

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

DAVID MAFFIT,

Petitioner,

vs.

**THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE MONICA TRUJILLO,
DISTRICT JUDGE,**

Respondents,

and

THE STATE OF NEVADA

Real Party in Interest.

Electronically Filed
Mar 24 2022 02:58 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

No.: 84187

MAFFIT'S PETITION FOR REHEARING PURSUANT TO NRAP RULE

40

**MICHAEL D. PARIENTE, ESQ.,
COUNSEL FOR PETITIONER**

Nevada Bar Number 9469

**JOHN GLENN WATKINS, ESQ.,
OF COUNSEL**

Nevada Bar Number 1574

3960 Howard Hughes Parkway #615

Las Vegas, Nevada 89169

Telephone: (702) 966-5310

Facsimile: (702) 953-7055

michael@parientelaw.com

johngwatkins@hotmail.com

**STEVEN WOLFSON,
DISTRICT ATTORNEY**

200 Lewis, Floor 3

Las Vegas, Nevada 89101

Telephone: (702) 671-3847

Facsimile: (702) 385-1687

steven.owens@clarkcountynvda.com

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

DAVID MAFFIT,

Petitioner,

vs.

**THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE MONICA TRUJILLO,
DISTRICT JUDGE,**

Respondents,

and

THE STATE OF NEVADA

Real Party in Interest.

No.: 84187

MAFFIT'S PETITION FOR REHEARING PURSUANT TO NRAP RULE

40

COMES NOW Petitioner DAVID MAFFIT, through his counsel
MICHAEL D. PARIENTE, ESQUIRE. and JOHN G. WATKINS, ESQUIRE,
OF COUNSEL and moves this Court for rehearing pursuant to NRAP Rule 40
on the grounds that this Court overlooked that a direct appeal by Maffit is not
adequate, to wit: (1) the district court, which is the appellate court, has already
ruled that the justice of the peace has subject matter jurisdiction to try Maffit's
case, (2) any appeal is nothing more than a "classic exercise in futility", (3)

1 Maffit is not protected against double jeopardy and (4) Maffit complied with
2 NRAP 21(a).
3

4 **NRAP 26.1 DISCLOSURE STATEMENTS**

5 The attorneys representing Petitioner David Maffit herein state, “there is
6 no such corporation” referred to in NRAP 26.1.
7
8

9
10 **I**

11 **LAW AND ARGUMENT**

12 **A.**

13 **RESPECTFULLY, THIS COURT OVERLOOKED A NUMBER OF**
14 **SALIENT FACTS**
15

16 This Court denied Maffit’s petition for extraordinary relief based on two
17 reasons: (1) “. . . petitioner has not demonstrated that a direct appeal from a
18 judgment of conviction would not be ‘a plain, speedy and adequate remedy in the
19 ordinary course of law,’” *citing Pan v. Eighth Judicial Dist. Court*, 120 Nev.
20 222, 228, 88 P.3d 840, 844 (2004) and (2) “. . . this court has sole discretion in
21 determining whether to entertain a writ petition,” *citing Smith v. Eighth Judicial*
22 *Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). The first reason
23 overlooked several salient points. The second reason should not control when it
24
25
26
27
28

is clear that the justice of the peace lacks subject matter jurisdiction to try Maffit's case.¹

Maffit's appeal is not an adequate remedy:

The availability of a legal remedy in the ordinary course of law depends on the existence of three separate and distinct facts: the remedy is plain; the remedy is speedy and the remedy is adequate. This Court has overlooked that the remedy of a direct appeal in Maffit's case is NOT adequate. The district Court, which is the appellant court, has already ruled that the justice of the peace has subject matter jurisdiction to try Maffit's case. Petitioners Appendix 44-48. Therefore, Maffit's appeal challenging the trial court's jurisdiction is a "classic exercise in futility." *See, Sereika v. State*, 114 Nev. 142, 147, 955 P.2d 175, 177 (1998); *Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711(1978). *See also* *751 Peria Del Mar Trust v. Bank of America*, 136 Nev. 62, 458 P.3d 348 (2020) ("The law does not require one to do a vain and futile thing.") *Id.*, 136 Nev. at 66; 458 P.3d at 351. Since the district appellant court has already ruled on the jurisdictional issue, Maffit's appeal would not be an adequate legal remedy.²

1. Maffit has presented cogent reasons why the charge filed against him is not a misdemeanor offense as a matter of law in his petition filed before this Court. The requirement of subject matter jurisdiction is essential in every case pending in a court of law, a requirement greater than the constitutional protection against double jeopardy.

2. It would appear that the law of the case doctrine applies here. *See, Geissel v. Galbraith*, 105 Nev. 101, 103-04, 769 P.2d 1294, 1296 (1989) ("Under the

Further, Maffit has no legal remedy to challenge the district court's jurisdiction finding in this Court. Mandamus and prohibition are not legal remedies and depend on the sole discretion of this Court.

Another reason why an appeal is not an adequate remedy for Maffit is the lack of protection against double jeopardy. If Maffit is acquitted by a court which lacks jurisdiction, he can be prosecuted again for the same charge. *See, EX PARTE ALEXANDER*, 80 Nev. 354, 393 P.2d 615 (1964) ("An acquittal or a conviction by a court having no jurisdiction is void; therefore, it is not a bar to subsequent indictment and trial by a court which has jurisdiction over the offense.") *Id.*, 80 Nev. at 359.

Discretion to deny writ petitions should be cautiously exercised:

Merely because this Court has sole discretion whether to entertain a writ petition, it should not be exercised when it is clear, as in Maffit's case, that the justice of the peace lacks jurisdiction to try Maffit's case. Under the separation of powers doctrine, appellant courts have the authority and responsibility to review legislation to make sure that an individual's rights are not violated. Judicial review is exclusively within the province of the judicial branch of government.

doctrine of the law of the case, where an appellant court states a principle or rule of law in deciding a case, that rule becomes the law of the case and is controlling both in the lower courts and on subsequent appeals, so long as the facts remain the same.")

1 *See, Marbury v. Madison*, 1 Cranch 137, 5 U.S. 137 (1803). Allowing the
2 Legislature to label an offense a misdemeanor when the law says it is a gross
3 misdemeanor or felony, to avoid the safeguard of trial by jury, is legally
4 indefensible.
5


6
7 ***Maffit satisfied NRAP 21(a):***

8 Unlike the petitioners in *Pan, supra*, Maffit complied with the
9 requirements of NRAP 21(a). Maffit's petition and appendix provided this Court
10 with the information to evaluate his petition. Maffit provided this Court with the
11 three (3) classifications of offenses, the definitions of those offenses, the charge
12 filed against Maffit is not a misdemeanor as defined by law and the justice of the
13 peace only has subject matter jurisdiction to try misdemeanor offenses. The
14 district court's decision was also provided.
15
16
17
18

19 **CONCLUSION**

20 Based on the foregoing, Maffit's petition for rehearing pursuant to NRAP
21 Rule 40 should be granted.
22
23

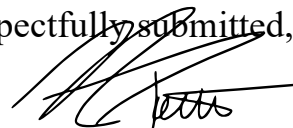
24 Respectfully submitted,

25 
26 Michael D. Pariente, Esquire
27 Attorney for Appellant Martin
28 John Glenn Watkins, Esquire

VERIFICATION

Under penalty of perjury, the undersigned declares that in the foregoing Petition and knows the contents thereof; that the Motion is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

Respectfully submitted,



Michael D. Pariente, Esquire
Attorney for Appellant N Martin
John Glenn Watkins, Esquire

CERTIFICATE OF COMPLIANCE

1. I 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 2016 with Times Roman 14 font style

2. I further certify that this brief complies with the page – or type - volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

- 1 ☐ Proportionally spaced, has a typeface of 14 points or more, and
2 contains 1,519 words; or
3 ☐ Monospaced, has 10.5 or fewer characters per inch, and contains
4 ----- words or ----- lines of text, or
5 ☐ Does not exceed 51 pages.

6 3. Finally, I hereby certify that I have read this Motion,
7
8 and to the best of my knowledge, information, and belief, it
9
10 is not frivolous or interposed for any improper purpose. I
11 further certify that this brief complies with all applicable
12 Nevada Rules of Appellate Procedure, in particular NRAP
13 28(e)(1), which requires every assertion in the brief regarding
14 matters in the record to be supported by a reference to the page
15 and volume number, if any, of the transcript or appendix where
16 the matter relied on it to be found. I understand that I may be
17 subject to sanctions in the event that the accompanying brief
18 is not in conformity with the requirements of the Nevada Rule
19 of Appellate Procedure.
20
21
22
23

24 Dated this 24th day of March, 2022.

25
26 

27 Michael D. Pariente, Esquire
28 Attorney for Appellant Martin
 John Glenn Watkins, Esquire

CERTIFICATE OF SERVICE

I, Christopher Barden, hereby certify and affirm that this document was filed electronically with the Supreme Court of Nevada on March 24th, 2022. Electronic Service of the foregoing Appellant's Petition for rehearing shall be made in accordance with the Master Service List as follows:

STEVEN WOLFSON,
DISTRICT ATTORNEY



Christopher Barden,
an employee of
Michael D. Pariente, Esquire