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.

Case No. 76417

REPLY TO OPPOSITION TO MOTION TO DISMISS PETITIONER VALDEZ-JIMENEZ

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Real Party In Interest

REPLY TO OPPOSITION TO MOTION TO DISMISS PETITIONERS VALDEZ-JIMENEZ

On July 17, 2019, the State moved to dismiss the petition of Valdez-Jimenez as moot. Petitioner filed an opposition on July 22, 2019. Pursuant to NRAP 27(a)(4), the State has five days in which to file a reply. Prior to the expiration of that time, this Court on July 24, 2019, granted the State's motion to dismiss in part as to the issue of excessive bail. Because the Court deferred ruling on the motion as to other issues, the State now submits the instant reply for the Court's consideration.

Even though the federal court dismissed Petitioner's pretrial bail petition as moot upon his guilty plea, Petitioner urges this Court to reach the merits of his nearly identical petition in this forum under the capable-of-repetition-yet-evading-review exception. The federal court did not distinguish between excessive bail and other procedural issues but denied all pretrial bail claims as moot. This Court should not tread where the federal court dared not.

The United States Supreme Court has already reached this issue and has held that by their very nature, pretrial bail issues become moot upon conviction. Murphy v. Hunt, 455 U.S. 478, 102 S.Ct. 1181 (1982).[1] For the capable-of-repetition-yet-

[1] Conviction moots pretrial detention issues in general, not just excessive bail. *See e.g.*, U.S. v. Sanchez-Gomez, ___ U.S. ___, 138 S.Ct. 1532 (2018) (outside of a class action, pretrial detention issues are moot upon conviction); *see also* United States v. Ramirez, 145 F.3d 345, 356 (5th Cir.1998) (holding that procedural delay in obtaining pretrial detention order was rendered moot by defendant's conviction);

evading-review exception to apply, the Court explained there must be a reasonable expectation "that the same controversy will recur involving the same complaining party," otherwise, "virtually any matter of short duration would be reviewable." Murphy v. Hunt, 455 U.S. at 482. In the pretrial bail context, there is no reason to believe that the defendant might overturn his convictions on appeal and once again be in the position to demand bail. Id. at 482-4. This is why Petitioner Valdez-Jimenez conceded and Judge Boulware agreed that the entirety of the petition was moot in federal court and the case was dismissed.

However, Petitioner maintains that in Nevada this exception to the mootness doctrine is broader and applies regardless of whether the case is capable of repetition to the petitioner himself. *See* Petitioner's Opposition filed July 22, 2019, at p. 7. As support for this argument, Petitioner cites to Binegar where this Court used the mootness exception to determine the constitutionality of a discovery statute after conviction, "without discussion of whether statute will apply again to petitioner." Id; Binegar v. District Court, 112 Nev. 544, 548, 915 P.2d 889, 892 (1996). With all due respect, a particular case holding's silence on an issue is hardly authority for the proposition that the legal principle does not exist in Nevada jurisprudence.

United States v. Vachon, 869 F.2d 653, 656 (1st Cir.1989) (various procedural violations of Bail Reform Act became moot upon conviction).

To the contrary, Nevada has expressly and affirmatively recognized that for the exception to apply, "a reasonable expectation must exist that the same complaining party will suffer the harm again." In re Guardianship of L.S. & H.S., 120 Nev. 157, 161, 87 P.3d 521, 524 (2004). In that case, this Court applied and cited to federal law recognizing the applicability of the capable-of-repetition-yet-evading-review doctrine only in "exceptional situations" where the issue might reasonably arise between the same parties again:

> Temporary guardianships and medical emergencies are typically of short duration. Both will expire prior to the issues being fully litigated. That Jason and Rebecca or Valley Hospital will be confronted with the same issue or injury again is an entirely reasonable prospect.

In re Guardianship of L.S. & H.S., 120 Nev. 157, 162, 87 P.3d 521, 524 (2004), *citing* Washington v. Harper, 494 U.S. 210, 110 S.Ct. 1028 (1990); see also Honig v. Doe, 484 U.S. 305, 318, 108 S.Ct. 592 (1988); United States Parole Comm'n v. Geraghty, 445 U.S. 388, 398, 100 S.Ct. 1202 (1980).

This mootness exception in Nevada was first borrowed from federal law which continues to as authority for appropriate interpretation. Cirac v. Lander, 95 Nev. 723, 733–34, 602 P.2d 1012, 1019 (1979), *citing* Moore v. Oglivie, 394 U.S. 814, 816, 89 S.Ct. 1493 (1969) (holding that even after an election is over, the nomination of candidates for statewide offices is an issue "capable of repetition yet evading review"); see also Langston v. State, Dep't of Motor Vehicles, 110 Nev. 342, 344, 871 P.2d 362, 363 (1994); Stephens Media, LLC v. Eighth Judicial Dist.

Court of State ex rel. Cty. of Clark, 125 Nev. 849, 858, 221 P.3d 1240, 1247 (2009); Las Vegas Review-Journal v. City of Henderson, 441 P.3d 546 (Nev. 2019). In short, there is no reason to believe that Nevada's application of the capable-of-repetition-yet-evading-review doctrine is any different than that of the federal courts.

Even if pretrial bail issues were viewed as capable of repetition, they are hardly within such a short duration of time so as to evade review. In the instant case, Petitioner's pretrial detention lasted more than a year before he decided to plead guilty. This is ample time to brief the pretrial bail issue and obtain a ruling. A better example of the kind of issue of short duration deemed sufficient to invoke the exception to mootness is found in State v. Washoe Co. Public Defender, 105 Nev. 299, 775 P.2d 217 (1989) (72 hour window for public defender's pre-appointment right of access to detainee was so short as to evade review).

Although pretrial bail may present a time-sensitive issue of some urgency, it is not of such short duration as to evade review for purposes of mootness. This Court has successfully entertained a variety of pretrial issues in criminal cases on the merits through extraordinary writ proceedings prior to guilty plea or disposition and this has been true for pretrial bail issues as well. *See e.g.*, Cameron v. Dist. Ct., 135 Nev.Adv.Op. 28 (July, 18, 2019); Application of Knast, 96 Nev. 597, 614 P.2d 2 (1980); Jones v. Sheriff, Washoe Cty., 89 Nev. 175, 175–76, 509 P.2d 824, 824 (1973); Application of Wheeler, 81 Nev. 495, 406 P.2d 713 (1965). There are

procedures in place to ensure that time-sensitive issues do not become moot. *See* Personhood Nevada v. Bristol, 126 Nev. 599, 603, 245 P.3d 572, 575 (2010) ("[T]his court typically resolves ballot-related cases before they become moot, often expediting such cases when requested to do so").

Petitioner did not move to expedite the instant case until nearly eight months after filing his petition and failed to avail himself of an emergency relief per NRAP 27(e) and NRAP 21(a)(6). It is petitioner himself who has caused his petition to evade review in this particular case, not the nature of pretrial bail issues in general. Petitioner no longer has a legally cognizable interest in the outcome of this case and it is only his attorneys who now seek an advisory ruling for the benefit of other clients whose cases are not before the Court.

WHEREFORE, the State respectfully requests that the motion to dismiss be granted.

Dated this 25th day of July, 2019.

Respectfully submitted,

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BY */s/ Steven S. Owens*
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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on July 25, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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