

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRAVIS BISH,

Appellant,

v.

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

Respondent.

No. 82295 Electronically Filed
Jun 29 2021 09:00 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL

COMES NOW, the State of Nevada, by and through CHRISTOPHER J. HICKS, District Attorney, and Marilee Cate, Appellate Deputy, and hereby files this Reply in Support of the State's Motion to Dismiss. This Reply is based on the pleadings and papers on file with this Court, and the following points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Appellant Travis Bish (hereinafter, "Bish") contends that the plain language of NRS 2.090(2) provides this Court with jurisdiction over his direct appeal from an order denying his pretrial petition for writ of habeas corpus, or in the alternative writ of mandamus. Bish's appeal should be

dismissed because his argument in support of this Court’s jurisdiction ignores basic statutory construction principles, more specific statutes on point, and prior precedent from this Court.

NRS 2.090(2) provides, “[t]he Supreme Court has jurisdiction to review upon appeal... (2)... an order granting or refusing to grant an injunction or mandamus in the case *provided for by law*.” (*emphasis added*). The plain language of NRS 2.090(2) provides jurisdiction over orders granting or refusing to grant mandamus only as provided by other statutes. Yet, Bish asserts that NRS 2.090(2) provides jurisdiction to this Court over all orders granting or denying writs of mandamus from lower courts. If the legislature intended for this Court to have jurisdiction over all pretrial orders denying writs of habeas corpus or alternatively pretrial writs of mandamus from the justice courts and district courts, it would not need to include the phrase “provided for by law” at the end of the statutory provision. Put simply, Bish’s interpretation of NRS 2.090(2) improperly places an emphasis on certain words of the statute to the exclusion of others and should be rejected. *See e.g., Williams v. State Dept. of Corrections*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017) (“[t]his

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court avoids statutory interpretation that renders language meaningless or superfluous.”) (cleaned up)¹.

In addition, Bish’s interpretation of NRS 2.090(2) cannot be harmonized with other statutes on point. *See Williams*, 133 Nev. at 596, 402 P.3d at 1262 (instructing that “whenever possible [the court] will interpret a rule or statute in harmony with other rules or statutes.”) (citation omitted). For example, Bish’s interpretation of NRS 2.090(2) is in direct contradiction of the plain language of NRS 177.015(3), which provides that “[t]he defendant only may appeal from a final judgment or verdict in a criminal case.” NRS 177.015(3). To the extent that there is a conflict between two statutes, the specific statute controls. *See Williams*, 133 Nev. at 601, 402 P.3d at 1265 (indicating that under the general/specific canon, the more specific statute takes precedence and controls). In other words, because this is an appeal from a pretrial order resolving a bail issue, and not a final judgment, this Court does not have jurisdiction to decide the issues presented pursuant to the plain language of the specific statute on point. *See* NRS 177.015(3); *see also Castillo*, 106 Nev. at 352, 792 P.2d at 1135 (“[a]n appeal in a criminal case lies from the

¹ “Cleaned up” is used to indicate that internal quotation marks, alterations, and citations have been omitted. *See e.g., Redlin v. United States*, 921 F.3d 850, 860 (9th Cir. 2019).

final judgment of the district court, not from an order finally resolving an issue in a criminal case.”).

Bish points to Chapter 34 of the Nevada Revised Statutes to support his claim concerning jurisdiction, but fails to cite to a specific statute which provides for an appeal from an order denying a pretrial petition for writ of habeas corpus or a district court order denying a writ of mandamus. This is because no appellate right exists from such a pretrial order. *See e.g., Castillo*, 106 Nev. at 352, 792 P.2d at 1135 (holding that “[n]o appeal lies from an order of the district court denying a pretrial petition for writ of habeas corpus.”); *see also* NRS 34.150 *et seq.*, NRS 34.700 *et seq.*, NRS 34.575(1) (only providing for an appeal after an order denying a *post-conviction* petition for writ of habeas corpus).

Interestingly, Bish also cites to this Court’s Opinion in *Valdez-Jimenez v. Eighth Judicial Dist. Ct.*, 136 Nev. 155, 460 P.3d 976 (2020), to support his argument that this Court has jurisdiction over his appeal. However, the procedural history of *Valdez-Jimenez* undermines Bish’s position because the bail issue presented in that case was not pursued as a direct appeal before judgment, like Bish is attempting here. *Id.* at 151, 460 P.3d at 981. In *Valdez-Jimenez*, the defendants/petitioners filed petitions for writs of mandamus with this Court and requested its extraordinary

intervention, which is discretionary. *See id.* (“Both defendants filed a petition for a writ of mandamus”); *see also Cote H. v. Eighth Judicial Dist. Ct.*, 124 Nev. 36, 39, 175 P.3d 906, 907-908 (2008) (emphasizing that writs of mandamus are extraordinary remedies, and the Nevada Supreme Court has complete discretion to decide whether to consider them). Bish has not filed a petition for writ of mandamus or satisfied his burden to demonstrate why this Court should intervene now. *See e.g., Walker v. Second Judicial Dist. Ct. (Michaels)*, 136 Nev. Adv. Op. 80, *5, 476 P.3d 1194 (2020) (“[w]here a district court is entrusted with discretion on an issue the petitioner’s burden to demonstrate a clear legal right to a particular course of action is substantial....”) (emphasis in original).

Bish filed a direct appeal of an interlocutory order without any statutory authority providing this Court with jurisdiction. As such, this Court does not have jurisdiction over the appeal and it should be dismissed. *See* NRS 177.015(3); *Castillo*, 106 Nev. at 352, 792 P.2d at 1135.

DATED: June 29, 2021.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: MARILEE CATE
Appellate Deputy

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this reply complies with NRAP 27, as well as 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 Microsoft Word 2013 in Georgia 14.

2. I further certify that this brief complies with the page limitations of NRAP 27(d)(2) because it does not exceed 5 pages.

3. Finally, I hereby certify that I have read this reply, 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 reply complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the reply regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in

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the event that the accompanying reply is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: June 29, 2021.

CHRISTOPHER J. HICKS
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on June 29, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Kathryn Reynolds
Deputy Public Defender

Tatyana Kazantseva
Washoe County District Attorney's Office