

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRAVIS BISH,

Appellant,

vs.

THE JUSTICE COURT FOR SPARKS
TOWNSHIP, THE HON. JESSICA
LONGLEY, BY AND THROUGH
REAL PARTY IN INTEREST THE
STATE OF NEVADA,

Respondent.

_____ /

OPPOSITION TO RESPONDENT'S MOTION TO DISMISS

Appellant, Travis Bish, by and through JOHN L. ARRASCADA, Washoe County Public Defender, and Kathryn Reynolds, Deputy Public Defender, provides the following opposition to Respondent's Motion to Dismiss filed on June 8, 2021. This Opposition is based on pleadings and papers on file with this Court, and the following points and authorities.

///

///

///

ARGUMENT IN OPPOSITION¹

As stated by Respondent, the State of Nevada, “the right to appeal is statutory; where no statutory authority to appeal is granted, no right to appeal exists.” *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1136 (1990). In the proceedings below, Mr. Bish filed his petition as an “Emergency Petition for Writ of Habeas Corpus, or in the Alternative, Petition for Writ of Mandamus, and Request for Emergency Hearing.” See Joint Appendix at 29. The Nevada Supreme Court clearly has statutory jurisdiction to review the district court’s denial of this petition for extraordinary relief.

NRS 2.090(2) provides that the Supreme Court “has jurisdiction to review upon appeal . . . an order granting or refusing to grant an injunction or mandamus in the case provided for by law.” The State argues that the phrase “in the case provided for by law” indicates that Mr. Bish must demonstrate a statutory violation underlying his petition for a writ of mandamus. See Motion to Dismiss at 4 (stating that “Bish

¹For the purposes of this Opposition, Mr. Bish does not dispute the procedural history of this case as recited in Respondent’s Motion to Dismiss.

does not cite another statute permitting a pretrial appeal of a bail determination in justice court and the State is aware of none”).

This argument defies logic. A writ of mandamus is available “to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station” or “to compel the admission of a party to the use and enjoyment of a right . . .” NRS 34.160. In other words, a writ of mandamus “compels a government body or official to perform a legally mandated act.” *Ashokan v. State, Dept of Insurance*, 109 Nev. 662, 665, 856 P.2d 244, 246 (1993). “Issuance of a writs is generally limited to situations where ‘there is not plain, speedy, and adequate remedy in the ordinary course of law.’” *Id.* (quoting NRS 34.170; NRS 34.330).

In *Valdez-Jimenez v. Eighth Judicial District Court*, the Nevada Supreme Court found that pursuant to the due process clause of the United States and Nevada Constitutions, a judge “may impose bail only if the State proves by clear and convincing evidence that it is necessary to ensure the defendant’s presence at future court proceedings or to protect the safety of the community, including the victim and the victim’s family.” 136 Nev. 155, 156, 460 P.3d 976, 980 (2020). This holding

established new law regarding an individual's liberty interest in avoiding unnecessary pretrial detention. Mr. Bish's petition to the district court sought to compel the justice court to perform its legally-mandated duty under *Valdez-Jimenez*, and grant Mr. Bish an own recognizance release, given the State's failure to prove the necessity of pretrial detention.

Accordingly, Mr. Bish sought a writ of mandamus at the district court in this case "as provided for by law." The plain language of NRS 2.090(2) allows for an appeal of the district court's denial of this petition. *See Savage v. Pierson*, 123 Nev. 86, 89, 157 P.3d 697, 699 (2007) (noting that the Nevada Supreme Court will "ascribe to words their plain meaning, unless this meaning was clearly not intended"). Given the plain language of NRS 2.090, this Court has jurisdiction to decide this appeal. Mr. Bish respectfully requests that this Court deny the State's Motion to Dismiss.

DATED this 22nd day of June 2021.

JOHN L. ARRASCADA
Washoe County Public Defender

By: /s/ Kathryn Reynolds
KATHRYN REYNOLDS
Deputy Public Defender

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Opposition complies with NRAP 27, as well as with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because: This brief has been prepared in a proportionally spaced typeface using Century in 14-point font.

2. I further certify that this Opposition complies with the page limitations of NRAP 27 (d)(2) because it does not exceed 10 pages.

3. Finally, I hereby certify that I have read this Opposition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied upon is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 22nd day of June 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Marilee Cate, Appellate Deputy
Washoe County District Attorney's Office

/s/ Kathryn Reynolds
KATHRYN REYNOLDS
Deputy Public Defender
Washoe County Public Defender's Office
Nevada State Bar No. 10955