

IN THE SUPREME COURT OF THE STATE OF NEVADA

ZANE M. FLOYD

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA, IN AND FOR THE
COUNTY OF CLARK; AND THE HONORABLE
MICHAEL P. VILLANI, DISTRICT JUDGE

Respondents,

And

THE STATE OF NEVADA,

Real Party in Interest.

Electronically Filed
Aug 20 2021 09:38 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 83167

D.C. No.: 99C159897

**ANSWER TO PETITION FOR WRIT
OF MANDAMUS AND PROHIBITION**

COMES NOW, the State of Nevada, Real Party in Interest, by STEVEN B. WOLFSON, District Attorney, through his Chief Deputy, ALEXANDER G. CHEN, on behalf of the above-named Real Party In Interest and submits this Answer to Petition for Writ of Mandamus in obedience to this Court's order filed July 30, 2021 in the above-captioned case. This Answer is based on the following memorandum and all papers and pleadings on file herein.

///

///

///

Dated this 20th day of August, 2021.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ Alexander G. Chen
ALEXANDER G. CHEN
Chief Deputy District Attorney
Nevada Bar #010539
Office of the Clark County District Attorney

MEMORANDUM OF
POINTS AND AUTHORITIES

STATEMENT OF THE CASE RELEVANT TO THIS PETITION

On December 28, 2008, all of Department V's civil and criminal caseloads were transferred to Department XVII. XI PA 2548.

On April 14, 2021, Petitioner Floyd filed a Motion to Transfer Case Under EDCR 1.60(H). I PA 006-014. The State filed its Response on April 26, 2021. VII PA 1642-X PA 2409. Following a hearing on the matter on May 14, 2021, the district court determined that it was the successor court and allowed to hear the matter under the creation of the homicide team, denying Petitioner Floyd's Motion to Transfer. XI PA 2529. On June 4, 2021, the district court filed the Order denying the Motion to Transfer Case Under EDCR 1.60(H). XI PA 2548-2550.

On June 9, 2021, Petitioner Floyd filed an Objection to Order Denying Motion to Transfer Case Under EDCR 1.60(H) in Department X. XI PA 2577-2586. The State filed its Response to the Objection on June 17, 2021. XI PA 2613-2619. On June 21, 2021, the district court in Department X filed the Order Denying Petitioner Floyd's Objection to Order Denying Motion to Transfer Case Under EDCR 1.60(H). XI PA 2620-2621.

Petitioner Floyd subsequently filed a second Objection with the Chief Judge of the Eighth Judicial District Court. XI PA 2659. On June 28, 2021, the Chief Judge issued a Minute Order declining to hear the second Objection. XI PA 2659. On July 7, 2021, Petitioner Floyd filed the instant Petition for Writ of Mandamus (hereinafter "Petition"). On July 30, 2021, this Court filed an Order Directing the State to Answer Petitioner's Petition for Writ of Mandamus.

SUMMARY OF THE ARGUMENT

The district court correctly determined that it is the proper department to preside over Petitioner Floyd's case. While the instant case originated in Department V, this case was routinely transferred to Department XVII on December 28, 2008. Therefore, the district court correctly found that it can preside over Petitioner Floyd's case as the successor department.

///

///

ARGUMENT

DEPARTMENT XVII IS THE CORRECT DEPARTMENT TO PRESIDE OVER PETITIONER FLOYD'S CASE

Petitioner claims that Department V is the only Department that has jurisdiction to issue an Order and Warrant of Execution and to hear his habeas petitions. Petition, at 12-17. However, Department XVII is the correct Department to preside over the instant case.

It is undisputed that the Petitioner Floyd was convicted in District Court Department V. However, cases that were in Department V have regularly been re-assigned over the twenty plus years it has taken to properly litigate this case. As indicated in Department XVII's Order, on December 28, 2008, Department V's civil and criminal caseloads were transferred to Department XVII. XI PA 2548-2550. The transfer of cases from Department V to Department XVII included Petitioner Floyd's case. XI PA 2548. Even though the number of the department is different, the court in which the conviction was obtained is now titled as Department XVII. Department V currently hears only civil matters, and thus, cannot hear Petitioner Floyd's criminal case. Therefore, Department XVII is the successor department that has been tasked with presiding over Petitioner Floyd's case based on the transfer on December 28, 2008.

Moreover, the Eighth District Court Rules govern the "procedure and administration of the Eighth Judicial District Court and all actions or proceedings

cognizable therein.” EDCR 1.10. Within the Eighth Judicial District Court, the chief judge has the authority to “assign or reassign all cases pending in the district.” EDCR 1.60(a). The chief judge also has the authority to determine the regular or special assignments of the judges. EDCR 1.30(b)(5).

Petitioner relies on Rainsberger v. State as his support for transferring the case to Department V. 85 Nev. 22, 449 P.2d 254 (1969). Petition, at 12-16. However, Rainsberger dealt with a provision of NRS 176.495 that no longer exists. At the time Rainsberger was decided, the Court was reading a 1967 version of NRS 176.495(3) which allowed for a three-judge panel to impose the death penalty, and it was up to the district court that took the plea or his “successor in office” to issue the warrant of execution. This provision was eliminated by the Legislature in 2003 by Assembly Bill 13.¹ Thus, this Court can easily distinguish Rainsberger from the instant case.

However, Department XVII is in fact the successor department that has been tasked with Petitioner Floyd’s case. The case was properly re-assigned by the Chief Judge of the Eighth Judicial District Court pursuant to Rule 1.60 of the Eighth Judicial District Court rules. Although Petitioner argues that the rules and administrative orders should not matter, those rules have been adopted and approved by this Court. The Legislature has given this Court the ability to make these rules

¹ See A.B. 13, p. 2084.

pursuant to NRS 2.120, and thus, the Eighth Judicial District Court Rules and Administrative Orders are valid.

Petitioner Floyd's request that this Court transfer his case out of Department XVII and to Department V has no merit. Department V—an all-civil department—is no longer the correct department to hear this case because this case was properly transferred to Department XVII on December 28, 2008. Therefore, the district court correctly determined that it was the successor court, and that Department XVII can properly issue any Orders or Warrants of Execution and hear Petitioner Floyd's pending state court matters.

CONCLUSION

Based on the foregoing, the State respectfully requests that the instant Petition for Writ of Mandamus be DENIED.

Dated this 20th day of August, 2021

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Alexander G. Chen*

ALEXANDER G. CHEN
Chief Deputy District Attorney
Nevada Bar #010539
Office of the Clark County District Attorney

AFFIDAVIT

I certify that the information provided in this mandamus petition is true and complete to the best of my knowledge, information and belief.

Dated this 20th day of August, 2021.

BY */s/ Alexander G. Chen*

ALEXANDER G. CHEN

Chief Deputy District Attorney

Nevada Bar #010539

Office of the Clark County District Attorney

Regional Justice Center

200 Lewis Avenue

Post Office Box 552212

Las Vegas, Nevada 89155

(702) 671-2750

CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this Answer to Mandamus Petition complies 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 Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this answer complies with the page and type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 918 words and 86 lines of text, and does not exceed 15 pages.
3. **Finally, I hereby certify** that I have read this Answer to Mandamus Petition, 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 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 the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 20th day of August, 2021.

Respectfully submitted

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Alexander G. Chen*

ALEXANDER G. CHEN
Chief Deputy District Attorney
Nevada Bar #010539
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on August 20, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

BRAD LEVENSON
DAVID ANTHONY
Assistant Federal Public Defenders

ALEXANDER G. CHEN
Chief Deputy District Attorney

I, further certify that on August 20, 2021, a copy was sent via email to District Court, Department 17's JEA for Judge Villani:

OLIVIA BLACK - JEA
blacko@clarkcountycourts.us

BY /s/ E. Davis
Employee, District Attorney's Office

AC/Brianna Stutz/ed