

Elizabeth A. Brown
CLERK OF THE COURT

1 **ORDR**

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

FILED

AUG 12 2021

4 **THE STATE OF NEVADA,**

5 **Plaintiff**

6 **v.**

7 **ERICK M BROWN.**

8 **Defendant**

Case No.: 03C189058

Dept. No.: XXV

No. 83241

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

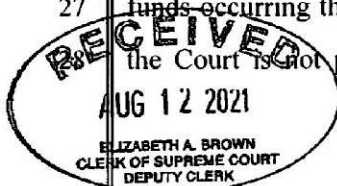
10 **ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF PROHIBITION**

11 **THIS MATTER** having come on for hearing before the above entitled Court on the
12 30th day of June, 2021, the Defendant not being present, **IN PROPER PERSON**, the Plaintiff
13 being represented by **STEVEN B. WOLFSON**, District Attorney, through **JOHN T. JONES**,
14 **JR.**, Chief Deputy District Attorney, and the Court without argument took under advisement,
15 based on the pleadings and good cause appearing, the Court hereby finds and orders as
16 follows:

17 The Petitioner requests that the Court issue a Writ of Prohibition that would
18 command the Nevada Department of Corrections (NDC) to cease and desist from removing
19 funds from the inmate account. The Petitioner argues that the NDC lacks the authority to
20 seize money from his account to enforce restitution payment since jurisdiction is vested
21 solely with the Court pursuant to NRS 176.275. However, there is no entitlement to relief
22 because the Writ of Prohibition is not the correct mechanism to be utilized in these
23 circumstances.

24 A writ of prohibition may be used by a court to order a "tribunal, corporation, board
25 or person exercising judicial functions" to refrain from doing an act in excess of its
26 jurisdiction. NRS 34.320. While there may be an argument that there is some seizure of
27 funds occurring that is a remotely related to or a natural consequence of a judicial function,
the Court is not persuaded by that argument. As argued by the State, the NDC is not a

KATHLEEN E. DELANEY
DISTRICT JUDGE
DEPARTMENT XXV



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1 judicial body, but rather an agency within the executive branch of Nevada's state
2 government. NDC engaging in its practices to take funds out of the inmate's account to pay
3 restitution does not constitute a judicial function that would result in this Court having
4 jurisdiction to issue a writ of prohibition.

5 A writ of prohibition may only issue "where there is not a plain, speedy and adequate
6 remedy in the ordinary course of law." NRS 34.330; *see also Sonia F. v. Eighth Jud. Dist.*
7 *Ct.*, 125 Nev. 495, 498, 215 P.3d 705, 707 (2009). As argued by the State, that is not the case
8 here. If Defendant wishes to challenge the seizure of funds in his inmate account by the
9 NDC, he may avail himself of administrative remedies or file a civil lawsuit alleging trespass
10 to property or conversion. Further, if he believes that he can demonstrate that the NDC's
11 actions have "deprive[d] him of a right, privilege, or immunity protected by the Constitution
12 or laws of the United States," he may also be able to file a civil rights complaint pursuant to
13 42 U.S.C. § 1983. *Butler ex rel. Biller v. Bayer*, 123 Nev. 450, 458, 168 P.3d 1055, 1061
14 (2007).

15 Accordingly, IT IS HEREBY ORDERED that the Defendant's Petition for Writ of
16 Prohibition is DENIED.

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18 Dated this 16th day of July, 2021

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23 399 700 959D 13DC
Kathleen E. Delaney
District Court Judge
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1 **CSERV**

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3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 The State of Nevada vs Erick M
7 Brown

CASE NO: 03C189658-1

DEPT. NO. Department 25

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9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District
11 Court. The foregoing Order was served via the court's electronic eFile system to all
12 recipients registered for e-Service on the above entitled case as listed below:

13 Service Date: 7/16/2021

14 Dept 25 Law Clerk

dept25lc@clarkcountycourts.us