

Damon L. Campbell
71683
P.O. Box 1989
Ely, Nevada 89301
In Proper Person

FILED

FEB 22 2023

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMON CAMPBELL,
Petitioner,

vs.

ERIKA BALLOU,
District Court Judge,
Eighth Judicial District
Department XXIV
Respondent.

Case No.: 86133

PETITION FOR WRIT OF MANDAMUS

COMES NOW, Petitioner, DAMON CAMPBELL, the real party in interest, in proper person, and requests that this Court Order the Respondent, ERIKA BALLOU, District Court Judge, Eighth Judicial District Court, Department XXIV, (1) File the Written Order of the District Court's oral decision on petitioner's Motion To Modify or Correct Sentence And Challenge The Restitution Award Entered.

FILED
FEB 21 2023
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

23-05324

This petition is made and based upon N.R.S. 34.160-34,170; The Nevada Constitution Article 6 § 4; United States Constitution Article 1 § 9; 28 U.S.C. § 2241 - 2254; N.R.S. Chapter 34 inclusive; The Declaration of Petitioner Damon Campbell, attached hereto as Exhibit "A" and incorporated herein by reference; The Minutes of the District Court, attached hereto as Exhibit "B"; and the argument which follows.

Dated this 14th day of February, 2023.

Respectfully submitted,



Damon Campbell
71683

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In the instant action, Petitioner moves this Court to issue an Order to the District Court in Clark County regarding the failure to enter a written final order of its decision on September 21, 2022, inhibiting petitioner from proceeding with a notice of appeal. (Ex. B) NRAP 4.

BRIEF HISTORY

On October 13, 2021, the petitioner filed a Motion for Modification of Sentence and Jail Time Credits.

On October 26, 2021, the State filed a Motion in opposition.

On November 2, 2021, petitioner filed a Motion for Grant of Defendant's Motion for Modification of Sentence.

On November 8, 2021, the District Court filed its Order Denying Defendant's Motion to Modify Sentence and Jail Time Credits, directing an Amended Judgment of Conviction to be prepared to reflect Restitution be paid to Victims of Crimes.

On November 30, 2021, petitioner filed a Motion for Request for Resentencing Hearing.

On December 14, 2021, the State filed its opposition.

On December 29, 2021, the District Court filed its Order Denying Defendant's Motion for Request for

Resentencing Hearing.

On January 13, 2022, petitioner filed a Motion for Status Check.

On June 9, 2022, the District Court filed petitioner's Amended Judgment of Conviction.

On July 7, 2022 petitioner filed his Motion To Modify or Correct Sentence And Challenge The Restitution Award Entered.

On July 13, 2022, the State filed its opposition.

On September, 21, 2022, the District Court denied petitioner's motion through oral judgment. (Ex. B)

ARGUMENT

The most basic requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *MATTHEWS v. ELDRIDGE*, 424 U.S. 319, 333, 47 L.Ed.2d 18, 98 S.Ct. 892 (1976).

N.R.S. 29.010 allows for the filing of an action, or, submission of a controversy without action, to resolve a dispute as to a matter of law. I believe the instant action falls neatly into the structure of N.R.S. 34.160 - 34.170 and gives additional footing for this Court to issue a mandamus writ upon the District Court. Mandamus will issue if a petitioner has no other plain, speedy,

and adequate remedy in the ordinary course of law. See N.R.S. 34.170. This is petitioner's only option for a remedy under the circumstances. The writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station and may be issued by the Supreme Court. See N.R.S. 34.160.

Before a petitioner can obtain a writ of mandamus he must establish sufficient facts to show that he has a legal right to have something done by the respondent which she has refused to do. *STATE ex rel. PHILLIPS v. SECOND JUDICIAL DISTRICT COURT*, 48 Nev. 27, 207 P.2d 80. Under the procedures of 28 U.S.C. § 2241-2254 all State remedies must be exhausted before a claim may be heard. "As a general rule, an appeal may not be taken before the entry of a final written judgment." *MORAN v. BONNEVILLE SQUARE ASSOCIATES*, 25 P.3d 898; *In re WORKER'S COMPENSATION REFUND*, 46 F.3d 813, 822 (1995) ("First Amendment right of Court Access cannot be impaired either directly or indirectly."). "The State and its officers may not abridge or impair petitioner's right to apply... for writ of habeas corpus." See *Ex parte HULL*, 312 U.S. at 549.

If this Court can reasonably read pleadings to state a valid claim or which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal authority, confusion of legal theories, poor syntax and/or, litigants unfamiliarity with pleading requirements,

due to petitioner being a pro se litigant petitioner prays that this Court will hold petitioner's pleading to a less stringent standard and construed liberally in comparison to those drafted by lawyers. *BOAG v. MACDOUGALL*, 454 U.S. 364, 365, 70 L.Ed. 2d 551, 102 S.Ct. 700; *GREEN v. BRANSON*, 108 F.3d 1296 (10th Cir. 1997); *SPENCER v. DOE*, 139 F.3d 107, 111-12 (2d Cir. 1998).

CONCLUSION

Petitioner asks only for the due process opportunity to continue his appellate process being hindered by the failure of the District Court to file its written order of its decision on September 21, 2022. Until done so petitioner cannot file his notice of appeal or proceed with his appeal. This Court is asked to review this and take whatever action it deems appropriate.

Dated this 14th day of February, 2023.

Respectfully submitted,



Damon Campbell
In Proper Person

CERTIFICATE OF SERVICE

I do hereby certify that I placed a true and exact copy of the aforementioned Petition for Writ of Mandamus in the United States Mail, postage prepaid, to the following:

Erika Ballou, District Court Judge
Eighth Judicial District Court
Department XXIV
200 South Third Street
P.O. Box 551601
Las Vegas, Nevada 89155-1601

Dated this 14th day of February, 2023.



Damon Campbell
In Proper Person

EXHIBIT A

DECLARATION OF DAMON CAMPBELL

DAMON CAMPBELL, knowing the penalties for perjury and stating under the penalty of perjury:

- 1) I am the Petitioner in the above entitled matter. I have personal knowledge of all the facts contained in this declaration and know them to be true.
- 2) This Declaration is submitted in support of my Petition for Writ of Mandamus.
- 3) This matter stems from a post-conviction Motion to Modify or Correct Sentence and Challenge the Restitution Award Entered.
- 4) The District Court never entered its written order of its final decision on September 21, 2022.
- 5) I am not a lawyer.
- 6) That Writ of Mandamus is the only vehicle available to me as there is no order to appeal from.

Dated this 14th day of February, 2023.

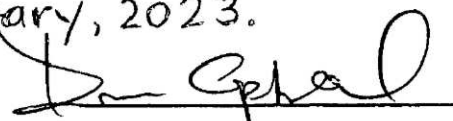

Damon Campbell

EXHIBIT B

CASE SUMMARY

CASE NO. 00C169550

Journal Entry Details:

The Court noted no parties present; ORDERED, matter CONTINUED for Attorney General's Office to be present. CLERK'S NOTE: This Minute Order was electronically served by Ro'Shell Hurtado, to all registered parties for Odyssey File & Serve.;

11/03/2021

**Motion to Modify Sentence (8:30 AM)** (Judicial Officer: Ballou, Erika)

Motion for Modification of Sentence and Jail Time Credits

Granted in Part;

Journal Entry Details:

Agnes Botelho, Esq. present via Bluejeans video conference. Deft. not present. COURT STATED IT'S FINDINGS, ORDERED, Motion For Modification of Sentence and Jail Time Credits DENIED as to credits; 541 DAYS was the correct amount of credit Deft. received; DIRECTED an Amended Judgment of Conviction be prepared to reflect Restitution be paid to Victims of Crimes; advised Ms. Botelho to prepare an order. NDC CLERK'S NOTE: This Minute Order was mailed to: Damon O Campbell #71683, WSCC, P.O.Box 7007, Warm Springs, NV, 89702.//rh11.04.21;

11/19/2021

**Minute Order (8:00 AM)** (Judicial Officer: Ballou, Erika)

Minute Order - No Hearing Held;

Journal Entry Details:

On October 13, 2021, Mr. Campbell filed a Motion for Modification and Jail Time Credits. The State filed an opposition on October 26, 2021. The Motion was heard on November 3, 2021. It was granted in part and denied in part. Prior to the hearing on the motion, on November 2, 2021, Mr. Campbell filed a Motion for Grant of Defendant's Motion for Modification of Sentence based on what he believed to be the State's failure to respond to his motion within the proscribed time period. As the State has responded and the motion was actually decided on the merits, the instant motion is MOOT. Therefore, the hearing scheduled for the instant motion on November 24, 2021, is hereby VACATED. CLERK'S NOTE: This Minute Order was electronically filed by Courtroom Clerk, Ro'Shell Hurtado, to all registered parties for Odyssey File & Serve: Mailed to: Damon Campbell #71683, P.O.Box 7007, Carson City, NV, 89702.//rh11.19.21;

11/24/2021

CANCELED Motion (8:30 AM) (Judicial Officer: Ballou, Erika)

Vacated

Defendant's Motion for Grant of Defendant's Motion for Modification of Sentence

12/20/2021

**Minute Order (3:00 AM)** (Judicial Officer: Ballou, Erika)


Minute Order - No Hearing Held;

Journal Entry Details:

On October 13, 2021, Defendant Damon Campbell (Mr. Campbell) filed a Motion for Modification of Sentence and Jail Time Credits, in which he alleged that at sentencing he did not receive all of the presentence credit for time served to which he believed he was entitled. He also complained that the names of the victims were not identified in his Judgment of Conviction. On November 3, 2021, this Court denied Mr. Campbell's claim that he did not receive sufficient presentence credit, and determined that 541 days was the correct amount of presentence credit. The Court did determine that the Judgment of Conviction would be amended to reflect that restitution in this case will be paid to Victims of Crime. The Order denying the Motion was filed on November 8, 2021. On November 30, 2021, Mr. Campbell filed the instant Motion for Request for Resentencing Hearing. Therein, he expresses a belief that he is to be resentenced in this case and requests that he be transported to the Court for a resentencing hearing. Mr. Campbell is mistaken, as his sentence is in no way being modified, nor has this Court scheduled a resentencing hearing. This Court merely ordered a correction to a clerical mistake in the Judgment of Conviction, as permitted under NRS 176.565 which reads in full: Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders. This Court may file an Amended Judgment of Conviction to correct such a mistake without holding an additional hearing. Thus, no hearing is warranted, and there is no need to schedule one or transport Mr. Campbell. The hearing scheduled for December 22, 2021, on Mr. Campbell's Motion for Request for Resentencing Hearing is hereby VACATED. The State is to prepare the order. CLERK'S NOTE: This Minute Order was electronically filed by Courtroom Clerk, Ro'Shell Hurtado, to all registered parties for Odyssey File & Serve. //jm 12/20/2021;

CASE SUMMARY

CASE NO. 00C169550

12/22/2021	CANCELED Motion (8:30 AM) (Judicial Officer: Ballou, Erika) <i>Vacated</i> <i>Defendant's Motion for Request for Resentencing Hearing</i>
07/18/2022	 Motion (9:30 AM) (Judicial Officer: Ballou, Erika) 07/18/2022, 07/25/2022, 08/17/2022, 08/31/2022, 09/21/2022 <i>Motion to Modify or Correct Sentence and Challenge the Restitution Award Entered in the Amended Judgment of Conviction</i> Matter Continued; Continued; Matter Continued; Matter Continued; Denied; Journal Entry Details: <i>The Court noted Motion was not the proper vehicle. Mr. Mcavoyamaya argued Judgment of Conviction (JOC) needed to be specific. COURT ORDERED, Motion to Modify or Correct Sentence and Challenge the Restitution Award Entered in the Amended Judgment of Conviction DENIED; advised the State to prepare the order. NDC;</i> Matter Continued; Continued; Matter Continued; Matter Continued; Denied; Journal Entry Details: <i>COURT ORDERED, matter CONTINUED for Judge Ballou. NDC CONTINUED TO 09.21.2022 9:30 AM CLERK'S NOTE: This Minute Order was prepared listening to JAVS./rh;</i> Matter Continued; Continued; Matter Continued; Matter Continued; Denied; Journal Entry Details: <i>Michael Mcavoyamaya, Esq. present via Bluejeans video conference. Arguments by counsel regarding jurisdiction. Following arguments, COURT ORDERED, matter CONTINUED for Judge Ballou. NDC CONTINUED TO 08.31.2022 9:30 AM;</i> Matter Continued; Continued; Matter Continued; Matter Continued; Denied; Journal Entry Details: <i>Defense counsel and Defendant not present. COURT ORDERED, matter CONTINUED due to Defense counsel and Defendant not present. NDC CONTINUED TO: 08/17/2022 9:30 AM CLERK'S NOTE: Email sent to Michael Mcavoyamaya of next hearing. 7/26/22khm;</i> Matter Continued; Continued; Matter Continued; Matter Continued; Denied; Journal Entry Details: <i>Michael Mcavoyamaya, Esq. present via Bluejeans video conference. COURT ORDERED, matter CONTINUED. NDC CONTINUED TO 07.25.2022 9:30 AM;</i>

DATE

FINANCIAL INFORMATION

Defendant Campbell, Damon Lamar

Total Charges

281.00

Total Payments and Credits

281.00

Balance Due as of 2/7/2023**0.00****Other** Public Copy Request

Total Charges

32.00

Total Payments and Credits

32.00

Balance Due as of 2/7/2023**0.00**