

NO 81184

NEVADA COURT OF APPEALS

CLARK COUNTY, NEVADA

FILED

Baron Montero Jones #7088929,

Petitioner

MAY 14 2020

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

Clark County Sheriff,

Case No: 20F06160X

Respondent.

Appellate Case No.

EMERGENCY PETITION FOR EQUITABLE APPLICATION FOR ORIGINAL WRIT HABEAS CORPUS AND GREAT WRIT HABEAS CORPUS PURSUANT TO NEV. CONST. ART. 6 § 4, ART. I § 4; U.S. CONST. ART. III § 2, ART. I § 9; AND COMMON LAW N.R.S. 1.030

Time is of the essence:

I, Baron Montero Jones #7088929, who appears pro se, in the spirit of equity, seeks the exercise of this court's judicial powers to courts of law and courts of equity jurisdiction granting and issuing this Emergency Original Writ Habeas Corpus and Great Writ Habeas Corpus under the Constitution of this State, the United States and Common Law. Nev. Const. Art. I § 4, Art. 6 § 4; U.S. Const. Art. I § 9, Art. III § 2; N.R.S. 1.030.

CUSTODY

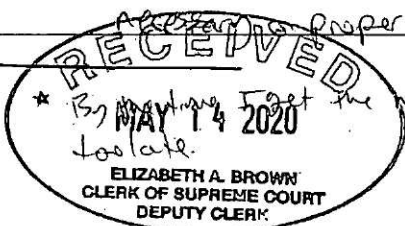
I, Baron Montero Jones #7088929, am imprisoned with the restraint of my liberty; I am confined and restrained by the Clark County Sheriff in the Clark County Detention Center; for Case No. 20F06160X, that originated in the Las Vegas Justice Courts 3/22/20; and subsequently handed up for mental evaluation to the Eighth Judicial District Court 4/1/20; a mental competency hearing was scheduled 5/8/20 in the district court; I was told I am going to a mental health hospital in 2 weeks. As of 5/9/20 I am indigent and request application to proceed in *bona paupers* status: post haste.*

I. JURISDICTION OF COURT OF APPEALS

1. Petitioner seeks the Original Writ Habeas Corpus and Great Writ Habeas Corpus; the Constitutional writs are not abolished. Nev. Const. Art. 6 § 4; U.S. Const. Art. III § 2; Harris v. State, 329 P.2d 619 (2014); Marshall v. Warden, 83 Nev. 442, 445, 434 P.2d 437, 439.

2. The Court of Appeals has power to issue writs of habeas corpus and all writs

As necessary proper to the complete exercise of their jurisdiction. Nev. Const. Art.



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6.54. The Court of Appeals may issue writs of habeas corpus to any part of the State upon petition by, or on behalf of any person held in actual custody in this State and may make such writ returnable before the issuing justice or judge or the court of which the justice or judge is a member or before any district Court in the State or of any judge of the district court. ^{Id.}

3. Additionally, as a safeguard for the Petitioner, he seeks the writ under common ^{the writ of right} law pursuant to law and equity ^{Ariz. Const. Art. I § 4; U.S. Const. Art. I § 9} ^{M.R.S. 1.03a} To ensure that his liberty is protected because it is in jeopardy of being abrogated.

II. PURPOSE OF WRITS ISSUANCE

4. The purpose of writ involves due process violations; Procedural and Substantive:
- Process is defective in some manner of substance required by law, rendering it void.
 - Jurisdiction of the Courts has been exceeded.
 - Lacks probable Cause, Courts has no right to jurisdiction.
 - Confining and restraining Petitioner of his liberty, without notice or a fair hearing prior to the deprivation.
 - No legal cause is shown for such imprisonment, restraint, and the continuance thereof.
 - To determine the legality of Petitioner's custody and restraint.

A. PROCESS IS DEFECTIVE

5. On or about 3/22/20, the justice court found probable cause and continued Petitioner's detainment¹ On or about 3/24/20 Petitioner was called before the justice Court and served with criminal complaint[†]; however, the justice "issued [it] with [] a blank... to be filled by another... [making it] void." M.R.S. § 320. Thereby making the process defective in some manner of substance required by law,

¹ Petitioner was previously detained already in Clark County Detention Center in Case No. 19F22569X

[†] Petitioner left before the hearing because his appointed counsel said the blank space on the complaint did not matter

rendering it void. If an offense is not triable in the justice courts, Petitioner must not be called upon to plead. *N.R.S. 517.196(1)*.

6. Because, under the Nevada Constitution the justice court is a court of limited original jurisdiction that must be prescribed by statute and the justice court cannot exercise jurisdiction that exceeds its statutory authorization. *Nev. Const. Art. 6 § 6, 3; Paschall v. State*, 116 Nev. 911, 914-15 (2000). If they do however, the correct remedy is habeas. *Dromiachi v. Warden*, 97 Nev. 392, 630 P. 2d 751 (1981).

7. Also in examining the extent of the justice courts limited inherent authority we focused on whether a particular power was necessary for the justice courts to carry out its functions. *Staker v. Cucco*, 127 Nev. 92, 216, 128 P. 3d at 1056.

8. One particular power necessary, statutorily, for the justice courts to continue to carry out its functions is to follow the procedure or processes required by law:

"The summons, execution and every other paper made or issued by a justice, except a subpoena must be issued without a blank left to be filled by another; otherwise it is void." *N.R.S. 4.320*.

Thereby, disregarding the legislature's intent and exceeding its statutory jurisdiction.

Wolner v. Justice Court, 116 Nev. 518, 1 P. 3d 377, 116 Nev. Adv. Rep. 61, 2000 Nev. Lexis 21 (Nev. 2000).

9. Regarding *N.R.S. 4.320*, the "Legislature did not intend to require performance of an impossible act," exercising compliance with the plain terms of Statute. *Torrey v. Daur Hotel, Inc.*, 78 Nev. 364, 367-68, 206 Nev. A.C. 615 (2016). But rather "when a Statute is clear on its face, a court cannot go beyond the statute in determining legislative intent." *Cucco*, at 95, 249 P. 3d at 123 (2011) (internal quotation marks omitted). See also *Frank v. State*, 432 P. 3d 752 (2019). Moreover, lacking subject matter jurisdiction because

there is no evidence to support the probable cause determination

B. PROBABLE CAUSE DETERMINATION

10. "All that is required [to support a probable cause determination] is that there be enough evidence presented to support a reasonable inference that the accused committed the charged offense." *Brymer v Sheriff*, 92 Nev. 592, 599 P.2d 844, 845 (1976); see also, *Staker v Kilson*, 433 P.2d 1352 (2019). However, the evidence supported is someone else's medical records and prescription drugs, and not Petitioner's.

11. Because the facts relating to the evidence of probable cause are in dispute, it becomes a question of fact and of law whether such facts constituted probable cause *Id.*

12. On or about 4/21/20, Petitioner caused to be sent to the Eighth Judicial District Court to take a mandatory Judicial Notice concerning these matters of Fact and of Law. *N.R.S. 47.130, 47.140, 47.150*. However, as of 5/8/20 hearing it was not addressed by the district court and now Petitioner is being sent to a mental health hospital in 2 weeks². Time of taking a mandatory judicial notice may be taken at any stage of the proceeding. *N.R.S. 47.170(2)(g), Thomas v Bible*, 674 F.Supp 759, 1988 U.S. Dist. (Eris 9546 (D. Nev. 1988)) *aff'd*, 886 F.2d 555 (9th Cir. Nev. 1990).

13. Probable cause exist "where the known facts and circumstances are sufficient to warrant a man of reasonable prudence" to believe that there is a substantial probability that a crime has been committed and that the person arrested committed the crime. *Cronas v United States*, 517 U.S. 670, 676, 116 S.Ct. 1657, 134

². Petitioner called his public defender, Christie Craig, and her supervisor Melissa Navaro, and her supervisor Virginia Eimpack and let messages on 3/31, 4/1, 4/2, 4/3, 4/7, 4/8, 4/10 & 4/13 concerning their missing. As of 5/8/20 Petitioner has not heard from any of them; which is why he seeks this court's equitable powers. Also, every phone call Petitioner made was monitored and recorded via CCOC.

(Ed 21 911 (1946). A reasonable prudent person with the facts and circumstances presented would not believe a crime has been committed because it is someone else's medical records and prescription drugs.

14. Arrest warrants shall issue if sworn complaint or supporting affidavit establishes probable cause to believe petitioner committed a criminal offense. NRS 171.106. However, evidence supporting such a finding must be legal, competent evidence. *Goldsmith v Sheriff* 85 Nev. 299, 307, 454 P.2d 26, 91-92 (1969). The unsigned blank sworn complaint, supporting affidavit, and evidence supporting such a finding is not legal competent evidence; and no warrant should have been issued, due to lack of probable cause. U.S. Const 4

C. NO NOTICE OF FAIR HEARING

15. Therefore, because the criminal complaint is defective by law, NRS. 4.320; the justice court exceeded its jurisdiction; also upon its erroneous probable cause evidence and to continue to confine petitioner and restrain his liberty without notice or a fair hearing prior to the deprivation. NRS. 171.186.

16. No legal cause is shown for such imprisonment, restraint, and the continuance thereof; appearing to simulate legal processes.

III. SIMULATING LEGAL PROCESS

17. Because of the above, the justice court has/is exceeding/ing its limited jurisdiction by making or issuing petitioner's criminal complaint "with[] a blank to be filled by another... Making the criminal complaint void." NRS. 4.320; the justice courts have been simulating a legal process, which is a category D felony, NRS. 193.130.

18. According to Chapter 207 of N.R.S. and Assembly Bill 15 (2019), "any person who causes to be prepared or delivered to another person any document that simulates a summons, complaint, judgment, order or other legal process with the intent to:

"(a) Induce payment of a claim from another person; or

"(b) Induce another person to:

"(1) Submit to the putative authority of the document; or

"(2) Take any action or refrain from taking any action;

"(i) In response to or on the basis of the document; or

"(ii) To comply with the document." N.R.S. CH 207, A.B. 15 (2019).

is guilty of a Category D felony and shall be punished as provided in N.R.S.

193.130.2a.

19. "Action" includes, without limitation:

(a) Making court appearance

(b) Obtaining legal counsel

(c) Acting upon a perceived conflict created by a document that simulates a summons, complaint, judgment or order or other legal process. ~~Id.~~

20. Moreover, there is a rebuttable presumption that a person intended to violate the provisions of this section if the person files with or presents or delivers to any court in this state any document that simulates a complaint or order or other legal process. ~~Id.~~ This includes the district court's order to submit Petitioner to a mental health hospital because it stems from the simulated legal criminal complaint.

21. Furthermore, Petitioner respectfully request this court — in addition to both

Constitutional writs (Nev. Const. Art. 6 § 4; U.S. Const. Art. IV § 2) — to issue common law writ of right and/or other equitable remedies.

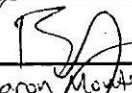
IV. COMMON LAW WRITS AND EQUITABLE REMEDIES

22. Common law writs is available under Article 6 § 4 of the Nevada Constitution necessary or proper to the complete exercise of their jurisdiction; and NRS 1.030 which continues the common law under some circumstances. *Trujillo v State*, 129 Nev. 200 (2013). Writ of right is a writ generally issued as a matter of course or granted as a matter of right. *Baron's Dictionary of Legal Terms*, 5^{med}.
23. Courts of equity has jurisdiction over suits in equity and administers justice according to fairness and provides remedies according to the rules and principles of equity. *Nev. Const. Art. I § 4*; *U.S. Const. Art. I § 9*. If courts of law are supposed to follow statutes and constitutional requirements, it is well established, so can courts of equity. *INS v Pangilinan*, 486 U.S. 875, 100 L.Ed. 2d 882, 108 S.Ct. 2210 (1988); *Hedges v Dixon County*, 180 U.S. 682, 192, 37 L.Ed. 1049, 14 S.Ct. 71 (1893); *Seabro, Walker v U.S. Dept. of Housing and Urban Dev.*, 912 F.2d 819 (5th Cir. 1990).
24. Including specific performance. Therefore we respectfully, and earnestly, implore the Court of Appeals court of equity jurisdiction because no remedy at law is or maybe inadequate.

Respectfully Submitted,

May 9, 2020
Dated

Signed under penalty
of perjury


Baron Montano Jones #7088929
Clark County Detention Center
330 S. Casino Center Blvd.
Las Vegas, NV 89101

AFFIDAVIT

COUNTY OF CLARK)

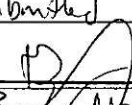
STATE OF NEVADA) §§
)

I, Baron Montero Jones #7088929, with pure intentions, state, verify and declare,
that the above is true and correct to the best of my knowledge and ability.

Respectfully Submitted

May 9, 2020
Dated

Signed under penalty
of perjury


Baron Montero Jones #7088929
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