

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILBER ERNESTO MARTINEZ
GUZMAN,
Petitioner,
vs.

No. 82342 Electronically Filed
Mar 31 2021 01:04 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
CONNIE J. STEINHEIMER, DISTRICT
JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party In Interest.

REPLY TO OPPOSITION TO EMERGENCY MOTION FOR STAY

Petitioner, Wilber Ernesto Martinez Guzman, pursuant to Rule 27(a)(4) of the Nevada Rules of Appellate Procedure, replies to the Real Party's Opposition to Emergency Motion for Stay (Opposition) as follows:

The Real Party's characterization of the writ petition as an invitation for this Court to "intervene into a discretionary case management decision", Opposition at 1, intentionally misstates the purpose of the writ and the issue at stake. The writ petition presents an issue of statutory interpretation that is based on both the plain

language of NRS 174.098(1) and its legislative history. The writ simply asks this Court to direct the district court to comply with the terms of NRS 174.098(1) when making its “case management” decisions. As such, under the statute, a district court cannot force a defendant to file a timely *Atkins* motion any sooner than when the defendant elects to file the motion, so long as it is not less than 10 days before trial. To the extent that the statute stands in the way of a district court’s “case management”, the specific terms of the statute control. The Real Party does not want to accept this result and so misdirects the conversation.

The Real Party complains that Mr. Guzman does not “explain why he seeks to vacate the deadline [for the filing of a motion under NRS 174.098(1)] and, therefore, fails to articulate the true purpose of his Petition.” Opposition at 6. But in both the Petition and in the Reply to Opposition to Petition for Writ of Mandamus Mr. Guzman has clearly stated the purpose of the writ; namely, to enforce the plain language of NRS 174.098(1) in the district court below. Notwithstanding the clarity of Mr. Guzman’s position, the Real Party insists that (really) he “is attempting to circumvent the district court’s requirement that he show good cause to continue the trial or extend his motion deadline.”

Opposition at 7. Not so. First, there is no “good cause” condition attached to the filing of a *timely* motion under NRS 174.098(1) and “timely” here means, under the statute, “not less than 10 days before the date set for trial.”¹ Second, Mr. Guzman seeks only a partial stay; his writ petition does not seek to stay *or* vacate the September trial date. Third, the arguments advanced by the Real Party against an emergency stay rehashes the arguments it makes against the petition. The fact that the Real Party raises them here demonstrates the broad disagreement existing between the parties—the very disagreement that the writ petition asks this Court to resolve. See, Opposition at 12 n. 8 (characterizing Mr. Guzman’s reading of the statute as “mistaken”). The instant request for a stay of the filing deadline is done to allow this Court to opportunity to fully consider the merit arguments of the parties.

On the merits what the Real Party seeks to accomplish is this Court’s avoidance of a question concerning the district court’s unilateral

¹ The Real Party invokes an inapplicable “good cause” standard throughout its opposition. Opposition at 8 (stating that the district court has said it will not “categorically deny Guzman’s motion even if he misses the motion deadline”); *Id.* at 9 (stating that “the district court has not denied Guzman of the opportunity to litigate an intellectual disability motion, nor will it if he misses the deadline”).

creation of an artificial—and extra-statutory—filing deadline for Mr. Guzman’s *Atkins* motion. But the artificial attachment of a “good cause” standard to the filing of Mr. Guzman’s *Atkins* motion creates a real and concrete harm on Mr. Guzman because it places on him a *proof burden* that no other defendant timely filing a motion under NRS 174.098(1) has had to (or has to) carry. Moreover, it is not a burden the legislature intended.

Conversely, the Real Party is not harmed by the requested stay or the relief sought in the writ petition because trial is more than five months away and in the absence of the arbitrary filing deadline that was set by the district court below, the Real Party would be in the same position as any other death-penalty prosecution team prosecuting a defendant with an intellectual disability claim under NRS 174.098, *i.e.* waiting for the *timely* filing of a motion under NRS 174.098(1). The Real Party asserts that when the *Atkins* motion is filed “the case will be stayed again.” Opposition at 11. But as the Real Party has to acknowledge, that result is commanded by the statute. See NRS 174.098(2)(a). That statutory command does not provide a basis for denying the requested stay currently pending before this Court.

In this light, it seems inconceivable that this Court will read into the statute extra terms sufficient to allow a district court the power to ignore or avoid its present controlling language. Thus, it is very likely that Mr. Guzman will prevail in this writ proceeding and will be allowed to timely file his motion in conformity with the statute.

CONCLUSION

This Court should grant the requested emergency motion for stay in order to avoid the harm that will result on April 12, 2021. Additionally, a stay will allow this Court sufficient time to reach a merits decision or order.

DATED this 31st day of March 2021.

JOHN L. ARRASCADA
Washoe County Public Defender

By: John Reese Petty
JOHN REESE PETTY
Chief Deputy Public Defender

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 31st day of March 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows: Jennifer P. Noble, Chief Appellate Deputy and Marilee Cate, Appellate Deputy, Washoe County District Attorney's Office.

I certify that I served a copy of this document by e-mailing a true and correct copy thereof to:

Christopher J. Hicks
Washoe County District Attorney
Mark Jackson
Douglas County District Attorney

John Reese Petty
John Reese Petty
Washoe County Public Defender's Office