

Christian S. Miles # 2888634
Petitioner / In Proper Person
~~P.O. Box 208 CCDC~~
~~Indian Springs, NV 89070-0208~~ 330 S. Casino Center
Las Vegas, NV, 89101

No. 77220

FILED

OCT 22 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

**EIGHT JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

Christian Stephen Miles

Petitioner

Case Nos. C-15-306436-1

v.

Dept. No. IX

State of Nevada, et al.
Respondents

Jennifer P. Togliatti, District Court Judge
Eighth Judicial District Court

Emergency Motion Under NRAP 27(e)

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

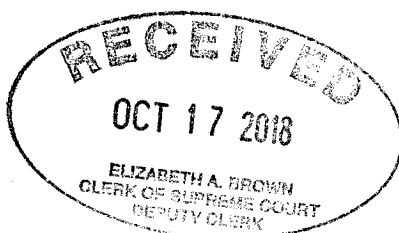
Action is necessary by October 31st, 2018

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 11th day of October, 2018.



Submitted by: [Signature]
Christian S. Miles # 2888634
Petitioner / In Proper Person

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The telephone numbers and office addresses of the attorneys for the parties and the telephone numbers and addresses for any pro se parties:

Christian Miles #2888634
C.C.D.C.
330 South Casino Center
Las Vegas, NV, 89101

Petitioner is currently incarcerated at C.C.D.C awaiting trial on a case that has been ongoing for about three years and six months. Petitioner has not received adequate notice of the charges and as a result unable to prepare a defense, defend against the charges, and invoke the Double Jeopardy Clause. Petitioner's Sixth and Fifth Amendment rights have and continue to be violated. Petitioner is forced to prepare for trial without adequate notice of the charges and various theories of prosecution. As a result of Respondent's actions Petitioner is also suffering mental, physical, and psychological harm at C.C.D.C. unable to sleep some days due to excessive noise and 24 hour constant illumination and has been suffering malnutrition and starvation due to the nutritionally inadequate food being served at the jail. Petitioner's health is declining due to deprivation of outdoor exercise and the various conditions of confinement. Petitioner is suffering ongoing harm, however to avoid irreparable harm, relief sought in the petition is needed in less than 14 days.

The relief sought in the petition was available to the District Court, and all grounds advanced in support of the petition were submitted to the District Court.

The relief sought in the petition was available to the District Court, and all grounds advanced in support of the petition were submitted to the District Court.

1 DATED this 11th day of October, 2018

2 BY: Christian Miles

3 Christian S. Miles #2888634
4 Petitioner / In Proper Person
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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 FACTS

On May 12, 2015, an Information was filed charging petitioner with sex trafficking of a child under 18 years of age (NRS 201.300), first degree kidnapping (NRS 200.310), living from the earnings of a prostitute (NRS 201.320), and child abuse, neglect, or endangerment (NRS 200.508). Appellant's Appendix 0001-0003 (hereinafter (App., [Page Number(s)])).

On May 15, 2018, Petitioner filed a Motion to Dismiss. App., 0004-0013. Petitioner set forth in that Motion that the Information violated NRS 173.035, and that Petitioner's Sixth and Fifth Amendment Constitutional rights have been violated. App., 0006-0007.

In the Motion to Dismiss, Petitioner argued the following:

1) the information is not a plain, concise, and definite written statement of the essential facts constituting the offenses charged;

2) the Information alleges the commission of the offenses solely in the conclusory language of the statute, and fails to include the means

1 by which the offenses was allegedly accomplished, or show that the means
2 are unknown;

3 3) the State failed to give adequate notice to petitioner of the various
4 theories of prosecution;

5 4) Petitioner is deprived of adequate notice of the charges against
6 him and prejudices petitioner to such an extent that he is unable to ade-
7 quately defend against the charges, in violation of the Sixth Amendment,
8 and

9 5) Petitioner is unable to adequately invoke the Double Jeopardy
10 Clause, in violation of the Fifth Amendment. App., 0006-0013.

11 On May 25, 2015, the State filed an opposition to Petitioner's Motion to
12 Dismiss. App., 0037-0041. The State argued in its opposition that the
13 information contained "a specific date range" and "factual details as to
14 the offenses committed," and that petitioner "has already had the opp-
15 ortunity to cross-examine the state's witnesses extensively in this case
16 on multiple occasions. Claiming now that he cannot adequately prepare
17 a defense is somewhat humorous and completely without merit." App.,
18 0040.

19 The State did not dispute Petitioner's arguments that (1) the Informa-
20 tion alleged the commission of the offenses solely in the conclusory lan-
21 guage of the statute and fails to allege the means by which the offenses
22 were allegedly committed; and (2) Petitioner is unable to adequately invoke
23 the Double Jeopardy Clause.

24 On August 8, 2018, a reply to the State's opposition to Petitioner's
25 motion to dismiss was filed. App., 0014-0036. In that Reply, Petitioner
26 alleged that the prosecutor, Samuel S. Martinez, had engaged in profes-
27 sional misconduct in violation of Nevada Rules of Professional Mis-

conduct. App., 0025-0031.

Finally, on September 28th, 2018, the district court denied the Motion to Dismiss with the following findings: 1) the Information was adequate because the State alleged that the "offenses took place in Clark County Nevada," occurred on or between "February 8, 2015-February 13, 2015" and "what the alleged crimes are,"; and 2) Defendant's argument that the offenses were alleged in the conclusory language of the statutes is misplaced because "the state is under no obligation to present their entire case to the Defendant via the Information," App., 0042-0044.

ARGUMENT

Mandamus is a proper remedy to compel performance of a judicial act when there is no plain, speedy, and adequate remedy of law in order to compel the performance of an act which the law requires as a duty resulting from office. Smith v. Eighth Judicial Dist. Court, 107 Nev. 674, 818 P.2d 849 (1991). To justify the issuance of a writ of mandamus to enforce the performance of an act by a public officer, two things must concur (1) the act must be one the performance of which the law especially enjoins as a duty resulting from an office, and (2) there must be an actual omission on the part of the respondent to perform it. State ex rel. Piper v. Gracey, 11 Nev. 223 (1876); State ex rel. Lawton v. Public Serv. Comm'n, 44 Nev. 102, 190 P. 284 (1920).

A writ of prohibition arrest the proceeding of any tribunal or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal person. NRS 34.320. The object of a writ of prohibition "is to restrain inferior courts from acting without authority of law in cases where wrong, damage, and injustice are likely to follow from such action. Olsen Fam-

1 City Trust v. District Court, 110 Nev. 548, 552, citing Silver Peak Mines v.
2 Second Judicial District Court, 33 Nev. 97 (1910). Writs of prohibition
3 "ought to issue freely whenever it is necessary for the protection of the
4 rights of a litigant and he has no other plain, speedy, and adequate re-
5 medy." Silver Peak Mines at 124. A writ of prohibition is an appropriate
6 remedy and should issue to prevent an action required by an order of
7 the district court entered in excess of jurisdiction. See NRS 34.150 and
8 Wardleigh v. Second Judicial Dist. Court, 111 Nev. 345 (1995), cited, State v.
9 Second Judicial Dist. Court, 120 Nev. 254, 258 (2004).

10 **A. The District Court Exceeded its Jurisdiction**

11 A district court judge must uphold and apply the law. Code of Judicial
12 conduct, (C.J.C.) Rule 2.2. Judges must follow the law as the legislature
13 has written it and as dictated by the Statutes. See In re Smith, 401 B.R.
14 343, 355 (Bankr. S.D. Ill. 2008); In re Jones, 55 S.W. 2d 243, 249 (Tex. Spec.
15 ct. Rev. 2000). "It is unsatisfactory to the court as it is to counsel to have
16 cases disposed of upon mere questions of practice; but it must be remem-
17 bered that the rules of practice are obligatory upon us as upon the par-
18 ties to a suit." Central Trust Co. of California v. Holmes Mining Co. et al.,
19 30 Nev. 437, 97 P. 390, 391 (1908).

20 Both the United States and Nevada Constitution require an indictment
21 or information to allege a criminal offense in a manner that is sufficient
22 to put the defendant on notice of the offense charged and the essential
23 facts constituting the offense "in order to permit adequate preparation of
24 a defense." Jennings v. State, 116 Nev. 488, 490, 998 P.2d 557, 559 (2000); See
25 NRS 173.075(1) ("The indictment or the information must be a plain, concise
26 and definite written statement of the essential facts constituting the
27 offense charged.").

1 To that end, the Nevada Supreme Court has held that a charging doc-
2 ument "which alleges the commission of the offense solely in the conclu-
3 sory language of the statute is insufficient." Sheriff v. Levinson, 95 Nev.
4 436, 596 P.2d 232, 233 (1979). See Earlywine v. Sheriff, 94 Nev. 100, 575
5 P.2d 599 (1978). Instead, the indictment or information must include
6 "a statement of the acts constituting the offense in ordinary and con-
7 cise language" and put the defendant on notice of the State's theory
8 of prosecution. Viray v. State, 121 Nev. 159, 162, 111 P.3d 1029, 1082 (2005) (quo-
9 ting Jennings, 116 Nev. at 490). Where one offense may be committed by
10 one or more specific means, an accused must be prepared to defend a-
11 gainst all means alleged. See State v. Kirkpatrick, 94 Nev. 628, 630, 584
12 P.2d 630, 671-72 (1978).

13 NRS 173.075 provides:

- 14 1. The indictment or information must be a plain, concise and defin-
15 ite written statement of the essential facts constituting the offense.
16 It must be signed by the attorney general acting pursuant to a specific
17 statute or district attorney. It need not contain a formal commencement,
18 a formal conclusion or any other matter not necessary to the statement.
19
- 20 2. Allegations made in one count may be incorporated by reference
21 in another count. It may be alleged in a single count that the means
22 by which the defendant committed the offense unknown or that the
23 defendant committed it by one or more specified means.
- 24 3. The indictment or information must state for each count the
25 official or customary citation of the statute, rule, regulation or other
26 provision of law which the defendant is alleged therein to have vio-
27 lated. Error in the citation or its omission is not a ground for dismissal
28 of the indictment or information or for reversal of a conviction if the

1 error or omission did not mislead the defendant to the defendant's prejudice.

2 As determined by the District Court in its September 28th, 2018, minute
3 order "The Court also FINDS that Defendant's argument that the Information
4 is insufficient because it only contains conclusory language is misplaced. At
5 the Information stage of the proceedings, the State is under no obligation
6 to present their entire case to the Defendant via the information, nor are
7 they under any obligation to present all evidence they plan to use against
8 Defendant at trial via the information." App. 0042-0043. According to the
9 District Court's own finding, the Information which alleged the commission
10 of the offenses solely in the conclusory language of the statute was
11 sufficient since "the State is under no obligation to present their entire
12 case" or "all evidence" to the petitioner via the Information. Where
13 the statutory language is conclusory, allegations phrased solely in such
14 language are insufficient. See Sheriff v. Levinson, 95 Nev. 436, 596 P.2d
15 232 (1979); Earlywine v. Sheriff, *Supra*.

16 However, in the instant case, the District Court refuses to apply
17 NR5 173.075 and the Nevada Supreme Court's holding in Levinson that
18 has held that "an information which alleges the commission of the of-
19 fense solely in the conclusory language of the statute is insufficient."
20 95 Nev. at 437 (citing Earlywine v. Sheriff, 94 Nev. 100, 575 P.2d 599 (1928)).
21 The Information alleges the commission of the offenses solely in the con-
22 clusory language of the statutes, (see NR5 201.300; 200.310; 201.320; 200.-
23 508) and fails to allege the means by which the offenses were alleged-
24 ly accomplished, or show that the means were unknown, as required
25 by NR5 173.075(2). App. 0001-0003. Moreover, the Information fails to
26 specify the acts of criminal conduct upon which the State is relying, or
27 any facts to support the charges. App. 0001-0003

1 There is no authority, statutory or otherwise, which authorizes an
2 Information to allege the commission of the offenses solely in the conclu-
3 sory language of the statutes. It is indicated by NRS 173.075(2) that an
4 Information should either include the means by which the offense was
5 accomplished, or show that the means are unknown. See West v. State,
6 119 Nev. 410, 418, 75 P.3d 808, 814 (2003) ("The Legislature has also provi-
7 ded that an information must specify the means by which the charged
8 offense was committed or allege that the means are unknown."). The infor-
9 mation must specify the acts of criminal conduct upon which the state is relying.
10 Bielling v. Sheriff, 89 Nev. 112, 508 P.2d 546 (1973).

11 As a result of the District Court's refusal to apply the law as the leg-
12 isature has written it and as dictated by the statutes and case law, Pe-
13 titioner has not received adequate notice of the charges so that Petition-
14 er may prepare a defense in violation of the Sixth Amendment. Petitioner
15 is entitled "to be informed of the nature and cause of the accusation"
16 against him. U.S. Const. Amend. VI. "No principle of procedural due pro-
17 cess is more clearly established than that notice of the specific charge,
18 and a chance to be heard in a trial of the issues raised by that charge,
19 if desired, are among the constitutional rights of every accused in a
20 criminal proceeding in all courts, state or federal." Cole v. Arkansas, 333 U.S.
21 196, 201 (1948). "The State is required to give adequate notice to the accused
22 of the various theories of prosecution." State v. Eight Judicial Dist. Court,
23 116 Nev. 374, 377, 947 P.2d 126, 129 (2000) (citing Alford v. State, 111 Nev. 1409,
24 906 P.2d 714 (1995)).

25 In addition, Petitioner is unable to invoke the Double Jeopardy Clause
26 as a result of the inadequate notice of the charges in violation of the
27 Fifth Amendment. App., 0011-0012. The Double Jeopardy Clause of

1 the Fifth Amendment states that no person shall "be subject for the
2 same offense to be twice put in jeopardy of life or limb." U.S. Const. Amend.
3 V. Simply put, the notice is inadequate to prevent double jeopardy.

4 For the above reasons, the district court exceeded its jurisdiction in
5 denying Petitioner's Motion to Dismiss Insufficient Information, as the
6 law dictates the Notice is inadequate.

7 B. There is No Appeal Available

8 Petitioner does not have an adequate legal remedy from the District
9 Courts minute order denying the Motion to Dismiss Insufficient Infor-
10 mation. See NRAP 3A; NR5 177.015. Petitioner's ability to appeal from dis-
11 trict court proceedings in a criminal case is limited by NR5 177.015 and
12 NRAP 3A. Accordingly, there is no appeal available to Petitioner in this
13 instance.

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

15 There is no plain, speedy and adequate remedy. The remedy can
16 only be accomplished through the writ process. A writ of mandamus/-
17 prohibition is the appropriate remedy to compel the District Court to
18 grant petitioner's Motion to dismiss.

19 CONCLUSION

20 Petitioner therefore respectfully request that a Writ of mandamus/-
21 prohibition be entered compelling the district court to Grant Petitioner's
22 Motion to Dismiss Insufficient Information.

23
24 Respectfully submitted this 11th day of October, 2018.

25 By: 

26 Christian S. Miles #2888634

27 /In proper person

CERTIFICATE OF SERVICE

Pursuant to NRAP 21(a), I hereby certify that on the date shown below I caused to be served a true and correct copy of the "Petition For Writ of Mandamus/Prohibition (NRS 34.150 thru 34.320)" by placing for mailing at the Clark County Detention Center, postage fully prepaid, addressed as follows:

Jennifer P. Togliatti
District Judge
Eight Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155-2369

Samuel S. Martinez
Chief Deputy District Attorney
Nevada Bar #10671
200 Lewis Avenue
Las Vegas, Nevada 89155-2212

DATED this 11th day of October, 2018

BY: Christian Miles

Christian S. Miles #2888634
Petitioner/In Proper Person