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NO. 82795

DAVID LEWIS REGD #74594
P.O. BOX 650 H.D.C.P.
INDIAN SPRINGS, N.V., 89070
Defendant/Petitioner Pro Se

FILED

APR 21 2021

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

IN THE SUPREME COURT OF NEVADA

Ex Parte: David Leonard Reed,
Petitioner,

Case NO.

District Court NO. C-18-329762-1

VS.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND
FOR THE COUNTY OF CLARK, AND
THE HONORABLE MONICA TRUJILLO,
The Real Party in Interest,
Respondent(s).

66 FIRST AMENDMENT
~~PETITION~~ PETITION⁹⁹

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO NRS. 34.160-170 AND 34.185

COMES NOW David Leonard Reed, ex parte, Petitioner, in pro se, hereby petitions the above-named court for issuance of writ of Habeas Corpus compelling the Eighth Judicial District Court of the State of Nevada, in and for the county of Clark, and the Hon. Monica Trujillo, to issue an order remanding David Leonard Reed into the custody of the sheriff of Clark County, Joseph Lombardo, at the Clark County Detention Center, and further, issue an order for David Leonard Reed to remain in the custody of the sheriff at Clark County Detention Center or ~~dismiss~~ DISMISS WITH PREJUDICE.

~~Dismiss with prejudice~~ case NO. C-18-329762-1.
34.185

This petition is made and based pursuant to N.R.S. 34.160-170 and the accompanying memorandum of points and authorities.

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ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

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21-11486

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT FACTS TO UNDERSTAND WHY THE WRIT SHOULD ISSUE

1.) Petitioner has been in the custody of the Nevada Dept. of Corrs. since November 14, 2017, (38 months), for NO legitimate purpose, other than to cause him harm in the pending accusations (C-18-329762-1), there were once, 3 separate complaints and 1 information, upon the Petitioner's arrival and incarceration in the Nevada Department of Corrections.

The fact that the Petitioner arrived at H.D.S.P. (Nev. Dept. of Corrs.) on Nov. 14, 2017, under the guise of a Final Parole Revocation hearing, (in accordance with N.R.S. 213.1517(3) & 213.1518), and at the first scheduled Final Revocation on November 28, 2017, Petitioner, vehemently demanded to proceed with the Final Revocation, yet for NO legitimate purpose, the Final Revocation was postponed 6 times over the course of two (2) years, before the board elected to revoke the Petitioner's Parole, just (4) four days, before he was to expire.

The fact that the Petitioner was transferred to a State Prison as a Paroled detainee, just (3) days before a court ordered, Firm, Preliminary Hearing [see 17FN2024X], and order requiring the Sheriff to detain custody, until the completion of 17FN2024X] and (15) fifteen days before an invoked 60-day speedy trial, [see C-17-327407-1], all substantiates Petitioner's contention that his transfer served NO legitimate purpose, but to cause him harm in the pending accusations. Specifically, but not exclusively, to circumvent the Police and Prosecutorial Misconduct and eviscerate the Petitioner's 4th Amend. Const. Right to the effective assistance of Counsel, 60-day speedy trial, to deny Petitioner's statutory right, 171-196(2) to a Preliminary examination in 15 days and Statutory Right 171-197(4)(a)(b) to be confronted, and confront the officer's, Declaration of Arrest, and for him to present his defense in support of denial of his 4th Amendment and NRS 179.085.

2.) Over the course of 3 1/2 Years, the Petitioner in Pro Se, and through Counsel, repeatedly requested to be remanded into the custody of the Clark County

1 Detention Center, for various violations of his civil / constitutional Rights, and due
2 to the Punitive Prison Conditions affecting his Rights to receive a fair trial, Retain
3 Counsel, Communicate with Counsel, Inadequate - Law Library Access etc.

4 ~~THE~~ ~~STATE~~ "Tellingly" IN CASE 17FN2024X (Initial case of indictment) ON
5 December 7, 2017 at a "status check", due to Petitioner not being transported to
6 Preliminary Hearings ON November 1, 2017 (while IN C.C.D.C.) and not being transpo-
7 rted to Preliminary Hearings November 17, 2017. (despite orders for both, and both being
8 critical stages), Petitioner made a compelling case to the court of #1 wanting
9 his Preliminary Hearings #2 being incarcerated in Prison ON lock-down 24/7 for
10 no reason, and not receiving the phone at times to communicate with Counsel in
11 assistance of his defense. For Preliminary, # articulating his objections to not being
12 transported, to the two previously scheduled examinations. Over the "State's
13 Objections", the court accepted the Petitioner's argument. "Tellingly" a Nevada
14 Department of Corrections, transportation C/O (Drake) who, was not a party, intervenor
15 and simply had no legal interest, was able to speak to the court and when he
16 spoke, made two False Representations, in support of him returning the Petitioner
17 to the Nevada Dept. of Corr's. Again, over, "Drake's Objections and Representations"
18 the court ordered the Petitioner Remanded to the Clark County Detention Center
19 ON Thursday, December 7, 2017, for the purpose of the fourth scheduled Prelimin-
20 ary Hearings. Friday, December 8, 2017, Petitioner was transported to General Population
21 From booking. Friday, SAT-SUN The Facility was on lock-down, making it impossible
22 for Petitioner to communicate with counsel for the December 21, 2017, Prelim. (which was the reason he was remanded) ON Monday, December 11, 2017, 4:30 AM,
23 Petitioner was told to "Roll-up" for his return to Prison, just 3 1/2 days after
24 the court ordered him to be remanded into the Clark County Detention Center.

25 3.) IN 2020 - 2021, several "EMERGENCY MOTIONS FOR INJUNCTION-TRO" were
26 filed in the U.S. Dist. Court. Dist. of Nev. SPECIFICALLY PERTAINING to HIGH DEPT STATE
27 Prison's "inadequate Law Library" and lock-down preventing adequate law library."
28

1 From 2017 - Until Present, Petitioner has repeatedly complained of the inhumanity of the Person
2 Lawlibrary and of his legal need to be similarly situated with other detainees, and of his
3 Need to be in a position to seek, meet and obtain counsel of his choice.

4 4.) December 6, 2017, ~~the~~ Petitioner was attacked from behind, while restrained
5 in leg and belly shackles, and had his head repeatedly slammed into the concrete. On De
6 cember 20, 2017, Petitioner filed a grievance, and in retaliation of filing the grievance
7 on the Dec. 6, 2017 Attack, Petitioner was even more brutally assaulted, but over the
8 head with a metal stick, repeatedly punched, kicked and stomped by several C/O's at
9 H.D.S.P. and was placed in seclusion for 9 months.

10 Petitioner wrote over 30 letters seeking to obtain counsel for both the criminal and
11 civil cases and Petitioner has direct evidence of at least 18 of those letters being
12 intercepted, not mailed or returned "falsely" Petitioner settled a claim with the Person
13 for a separate similar mail claim. That and several other incidents over the course of (SS)
14 thirty-eight months, have thwarted the Petitioner from seeking, consulting and obtaining counsel
15 for his defense.

16 5.) Petitioner has not been transported to 29 court hearings (despite orders) (despite
17 the vast majority being critical stages, including Pre Trial Conference February 5, 2021
18 Calendar Call March 6, 2021, and the mentioned Preliminary Hearings.

19 6.) March 14, 2018, Petitioner's counsel was ineffective - by:

- 20 (a) allowing Petitioner to plea to a skeleton indictment that did not contain
21 a true bill.
- 22 (b) advising Petitioner to waive his right to speedy trial
- 23 (c) requesting 21 days to file Pre trial, wait and not filing the writ.

24 7.) March 18, 2018, Petitioner mailed Motion to withdraw counsel and appoint
25 new counsel, due to his counsel refusing his calls and due to the Pre trial writ
26 being due by April 4, 2018.

27 8.) April 25, 2018, Petitioner was not transported to hearings for motion to withdraw and
28 appoint counsel, where appointed counsel made false representations to the court (without Petitioner
being present) claiming, "She and Petitioner had come to an understanding" despite not speaking

1 to the Petitioner until April 5, 2018 one day after the Pretrial writ was due, and
2 despite her representations being false.

3 9.) August 8, 2019, the court erred, and denied Petitioner of his right to counsel,
4 right to the compulsory process, [enabling this court's ability to Review Record] when he allowed Peti-
5 tioner's counsel to be sworn in over the phone at the evidentiary hearings, despite her being in
6 the court building enabling the Petitioner to review her notes and impeach her sworn testi-
7 mony.

8 10.) The court erred by denying Petitioner's motion to re-open the August 8, 2019 hearings
9 after Petitioner received new evidence impeaching (contradiction) to counsel's sworn testi-
10 mony, and after the state previously (and now) failing to provide discovery in accordance
11 with Brady and its progenies 3 NRS 174.234, had furnished him with new evidence.

12 11.) March 15, 2021, at Stokes Creek, Petitioner again requested to be re-
13 leased into the custody of Sheriff Joe Lombardo at C.C.D.C. due to the harm he
14 suffered and irreparable harm both great and immediate, including a letter wrote
15 explaining that several prison officials of attempting to assassinate the Petitioner,
16 and especially of his need to consult and hire an attorney for his defense
17 due to his inability to due so, because of the barriers erected while he's held
18 in prison, him being in excess of his sentence.

19 Additionally, Petitioner argued that his right to Preliminary hearings was denied, right
20 to speedy-trial denied, due to the I. A. C. and further argued the inadequate access
21 to the law library, no access to stand-by-counsel or an investigator, due to
22 them being ordered not to accept calls, and that if I was similarly situated
23 with other detainees, I would not have no room to complain.

24 II. RELIEF SOUGHT

25 Simply, Petitioner request this court to order the Eighth Judicial District court
26 to issue an order remanding him to the Clark County Detention Center until the
27 conclusion of C-18-329762-1 or in the alternative, dismissing C-18-329762-1
28 with prejudice.

III.

LEGAL ARGUMENT, WHY WRIT SHOULD ISSUE

A. The writ should issue because Petitioner has no plain, speedy and adequate remedy ~~at law~~ in the ordinary course of law. State v. Second Judicial District Court ex. Rel. County of Washoe 11 P.3d 1201, ___ Nev. ___ (2000).

Over the course of 3 1/2 years, reed has consistently ^{effective assistance of counsel} tried to prevent from being denied his right to due process of law, ~~due~~ ^{effective assistance of counsel}, and access to the court all to no avail, in which the court is directly and indirectly assisting in the violations of his rights. See Petitioner Facts at 1-11 of this petition. Subjecting a detainee to gratuitous and wholesale deprivation of rights which are unrelated to insuring his presence at trial offends the requirements of due process of law. Brenneman v. Madison et al. 343 F. Supp. 128; 1972 U.S. Dist. LEXIS 15375, No. C-70 1911 May 12, 1972. Over the course of 3 1/2 years the court has gave several excuses of why it won't order the petitioner housed, including August 19, 2019, when the court told appointed counsel that it's too expensive to house the petitioner. Inadequate resources can never be an adequate justification for the state's depriving any person of his constitutional rights. If the state cannot obtain the resources to detain persons awaiting trial in accordance with minimum constitutional standards, then the state simply will not be permitted to detain such persons. Id.

B. PRE-TRIAL DETAINees HAVE A CONSTITUTIONAL RIGHT, PROTECTED BY THE FIRST AMENDMENT, TO COMMUNICATE WITH FRIENDS, RELATIVES, ATTORNEYS AND PUBLIC OFFICIALS BY MEANS OF VISITS, CORRESPONDENCE AND TELEPHONE CALLS. Id.

Prior to Plaintiff/Petitioner, being transferred to prison, (3-days before Prelim / 15 days before calendar call) Petitioner was able to communicate with a host of friends and family, who were all willing to, and prepared to help pay for his attorney and other legal fees. Petitioner was able to attend to the law-library kiosk at least four times a day if he chose and "shop" for an attorney who shared his legal interest and objectives. Since, Petitioner has been incarcerated, he at various times have been restricted from making phone calls, his mail has been intercepted, not mailed or returned. And the only person

1 with the means to drive to the Prison was prohibited from visiting the petitioner
2 after 3 visits for no legitimate reason but to further break down the
3 petitioner's communication with friends and relatives and those willing to
4 offer him support. The right to hire and consult an attorney is protected
5 by the First Amendment's guarantee of freedom of speech, association and petition
6 ... [T]he State cannot impede an individual's ability to consult with cou-
7 nsel on legal matters ... Furthermore, the right to obtain legal advice does not
8 depend on the purpose for which the advice was sought ... Dennis v. Dunlap,
9 209 F.3d 944, 954 (7th Cir. 2000); accord Boyle v. County of Kern, 271 F.3d 955,
10 961 (10th Cir. 2001) ("First Amendment rights of association and free speech
11 extend to the right to retain and consult with an attorney."); Ciprozani v. Lico
12 mining Housing Auth., 177 F.Supp. 2d 303, 324 (M.D. Pa. 2001).

13 Here, the record is clear that Reed was only transferred as a means to harass, interfere
14 and impede his ability to receive a fair trial process and to prevent him from being
15 similarly situated with detainees and not persons convicted, which is obvious due to
16 the fact that Reed sent in Prison on Parole for 2 Years, and just 4 days be-
17 fore Reed would've been released from his judgment of conviction and therefore
18 transferred to C.C.D.C. or able to post his bail, the State revoked his Parole. Reed
19 has been punished on occasions. IN Anderson v. Nooner, 438 F.2d 183, 190 (5th Cir.
20 1971), the Court of Appeals for the 5th Circuit elaborated on the difference between
21 convicts and detainees:

22 "Incarceration after conviction is imposed to punish, to deter, and to rehabilitate the convict
23 (citation omitted). Some freedom to accomplish these ends must of necessity be afforded prison
24 personnel. Conversely, where incarceration is imposed prior to conviction, deterrence, punishment
25 and retribution are not legitimate functions of the incarcerating officials. Their role is
26 but a temporary holding operation, and their necessary freedom of action is concomitantly
27 diminished ... Punitive measures in such a context are out of harmony with the pres-
28 umption of innocence." It is true that any deprivation of liberty is in reality a form of
punishment; but it is also true that the only legitimate purpose of incarcerating those who are
accused of crime is to guarantee their presence at trial. "The Constitutional author-
ity for the State to distinguish between criminal defendants by freeing those who post
bail pending trial and confining those who do not, furnishes no justification for any addi-
tional inequality of treatment beyond that which is inherent in the conf-
inement itself." see Stack v. Boyle, 342 U.S. 114, 72 S.Ct. 1190 L.Ed. 3 (1956) It
certainly furnishes no justification for treating pre-trial detainees as convicted prisoners."

Which is the case in this matter.

1 C. PETITIONER HAVE NO ACCESS TO ADEQUATE LAW LIBRARY OR STANDBY-COUNSEL

2 Even prior to the current global pandemic ("Covid-19"), at least 31 of the 38
3 months readwrote in Prison has not been able to physically attend law library and
4 conduct effective legal research. Feed does not have access to an investigator,
5 stand-by-counsel, which they were ordered not to accept calls from feed, due
6 to a break-down in communication. In Wolfe v. State, 95 Nev. 240, 242, 591 P.2d
7 1155, 1156 (1976). This court held: "the right to self-representation includes either
8 the access to an adequate law library or "adequate assistance from persons trained in
9 the law." This court ^{also} ~~held~~ held in Wilkie v. State, "the availability of stand-
10 by-counsel satisfied the requirements of Wolfe and thus no further access to the
11 law library was necessary. Further holding: although the defendant could not use
12 the law library, he never the less could've worked with stand-by-counsel to provide
13 him with the legal documents or research. 95 Nev. 192, 194, 644 P.2d 508, 509 (1982)

14 Petitioner has neither requirement as stated in Wolfe. also see fact
15 3-11 of this petition.

16
17 A writ of mandamus is issued to compel performance of an act which the law
18 especially enjoins as a duty resulting from an office, trust or station. see, Levy v. Stewart
19 619 P.2d 1212, 960 Nev. 846 (1980).

20 A writ of mandamus may issue to control arbitrary or capricious exercise
21 of discretion. see Barnes v. Eighth Judicial District Court of the State of Nevada, in
22 and for Clark County, 748 P.2d 483, 103 Nev. 679 (1987).

23 This court has also held that the action being sought to be compelled must
24 be one already required by law. see Mineral County v. State, Department of Conse-
25 rvation and Natural Resources, 70 P.3d 800, — Nev. — (2001).

26 It has also been held that a writ of mandamus is proper when the petitioner
27 raises urgent and important issue[s] of law requiring clarification by the Supre-
28 me Court. see Falk v. Douglas County, 3 P.3d 661, — Nev. — (2000).

1 AS is the case here, where in order to circumvent its misconduct and ~~impede~~ impede
2 Petitioner's, the State has used its agency to deny Petitioner's right to counsel, right
3 to Due Process and Access to the Court.

4 Mandamus is appropriate remedy when officer's discretion is exercised arbitrarily or capri-
5 ciously. County of Clark v. Atlantic Seafoods, 96 Nev. 608, 615 P.2d 253, 1980 Nev.
6 LEXIS 603 (Nev. 1980).

7 For 3 1/2 years this court has arbitrarily and capriciously allowed the Petitioner
8 to suffer irreparable harm at the hands of the State and has repeatedly denied
9 his request to be remanded into C.C.D.C. and thus similarly situated.

10 Petitioner who tendered a sufficient showing of ongoing and irreparable harm justi-
11 fied Provisional determination that court should consider the matter further to ascertain
12 whether the facts justified issuance of an interlocutory writ of mandamus or Prohibi-
13 tion. Whithead v. Nevada Commission on Judicial Discipline, 110 Nev. 128, 906 P.2d 200,
14 1994 Nev. LEXIS 18 (Nev. 1994).

15 Based upon the foregoing, Petitioner believe this court should issue a writ of mandamus
16 requiring the 8th Judicial District Court, to issue an order either dismissing case
17 329762-1 or in the alternative ordering the Petitioner to be remanded into the
18 custody of Sheriff Joe Lombardo at C.C.D.C.

19 IV. Wherefore, on the Premises, Petitioner pray this court grant the relief
20 requested in this writ.

21 Dated March 16, 2021

22 BY: David Leadford
23 Petitioner / IN PRO SE
24
25
26
27
28

CERTIFICATE OF SERVICE

I, David Leard Reed, hereby certify pursuant to NRCPS(b), that on this 4th
day of ~~March~~^{April}, 2021, I mailed the foregoing Petition for writ of mandamus pursuant
to NRS 34-160-170, by depositing it in the Ashcroft State Prison Mail
U.S. Postage First-Class addressed as follows:

OFFICE OF THE CLERK
201 S. Carson St. #201
Carson City, N.V. 89701

Clerk OF COURT
Dept. #3
200 Lewis Ave. 3rd Floor
Las Vegas, NV 89155-1160

DATED: 4th, 2021.
~~MARCH~~
April

BT: David Reed
Petitioner / in Pro se