

NO. 86361

FILED

APR 05 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY D. Smith
DEPUTY CLERK

MARC SCHACHTER # 91445
Petitioner / In Proper Person
P.O. Box 208
Indian Springs, NV 89070-0208

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARC PAUL SCHACHTER

Petitioner

Case Nos. CR14-1464
84547-COA
67673

State of Nevada, et al.
Respondents

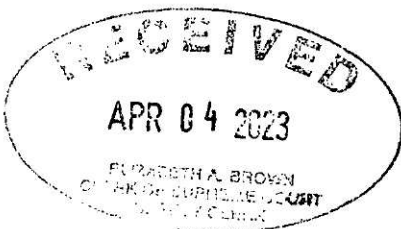
PETITION FOR WRIT OF MANDAMUS / PROHIBITION
(NRS 34.150 thru 34.320)

MARC SCHACHTER 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 21 day of MARCH, 2023

Submitted by: Marc / A
MARC SCHACHTER # 91445
Petitioner / In Proper Person



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 IN CASE NO. 84547-COA, THIS COURT ORDERED
2 THE DISTRICT COURT TO "VACATE THE CORRECTED
3 JUDGMENT OF CONVICTION FILED ON JULY 30, 2015,
4 AND TO REISSUE THE JUDGMENT FOLLOWING THE
5 SUPREME COURT'S ISSUANCE OF REMITTITUR IN THIS
6 CASE." (PAGE #2) FOLLOWING THAT ORDER, PETITIONER
7 FILED A PETITION FOR WRIT OF HABEAS CORPUS ON
8 OCT. 4, 2022 ON THE SOLE GROUND THAT PETITIONER
9 WAS BEING HELD BEYOND THE STATUTORY MAXIMUM
10 SENTENCE. ON OCT. 13, 2022, THE DISTRICT COURT
11 VACATED THE JULY 30, 2015 CORRECTED JUDGMENT OF
12 CONVICTION AND ORDERED THE STATE TO FILE A
13 RESPONSE TO THE PETITION FOR WRIT OF HABEAS
14 CORPUS. THE STATE RESPONDED AND THE DISTRICT
15 COURT ORDERED ORAL ARGUMENTS AT A JUNE
16 28, 2023 HEARING.

17
18 PETITIONER NOW ASKS THIS COURT TO PROHIBIT
19 THE DISTRICT COURT FROM IMPOSING OR SUPER-
20 CEDING ANY ENHANCEMENTS TO MY TWELVE (12)
21 TO FORTY-EIGHT (48) MONTH SENTENCE FOR THE
22 PRIMARY CRIME OF ATTEMPTED ROBBERY. PETITIONER
23 HAS SERVED WELL-IN-EXCESS OF ANY AVAILABLE
24 SENTENCE FOR HIS SOLE PRIMARY CONVICTION.
25 THE DISTRICT COURT SHOULD NOT BE ABLE TO
26 USE NUNC PRO TUNC TO GET AROUND SENTENCING
27 AND DOUBLE JEOPARDY DUE PROCESS PROTECTIONS

1 PETITIONER HAS SERVED ALMOST NINE (9) YEARS
2 AND IS ENTITLED TO AN EXPECTATION OF FINALITY
3 IN REGARDS TO HIS ATTEMPTED ROBBERY CONVICTION.
4 ANY ATTEMPT TO NOW ALTER THAT SENTENCE
5 IS PROHIBITED BY BOTH THE NEVADA AND U.S.
6 CONSTITUTIONS.

7
8 BECAUSE OF THE AMBIGUITY OF THIS COURT'S
9 ORDER TO "REISSUE" THE JUDGMENT OF
10 CONVICTION AND THE FACT THAT PETITIONER
11 IS AS MUCH AS FIVE(S) YEARS OVERDUE
12 FOR RELEASE, PETITIONER HAS NO PLAIN,
13 SPEEDY OR ADEQUATE REMEDY AVAILABLE TO
14 HIM AT THIS TIME. THE DISTRICT COURT
15 COULD ARGUE IT IS ONLY DOING WHAT IT WAS
16 ORDERED TO DO WITHOUT REGARD TO THE
17 LEGALITY OF THE ORIGINAL SENTENCE. ESPECIALLY
18 IN LIGHT OF THE FACT THAT THIS SENTENCE
19 HAS BEEN RULED ILLEGAL AND/OR CHANGED ON
20 MULTIPLE OCCASSIONS.

21
22 PETITIONER ALSO ASKS THIS COURT FOR AN
23 EXPEDITED DECISION OF THIS PETITION TO BE
24 AVAILABLE PRIOR TO THE JUNE 28, 2023 HEARING
25 ON THE HABEAS CORPUS FILED IN DISTRICT COURT.

CERTIFICATE OF SERVICE BY MAILING

I, AVA UNDERWOOD, hereby certify, pursuant to NRCP 5(b), that on this 29
day of MARCH, 2023 I mailed a true and correct copy of the foregoing, "PETITION
FOR WRIT OF 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
OFFICE OF THE CLERK
201 S. CARSON ST. SUITE 201
CARSON CITY, NV 89701

ATTORNEY GENERAL
100 N. CARSON ST.
CARSON, NV 89701

SECOND JUDICIAL DISTRICT COURT
75 COURT ST.
RENO, NV 89501

CC: FILE

DATED: this 29 day of MARCH, 2023

In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

X AVA UNDERWOOD
1101 E COURT ST.
PARACOULD, AR 72450

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding PETITION FOR

WRT OF Prohibition

(Title of Document)

filed in District Court Case number

CR-14-1044

84547- C2A

☒ 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)

-OF-

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

Maria
Signature

Signature

3/21/23
Date

Date _____

MARC SCHAECHTER
Print Name

Print Name _____

PETITIONER
Title

Title