

IN THE SUPREME COURT OF THE STATE OF NEVADA

NATASHA EARLY,

Appellant,

vs.

THE STATE OF NEVADA
EMPLOYMENT SECURITY
DIVISION; AND KIMBERLY GAA
[NOW, LYNDIA PARVEN] IN HER
CAPACITY AS ADMINISTRATOR OF
THE EMPLOYMENT SECURITY
DIVISION,

Respondents.

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District Court Case No. A826013
Elizabeth A. Brown
Clerk of Supreme Court

OPPOSITION TO EMERGENCY MOTION UNDER NRAP 27(e)

The EMPLOYMENT SECURITY DIVISION (“ESD”), and its
Administrator, LYNDIA PARVEN, by and through counsel, TROY C. JORDAN,
respectfully opposes Appellant’s *Emergency Motion Under NRAP 27(e)*.¹

DATED this 1st day of November, 2021

Troy C. Jordan, Esq.
Nevada State Bar No. 9073
Senior Legal Counsel *for*
Respondents Employment Security Division,
Nevada Dept. of Employment, Training & Rehabilitation
500 East Third Street
Carson City, NV 89713
775-684-3996

¹ While NRAP 27(a)(3) allows Respondents to file this opposition, they do not believe a response is required. NRAP 46A(c).

POINTS AND AUTHORITIES

Appellant claims that her Motion constitutes an emergency because “the nature of this case concerns the economic welfare of her and her child.” NRAP 27(e) provides:

If a movant certifies that to avoid irreparable harm relief is needed in less than 14 days, the motion shall be governed by the following requirements:

(1) Before filing the motion, the movant shall make every practicable effort to notify the clerk of the Supreme Court, opposing counsel, and any opposing parties proceeding without counsel and to serve the motion at the earliest possible time. If an emergency motion is not filed at the earliest possible time, the court may summarily deny the motion.

(2) A motion filed under this subdivision shall include the title “Emergency Motion Under NRAP 27 (e)” immediately below the caption of the case and a statement immediately below the title of the motion that states the date or event by which action is necessary.

(3) A motion filed under this subdivision shall be accompanied by a certificate of the movant or the movant’s counsel, if any, entitled “NRAP 27 (e) Certificate,” that contains the following information:

(A) The telephone numbers and office addresses of the attorneys for the parties and the telephone numbers and addresses for any pro se parties;

(B) Facts showing the existence and nature of the claimed emergency; and

(C) When and how counsel for the other parties and any pro se parties were notified and whether they have been served with the motion; or, if not notified and served, why that was not done.

While not used in the context of NRAP 27(e), the Nevada Supreme Court has used the term “irreparable harm” in the context of injunctions and defined it as a harm for which compensatory relief would be inadequate. *See, e.g., City of Sparks v. Sparks Mun. Court*, 129 Nev. 348, 356, 302 P.3d 1118, 1124 (2013)

The Supreme Court indicated, in an unpublished opinion, that an emergency motion filed pursuant to NRAP 27(a) requires the litigant to provide a legal basis on which relief might be granted. *Followill v. State*, 2021 WL 4238262, Docket #82307 n.2 (September 16, 2021) (unpublished).

In this case, Appellant claims this Court needs to act because she and her child face homelessness because she has not received unemployment compensation, she believes is due to her.

Appellant is upset because her appeal has not been decided on a schedule of her choosing and that the Nevada Supreme Court has assigned this case to the Court of Appeals rather than retaining jurisdiction. However, Appellant has no legal right to have her case decided by this Court at any particular speed.

Additionally, Respondents note that even if Appellant is successful in this Court, she would not be immediately eligible for benefits.² Appellant initially sought a *Writ of Mandamus* in the district court due to the denial of unemployment

² Given the statewide labor shortage and number of jobs currently available to willing applicants, nothing since June, 2020 has prevented Appellant from seeking employment to avoid her claimed imminent homelessness.

insurance benefits. The district court found that a *Writ of Mandamus* was unwarranted because Appellant failed to exhaust the administrative requirements of NRS 612 following the denial of unemployment insurance benefits. Specifically, the District Court held,

NRS 34.170 provides that a writ of mandamus shall issue “in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of the law. *Armstrong* helpfully noted

that “[t]he writ *will not* issue, however, if a petitioner has a plain, speedy, and adequate remedy in the ordinary course of the law. 127 Nev. at 931, 267 P.3d at 779 (emphasis added).

“Petitioners have the burden of demonstrating that writ relief is warranted.” *Hairr v. District Court*, 132 Nev. 180, 183, 368 P.3d 1198, 1200 (2016). *Accord Pan v. District Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

The Court finds that Petitioner has a plain, speedy, and adequate remedy at law, specifically the administrative appeals process located in Chapter 612 of the NRS. There was a failure by Petitioner to exhaust administrative remedies. Petitioner, therefore, failed to establish a basis to grant extraordinary relief. This Court noted it was not taking a position whether Petitioner was entitled to benefits. The issues raised in the Petition were not ripe before the Court because all of the administrative processes had not been utilized or exhausted.

Rather than taking the district court to heart and seeking to exhaust her administrative remedies, Appellant appealed the order of dismissal of the Petition for Writ of Mandamus. Since this court does not have an independent fact-finding

function, the MOST this court could do, based on the posture of this appeal, is remand the case to the district court to consider certain documents Appellant claims were not considered.³ Such a remand would not put a dime in Appellant's pocket. Rather, the district court could perhaps then order ESD to restart its administrative process and for its Board of Review to consider her claims. The district court in this matter has no authority to unilaterally order ESD to pay anything because she has failed to exhaust her administrative remedies.

Because Appellant's *Motion* would not prevent an irreparable harm, it should be denied.

DATED this 1st day of November, 2021.

/s/ TROY C. JORDAN
TROY C. JORDAN, ESQ.
Nevada State Bar No. 9073
Division Senior Legal Counsel
State of Nevada DETR/ESD
500 East Third Street
Carson City, Nevada 89713
(775) 684-3996
Attorney for ESD

³ Respondents do not believe this argument has merit in the first instance.

EXHIBIT LIST

EXHIBIT 1 – Followill v. State, 495 P.3d 123 (2021)

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(d)(1)(B), I hereby certify that I am an employee of the State of Nevada, over the age of 18 years; and that on the date hereinbelow set forth, I served a true and correct copy of the foregoing **OPPOSITION TO EMERGENCY MOTION**, by electronically serving through Eflex and/or mailing to the address below and placing the same within an envelope which was thereafter sealed and deposited for postage and mailing with the State of Nevada Mail at Carson City, Nevada, addressed for delivery as follows:

Natasha Early
4650 West Oakey Boulevard Apt 2035
Las Vegas, NV 89102

DATED this 1st day of November, 2021.

/s/ Tiffani M. Silva
TIFFANI M. SILVA

EXHIBIT 1

495 P.3d 123 (Table)

Unpublished Disposition

This is an unpublished disposition. See Nevada Rules of Appellate Procedure, Rule 36(c) before citing. Supreme Court of Nevada.

Nicole Christine FOLLOWILL, Appellant,

v.

The STATE of Nevada, Respondent.

No. 82307

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FILED SEPTEMBER 16, 2021

This is a pro se appeal from a district court order denying appellant Nicole Christine Followill's postconviction motion to modify a sentence. Ninth Judicial District Court, Douglas County; [Thomas W. Gregory](#), Judge.¹

Attorneys and Law Firms

Nicole Christine Followill

Attorney General/Carson City

Douglas County District Attorney/Minden

ORDER OF AFFIRMANCE

*1 In her motion Followill raised a number of claims challenging the validity of her conviction and sentence, and the parole proceedings, Followill's claims, however, fell outside the narrow scope of claims permissible in a motion to modify sentence as they do not allege that her sentence was based on material mistakes about her criminal record that worked to her extreme detriment.² See [Edwards v. State](#), 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits of any of the claims raised in the motion, we conclude that the district court did not err in denying the motion.³

Having considered Followill's contentions and concluded that they do not warrant relief, we

ORDER the judgment of the district court AFFIRMED.⁴

All Citations

495 P.3d 123 (Table), 2021 WL 4238272

Footnotes

- 1 Having considered the pro se brief filed by Followill, we conclude that a response is not necessary. [NRAP 46A\(c\)](#). This appeal has been submitted for decision based on the pro se brief and the records. See [NRAP 34\(f\)\(3\)](#).
- 2 Insofar as Followill argues that [NRS 176.033\(2\)](#) (2019) and *Brown v. United States*, CR ELH-00-0100, 2020 WL 1248950 (D. Md. Mar. 16, 2020), warrant modification of her sentence, she is mistaken. Cf. 2019 Nev. Stat., ch. 633, §§ 10.5, 137, at 4381-82, 4488 (amending [NRS 176.033](#) to remove the provision previously set forth at [NRS 176.033\(2\)](#)); *Board of Parole Comm'rs v. Second Judicial Dist. Court*, 135 Nev. 398, 401-02, 451 P.3d 73, 77 (2019) (providing that the version of [NRS 176.033](#) in effect when the motion is filed applies). [NRS 176.033\(2\)](#) permitted the Board of Parole Commissioners to petition for relief for a parolee. Followill is not on parole, and [NRS 176.033\(2\)](#) does not provide a basis for her to petition for relief. *Brown* is an unpublished case from a different jurisdiction that concerned a request for relief on the basis of federal sentencing guidelines; the case does not apply Nevada law, and the federal guidelines do not apply to Followill.
- 3 Followill has also filed a "Motion for Review Emergency Motion." Insofar as Followill requests some form of release from incarceration on the basis of uncertain circumstances regarding her son's housing, she has not stated a basis on which relief may be granted. Insofar as her motion seeks immediate review of this appeal, this order resolves all outstanding issues, and the request is now moot. Cf. [NRAP 27\(e\)](#) (stating rules governing requests for emergency or expedited relief).
- 4 The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.