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Electronically Filed
Jan 26 2022 08:26 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

5 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

6 JEFFREY PAUL MEEH,
7 Petitioner,

8 vs.

9 KIMBERLY WANKER, FIFTH
JUDICIAL DISTRICT COURT
10 JUDGE,
Respondent,
11 STATE OF NEVADA,
12 Real Party in Interest.

Case No.:

District Court Case No.: CR20-0037

**PETITION FOR WRIT OF
MANDAMUS**

13 COMES NOW Petitioner, JEFFREY PAUL MEEH, by and through his
14 attorney of record, NADINE MORTON, and files the instant Petition for Writ of
15 Mandamus requesting this Honorable Court vacate Judge Kimberly Wanker's
16 ruling entered on July 17, 2020, which imposed random drug testing on Meeh
17 without probable cause.

18 DATED this 13th day of January, 2022.

19 /s/ Nadine Morton

20 NADINE MORTON, ESQ.
Nevada Bar No. 85830-

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7 **ROUTING STATEMENT**

8 Petitioner JEFFREY PAUL MEEH (hereinafter referred to as “Meeh”)
9 agrees with the presumption, pursuant to NRAP 17(a), that his petition should first
10 be heard before the Nevada Supreme Court.

11
12 **RELIEF SOUGHT**

13 Meeh respectfully requests that this Honorable Court vacate Honorable Judge
14 Wanker’s Order directing Meeh to submit to random drug testing without probable
15 cause

16 **STATEMENT OF ISSUES**

17 Did the court unreasonably search Meeh when it ordered him to submit to
18 random drug testing during his arraignment when he was not charged with a drug
19 related offense, entered a not guilty plea, and did not appear under the influence?

20 **FACTS AND PROCEDURAL HISTORY**

1 **1. Charges/Indictments**

2 Meeh has been charged with possession of an instrument with burglarious
3 intent in violation of Nevada Revised Statute 205.080.

4 **2. Procedural History.**

5 Meeh appeared in Court on July 17, 2020, before Honorable Kimberly
6 Wanker (hereinafter “Wanker”) for his arraignment. (Petitioner Appendix “PA”
7 p.2). Wanker ordered Meeh submit to a urinalysis test as she does with all criminal
8 defendants in her court. (PA 2). The case was then called. (PA 2). On the record
9 Wanker stated that Meeh “tested positive” and ordered him to randomly test with
10 the Drug Court program. (PA 2). The matter was then reset. Meeh appeared for his
11 arraignment on September 4, 2020. (PA 2). At his arraignment he entered a not
12 guilty plea and the case was set for trial. (PA 2).

13 On April 12, 2021, the matter was set for a change of plea. (PA 4). The Court
14 canvassed Meeh, accepted his plea of guilt to an offense involving stolen property,
15 a misdemeanor, in violation of NRS 207.275(2)(a), and set the matter for
16 sentencing. (PA 4).

17 On August 20, 2021, Wanker again imposed a drug test on Meeh. (PA 6).
18 Meeh was unable to submit the sample and Wanker stated that Meeh
19 “acknowledges he would need to submit to drug testing” pursuant to the plea
20 agreement. (PA 6). Wanker also stated that he “was allowed to sign a guilty plea

1 agreement... that he voluntarily agreed to submit to drug testing.” (PA 6).
2 However, the random drug testing was imposed 9 months before the plea agreement
3 was entered. The court entered an order to show cause to obtain another Judge’s
4 opinion on whether Meeh was in contempt of court and the matter was continued
5 to January 14, 2022. (PA 6).

6 REASONS WHY WRIT SHOULD ISSUE

7 **This is a proper case for issuance of a Writ of Mandamus.**

8 The Nevada Constitution and Nevada Revised Statutes provide the Supreme
9 Court original jurisdiction to issue writs of mandamus. Specifically, the
10 Constitution provides that the Court “shall have the power to issue writs of
11 mandamus and also, all writs necessary or proper to the complete exercise of its
12 appellate jurisdiction.” Nev. Const. Art. 6 § 4. Additionally, N.R.S. 34.160 provides
13 in pertinent part that a “writ may be issued by the Supreme Court to compel the
14 performance of an act which the law especially enjoins as a duty resulting from an
15 office, trust or station.” Together, these provisions have long been held to give
16 jurisdiction to the Supreme Court to entertain petitions for and issue writs of
17 mandamus, whether to compel an action or to correct an abuse of discretion. *See*
18 *State v. Dist. Ct.*, 116 Nev. 127 (2000) (citing *State ex rel Curtis v. McCollough*, 3
19 Nev. 202 (1867)).

20 Extraordinary relief is warranted for a couple of reasons. First, Meeh does

1 not have a plain, speedy, and adequate remedy in the ordinary course of law. *See*
2 NRS 34.170. Meeh and all other defendants before Wanker would be forced to
3 submit to random drug screening under threat of contempt of court and even before
4 arraignment. Second, Meeh's Fourth Amendment and Due Process rights were
5 violated without legitimate government interest. Meeh was ordered to sit for
6 random drug testing even though his charge was not drug related, he did not appear
7 incapacitated, and without probable cause. (PA 2-6).

8 ARGUMENT

9 1. *This Court has jurisdiction to issue a Writ of Mandamus*

10 This Court has original jurisdiction to issue writs of mandamus and
11 prohibition. Nev. Const. art. 6, § 4. Writs of mandamus and prohibition are
12 necessary if a petitioner does not have a "plain, speedy and adequate remedy in the
13 ordinary course of law." *Cote v. Eighth Judicial Dist. Ct.*, 124 Nev. 36, 39 175 P.3d
14 906, 908 (2008) (quoting NRS 34.170 and NRS 34.330). The writ of mandamus
15 compels the performance of an act the law requires, NRS 34.160, and the writ of
16 prohibition is available when a court acts in excess of its jurisdiction, NRS 34.320.

17 Writs of mandamus are available to correct the district court's arbitrary or
18 capricious exercise of discretion. *State v. Zogheib*, 130 Nev. 158,161, 321 P.3d
19 882, 884 (2014). A discretionary ruling that is "contrary to the evidence or
20 established rules of law" or is influenced by prejudice or preference rather than

1 *Ornelas v. United States*, 517 U.S. 690 (1996). "This court reviews the lawfulness
2 of a search de novo because such a review requires consideration of both factual
3 circumstances and legal issues." *Casteel v. State*, 122 Nev. 356,360, 131 P.3d 1, 3
4 (2006) (internal quotations omitted).

5 Probable cause for a search and seizure exists "where the known facts and
6 circumstances are sufficient to warrant a man of reasonable prudence in the belief
7 that contraband or evidence of a crime will be found." *Ornelas* at 696. To
8 determine whether reasonable suspicion exists, courts look to the totality of the
9 circumstances. *Alabama v. White*, 496 U.S. 325, 330-31 (1990); *State v. Rincon*,
10 122 Nev. 1170, 1173-74 (2006).

11 Here, Wanker gave absolutely no reason for ordering Meeh to submit to a
12 drug test before his case was called for arraignment. (PA 2). Meeh's arrest did not
13 nullify his fourth amendment right. The Court did not have probable cause to seize
14 his urine for a drug test before he entered his not guilty plea and the record is devoid
15 of any justifiable cause warranting this search.

16 **3. Wanker's Blanket Order Requiring Drug Testing Before** 17 **Arraignment and At Sentencing is Unconstitutional**

18 In *United States v. Scott*, 450 F.3d 863, 875 (9th Cir. 2005), the Ninth Circuit
19 Court of Appeals held that the government may not conduct a search of an
20 individual released while awaiting trial in Nevada, based on less than probable

1 cause even when his Fourth Amendment rights were waived as a condition of pre-
2 trial release. The Court held that the totality of the circumstances required probable
3 cause in order to search the defendant or his home. *Id.* at 863. Scott's assent to his
4 release conditions does not make an unreasonable search reasonable. *Id.* at 870. The
5 searches were not reasonable under a general "totality of the circumstances"
6 approach either. *Id.* at 871. The record reflects that the Wanker did not conduct a
7 totality of the circumstances test before Meeh's arraignment but instead imposed
8 her blanket "all defendants must test" order on him. However, under Scott it is clear
9 that Meeh had not waived his Fourth Amendment rights simply by being arrested
10 and at this point in the case, had not agreed to any conditions of pre-trial release.

11 Nevada's legislature has left release conditions to be determined in individual
12 cases. *See, e.g. NRS 178.484-4853.* Specifically, similar to the Fourth
13 Amendment's requirement that all searches be reasonable, NRS 178.484 (11)
14 requires that all conditions imposed must be reasonable. Where the statute speaks
15 to reasonable conditions to protect health, safety and welfare of the community to
16 ensure the accused will appear in court, there is nothing in the statute that speaks to
17 drug testing. Furthermore, the opposite could easily be true: that such a practice by
18 the district court reduces the likelihood a defendant will appear in court if he or she
19 is going to have to urinate for the court without a warrant and possibly be
20 incarcerated.

1 NRS 178.484(11) speaks to a court's ability to impose reasonable restrictions
2 "before" releasing a person arrested for any crime (emphasis added). Here, the
3 District Court looks to impose restrictions after a person has already been released
4 from custody, contrary to the wording in the statute. Unless a statute is ambiguous,
5 the plain meaning is to be attributed.

6 "The Nevada Legislature has not taken the position that drug use among
7 pretrial releasees impairs their tendency to show up in court." *State v. Cataino*, 120
8 Nev. 1030, 1033, 102 P.3d 588, 590 (2004). Additionally, in *Cruz v. Kauai*, the
9 Court stated "[o]ne ... released on pre-trial bail does not lose his or her Fourth
10 Amendment right to be free of unreasonable seizures." 279 F.3d 1064, 1068 (9th
11 Cir. 2002)

12 Finally, Nevada applies a reasonable suspicion standard to probationary
13 searches. *Allan v. State*, 746 P.2d 138 (Nev. 1987); NRS 171.123(2). Wanker's
14 ruling afforded Meeh less protection and privacy under the Fourth Amendment than
15 a person already convicted and sentenced to probation as Wanker did not articulate
16 any standard before imposing the drug testing on Meeh.

17 CONCLUSION

18 The Fourth Amendment is not rendered meaningless simply because Meeh
19 had a pending case before Judge Wanker. This Court should adhere to the precedent
20

1 of the *Scott* case and prohibit the District Court from effectuating its administrative
2 order any further.

3 DATED this 13th day of January, 2022.

4 /s/ Nadine Morton

NADINE MORTON, ESQ.

5 Nevada Bar No. 8583

MORTON LAW, PLLC.

6 Attorney for Petitioner Jeffrey Paul Meeh
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CERTIFICATE OF COMPLIANCE

1. I, Nadine Morton, do hereby certify that this brief 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 in Times New Roman, font size 14.

2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) and NRAP 21(a)(6)(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 or more and contains 2,508 words.

3. Finally, I hereby certify that I have read this appellate brief, 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.

1 DATED this 13th day of January, 2022.

2 /s/ Nadine Morton

3 NADINE MORTON, ESQ.

4 Nevada Bar No. 8583

5 **MORTON LAW, PLLC.**

6 Attorney for Petitioner Jeffrey Paul Meeh

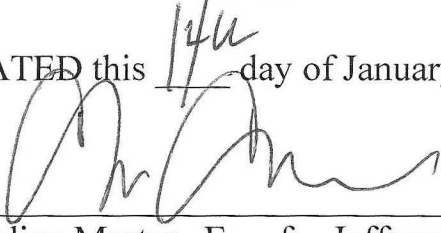
1 VERIFICATION

2 STATE OF NEVADA)
3)ss:
4 COUNTY OF NYE)

5 I, Nadine Morton, being first duly sworn, deposes and states as follows:

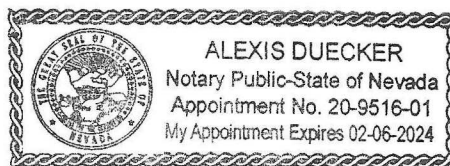
6 That I represent the Petitioner in the above-entitled action; that I have read
7 the foregoing Petition for Writ of Mandamus and know the contents thereof, that
8 the same is true of my own knowledge, except for those matters therein contained
9 stated on information and belief, and as to those matters, I believe them to be true.
10 I further verify Petitioner has personally authorized me to commence this action.

11 DATED this 14 day of January, 2022.

12 
Nadine Morton, Esq. for Jeffrey Paul Meeh

13 SUBSCRIBED and SWORN to before me
14 this 14 day of January, 2022.

15 
16 NOTARY PUBLIC in and for said
17 Nye
Clark County, State of Nevada



1 VERIFICATION

2 STATE OF NEVADA)
3)ss:
4 COUNTY OF NYE)


5 I, Jeffrey Paul Meeh, being first duly sworn, deposes and states as follows:

6 That I am the Petitioner in the above-entitled action; that I have read the
7 foregoing Petition for Writ of Mandamus and know the contents thereof, that the
8 same is true of my own knowledge, except for those matters therein contained stated
9 on information and belief, and as to those matters, I believe them to be true.

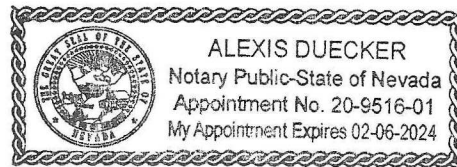
10 DATED this 14 day of January, 2022.

11 
12 _____
13 Jeffrey Paul Meeh

14 SUBSCRIBED and SWORN to before me
15 this 14 day of January, 2022.

16 
17 _____

18 NOTARY PUBLIC in and for said
19 Nye
20 Clark County, State of Nevada




1 **CERTIFICATE OF MAILING**

2 I HEREBY CERTIFY that on the 14 day of January, 2022, a copy of the
3 foregoing Petition for Writ of Mandamus was deposited in the United States Post
4 Office at Las Vegas, Nevada, postage prepaid, addressed to the following:

5 Chris Arabia
6 Nye County District Attorney
7 P.O Box 39
8 Pahrump, Nevada 89041

9 The Honorable Kimberly Wanker
10 Fifth Judicial District Court Judge
11 Department 1
12 P.O. Box 153
13 101 Radar Road
14 Tonopah, Nevada 89049

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19
20

12 /s/ 
13 _____
14 Nadine Morton, Esq.
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