

IN THE SUPREME COURT OF THE STATE OF NEVADA

PETER JASON HELFRICH,
Petitioner,

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Elizabeth A. Brown
Clerk of Supreme Court

v.

THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF NYE; AND THE HONORABLE DAVID R.
GAMBLE, SENIOR JUDGE,

Respondents.

RESPONDENTS FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA AND HONORABLE DAVID R. GAMBLE, SENIOR JUDGE'S
ANSWER TO PETITION FOR WRIT OF MANDAMUS

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Court and Honorable David R. Gamble, Sr. Judge*

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I. INTRODUCTION

The bell has tolled for amending Plaintiff Helfrich's presentence investigation report. By failing to request a ruling on his objection or to raise these issues on direct appeal, Helfrich waived his right to correct alleged errors in the presentence investigation report. Further, once the district court sentenced Helfrich, it no longer had authority to order an amendment of the report. Accordingly, his petition for an order directing the district court to rule on his petition for writ of habeas corpus should be denied.

Notwithstanding these facts, his petition was not properly before the district court. At the time of its filing, Helfrich was represented by counsel, so the petition is a fugitive document. Nor was it served on the parties or counsel. And the ministerial duties of the county clerks do not obligate them to serve motions filed with the court.

Further, a petition for habeas corpus is not the proper mechanism to correct alleged errors in a presentence investigation report. Rather, its purpose is to inquire into the cause of imprisonment or restraint of liberty. Helfrich's petition does neither.

Helfrich's supplemental petition also does not warrant this Court's exercise of discretion to grant extraordinary relief. His suspicion that the county clerk may refuse to file his emergency affidavit of preliminary injunction and

temporary restraining order does not demonstrate the omission of a legal duty. Nor does the law require the district court to rule on a motion to enjoin non-parties within 90 days. For these reasons and those discussed below, Helfrich's petition for a writ of mandamus should be denied.

II. BACKGROUND

A. Presentencing

Helfrich was charged with battery with a use of a deadly weapon for ramming his vehicle into another vehicle. **Ex. A**, Petition for Writ of Habeas Corpus, at AG002. He entered a no contest plea. *Id.* On 6-8-21, Nevada Department of Public Safety, Parole and Probation, prepared a presentence investigation report (PSI) as mandated under NRS 176.135(1). **Ex. B**, Case summary, at AG079. A supplemental presentence report was prepared on 6-21-21. *Id.*; *see also* **Ex. A** at AG061-AG069.

A few weeks later, Helfrich filed an affidavit of judicial notice of motion to withdraw plea and notice of firing David Neely, defense counsel. **Ex. C** at AG082. Helfrich requested that Neely file motions to withdraw his plea and to reinvoke his right to a speedy trial. *Id.* at AG083. Helfrich failed to serve the affidavit of judicial notice on parties or counsel. *Id.* at AG082-086.

B. Sentencing Hearing

A sentencing hearing occurred before Judge Gamble on 7-28-21. **Ex. D**, Hearing Transcript, at AG087. Prosecutor Kirk Vitto, Neely, and Helfrich attended. At no time during the hearing did Helfrich inform the district court that he wanted

to withdraw his plea, “fired” Neely, or otherwise objected to Neely appearing on his behalf. During his sentence recommendation, Neely, at Helfrich’s request, read specified excerpts from the offense synopsis into the record. **Ex. D** at AG096. After the completion of recommendations by both counsel Helfrich personally addressed the district court describing his version of the facts that preceded the vehicle crash. *Id.* at AG100. Helfrich also objected to the omission of certain facts from the PSI asserting that they provided context for his behavior. *Id.* at AG109. Helfrich did not request a ruling from the district court concerning his objections.

Before imposing sentence, the district court explained:

[W]hat you are being sentenced for, just so you understand, is not the reaction to what you perceived to be happening at the house where the lady lived, it’s what you did with the car, assaulting, battering the other car and the people in it.

Id. at AG116. The court adjudged Helfrich guilty of the offense of battery with the use of a deadly weapon, a category B felony, and sentenced him to a term of 6 years with a minimum parole eligibility of two years. *Id.* at AG116-117. A judgment of conviction was filed on the same day.

C. Post-sentencing

More than a month after the sentencing, Helfrich filed an affidavit of indigent petition for writ of habeas corpus seeking an order to correct and amend factual errors contained in the PSI report. **Ex. A** at AG001. The petition challenged neither

his conviction nor his sentence. The petition was not served on the parties or counsel nor was a request for hearing made. Almost 10 weeks later, he filed a motion to withdraw counsel and demand for indigent copies of all documents and transcripts of all hearings. **Ex. E** at AG120. The motion was not served on the parties or counsel. Since these filings, Helfrich filed numerous affidavits of judicial notice, petitions for writ of mandamus, and motions for other relief with the district court. **Ex. B** at AG080-081.

The instant petition asks this Court to compel the district court to rule on his petition for writ of habeas corpus. He also filed a supplement to his petition for an order directing the Nye County Clerk's Office to file his "Declaration in Support of Affiant's Emergency Motion for Temporary Restraining Order & Preliminary Injunction" seeking the return of documents to support his habeas petition and ordering the district court to rule on it within 90 days.

In response to Helfrich's petition, this Court entered an order directing answer.

III. LEGAL STANDARD

A writ of mandamus is a judicial remedy available for a superior court to compel a subordinate court to perform a lawful act. This Court may issue a writ of mandamus "to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, . . . , or to control a manifest abuse of or

arbitrary or capricious exercise of discretion.” *Rugamas v. Eighth Jud. Dist. Ct.*, 129 Nev. 424, 305 P.3d 887 (2013); NRS 34.160.

But a writ may not issue where the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170. Mandamus is an extraordinary remedy, and the decision to entertain a petition lies within the discretion of this Court. *Hickey v. District Court*, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989). To justify the issuance of a writ of mandamus to enforce the performance of an act by a public officer, the act must be one that the law requires as a duty resulting from the office, and there must be an actual omission on the part of the officer to perform it. *Mineral County v. Dep’t of Conserv. & Natural Res.*, 117 Nev. 235, 243, 20 P.3d 800, 805 (2001); *Brewery Arts Center v. State Bd. Of Examiners*, 108 Nev. 1050, 1054, 843 P.2d 369, 372 (1992); *Ex rel Blake v. County Comm’rs*, 48 Nev. 299, 231 P. 384, 385 (1924).

Further, mandamus will not issue unless the petitioner demonstrates a clear legal right to the relief demanded. *Blake*, 231 P. at 385. He must not only show the respondent failed to perform the required duty, but that the performance thereof is actually due from him at the time of the application. *State ex rel. Piper v. Gracey*, 11 Nev. 223, 233 (1876). Mandamus may compel an officer or tribunal exercising judicial functions to act, but never to review or correct such judicial acts however erroneous they may be. *York v. Board of County Comm’rs*, 89 Nev. 173, 174, 509

P.2d 967 (1973); *State v. Eighth Judicial Dist. Court*, 116 Nev. 127, 133, 994 P.2d 692, 696 (2000).

IV. ARGUMENT

A. Helfrich waived his right to have the PSI amended

Helfrich waived the right to correct alleged errors in the PSI when he failed, before sentencing, to seek a ruling from the district court concerning his objections or to raise the issues on a direct appeal. *Stockmeier v. State, Bd. Of Parole Com'rs*, 127 Nev. 243, 250-251, 255 P.3d 209, 214 (2011). A defendant has a right to object to purported factual errors in a PSI at or before the time of sentence. NRS 176.156 (1).

During the sentencing hearing, Helfrich objected to the PSI's omission of certain facts that purportedly preceded the vehicle crash to give context for his actions. **Ex. D** at AG109. The district court considered these statements and made sure that Helfrich knew that Judge Gamble had "read every single word" of the recommendation prior to the hearing. *Id.* at AG093-094. The court also informed Helfrich that he was being sentenced for battering another car and the people in it, not for his reaction to events that preceded the crash. *Id.* at AG116. But neither during his statement to the court nor before the court pronounced sentence did Helfrich request a ruling on his objections. This failure constituted a waiver of his right to correct alleged errors in the PSI.

Nor does Helfrich's speculation that omissions in the PSI will impact his parole hearing save his claim. The district court's decision not to amend the PSI in the judgment of conviction (JOC) demonstrates that the information in the PSI was not based on impalpable or highly suspect evidence which could have made amendment necessary. *Sasser v. State*, 130 Nev. 387, 394-395, 324 P.3d 1221, 1226 (2014); *cf. Del-Angel v. State*, 2015 WL 1877531, *3 (Nev. App. 2015). Simply put, Helfrich's habeas petition will not turn back the clock to unring the bell. Because he failed to seek a ruling before he was sentenced or to raise the issues on a direct appeal, he waived any ability to correct errors in the PSI.

B. The District Court lacks post-sentencing authority to order an amendment of the PSI

Once the district court sentenced Helfrich, it no longer had authority to order an amendment of the PSI. The process by which the district court resolves challenges to a PSI is not entirely clear. *Stockmeier*, 127 Nev. at 250, 255 P.3d at 213. A district court has discretion to amend a PSI itself, return it to parole and probation for amending, or amend it in the JOC if it finds that the information in the PSI is inaccurate or based on impalpable or highly suspect evidence. *Sasser*, 130 Nev. at 395, 324 P.3d at 1226. But it is not required to amend a PSI in the JOC. *Sasser*, 130 Nev. at 392, 324 P.3d at 1224; *see also Walker v. Second Jud. Dist. Ct. in & for Cnty. of Washoe*, 136 Nev. 678, 680, 476 P.3d 1194, 1197 (2020) ([M]andamus is available only where "the law is overridden or misapplied, or when

the judgment exercised is manifestly unreasonable or the result of partiality, prejudice, bias or ill will.") (internal citations omitted). Nevada law does not provide the district court or P&P with express, implied, or inherent authority to amend a prisoner's PSI post-sentencing. *Stockmeier*, 127 Nev at 249, 255 P.3d at 213. In fact, it "does not provide any administrative or judicial scheme for amending a PSI after the defendant is sentenced." *Stockmeier*, 127 Nev. at 249-250, 255 P.3d at 213.

During sentencing, the district court considered Helfrich's objections to omissions in the PSI and made it clear that any sentence was not based on disputed facts. **Ex. D** at AG116. The court also made clear that Judge Gamble read everything Helfrich submitted in contemplation of sentencing. *Id.* at AG093-094. The district court adjudged him guilty of the charge and imposed sentence despite his assertions of PSI omissions. Nor did it amend the PSI in the JOC. These judicial acts illustrate that the district court did not construe the PSI as containing impalpable or highly suspect evidence warranting amendment. At that point, Helfrich's avenue of relief was to raise the issue in a direct appeal challenging his JOC, sentence, or detention. NRS 34.360. His habeas petition was not a substitute for that remedy. Since his sentencing, the district court has had no authority to amend or order the amendment of his PSI. Accordingly, this Court should deny mandamus relief.

C. Helfrich's petition was not properly before the district court for decision

1. Helfrich was represented by counsel when he filed the petition, so it is a fugitive document

Since Helfrich was represented by Neely, he was prohibited from filing the habeas petition as a pro se party. "When a defendant is represented by an attorney, that defendant cannot appear on their own behalf in the case without the consent of the court." N.R. Cr. P. 3(1). Where a client moves to dismiss, he must serve a copy of the application on the attorney and all other parties or their attorneys. N.R. Cr. P. 3(2).

Prior to the sentencing hearing, Helfrich filed an affidavit of judicial notice of motion to withdraw plea and "notice that I am firing David Neely." **Ex. C** at AG082. He requested that Neely withdraw from representation after filing motions to withdraw Helfrich's plea and to reinvoke his right to a speedy trial. *Id.* at AG083. Helfrich failed to serve the affidavit of judicial notice on parties or counsel.

At the 7-28-21 sentencing hearing, Neely appeared on behalf of Helfrich. Helfrich did not inform the district court that he wanted to withdraw the plea, that Neely was fired, or that he otherwise objected to Neely's representation of him during the hearing. Neither after the sentencing nor before filing the habeas petition did Helfrich move to withdraw Neely as his counsel. Not until 11-15-21, more than two months after filing the petition, did Helfrich file the motion. **Ex. E** at AG120.

For this reason alone, the petition should be treated as a fugitive document that was not properly before the court.

2. The petition was never served on the parties or counsel

Because Helfrich never served the petition on counsel or parties, it was not properly before the district court for decision. Rule 5 of the Nevada Rules of Civil Procedure provides that written motions or notices must be served on all parties or their respective counsel. NRCP 5(a) and (b). The district court record does not reflect that Helfrich complied with this rule. Instead, he simply mailed his motions, affidavits, and notices to the clerk for filing with instructions for service. Some of Helfrich's filings directed the clerk to serve the documents on people or departments who were not even parties to the action. **Ex. A** at AG021-023. While a district court clerk may have a ministerial duty to accept and file documents, there is no corresponding duty to serve those documents on counsel or parties. *Bowman v. Eighth Jud. Dist. Ct., In & For Clark Cnty.*, 102 Nev. 474, 478, 728 P.2d 433, 435 (1986). For these reasons, Helfrich's habeas petition was not properly before the district court.

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D. Even if Helfrich’s petition was properly before the district court, it is not the proper mechanism to challenge errors to a PSI

Helfrich’s petition is not the proper mechanism to address purported omissions in a PSI. “Every person unlawfully committed, detained, confined or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint.” NRS 34.360. Helfrich’s petition does not inquire into the cause of his imprisonment or restraint. Nor does it request relief from his judgment of conviction or sentence. *See id.* Similarly, it does not assert that his imprisonment is illegal. *See id.* Helfrich’s petition requests an order from the district court directing P&P to correct alleged factual errors in the PSI, and to provide a complete copy of the PSI questionnaire and the PSI report. But for the reasons previously discussed, neither the district court nor P&P have authority to amend a PSI post-sentence. *Stockmeier*, 127 Nev. at 248-249, 255 P.3d at 212-213 (Once a defendant is sentenced, P&P has no further statutory duties concerning his PSI. The district court’s final statutory duty is to cause a copy to be transmitted to the Director of the Department of Corrections). Since Helfrich has no legal right to have the PSI amended, mandamus should not issue.

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E. Helfrich's supplemental petition identifies no legal rights that can be enforced through mandamus relief

1. A presupposition that the county clerk will not file a motion is not an omission of a legal duty

Helfrich did not assert that the county clerk refused to file his emergency affidavit of preliminary injunction and temporary restraining order so there is no legal right to be enforced through mandamus relief. A writ of mandamus is not to be granted in anticipation of an omission of a duty however strong the presumption may be that the official will refuse to perform the duty when the time for performance arrives. *Brewery Arts Center*, 108 Nev. 1050, 1054, 843 P.2d 369, 372 (1992). An actual default or omission of a duty is an essential prerequisite to issuing a writ of mandamus as is the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Lawton v. Public Serv. Comm'n*, 44 Nev. 102, 108, 112, 190 P. 284 (1920). A county clerk has a ministerial duty to accept and file documents. *Bowman*, 102 Nev. at 478, 728 P.2d at 435. Helfrich's suspicion that the county clerk may refuse to file his document in the future does not demonstrate the failure to perform an act that the law requires now.

2. The district court has no legal duty to rule on a motion within a specified timeframe that is directed to state officials who are not parties to the matter

The proposed motion seeks to enjoin state officials who are not parties in Case No. CR20-0145. The motion also seeks to impose upon the district court a 90-day timeframe for issuing a ruling on the motion. Helfrich cited no authority that

imposes a legal duty on the district court to adjudicate, within a certain timeframe, a motion to enjoin non-parties. The relief sought in his supplemental petition should be denied.

V. CONCLUSION

The bell tolled on Helfrich's right to correct alleged errors in the PSI when he failed to demand a ruling on his objections before sentencing or to raise the issues on a direct appeal. The county clerk has no duty to serve documents nor does the district court have a duty to enjoin persons who are not parties to the action. Since Helfrich has identified no act by State Defendants that the law requires, the extraordinary remedy of mandamus should not issue.

DATED this 7th day of February, 2023.

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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 2010 in 14 pt. font and Times New Roman; or

☐ This brief has been prepared in a monospaced typeface using [state name and version of word processing program] 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 no more than 14,000 words; or

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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.

Dated this 7th day of February, 2023.

AARON D. FORD
Attorney General

By: /s/ Sabrena K. Clinton
Sabrena K. Clinton (Bar No. 6499)
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 7th day of February, 2023, and e-served the same on all parties listed on the Court's Master Service List.

I further certify that any of the participants in the case that are not registered as electronic users will be mailed the foregoing document by First-Class Mail, postage prepaid.

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