

ND. 84786

Petitioner / In Proper Person
P.O. Box 208
Indian Springs, NV 89070-0208

FILED

MAY 31 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

Michael T. McLaughlin

Petitioner

Case Nos.

State of Nevada, et al.
Respondents

PETITION FOR WRIT OF MANDAMUS / PROHIBITION
(NRS 34.150 thru 34.320)

MICHAEL T. McLAUGHLIN, Petitioner in proper person, under penalty of perjury,
being duly sworn, deposes and says:

There is no appeal from Respondent's actions and that Petitioner has no other
plain, speedy, or adequate remedy other than Mandamus/ Prohibition.

Dated this 20th day of May, 2022

Submitted by: Michael T. McLaughlin
MICHAEL T. McLAUGHLIN # 83193
Petitioner / In Proper Person



22-17115

JURISDICTION

Jurisdiction of this Court is invoked pursuant to NRS 34.150 thru NRS 34.320, Petitioner submits that mandamus/ prohibition is the proper vehicle, since the controversy Petitioner is contending is not a challenge to his conviction:

Although courts have extended the scope of habeas corpus to embrace an Eighth Amendment violation occurring during their confinement following valid conviction. See Coffin v. Reichard 143 F.2d 443, 155 ALR 143 (6th Cir. 1194), Scate ex rel Col. v. Tahash 269 Minn. 1, 129 NW 2d 904 (1964), In Re Roddle 57 Ca. 2d 840, 22 CA Reporter 472, 372 P.2d 304 (1962) This Court has chosen not to do so, since the post-conviction remedies of NRS Chapters 34 and 177 are in fact available to challenge the conviction, sentence or restraint. However, in this instant case the Petitioner claims that there is no redress available, and has no other option other than Mandamus/ Prohibition. See State v. Wright, (1875), 10 Nev.167, Goicoechea v. Fourth Judicial Court In and For Elko County, (1980), 607 P.2d 567, Russell v. Thompson, (1980), 619 P.2d 537, Margold v. Eighth Judicial District Court In and For The County of Clark, 858 P.2d 33 (1993), Ashokan v. State Dept. of Ins., 856 P.2d 244 (1993), State v. Eighth Judicial District Court In and For The County of Clark, 997 P.2d 126 (2000) and Mineral County v. State Dept. of Conservation and Natural Resources, 20 P.3d 800 (2001).

1 On April 18, 2022, subsequently after filing an Informal Appellate brief addressing this instant issue in ground Three,
2
3 Petitioner filed with the Eighth Judicial District Court a Motion
4 to Correct a Clerical Error within the Judgment of Conviction
5 entered in Case Number 03C189119.

6 The State of Nevada filed their opposition on April 20,
7 2022 and Movant replied filed May 11, however, the reply was
8 mailed to the Court Clerk on the 2nd of May 2022 and it was
9 not filed until (9) Nine days later.

10 In petitioner's Reply and Supplement to reply McLaughlin
11 addressed the fact that the State of Nevada did not comply
12 with the "Statutory Requirements" in their order of restitution
13 contained within the Judgment of Conviction Order which is
14 a requisite portion of an Sentencing proceeding.

15 By not following the statutes; and it is the language contained
16 within the particular N.R.S. (Nevada Revised Statutes) which is of
17 concern in determining whether the Court had Statutory Authority
18 and discretion

19 The Statutes petitioner refers to are: NRS 176.033 Reads as:
20 IF a sentence is required or permitted by Statute, the Court
21 shall ³ If Restitution is appropriate, set an amount for each
22 victim" . . . NRS 176.105 (1) "IF a defendant is found guilty and is
23 sentenced as provided by law, the judgment of conviction must
24 set forth " The terms and amount of any fine, restitution or
25 administrative assessment and

26 N.B.C.P. Rule 69 Execution: Money Judgment Applicable procedure

27 "A money judgment is enforced by a writ of execution."

1 Additionally, the Court applied 653 days of pre-sentence jail
2 credits, however, the sentencing date was continued five (5)
3 days and those five (5) additional days were never credited
4 to petitioner's sentence.

5 Having no plain, speedy, or adequate remedy at law other
6 than Mandamus to obtain correction of petitioner's judgment
7 of conviction affecting his sentence credits and imposition
8 of Restitution which amounts to more than a mere "scriveners
9 error".

10 The Correction Requires an vacation of Sentence and an
11 Re-sentencing hearing with the petitioner present in Court. It also
12 requires the District Court to "Amend the Judgment of Conviction"
13 of the petitioner.

CERTIFICATE OF SERVICE BY MAILING

I, MICHAEL T. McLAUGHIN, hereby certify, pursuant to NRCP 5(b), that on this _____ day of _____, 20____, I mailed a true and correct copy of the foregoing, "WRIT OF MANDAMUS/PROHIBITION"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

SUPREME COURT OF NEVADA
CLERK OF THE COURT:
ELIZABETH GROWN
201 S. CARSON STREET
CARSON CITY, NEVADA 89701

CC: FILE

DATED: this 20th day of May, 2022

Michael J. McLaughlin
MICHAEL T. McLAUGHIN # 89193
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

WRIT OF HABEAS CORPUS / PROHIBITION
(Title of Document)

filed in District Court Case number _____

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-OR-

B. For the administration of a public program or for an application
for a federal or state grant.

Michael J. McLaughlin
Signature

5-20-2022
Date

MICHAEL McLaughlin
Print Name

Title