

IN THE SUPREME COURT OF THE STATE OF NEVADA

TULY LEPOLO,
aka TAUTAMUA LEPOLO,
aka TUTAUMUA LEPOLO,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; THE HONORABLE MICHAEL
VILLANI, DISTRICT JUDGE; AND THE
HONORABLE DAVID BARKER,
SENIOR DISTRICT COURT JUDGE,

Respondents,

STATE OF NEVADA,

Real Party in Interest.

Electronically Filed
Aug 26 2022 11:33 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 83755

**MOTION TO DISMISS PETITION AND VACATE ORAL ARGUMENT
FOR MOOTNESS PURSUANT TO NRAP 27**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, ALEXANDER CHEN, and moves this Court to dismiss the Petition for Writ of Mandamus and Vacate Oral Argument. This motion is based on the following memorandum, declaration of counsel and all papers and pleadings on file herein.

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Dated this 26th day of August, 2022.

Respectfully submitted,

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

BY /s/ Alexander Chen
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #10539
Office of the Clark County District Attorney

MEMORANDUM

Petitioner filed an original petition for writ of mandamus that sought relief regarding his custody status in district court. On August 8, 2022, this court filed an order scheduling oral arguments for September 9, 2022. At the time that oral arguments were scheduled, Petitioner was already set for a jury trial that was scheduled to commence on August 17, 2022.

Pursuant to NRAP 8(a), Petitioner did not make a motion for a stay in district court, nor upon denial of such a request in district court was there a request that this court grant a stay pending the resolution of the instant petition.

Petitioner's trial commenced on August 17, 2022 as originally scheduled in District Court Case No. C-20-345911-1. The trial concluded on August 25, 2022 in which the jury returned a guilty verdict on the counts of First Degree Murder with Use of Deadly Weapon and Assault with Use of a Deadly Weapon. Petitioner voluntarily waived his penalty hearing in favor of stipulating to a twenty (20) to (50) year sentence in the Nevada Department of Corrections.

This court may not render opinions on petitions that are moot. Degraw v. Eighth Judicial Dist. Court, 134 Nev. 330, 332 (2018). A case is moot if it “seeks to determine an abstract question which does not rest upon existing facts or rights.” NCAA v. Univ. of Nev., Reno, 97 Nev. 56, 58 (1981). While there was potentially

a real controversy at the time that the petition was filed, it became moot when Petitioner's trial concluded. Id.

Petitioner was held with no bail pending his trial because the district court found that there were no conditions of release that would ensure Petitioner's appearance and protect the community. The district court's decision to hold Petitioner without bail could only occur where the proof is evident and presumption great that Petitioner committed a First Degree Murder charge. The jury's verdict certainly supports the district court's decision to hold Petitioner without bail.

Given that the matter is now moot, the State respectfully requests this court to dismiss Petitioner's petition for writ of mandamus and vacate the September 9, 2022 oral argument.

Dated this 26th day of August, 2022.

Respectfully submitted,

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

BY */s/ Alexander Chen*

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

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on August 26, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

JASON R. MARGOLIS
Counsel for Petitioner

ALEXANDER CHEN
Chief Deputy District Attorney

BY /s/ J. Hall
Employee, District Attorney's Office

AC//jh