled guilty and waived his right to a trial, ending his pretrial detention, and thereby rendering moot his claim regarding the setting of his bail and depriving the Court of jurisdiction. See Motion to Dismiss Petition as Moot (ECF No. 27), pp. 2-4 (citing *Murphy v. Hunt*, 455 U.S. 478, 481-82 (1982)). On the same date, Valdez-Jimenez responded to the motion to dismiss, giving notice that he agrees the case is moot and the Court is without jurisdiction, and that he does not oppose the motion to dismiss (ECF No. 28).

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1 Therefore, good cause appearing,

2 **IT IS HEREBY ORDERED** that Respondents' Motion to Dismiss Petition as Moot
3 (ECF Nos. 25, 27) is **GRANTED**. This action is dismissed, without prejudice.

4 **IT IS FURTHER ORDERED** that the Clerk of the Court is directed to enter
5 judgment accordingly and close this case.

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7 DATED this 26th day of June, 2019.

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RICHARD F. BOULWARE, II,
11 UNITED STATES DISTRICT JUDGE
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