

Steven D. Grierson

FILED

MAY 16 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
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DEPUTY CLERK

Christian Miles #2888634
Petitioner / In Proper Person
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**EIGHT JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

Christian Stephan Miles

Petitioner

Case Nos. C-15-306436-1

v.

Dept. No. IX

State of Nevada, et al.
Respondents

Eighth Judicial District Court

PETITION FOR WRIT OF MANDAMUS / PROHIBITION
(NRS 34.150 thru 34.320)

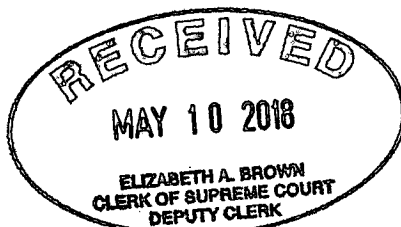
Christian S. Miles, Petitioner in proper person, under penalty of perjury, being
duly sworn, deposes and says:

There is no appeal from Respondent's actions and that Petitioner has no other
plain, speedy, or adequate remedy other than Mandamus/ Prohibition.

Dated this 26th day of April, 2018.

Submitted by: Christian Miles
Christian Stephan Miles #2888634
Petitioner / In Proper Person

CLERK OF THE COURT



18-18634

POINTS AND AUTHORITIES

Jurisdiction of this Court is invoked pursuant to NRS 34.150 thru NRS 34.320, petitioner submits that mandamus/prohibition is the proper vehicle, since the controversy petitioner is contending is not a challenge to his conviction.

Mandamus is a proper remedy to compel performance of a judicial act when there is no plain, speedy, and adequate remedy at law in order to compel the performance of an act which the law requires as a duty resulting from office. See NRS 34.160; NRS 34.170. Prohibition is a proper remedy to restrain a district judge from exercising a judicial function without or in excess of its jurisdiction. See NRS 34.330; NRS 34.320.

STATEMENT OF RELEVANT FACTS

On May 7th, 2015, a preliminary hearing was held and alleged victim G.K. testified as a witness for the State. G.K. alleged in her testimony that she was "going to run away" and "leave with" Petitioner. PRELIMINARY HEARING TRANSCRIPTS, pages 5-6, lines 25-1 (hereinafter (PHT, [Page Number(s), [Line Number(s)]). G.K. alleged in her testimony that she "inboxed" Petitioner "on Facebook" and "told him to come pick her up from her home" PHT. 6.6-10, that she didn't tell her mother, Becky York that she was leaving her home. PHT. 7.5-7, and that she "got in" the petitioner's car with her bags and they drove off. Thereafter, her mother Becky York "pulled up on the side" of the car "trying to flag" her and Petitioner down, but they "got away from her." PHT. 7.21-25.

G.K. alleged in her testimony that "he [defendant] was explaining for me to get down, like what he was going to do and what

1 was going to happen. So he told me that he was going to post
2 pictures on the site and I was going to get clients and I was
3 going to have sex with them and I was going to get money
4 and I was going to give it to him." PHT. 11, 12-17. The prosecutor
5 Samuel Martinez (Martinez), asked G.K. "And the defendant
6 explained that process to you?" PHT. 11, 18-19. G.K. alleged in her
7 testimony "yes." PHT. 11, 20. Martinez stated to the Court that
8 "She [G.K.] testified previously that he [defendant] had explain-
9 ed why he was taking the pictures and that he was going to
10 post her photos on different websites." PHT. 15, 6-9. Martinez
11 set a timeframe stating to the court "When he [defendant]
12 picked her [G.K.] up when she thought she was going to go to
13 the grandma's house." PHT. 21, 1-3. the Court stated "Right at
14 that time." PHT. 21, 5, and thereafter Martinez asked G.K. "Did
15 there ever come a point in time after that when you were
16 with the defendant that he explained to you what he want-
17 ed you to do?" PHT. 21, 6-8. and G.K. alleged in her testimony
18 "No. He explained to me before we even met." PHT. 21, 9-10.
19 G.K. alleged in her testimony that she and petitioner "went to
20 go get me a phone because I didn't have one at the time, and
21 then he [defendant] processed some type of texting so were
22 the clients would text my phone but he will also get the text
23 and he would reply to them." PHT. 12, 8-12. Martinez asked G.K.
24 "So he [defendant] bought you the cell phone; is that correct?"
25 PHT. 12, 13-14, and G.K. alleged "Yes." in her testimony. PHT. 12, 15.
26 Martinez asked G.K. "And then associated with that cell phone
27 you had your own phone number?" PHT. 12, 16-17, and G.K. alleged
28 "Yes." in her testimony. PHT. 12, 18. G.K. was asked "What is the

1 name of the app that you describe where two parties can get the
2 same message? PHT, 24, 5-6, and G.K. testified "TextNow" PHT, 24, 7
3 and was asked "What was the phone number for that [TextNow]?"
4 PHT, 24, 12, and G.K. testified that the phone number was "517-2010"
5 PHT, 24, 13. G.K. testified that the model of the cellular phone allegedly
6 provided to her by the defendant was a "Galaxy L." PHT, 25, 7-8,
7 and testified that the phone number for that cellular phone was
8 "517-1020" PHT, 34, 12-14. Martinez asked G.K. "Did he [defendant] tell
9 you or explain to you what the purpose of that [TextNow] app or
10 device was on his phone?" PHT, 13, 7-8, and G.K. testified "No..." PHT
11 12, 9.

12 G.K. testified that "An in-call is when someone comes to the suite and
13 I have sex with them and they give me money. An out-call is when I
14 go out to them or to their house or to their suite and have sex with
15 them and get money." PHT, 16, 2-6, and alleged in her testimony that
16 she had sex with "five or six" men for money and made "\$500" total
17 on the in-calls and "gave it to" the defendant. PHT, 16, 7-25. G.K.
18 also alleged in her testimony that she went on "one" out-call
19 that the defendant drove her to. PHT, 17, 2-18, and alleged in her
20 testimony that she gave the money she made on the out-call
21 to the defendant. PHT, 18, 2-23.

22 ARGUMENT

23
24 Mandamus is a proper remedy to compel performance of a
25 judicial act when there is no plain, speedy, and adequate reme-
26 dy of law in order to compel the performance of an act which
27 the law requires as a duty resulting from office. Smith v. Big
28 bt Judicial Dist. Court, 107 Nev. 674, 818 P.2d 849 (1991). To justify

1 the issuance of a writ of mandamus to enforce the perform-
2 ance of an act by a public officer, two things must concur (1)
3 the act must be one the performance of which the law especial-
4 ly enjoins as a duty resulting from an office, and (2) there
5 must be an actual omission on the part of the respondent to
6 perform it. State ex rel. Piper v. Gracey, 11 Nev. 223 (1876); State ex
7 rel. Lawton v. Public serv. Commn., 44 Nev. 102, 190 P. 284 (1920).

8 A writ of prohibition arrest the proceeding of any tribunal
9 or person exercising judicial functions, when such proceedings
10 are without or in excess of the jurisdiction of such tribunal
11 person. NRS 34, 320. The object of a writ of prohibition "is to re-
12 strain inferior courts from acting without authority of law
13 in cases where wrong, damage, and injustice are likely to
14 follow from such action. Olsen Family Trust v. District Court,
15 110 Nev. 548, 552, citing Silver Peak Mines v. Second Judicial
16 District Court, 33 Nev. 97 (1910). Writs of prohibition "ought to is-
17 sue freely whenever it is necessary for the protection of the
18 rights of a litigant and he has no other plain, speedy, and ad-
19 equate remedy." Silver Peak Mines at 124. A writ of prohibition
20 is an appropriate remedy and should issue to prevent an action
21 required by an order of the district court entered in excess of
22 jurisdiction. See NRS 34, 150 and 34, 320; Wardleigh v. Second Ju-
23 dicial Dist. Court 111 Nev. 345 (1995), cited, State v. Second Judi-
24 cial Dist. Court, 120 Nev. 254, 258 (2004).

25 A. The District Court Exceeded its Jurisdiction

26 A district court judge must uphold and apply the law. Code
27 of Judicial conduct (C.J.C) Rule 2.2. Judges must follow the law
28 as the legislature has written it and as dictated by the Statutes.

1 See In re Smith, 401 B.R. 343, 355 (Bankr. S.D. Ill. 2008); In re
2 Jones, 55 S.W. 2d 243, 249 (Tex. Spec. Ct. Rev. 2000). "It is unsat-
3 isfactory to the court as it is to counsel to have cases dispos-
4 ed of upon mere questions of practice; but it must be remem-
5 bered that the rules of practice are as obligatory upon us
6 as upon the parties to a suit." Central Trust Co. of California
7 v. Holmes Mining Co. et al., 30 Nev. 437, 97 P. 390, 391 (1908).

8 NRS 175.291 provides in part:

9 1. A conviction shall not be had on the testimony of an accom-
10 plice unless he is corroborated by other evidence which in itself,
11 and without the aid of the testimony of the accomplice, tends
12 to connect the defendant with the commission of the offense.

13 The requirement that the testimony of an accomplice be
14 corroborated is applicable to preliminary hearings. In re Cx-
15 ley and Mulvaney, 38 Nev. 379, 149 P. 992 (1915); In re Bowman
16 and Best, 38 Nev. 484, 151 P. 517 (1915); Ex parte Hutchinson,
17 76 Nev. 478, 357 P. 2d 589 (1960); State v. Wyatt, 84 Nev. 731, 448
18 P.2d 827 (1968).

19 An accomplice is one who is liable to prosecution for
20 the identical offense charged against the defendant. NRS
21 175.291(2), or who is culpably implicated in, or unlawfully
22 cooperates, aids or abets in the commission of the crime ch-
23 arged. Austin v. State, 87 Nev. 578, 491 P.2d 724 (1971).

24 In addition, "The test is to whether one is an accomplice
25 is whether his participation in the offense has been crimin-
26 ally corrupt." Austin v. State, 87 Nev. 578, 587, 491 P.2d 724, 730
27 (1971) (quoting Blake v. State, 24 P.2d 362 (Okla. Crim. App. 1933)).

28 ///

1 Under Sheriff v. Gordon, 96 Nev. 205, 606 P.2d 533 (1980) A
2 defendant cannot be tried on a charge of pandering, NRS 201-
3 300, where the indictment is supported only by uncorrobor-
4 ated testimony of the prostitute, nor can an indictment be
5 sustained by the combined testimony of the prostitute
6 and the accomplice because witnesses whose testimony
7 requires corroboration may not corroborate each other. Id.
8 at 207.

9 A motion to Dismiss was filed challenging the uncorroborated
10 testimony of G.K., adduced by the State at the preliminary hear-
11 ing. (See Motion to Dismiss for Uncorroborated Accomplice Testi-
12 mony; filed, September, 8, 2015).

13 As determined by the district court in its April 11, 2018, deci-
14 sion and order "Defendant's arguments fail for the following
15 reasons: A child victim who is sex trafficked cannot be also guilt-
16 y of trafficking him or herself. A child cannot kidnap him or her-
17 self. A prostitute cannot be guilty of living off the earnings of
18 his or her own prostitution. See Sheriff, Clark County v. Horner,
19 Nev. 312, 314 (1980) (Testimony of prostitute, who could not be tried
20 under statute proscribing Living from Earnings of Prostitute, was
21 not that of 'accomplice' requiring corroboration under statute
22 requiring corroboration of accomplice's testimony)." The District
23 court cites NRS 175.291, and Sheriff v. Horner, however, Sheriff
24 v. Horner cites Sheriff v. Gordon, which the district court has
25 not applied. In enacting NRS 175.291, the legislature intended
26 that "one who has participated criminally in a given criminal
27 venture shall be deemed to have such character, and such mo-
28 tives, that his testimony alone shall not rise to the dignity of

1 proof beyond a reasonable doubt." Austin v. State, 87 Nev. 578.
2 491 P.2d 724 (1971), which the district court also did not apply.
3 Here, the district court has refused to apply Sheriff v. Gor-
4 don, 96 Nev. 205 (1980), to this case which has held that a defen-
5 dant may not be tried on the pandering charge, NRS 201.300, if
6 the indictment is supported only by the uncorroborated tes-
7 timony of the prostitute, the person upon whom the offense
8 was allegedly committed. Id. at 206. Petitioner is being charged
9 under NRS 201.300, as set forth in the information as count
10 one (1), and the alleged prostitute G.K.'s testimony at the
11 preliminary hearing was uncorroborated. Therefore,
12 Sheriff v. Gordon requires the dismissal of the pandering
13 charge. The district court has also refused to apply Austin v. State
14 87 Nev. 578 (1971), to this case which defines an accomplice as
15 one culpably implicated in, or who unlawfully co-operates, aids
16 ~~in~~ ^{or} abets ~~and~~ insists in the commission of the crimes
17 charged. 87 Nev. at 587. G.K.'s testimony at the preliminary
18 hearing established that she was culpably implicated in, un-
19 lawfully co-operated, aided, abetted, and insisted in, the
20 commission of the crimes charged against petitioner by
21 engaging in prostitution. The district court refuses to apply
22 Austin v. State to this case. Petitioner is being charged with
23 NRS 201.300, pandering, NRS 200.310-200.320, first degree kid-
24 napping, NRS 200.508(1), child abuse, neglect, or endanger-
25 ment, and NRS 201.320, living from the earnings of a prosti-
26 tute, based on G.K. allegedly engaging in prostitution. Under
27 Austin v. State G.K. is an accomplice to the crimes charged.
28 Therefore, Austin v. State requires the dismissal of all charges.

1 set forth in the information.

2 For the above reasons, the district court exceeded its
3 jurisdiction in ordering defendant's Motion to Dismiss, de-
4 nied, as the law dictates that G.K. is an accomplice to crimes
5 charged, and that her testimony was uncorroborated.

6 B. There is No Appeal Available

7 Petitioner does not have an adequate legal remedy from
8 the District Court's order denying the Motion to Dismiss for Un-
9 corroborated Accomplice Testimony. See NRAP 3A; NRS 177.015.
10 Petitioner's ability to appeal from district court proceedings in
11 a criminal case is limited by NRS 177.015 and NRAP 3A. Accord-
12 ingly, there is no appeal available to Petitioner in this instance.

13 C. There is not a plain, speedy and Adequate Remedy

14 There is no plain, speedy and adequate remedy. The remedy
15 can only be accomplished through the writ process. A writ of
16 mandamus/prohibition is the appropriate remedy to com-
17 pel the District Court to grant the motion to dismiss.

18 CONCLUSION

19 Petitioner therefore respectfully request that a Writ of
20 mandamus/prohibition be entered compelling the district court
21 to Grant Petitioner Motion to Dismiss for Uncorroborated
22 Accomplice Testimony.

23

24 Respectfully submitted this 26th day of April, 2018.

25

By: *Christian Miles*

26

Christian S. Miles #2888634

27

/In proper person

28

To Clerk of the Court for the Nevada Supreme Court

This petition for writ of mandamus/prohibition was originally filed with in the District Court however I was advised that this petition must be filed in the Nevada Supreme Court. Please file, thanks

