

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

2 JEFFREY PAUL MEEH)

3 Petitioner,)

4 vs.)

5 KIMBERLY WANKER, FIFTH)
6 JUDICIAL DISTRICT COURT)
7 JUDGE)

8 Respondent,)
9 THE STATE OF NEVADA,)
10 Real Party in Interest.)

Supreme Court Case No.: 84365-COA

Electronically Filed
Jun 06 2022 05:10 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

11 **STATE'S RESPONSE TO PETITION FOR WRIT OF**

12 **MANDAMUS**

13 **ATTORNEY FOR APPELLANT**

14 **ATTORNEYS FOR RESPONDENTS**

15 NADINE MORTON, ESQ.
16 NV Bar No. 008583
17 11700 W. Charleston Blvd
18 Suite 170-65
19 Las Vegas, NV 89135

20 CHRISTOPHER ARABIA
NYE COUNTY DISTRICT ATTORNEY
520 E. Basin Road, Suite 107
Pahrump, NV 89041
(775) 751-7080

JOHN J. FRIEL, JR.
DISTRICT ATTORNEY
P. O. Box 593
101 Radar Road
Tonopah, NV 89049

AARON FORD
NEVADA ATTORNEY GENERAL
100 N. Carson St.
Carson City, NV 89701

1 **FACTS AND PROCEDURAL HISTORY**

2 On April 12, 2021, Petitioner Meeh pleaded guilty to an Offense Involving
3 Stolen Property, a Misdemeanor. (APPX 003). In exchange for pleading guilty the
4 State agreed to make no sentencing recommendation. As part of that agreement
5 Meeh acknowledged that he would provide a sample of urine pending sentencing
6 and that he would test willingly and voluntarily. Meeh also agreed that the
7 prosecution would be free to withdraw from the plea agreement and be free to
8 argue any legal sentence if he failed to do so. (APPX 005).

9 On March 16, 2022, Meeh was sentenced to 180 days in the Nye County
10 Detention Center. (APPX 017).

11 **ARGUMENT**

12 It appears now that Meeh is challenging the courts July 17, 2020, order for
13 drug testing, even though he signed a Guilty Plea Agreement with the advice of
14 counsel to do the same testing.

15 As the judge pointed out: “But, I am allowed to place reasonable restrictions
16 on him. I don’t think that’s an unreasonable restriction for me to have placed no
17 alcohol, no drugs, no recreational medical marijuana.

18 So, once again, are you going to advise your client to refuse to drug test
19 today. That’s just the bottom line.

1 MS. MORTON: What I am going to ask Your Honor is that the Court
2 continue this so I can appeal this, the Court's request that he give a drug test.

3 THE COURT: Well, I think it's a little late. I have been drug testing him. I
4 think you've waived the issue. I have been drug testing him. Other counsel hasn't
5 found the need to do that. He either tests with me today or he doesn't.

6 MS. MORTON: He's here for sentencing, Your Honor.

7 THE COURT: Ms. Morton let me explain something to you in no uncertain
8 times. I cannot sentence somebody who is under the influence of a controlled
9 substance, all right?" (PA0048).

10 In Manuela H. v. Eighth Judicial Dist. Court, 132 Nev. Adv. Rep. 1 (2016),
11 a writ petition challenged a district court order establishing a case plan in an abuse
12 and neglect proceeding, which required petitioner Manuela H. to submit to drug
13 testing if an agent from the Department of Child and Family Services (DFS)
14 reasonably believed that she was under the influence of a controlled substance.
15 However, the district court did not make any findings to support the drug testing
16 requirement in the case plan. We hold that when an action step in a case plan is
17 not related to an allegation in the abuse and neglect petition, the district court must
18 make specific factual findings that justify the action step with which the parent
19 must comply. Because the district court did not make factual findings to justify
20 the action step that Manuela submits to drug testing when a DFS agent reasonably

1 believes she is under the influence of a controlled substance, and because Manuela
2 has no other remedy available to her, we grant her petition for a writ of mandamus.

3 Unlike the case at hand, the petition in Manuela was filed while the case was
4 still pending, and the testing was not a condition of her release.

5 **CONCLUSION**

6 The District Court's was clearly imposing testing as a condition of Meeh's
7 release that he agreed to, which would make his original argument moot.

8 The State believes it would be helpful for District Court the clarify the
9 reason for the individual testing if the issue comes up in the future.

10 **DATED** this 6th day of June 2022.

11 CHRISTOPHER ARABIA
12 Nevada Bar No. 9749
13 NYE COUNTY DISTRICT ATTORNEY
14 P. O. Box 593
15 Tonopah, NV 89049
16 Attorney for Respondents

15 By


16 **John J Friel, Jr.**
17 Nevada Bar No. 4992
18 Deputy District Attorney
19
20

1 **CERTIFICATE OF COMPLIANCE**

2 I hereby certify that I have read this appellate brief, and to the best of my
3 knowledge, information, and belief, it is not frivolous or interposed for any improper
4 purpose. I further certify that this brief complies with all applicable Nevada Rules
5 of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in
6 the brief regarding matters in the record to be supported by appropriate references
7 to the record on appeal. I understand that I may be subject to sanctions in the event
8 that the accompanying brief is not in conformity with the requirements of the Nevada
9 Rules of Appellate Procedure.

VERIFICATION

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 97-2003 in Times New Roman, 14 pt. font; or

☐ This brief has been prepared in a monospaced typeface using Microsoft Word 97-2003 in _____ with [*state number of characters per inch and name of type 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:

☐ Proportionately spaced, has a typeface of 14 points or more and contains _____ words; or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains ____ words or ____ lines of text; or

☒ Does not exceed 30 pages.

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

1 reference to the page and volume number, if any, of the transcript or appendix where
2 the matter relied on is to be found. I understand that I may be subject to sanctions in
3 the event that the accompanying brief is not in conformity with the requirements of
4 the Nevada Rules of Appellate Procedure.

5 **DATED** this 6th day of June 2022.

6 **CHRISTOPHER ARABIA**

Nevada Bar No. 9749

7 **NYE COUNTY DISTRICT ATTORNEY**

P. O. Box 593

8 Tonopah, NV 89049

Attorney for Respondents

9
10 By


11 **JOHN J. FRIEL, Jr.**

Nevada Bar No. 4992

12 **DEPUTY DISTRICT ATTORNEY**
13
14
15
16
17
18
19
20

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
20

NADINE MORTON, ESQ. Nevada Bar No. 008583 11700 W. Charleston Blvd Ste. 170-65 Las Vegas, NV 89135	AARON FORD Nevada Attorney General 100 N. Carson Street Carson City, NV 89701-4717
---	---

AARON FORD
Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701-4717


Kristine M. Kipp