

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE ,)

Case No. _____

Petitioner ,)

EIGHTH JUDICIAL CASE NO. 08CZ56630

-VS-

THE EIGHTH JUDICIAL DISTRICT COURT)
OF THE STATE OF NEVADA, IN AND)
FOR THE COUNTY OF CLARK; AND THE)
HONORABLE MICHAEL VILLANI DIST. JUDGE,)
AND THE STATE OF NEVADA, REAL PARTY)
IN INTEREST Respondents ,)

- NRAP 21 (5)
- SEE AFFIDAVIT ATTACHED OF BRIAN O'KEEFE

FILED

APR 30 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

PETITION FOR WRIT OF MANDAMUS THEREBY
CHALLENGING THE ORDER SIGNED AND NEVER
SERVED PURSUANT NRAP 4(C)(2) IN WHICH
THE NDOC HAS NOW INITIATED DISCIPLINARY
ACTIONS WITHOUT O'KEEFE BEING PROVIDED A
PROPER APPELLATE REVIEW OF REFERRED ORDER
PURSUANT NRCPV 56(a)

I. JURISDICTION: NRAP 21; NR 34.150 et seq.; Nev. Const., Article 6 sec. 4;
NRAP 3A (b)(1); NR 204.451 (1)(d).

SYNOPSIS OF ISSUE

In complete retaliation, the Clark County District Attorney's Office via
D.D.A. Niman, files a motion to declare O'Keefe a vexatious litigant
referring to the NDOC for disciplinary with forfeiture of statutory credits.
The lower district court granted the state's motion without mention or
despite that O'Keefe's actions were sound, based on available legal
remedies and the right to redress as a litigious litigant. Moreover,
this court denied O'Keefe's last mandamus noting the district court
had not entered any order. (see No. 78405 - CoA FILED APR 05 2019)

However NDOC starts disciplinary proceedings from alleged order signed
April 10 2019, whereas O'Keefe was never noticed or served, still to this day.

INVOKED HAINES v. KERNER, 404 U.S. 519, 520 (1972) (per curiam) (... pro se leniency...)

LCCLL FORM 28.014

RECEIVED
APR 26 2019
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

19-18987

AFFIDAVIT OF Brian Kerry O'Keefe #90244

STATE OF NEVADA)

PETITION FOR WRIT OF HABEAS CORPUS - Mailed 4/24/2019

) SS:

COUNTY OF PERKINS)

I, Brian Kerry O'Keefe, the undersigned, do hereby swear that all the following statements are true and correct, to the best of my own knowledge and of my own volition.

1. My name is Brian Kerry O'Keefe.

2. I am over 18 years of age, I reside at Lovelock Correctional Center, 1200 Prison Road, Lovelock, Nevada 89419. I am fully competent to make this

affidavit and I have personal knowledge of the facts stated herein.

3. Pursuant NRS 21(5), I verify the contents of this action under penalty of perjury.

4. I swear that no action ever filed was for any purpose to harass state.

5. I believe all actions are allowed by law and are non-frivolous.

6. I have never received any notice or entry of ORDER signed, filed.

7. I believe the "MOTION TO DECLARE O'KEEFE VEXATIOUS" is completely unfounded, unsupported and completely made based on bare and naked allegations as true retaliation caused by this COURT'S ORDER OF REVERSAL and REMAND (74598-COA) and actions pending in this Court # 77797, 77541, 77228, 78550.

I declare under penalty of perjury that the foregoing is true and correct, and that this document is executed without benefit of a notary pursuant to NRS 208.165 and/or 28 U.S.C.A § 1746 as I am a prisoner to state custody.

Dated this 24th day of April, 2019

By: Brian K O'Keefe #90244
Brian K O'Keefe

II. STATEMENT OF CASE (POINTS AND AUTHORITIES)

(• SEE EXHIBIT 1 (78405-COA FILED APR 05 2019, NRS 209.451(1)(d))

Based on the same attorney for the state, D.D.A. MR. NIMAN, who filed an independent action, also in department XVII under case no. CZ80630, to have O'Keefe's NRS 34.360 petition, 8TH Case No. A761904-W, (see 78105-COA) (pending) transferred improperly before the Nevada Supreme Court Clerk's office issued the remittitur, (case no. 74598-COA, ORDER OF REVERSAL, REMAND 9/14/18), MR. NIMAN again files another Motion to DECLARE VEXATIOUS LITIGANT..., based truly for retaliation. O'Keefe demonstrated litigiousness¹ via SON and/or COA case no.s 74598, (ORDER OF REVERSAL AND REMAND), 77228.

(ORDER GRANTING PETITION FOR WRIT OF MANDAMUS), 77541 (CZ80630, APPEAL OF MOTION TO CORRECT FACIALLY ILLEGAL SENTENCE AS CASE OF FIRST-IMPRESSION), (INCORPORATE 9TH Cir. COA, CASE No. 12-15271 ISSUED APR 13 2012 AS EXHIBIT "A"), SON CASE NO. 77797, (PETITION FOR CORAM NOBIS), SON 78550 (PETITION FOR CORAM NOBIS) whereas this Court has found colorable, sound issues.

O'Keefe in no manner has intentionally filed any action to be vexatious or an action that is without a legal legislated remedy.

(• see e.g. NRS 176.555; PETITION PURSUANT NRS 34-360; PETITIONS FOR CORAM NOBIS.)

Apparently, the Motion to DECLARE O'KEEFE VEXATIOUS was filed and granted on March 12, 2019, only orally pronounced, by the district court.

(• SEE EXHIBIT 2 (JOURNAL ENTRY-MINUTE ORDER MARCH 12, 2019 Judge Villani))

The state, D.D.A. NIMAN, mails O'Keefe his Findings of FACT, CONCLUSIONS OF LAW AND BLANK ORDER WITH NO signatures or dates. Moreover, the Order is intertwined as part of the motion, at page 13, where the findings are listed also from lines 1-7, with ORDER as lines 9-16. Moreover, the state omits history, ending on page 9, from 3/12/19 on.

FN 1: LIST NOT ALL INCLUSIVE.

1 ultimately, the court [or state or clerk] provide O'Keefe with ~~no~~
2 notice that or when the ORDER was actually made as
3 an "ENTRY OF ORDER".

4 IN FACT, demonstrated and attached as
5 EXHIBIT 3, (NOTICE OF CHARGES, DISCIPLINARY FORM I) O'Keefe is
6 summoned to receive his notice, which clearly manifests that
7 on date of incident, 04/10/2019, a signed order from the 8TH
8 Judicial Court declaring inmate O'Keefe #90244 a vexatious litigant
9 in violation of the rules of the court. (NRS 209.451(1)(d))

10 • SEE N.R.CIV.P 58(e) (NOTICE OF ENTRY) (Within 10 days after entry...)
11 (• see EXHIBIT 3 (STATE OF NEVADA Dept of Corr. Disciplinary FORM I, 04/18/2019))

12
13 Approximately eight hours later, O'Keefe is summoned again.
14 (• see EXHIBIT 4 (DISCIPLINARY FORM II SUMMARY OF HEARING))

15
16 As of the writing of this action, and mailing, O'Keefe still has
17 no copy of any signed, filed order from the court or clerk.

18
19 With emphasis, the Court or state fail to explain how each action
20 filed by O'Keefe is frivolous, and prove that there is absolutely
21 no legal basis or tenable claim and vehicle approved by legislation.
22 Noting, bare and naked allegations are not persuasive authority.

23 • see Jones v. Eighth Judicial Dist. Ct., 130 Nev. ___, 330 P.3d 475, 477 (2014)
24 Courts must prove their is no legal vehicle and claims raised
25 must be completely un-sound.

26 Moreover, due process and notice
27 must be followed, formal law, where a party is afforded
28 a copy of order to challenge by timely appellate review.

III. LEGAL ARGUMENT

All actions O'Keefe has filed are prosecuted by legally approved statutes or Articles of the Nevada Constitution. Additionally, every action the state wrongly claims is filed to harass the state, has generally been screened and filed by the clerk with all IN FORMA PAUPERIS applications approved by the court, with hearings set.

The United States Supreme Court and the Nevada Supreme Court both recognize "that prisoners have a constitutional right of access to the courts." see Bounds v. SMITH, 430 U.S. 817, 821, 97 S. Ct. 1491 (1977); (INVOKE Nev. Const. Art. I § 2)

Prima facie evidence already exists proving O'Keefe's actions are not frivolous litigation. The state and court cannot single-handedly, therefore arbitrarily and capriciously, declare all O'Keefe's actions frivolous and without a legal remedy or colorable, tenable claim without also allowing for scrutiny by appellate review, before having the NDOC sanction O'Keefe pursuant NR8 209.45(1)(d).

Additionally, the court must serve O'Keefe notice of entry of order and an actual copy of the order for my legal records.

Anything less would be uncivilized and unconstitutional violating the tradition of "RULE OF LAW" and equity?

A. Mandamus is the appropriate vehicle for challenging contested orders entered by the district court. • see Angell v. Eighth - Judicial District Court, ex rel, 839 P.2d 1329, 108 Nev. 923 (1992)

1 • SEE • ALSO Alexander v. State, Docket No. 72002 (1/12/2017) (Petition denied)
2 Imperative here, is that this Court has "per curiam" knowledge
3 of all of O'Keefe's actions pending (i.e. No. 77797, 74598, 7154, etc.)
4 and the seriousness of some claims within, concerning actual innocence
5 specifically in SON case no. 77797. (see also 78105-CoA, 74598-CoA)

6
7 Naturally, the same county, CLARK, who initiated these actions
8 are trying hard to cover, thereby legally "MASKING"?
9 They want to violate O'Keefe, charge him with frivolous
10 charges, via NRS 209.451(1)(d), then prohibit review.

11
12 **B.** DEPT. XIII BIASED; COURT HEARD ALL PRIOR ACTIONS (No. C250630)

13
14 Here, the same court that heard two of O'Keefe's trials and
15 sentenced O'Keefe in (3) trials, is the same judge deciding
16 whether O'Keefe's actions are frivolous and baseless.
17 O'Keefe believes the Chief Judge should have decided motion.

18
19 IV. SUMMARY: O'Keefe has never requested anybody to lie, cheat,
20 give me favors or let me, simply go. However, O'Keefe has
21 truly only attempted to educate myself with the law to therefore
22 exercise my FIRST AMENDMENT and to petition ... for a redress of grievances.

23
24 V. PRAYER FOR RELIEF: Reverse the alleged District Court ORDER
25 filed and signed April 10, 2019 thereby issuing formally the
26 writ of mandamus or, ALTERNATIVELY, issue Temporary
27 Restraining ORDER (TRO) to NDOC (NRCivP 62) to bar any sanctions
28 until decision made by this court and formally announced.

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing
(check appropriate box)

☐ Opening Brief

☐ Reply Brief

☐ Motion: _____

☒ Petition: FOR WRIT OF HABEAS CORPUS

☐ Other: _____

to the below address(es) on this 24th day of April, 2019, by
placing same in the hands of prison staff for posting in the U.S. Mail, per

Nev.R.App.P. 25: By B-788 slip No. 2285582 (LCC-LAW LIBRARY)

- Logged -

THE EIGHTH JUDICIAL DISTRICT COURT
HONORABLE MICHAEL VILLANI DEPT. 17
REGIONAL JUSTICE CENTER
200 LEWIS AVENUE
LAS VEGAS, Nevada 89135

Attorney for Judge Villani, Dept. XVII

☒ and

THE NEVADA SUPREME COURT
OFFICE OF THE CLERK
201 S. Carson Street
Suite 201

Carson City, Nevada 89701

ORIGINAL AND PETITIONER'S COPY

Brian F. O'Leary
Brian F. O'Leary # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

EXHIBIT

1

ORDER

78 405 - COA APR 05 2019

NR & 209. 451 (i)(d)

EXHIBIT

1

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,
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.

No. 78405-COA

FILED

APR 05 2019

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

ORDER DENYING PETITION FOR WRIT OF PROHIBITION

This pro se, emergency petition for a writ of prohibition challenges the district court's authority to hold a hearing and resolve a matter when a related writ petition is pending before the appellate court, as well as the district court's authority to proceed under NRS 209.451(1)(d) in a habeas action.

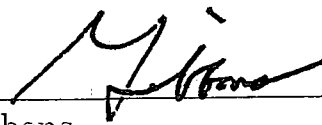
In Docket No. 78105-COA, petitioner seeks extraordinary relief based on his belief that the district court failed to properly comply with our order directing the departmental transfer of his district court habeas petition. Because that writ petition has not yet been resolved, petitioner claims that the district court lacks jurisdiction to rule on the habeas petition. Further, petitioner asserts that a minute order was issued in the district court case on March 21, 2019, indicating the district court's intention to grant real party in interest's motion for a NRS 209.451(1)(d) finding that petitioner filed documents for improper purposes warranting a forfeiture of credits. No copy of that minute order was attached to



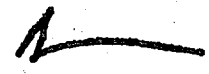
petitioner's writ petition, but petitioner argues that NRS 209.451(1)(d) does not apply to habeas petitions under *Dotson v. State*, 114 Nev. 582, 584, 958 P.2d 81, 82 (1998).

Having considered petitioner's arguments, we deny relief. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Writ petitions filed in the appellate court do not divest the district court of jurisdiction to proceed with the underlying matter. *Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 650, 5 P.3d 569, 571 (2000). Further, petitioner fails to acknowledge that NRS 209.451 was amended after the *Dotson* opinion was issued to expressly include petitions for habeas corpus in its purview. 1999 Nev. Stat., ch. 59, §5, at 146-47. Regardless, to the extent the district court's power to issue a finding relating to the forfeiture of credits is challenged, this petition is premature because the district court has not yet finally decided the forfeiture matter by written order, and petitioner can appeal from any order that finally resolves the case below, precluding writ relief. NRS 34.330. Thus, we

ORDER the petition DENIED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michael Villani, District Judge
Brian Kerry O'Keefe
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

EXHIBIT

2

JOURNAL ENTRY / MINUTE ORDER

MARCH 12, 2019

E.F.D.C. Judge Villani

EXHIBIT

2

Felony/Gross Misdemeanor

COURT MINUTES

March 12, 2019

08C250630

The State of Nevada vs Brian K O'Keefe

March 12, 2019

08:30 AM

All Pending Motions

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Black, Olivia

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Ashley A. Lacher

Attorney for Plaintiff

State of Nevada

Plaintiff

JOURNAL ENTRIES

PETITION FOR WRIT OF HABEAS CORPUS...DEFENDANT'S NOTICE OF MOTION...STATE'S
NOTICE OF MOTION AND MOTION TO DECLARRE VEXATIOUS LITIGANT AND TO REFER
DEFENDANT TO DEPARTMENT OF CORRECTIONS FOR FORFEITURE OF STATUTORY CREDITS

Defendant not present. Court noted this was the State's motion to declare Defendant a vexatious litigant. Court further noted it was basing its decision on the pleadings that had been filed and not taking oral argument. COURT ADOPTED the Procedural History as set forth by the State. Court stated the State previously file this motion and the Court continued to give Defendant an opportunity to file a opposition. COURT FINDS, Defendant had filed numerous successive petitions that had not had any merit and also filed some motions that were nonsequential. COURT FINDS, Defendant's previous motions had been frivolous and both of a harassing nature toward the State, those motions have been without arguable or legal or factual bases. Court stated Defendant allowed to present to the Court any future pleadings for the Court to determine whether or not there was any legal bases for those motions thereafter the Court would allow them to be filed and heard in due course. COURT ORDERED, Motion GRANTED; Status Check SET for State to prepare the formal findings, facts and conclusion of law. COURT FURTHER ORDERED, Defendant to referred to the Department of Corrections for Forfeiture of Statutory Credits GRANTED.

NDC

04/04/19 8:30 AM STATUS CHECK: FINDINGS, FACTS AND CONCLUSION OF LAW

CLERK'S NOTE: The above minute order has been distributed to:

BRIAN O'KEEFE #90244
1200 PRISON ROAD
LOVELOCK, NV 89419 //ob/03/13/19.

EXHIBIT

3

NOTICES OF CHARGES

IN/DOC

DISCIPLINARY FORM I

APRIL 22, 2019

EXHIBIT

3



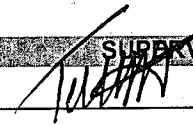
State of Nevada
Department of Corrections

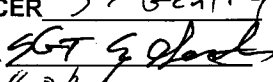
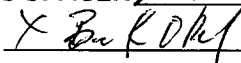
DISCIPLINARY FORM I
NOTICE OF CHARGES

INMATE INFORMATION	VIOLATION INFORMATION
INMATE NAME: OKEEFE, BRIAN 90244	CHARGING EMPLOYEE Lt. K. Widmar
CURRENT LOCATION: LCC-U1-B-39-B; ; NC	DATE OF INCIDENT: 04/10/2019
OIC#: 460152	DATE CHARGES WRITTEN: 04/15/2019

CHARGES AND EVIDENCE			
Chrg	Description	Evidence	Evidence Disposition
MJ48:	Violation of Court Procedures	Court order	uploaded to IR

REPORT OF VIOLATION
On April 10, 2019 a signed court order from the 8th Judicial Court issued by Judge M. Villani declaring inmate B. O'Keefe #90244 a vexatious litigant in violation of the rules of the court. The order refers the matter to the NDOC disciplinary process for forfeiture of statutory credits.

CHARGING EMPLOYEE SIGNATURE	SUPERVISOR SIGNATURE
	

SERVICE OF NOTICE OF CHARGES	DISTRIBUTION
DATE OF SERVICE: 4/22/19 TIME OF SERVICE: 0758 AM	Primary Hearing Officer (Original)
PRINTED NAME OF HEARING OFFICER S. Gentry	Charging employee (Copy)
SIGNATURE OF HEARING OFFICER 	Inmate (Copy)
SIGNATURE OF INMATE 	

(Signature indicates receipt of notice only. It is not a plea; refusal to sign should be noted)

EXHIBIT

4

SUMMARY OF HEARING

NDOC

DISCIPLINARY FORM II

APRIL 22, 2019

EXHIBIT

4



State of Nevada Department of Corrections

DISCIPLINARY FORM II SUMMARY OF HEARING OFFICER'S INQUIRY AND DISPOSITION

INMATE INFORMATION		HEARING INFORMATION	
INMATE NAME:	OKEEFE, BRIAN 90244	DATE OF HEARING	04/22/2019 TIME OF HEARING 09:28 am
CURRENT LOCATION:	LCC-U1-B-39-B; : NC	NAME OF HEARING OFFICER	GENTRY, STARLIN
OIC#:	460152	DATE OF SERVICE OF NOTICE OF CHARGES:	04/22/2019
WAIVE PREPARATION	Y	WAIVE HEARING:	N
		REFUSE TO SIGN	N

CHARGES		
Chrg	Description	Plea
MJ48	Violation of Court Procedures	Not Guilty

PRELIMINARY STATEMENT OF OFFENDER
"I filed an action in the courts that ultimately resulted in an order of reversal and remand back to the district in Las Vegas."

PRELIMINARY INSTITUTION PRESENTATION
Inmate is accused of filing a vexacious litigation in the 8th Judicial Court.

PRELIMINARY HEARING OFFICER ACTION				
Chrg	Description	RChrg	Description	Finding
MJ48	Violation of Court Procedures	MJ48	Violation of Court Procedures	Refer to Disciplinary Hearing

RESULTS OF INFORMAL SUMMARY HEARING								
Line	Description	Mths	Days	Eff. Date	End Date	SSL	Rest. Act	Penalty Comment
EVIDENCE RELIED ON FOR PRELIMINARY HEARING								

Date	UserName	Statement
04/22/2019	S. Gentry	Inmate plead not guilty to the charge of MJ48 Violation of Court Procedures.

ADVICE TO DISCIPLINARY COMMITTEE
Counsel Substitute Requested: ☐ Name of Counsel Substitute:

WITNESS INFORMATION
Witness Decision Justification: Inmate wants Dawn Bequette as a witness, as she could testify that the litigation was remanded back to the 8th Judicial Court by the Supreme Court.

Name	NDOC/ID#	Decision	Reason	Table
BEQUETTE, DAWN		ACCEPTED	RELEVANT	STAFF

SIGNATURES AND RECEIPT	DISTRIBUTION
DATE OF SERVICE: <u>4/22/19</u> TIME OF SERVICE: <u>1:09 PM</u>	
PRINTED NAME OF HEARING OFFICER: <u>S. Gentry</u>	Primary Hearing Officer (Original)
SIGNATURE OF HEARING OFFICER: <u>[Signature]</u>	Charging employee (Copy)
SIGNATURE OF INMATE: <u>[Signature]</u>	Inmate (Copy)
(Signature indicates receipt only. It is not a plea; refusal to sign should be noted)	