IN THE SUPREME COURT OF THE STATE OF NEVADA

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ZANE M. FLOYD,

Petitioner,

v.

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

Respondent.

STATE OF NEVADA

Real Party in Interest.

Supreme Court Case No.
83167

District Court Case Nos.
99C159897
Habeas Court Case No.
A-21-832952-W

REPLY TO STATE'S ANSWER TO PETITION FOR WRIT OF MANDAMUS AND PROHIBITION

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Table of Contents

Table of Authorities

Federal Cases **Page(s)**

State Cases

State Statutes

I. Introduction

On July 7, 2021, petitioner Zane Floyd filed a petition for writ of mandamus or prohibition with this Court. The State filed its answer to the petition on August 20, 2021. Floyd submits the following reply in response.

II. Argument

The State makes important concessions that must result in the conclusion that Department 5 of the Eighth Judicial District Court is the only district court that can issue an order or warrant of execution and hear Floyd's habeas petition.

A. The State concedes that NRS 34.730(3)(b) requires the district court in Department 5 to adjudicate Floyd's habeas corpus petition.

The State does not address Floyd's argument that the district court erred in holding it had jurisdiction to adjudicate the habeas petition under NRS 34.730(3)(b). Neither the district court in Department 17 nor the Presiding Criminal Judge in Department 10 addressed this statutory provision. For its part, the State effectively conceded below that the reference to the "original judge or court" in this

statutory provision was department specific, but argued it was not possible for Department 5 to hear the case as it was designated as a civil department. 11PA2617-18.[1] The State no longer urges this position before this Court. Indeed, it is undisputed that the term "original" would be effectively read out of the statute were this Court to adopt such a reading of it. *See Southern Nevada Homebuilders Ass'n v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (terms in a statute should be read "in a way that would not render words or phrases superfluous or make a provision nugatory".). Based on the State's concession this Court should grant this part of Floyd's writ.

The State's concession as to NRS 34.730(3)(b) is also relevant to Floyd's argument that the district court in Department 17 did not have jurisdiction to issue an order and warrant of execution. This Court has acknowledged the rule of statutory construction that statutes in different Chapters of the state statutory scheme should be read *in para materia* with one another. *E.g.*, *State, Div. of Ins. v. State Farm Mut.*

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[1] It is unclear what the import of this argument would have been in any event, as habeas proceedings are neither exclusively civil or criminal in nature. *Beets v. State*, 110 Nev. 339, 358, 871 P.2d 357, 341 (1994).

Aut. Ins. Co., 116 Nev. 290, 294, 995 P.2d 482, 485 (2000) ("Statutes are said to be 'in para materia' when they involve the same class of persons or things or seek to accomplish the same purpose.") (citation omitted). Here, application of *in para materia* must result in the conclusion that, had the Legislature intended a habeas proceeding to be decided by the original judge or court, it must also have intended the same court to be the one with jurisdiction to enter an order and warrant of execution as stated in NRS 176.495 and 176.505.

B. The State concedes that this Court's decision in *Rainsberger* requires a department specific outcome.

The State acknowledges Floyd has correctly stated the holding from this Court's decision in *Rainsberger v. State*, 85 Nev. 22, 449 P.2d 254 (1969), that former NRS 176.495(3) is department specific. Ans. at 5. Again, this concession by the State is important as neither the district court in Department 17 nor the Presiding Criminal Judge in Department 10 acknowledged *Rainsberger*. In light of this concession, the question arises why the Legislature would intend for one result in

guilty plea cases and another in cases involving a jury verdict.[2] After all, the Legislature passed each of the subsections of NRS 176.495 at the same time, and the most reasonable reading of the statute is that both subsections intended for the same meaning when it came to the identity of the specific court, but used different terminology only to distinguish between cases involving jury verdicts and cases involving a guilty plea.

The State's concession with respect to *Rainsberger* is also relevant to Floyd's argument that NRS 176.505(2) requires a department specific interpretation. Subsection (2) of NRS 176.505, which identifies the department in which the sentence of death was obtained, was passed at the same time as subsection (3) of NRS 176.495. 1967 Nev. Stat., ch. 525, § 230, p. 1439. Therefore, if *Rainsberger* requires a department

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[2] The difference would not have been due to distinguishing one judge on a three-judge panel from the others as the two other judges on a panel came from a different county from the one that accepted the defendant's guilty plea or confession. *See* former NRS 157.556(1) (providing that "the Supreme Court shall appoint two district judges from judicial districts other than the district in which the plea was made") (repealed June 9, 2003). Similarly, it would not have made sense for the Legislature to have one intention in guilty plea cases leading to a three-judge panel and another in three-judge panel cases arising after a hung jury as to penalty. *See id.* Neither the State nor the district courts have ever addressed this incongruity.

specific reading as to NRS 176.495(3), it must also require one as to NRS 176.505(2).[3] The State has never acknowledged the import of its concession as it applies to Floyd's arguments with respect to NRS 176.505(2). This conclusion undermines the State's unsupported argument that the Legislature's repeal of NRS 176.495(3) somehow represents a repudiation of the department specific reading of the statutes that this Court acknowledged in *Rainsberger*.[4]

The State's concession with respect to *Rainsberger* also undermines the district court's rationale for its decision. When Floyd's initial transfer motion was argued, it was his counsel's argument with respect to former subsection (3) of NRS 176.495 that the district court cited in support of its decision. 11PA2519, 2529. Specifically, the terminology concerning the "successor in office" to the court that received the plea was the same language the district court believed

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[3] The State does not suggest that this Court overlooked NRS 176.505(2) when it decided *Rainsberger*.

[4] As Floyd argued in his writ, the Legislature repealed NRS 176.495(3) after the Supreme Court's decision in *Ring v. Arizona*, 536 U.S. 584 (2002), which proscribed judicial fact-finding in capital sentencing proceedings. The State does not cite any legislative history suggesting the Legislature repealed the statutory provision because it intended to alter the identity of the court that could issue orders and warrants of execution.

allowed it to hear the case. *Id.* But this Court has acknowledged in other contexts that the term "successor in office" refers to the specific judge that replaced the former one. *E.g.*, *Calloway v. Reno*, 116 Nev. 250, 253 n.1, 993 P.2d 1259, 1261 n.1 (2000). The State's answer fails to address this construction of the term "successor in office" or address this Court's decision in *Calloway*.

C. Floyd's interpretation of the statutory scheme does not lead to absurd results.

In combination, the State's two concessions repel its argument that Floyd's interpretation of the statutes leads to an absurd result. It is perfectly reasonable to conclude the Legislature intended for cases involving jury verdicts and guilty pleas to both be adjudicated in the same judicial department for habeas proceedings and also for entry of orders and warrants of execution. The only absurd reading is the one the State urges, which would result in the conclusion that cases involving jury verdicts must be routed to the same department for habeas proceedings, but not to the same department for orders and warrant of execution, whereas that result would still be required in guilty plea cases. The only reasonable interpretation of the statutes is

that they have the same meaning when it comes to identifying the particular court with jurisdiction to hear the case—the only difference being whether the case involved a jury verdict or guilty plea.

For the purposes of this writ Floyd does not challenge the district court's conclusions with respect to the validity of the court rules that allegedly led to the transfer of his case from Department 5 to Department 17. It is also important to note that the Legislature's intent with respect to the identity of the court that must hear a habeas petition and enter orders and warrants of execution will ordinarily not be in any way inconsistent with court rules regarding the initial assignment of a criminal case. For example, the newly enacted statewide rules of criminal procedure will not be affected by Floyd's reading of Chapters 34 and 176: it will mean only that the case will need to stay with the same department that entered the judgment of conviction for habeas proceedings and for orders and warrants of execution.

The State argues that the Legislature has granted this Court and the district courts of this state the authority to assign cases under NRS 2.120. Ans. at 5-6. But NRS 2.120(1) expressly states those rules must

be consistent with the laws passed by the Legislature. Moreover, as a matter of statutory construction, the specific provisions of NRS 34.730(3)(b), 176.495, and 176.505 control over the general provision of NRS 2.120 to the extent there is any inconsistency. This conclusion is consistent with this Court's well-established rule of statutory construction that specific statutory provisions control over general ones. *E.g.*, *Stat Indus. Ins. System v. Miller*, 112 Nev. 1112, 1118-19, 923 P.2d 577, 580 (1996) (citing *SIIS v. Surman*, 103 Nev. 366, 368, 741 P.2d 1357, 1359 (1987)).

The State correctly acknowledges that Department 5 was the district court that entered the judgment of conviction. Ans. at 3. As a matter of statutory construction, Department 5 was the court in which the conviction was obtained under NRS 176.495(1) and 176.505(1). This designation of a specific court in the county in which the defendant was convicted by the Legislature is consistent with this Court's decision in *Rainsberger* when this Court was interpreting former NRS 176.495(3) and NRS 176.505. For the same reason, this interpretation applies in cases involving jury's verdicts as in Floyd's case.

D. The State does not dispute that the actions taken by a district court without jurisdiction are a nullity.

Finally, the State does not address Floyd's arguments that the implication of his reading of the statutes necessarily renders the proceedings in Department 17 following the denial of the transfer motion a nullity. Writ at Section VII(C) at 17-18. This conclusion, which requires a court to inquire into its own subject matter jurisdiction *sua sponte*, is also required as a matter of state law. NRS 174.105(3); *e.g.*, *Application of Alexander*, 80 Nev. 354, 358-59, 393 P.2d 615, 617 (1964).

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III. Conclusion

For the foregoing reasons and those stated in his writ petition, Floyd requests that this Court grant his petition and order the district court to transfer his case to Department 5 for *de novo* consideration of his habeas petition and the motions filed in the criminal case.

DATED this 3rd day of September, 2021.

Respectfully submitted,

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/s/ David Anthony
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Respectfully submitted,

/s/ David Anthony
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