

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 10:10 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 83225

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.

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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 April 14, 2021, the State filed a Motion for the Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant of Execution. I PA 047-108. Petitioner Floyd filed its Opposition on April 21, 2021. I PA 109-125. The State filed an Addendum to its Second Supplemental Order of Execution and Second Supplemental Warrant of Execution on May 10, 2021. II PA 289-294.

On May 11, 2021, Petitioner Floyd filed a Motion to Strike, or Alternatively, Motion to Stay the Second Supplemental Order of Execution and Second Supplemental Warrant of Execution. II PA 295-308. The State filed its Opposition to the Motion to Strike on May 13, 2021. II PA 335-338. Following a hearing on

June 4, 2021, the district court denied Petitioner’s Motion to Strike. II PA 373. The district court’s Decision and Order was filed on June 7, 2021. II PA 390-393.

On July 16, 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 Ely State Prison is the proper state prison for Petitioner Floyd’s execution to take place. Interpreting the statute as Petitioner Floyd wishes would clearly lead to an absurd result. Therefore, this Court should find that the proper location for the execution is Ely State Prison.

ARGUMENT

THE PROPER LOCATION FOR PETITIONER FLOYD’S EXECUTION IS ELY STATE PRISON

Petitioner claims that the meaning of “the state prison” in NRS 176.355(3) is clear and requires that all executions take place at the decommissioned Nevada State Prison. Petition, at 2-3, 13-32.

Petitioner Floyd is persistent that the decommissioned Nevada State Prison in Carson City is the only state prison in Nevada where his execution can be held. The NRS does not specify that there is **only** one state prison in Nevada. In fact, Petitioner specifically notes that there are currently seven active Nevada state prisons based on its most recent search of the Nevada Department of Corrections. Petition, at 4.

Notably, the decommissioned Nevada State Prison is missing from Petitioner’s list. Id. Thus, it is unclear why the execution must take place at the decommissioned Nevada State Prison, and not any other state prison in Nevada.

Petitioner claims that the district court “relied on untrue facts and ignored relevant canons of statutory construction.” Petition, at 33. However, the district court relied on the most important canon of statutory construction—that interpreting the statute on its plain meaning cannot provide an absurd result. II PA 373. Clearly, it would lead to an absurd result to hold the execution at the decommissioned Nevada State Prison, instead of the ability to hold executions at any state prison with the proper facility.

If this Court interprets NRS 176.355(3) to mean all executions can only take at the decommissioned Nevada State Prison, it will mean any defendant convicted of a crime must also serve their punishment at the decommissioned Nevada State Prison. For example. NRS 200.030(4)(b) provides, “[a] person convicted of murder of the first degree is guilty of a category A felony and shall be punished ... [b]y imprisonment **in the state prison.**” (emphasis added). Similarly, NRS 200.030(5) states that a person convicted of murder in the second degree “shall be punished by imprisonment **in the state prison.**” (emphasis added). As this Court is well aware, any defendant convicted of murder in Nevada can serve their sentence at a number of different Nevada state prisons. But under Petitioner’s statutory interpretation, all

defendants that have been convicted of murder should be moved to serve their punishment in the decommissioned Nevada State Prison in Carson City.¹

Petitioner repeatedly states that the legislature's intent is clear that all executions must take place at the decommissioned Nevada State Prison in Carson City. However, this Court can clearly see the legislature's intent by looking at the newly built execution chamber at Ely State Prison. In 2015, the Nevada legislature approved \$860,000 to fund the new execution chamber at Ely State Prison.² While Petitioner asserts that the Nevada Legislature's apportionment of funds for an execution chamber at Ely State Prison in 2015 "provides no insight regarding its intent in 1967, 1977, 1983, 1989, or 2001," it clearly provides insight into the legislature's intent for an execution in 2021. Petition, at 27. If the legislature's intent were for executions to take place only at the decommissioned Nevada State Prison in Carson City, the legislature would not have approved almost a million dollars to construct a new execution chamber at Ely State Prison after Nevada State Prison closed.

¹ It is also important to note that almost every crime in the NRS provides the exact language that a person "shall be punished by imprisonment in the state prison." Without listing every crime in the NRS, the State is confident that if this Court turns to any random crime, it will see that same "imprisonment in the state prison" language.

² See www.reviewjournal.com/crime/nevadas-new-86000-execution-chamber-is-finished-but-gathering-dust/.

Petitioner's interpretation of NRS 176.355(3) clearly leads to an absurd result. Therefore, the district court correctly determined that Petitioner Floyd's execution should take place in the newly constructed execution chamber at Ely State Prison and not at the decommissioned Nevada State Prison.

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
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Nevada Bar #001565

BY */s/ Alexander G. Chen*

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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*

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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 911 words and 85 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

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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:

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Nevada Attorney General

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

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

AC/Brianna Stutz/ed