

*Steven D. Grierson*

SEAN RODNEY ORTH #96723

PO Box 650

Indian Springs, NEVADA

89070

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Jul 20 2023 03:06 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

DISTRICT COURT

Clark County, NEVADA

SEAN RODNEY ORTH,

PETITIONER,

CASE NO. A-23-869964-W

VS.

DEPT NO. X

BRIAN WILLIAMS, WARDEN

HOSP,

Resident. /

NOTICE OF APPEAL

Comes now, SEAN ORTH, PETITIONER, who gives this  
Honorable Court notice of appeal for the Court's  
Decision dismissing PETITIONER'S Petition for a writ  
of HABEAS CORPUS on June 28, 2023.

Respectfully Submitted, July 9, 2023.

Sean Orth

RECEIVED  
JUL 17 2023  
CLERK OF THE COURT

CERTIFICATE OF SERVICE

I, SEAN O'NEIL DO HEREBY CERTIFY THAT ON JULY 9, 2023  
I DID MAIL A TRUE AND CORRECT COPY OF THE FOLLOWING  
NOTICE OF APPEAL TO KATRINA LOPEZ, DEPUTY NEVADA ATTORNEY  
GENERAL, 555 E. WASHINGTON AVE, STE. 3100, LV, NV.  
89101-1068.

SEAN O'NEIL

Sean O'Neil 96723

PO Box 650

Indian Springs, NV, 89070

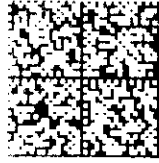
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CLERK OF THE COURT

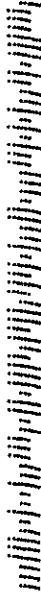
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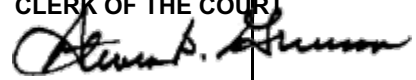
CLERK OF THE COURT  
DISTRICT COURT  
CLARK COUNTY NEVADA  
200 Lewis Ave. 3<sup>rd</sup> Floor  
LV, NV, 89155-1160



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ASTA

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF CLARK**

SEAN RODNEY ORTH,

Plaintiff(s),

vs.

BRIAN WILLIAMS, WARDEN, HIGH DESERT  
STATE PRISON, NEVADA,

Defendant(s),

Case No: A-23-869964-W

Dept No: X

**CASE APPEAL STATEMENT**

1. Appellant(s): Sean Orth

2. Judge: Tierra Jones

3. Appellant(s): Sean Orth

Counsel:

Sean Orth #96723  
P.O. Box 650  
Indian Springs, NV 89070

4. Respondent (s): Brian Williams

Counsel:

Aaron D. Ford, Attorney General  
555 E. Washington Ave., Ste. 3900

Las Vegas, NV 89101-1068

5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes  
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: N/A  
*\*\*Expires 1 year from date filed*

Appellant Filed Application to Proceed in Forma Pauperis: No  
Date Application(s) filed: N/A

9. Date Commenced in District Court: May 2, 2023

10. Brief Description of the Nature of the Action: Civil Writ

Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 18 day of July 2023.

Steven D. Grierson, Clerk of the Court

/s/ Cierra Borum

Cierra Borum, Deputy Clerk

200 Lewis Ave

PO Box 551601

Las Vegas, Nevada 89155-1601

(702) 671-0512

cc: Sean Orth

# CASE SUMMARY

## CASE NO. A-23-869964-W

Sean Orth, Plaintiff(s)

vs.

Brian Williams, Warden at High Desert State Prison, NV,  
Defendant(s)§  
§  
§  
§  
§

Location: **Department 10**  
 Judicial Officer: **Jones, Tierra**  
 Filed on: **05/02/2023**  
 Cross-Reference Case Number: **A869964**

### CASE INFORMATION

#### Related Cases

C-20-352701-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

#### Statistical Closures

06/29/2023 Other Manner of Disposition

Case Status: **06/29/2023 Closed**

### DATE

### CASE ASSIGNMENT

#### Current Case Assignment

Case Number A-23-869964-W  
 Court Department 10  
 Date Assigned 05/02/2023  
 Judicial Officer Jones, Tierra

### PARTY INFORMATION







		<i>Lead Attorneys</i>
<b>Plaintiff</b>	<b>Orth, Sean</b>	<b>Pro Se</b>
<b>Defendant</b>	<b>Brian Williams, Warden at High Desert State Prison, NV</b>	<b>Samuels, Katrina A</b> <i>Retained</i> 702-486-3770(W)

### DATE

### EVENTS & ORDERS OF THE COURT

### INDEX

#### EVENTS

05/02/2023	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Orth, Sean [1] Post Conviction
05/02/2023	 Appendix Filed By: Plaintiff Orth, Sean [2] Appendix of Exhibits
05/02/2023	 Application to Proceed in Forma Pauperis Filed By: Plaintiff Orth, Sean [3] Application to Proceed in Forma Pauperis
05/08/2023	 Order for Petition for Writ of Habeas Corpus [4] Order for Petition for Writ of Habeas Corpus
06/07/2023	 Response [5] STATES RESPONSE TO PETITIONERS PETITION FOR WRIT OF HABEAS CORPUS
06/22/2023	 Motion to Dismiss Filed By: Defendant Brian Williams, Warden at High Desert State Prison, NV [6] Motion to Dismiss Petition for Writ of Habeas Corpus

**CASE SUMMARY**  
**CASE NO. A-23-869964-W**

06/22/2023



Exhibits

Filed By: Defendant Brian Williams, Warden at High Desert State Prison, NV  
*[7] Respondent's Index of Exhibits*

06/22/2023



Notice

Filed By: Defendant Brian Williams, Warden at High Desert State Prison, NV  
*[8] Notice of Manual Filing of Exhibit J in Support of the State's Motion to Dismiss*

06/29/2023



Decision and Order

*[9] Decision and Order*

07/03/2023



Notice of Entry of Order

*[10] Notice of Entry of Order*

07/07/2023



Reply

Filed by: Plaintiff Orth, Sean  
*[11] Petitioner's Reply to State's Response to Petitioner's Petition for A Writ of Habeas Corpus*

07/17/2023



Notice of Appeal

*[12] Notice of Appeal*

07/18/2023



Case Appeal Statement

*[13] Case Appeal Statement*

**HEARINGS**

06/28/2023

**Petition for Writ of Habeas Corpus (8:30 AM)** (Judicial Officer: Jones, Tierra)  
Denied;

06/28/2023

**Motion to Dismiss (8:30 AM)** (Judicial Officer: Jones, Tierra)  
*Defendant's Motion to Dismiss Petition for Writ of Habeas Corpus*  
Granted;

06/28/2023



**All Pending Motions (8:30 AM)** (Judicial Officer: Jones, Tierra)

Matter Heard;  
Journal Entry Details:  
*PETITION FOR WRIT OF HABEAS CORPUS... DEFENDANT'S MOTION TO DISMISS  
PETITION FOR WRIT OF HABEAS CORPUS... Defendant not present; Deputy District  
Attorney Cal Thoman present on behalf of the State; Deputy Attorney General Katrina Lopez  
present. COURT INDICATED the State filed a response, and the Attorney General's Office  
filed a motion to dismiss and ORDERED Motion to Dismiss GRANTED which renders the  
States Opposition MOOT. Ms. Lopez stated she would prepare an order. NDC CLERK'S  
NOTE: A copy of this Minute Order has been mailed to: Sean Orth #96723, PO BOX 650,  
Indian Springs, Nevada 89070. (ks 6-28-2023);*

## DISTRICT COURT CIVIL COVER SHEET

A-23-869964-W

Dept. 10

County, Nevada

Case No.

(Assigned by Clerk's Office)

**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Sean Orth

Defendant(s) (name/address/phone):

Brian Williams

Attorney (name/address/phone):

Attorney (name/address/phone):

**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types**

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate</b> (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input checked="" type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

May 2, 2023

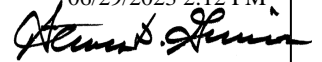
Date

PREPARED BY CLERK

Signature of initiating party or representative

See other side for family-related case filings.



  
CLERK OF THE COURT

1 **DAO**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5 SEAN ORTH,

6 Petitioner,

7 vs.

8 BRIAN WILLIAMS, WARDEN AT HIGH  
9 DESERT STATE PRISON, NV,

10 Respondent.

Case No. A-23-869964-W

Dept. No. X

11 **DECISION AND ORDER**

12 THIS CAUSE came before the Honorable Tierra Jones on June 28, 2023, for a hearing of  
13 Petitioner Sean Orth's First Amended Petition for a Writ of Habeas Corpus (Post-Conviction) filed on  
14 May 2, 2023. The State filed a response<sup>1</sup> on June 7, 2023, and Respondents filed a motion to dismiss on  
15 June 22, 2023. Deputy Attorney General Katrina A. Lopez appeared on behalf of Respondents. Petitioner  
16 Sean Orth was not present. At the hearing, the Court did not entertain argument and made its decision  
17 based solely upon the pleadings.

18 THE COURT FINDS that Petitioner Sean Orth ("Mr. Orth") is currently incarcerated at High  
19 Desert State Prison. He is serving time for criminal acts he committed in 2005 and 2006 (CR05-1459)  
20 (CR06-2177). The Second Judicial District Court adjudicated Mr. Orth guilty of Robbery with Use of a  
21 Deadly Weapon, Conspiracy to Commit Robbery with Use of a Deadly Weapon, and Eluding an Officer  
22 (CR05-1459). The Court also adjudicated Mr. Orth guilty of Trafficking in a Controlled Substance and  
23 two counts of Ex-Felon in Possession of a Firearm (CR06-2177). The Court sentenced Mr. Orth under  
24 the large habitual offender statute, imposing 6 concurrent sentences of life with the possibility of parole  
25 after 10 years. On November 26, 2018, the Board of Parole Commissioners ("the Board") paroled Mr.

26 ///

27  
28 <sup>1</sup> The State argued in its response that Petitioner Sean Orth's challenge to the decisions made by  
the Board of Parole Commissioners is not cognizable in habeas proceedings and requested that the  
Attorney General's Office respond if additional briefing is needed.

1 Orth in CR05-1459 and CR06-2177.<sup>2</sup> After being paroled, Mr. Orth violated various terms and conditions  
2 of his parole including fleeing or attempting to elude law enforcement on November 3, 2020<sup>3</sup> (*C-20-*  
3 *352701-I*). After his arrest, the Board and the Division of Parole and Probation issued a retake warrant  
4 returning Mr. Orth to High Desert State Prison.

5 THE COURT FURTHER FINDS that after waiving his preliminary inquiry, Mr. Orth continued  
6 his parole revocation hearing six times with counsel present at every hearing. According to Mr. Orth's  
7 counsel, Mr. Orth's case in *C-20-352701-I* was pending adjudication and counsel advised Mr. Orth's  
8 parole revocation hearing would not proceed while his pending criminal matter remained unresolved. On  
9 November 4, 2021, Mr. Orth pled guilty to the crime of Stop Required on Signal of Police Officer (*C-*  
10 *20-352701-I*). Mr. Orth subsequently withdrew his counsel and represented himself. Mr. Orth advised  
11 the Board that he was moving to withdraw his plea in *C-20-352701-I*. The Board continued his hearing  
12 to allow Mr. Orth to litigate his issues in district court regarding his plea before proceeding with the  
13 revocation hearing. On March 22, 2022, the Board held a parole revocation hearing and revoked Mr.  
14 Orth's parole to March 1, 2024, and restored all of Mr. Orth's forfeited statutory credit earned prior to  
15 the date of revocation. On August 8, 2022, the Eighth Judicial District Court sentenced Mr. Orth to twelve  
16 to thirty months in prison to run concurrent with his life sentences (*C-20-352701-I*). On May 2, 2023,  
17 Mr. Orth filed a petition claiming that the Board deferred holding a timely parole revocation hearing and  
18 requested a recalculation of his credits earned toward cases CR05-1459, CR06-2177 and *C-20-352701-*  
19 *1* based on the alleged delayed timeframe between his return to High Desert State Prison and his  
20 revocation hearing.

21 WHEREFORE THE COURT CONCLUDES that NEV. REV. STAT. 34.720(1) allows a petitioner  
22 to seek habeas relief by challenging his judgment of conviction or sentence in a criminal case. NEV. REV.

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23  
24 <sup>2</sup> Since Mr. Orth's sentences carry a maximum life sentence, his parole expiration date is "life"  
in cases CR05-1459 and CR06-2177.

25 <sup>3</sup> Mr. Orth's other parole violations include: associating with convicted felons and failing to pay  
26 monthly supervision fees (directives), failing to provide updates regarding an overnight stay, proof of  
27 employment and remaining at a certain residence after being directed to move out (conduct), ingesting  
28 methamphetamines (controlled substances), having beer in his possession (intoxicants), possessing a  
firearm and ammunition (weapons), failing to provide proof of completion of mandatory substance abuse  
treatment (special condition 1) and failing to provide proof of completion of mandatory mental health  
treatment (special condition 3). The State withdrew the controlled substances and intoxicants violations  
due to insufficient evidence.

1 STAT. 34.720(2) also allows a petitioner to seek habeas relief by challenging the computation of time he  
2 served pursuant to a judgment of conviction. However, NEV. REV. STAT. 34.720 does not permit a  
3 petitioner to challenge the actions of the Board. *See Anselmo v. Bisbee*, 133 Nev. 317, 319, 396 P.3d 848,  
4 850 (2017) (“[T]here is no applicable statutory vehicle through which [a petitioner] may challenge the  
5 Board’s actions.”) (alterations added). In this case, Mr. Orth is neither challenging his judgments of  
6 conviction or the sentences in his criminal cases nor the computation of time he served pursuant to his  
7 judgments of conviction. Instead, Mr. Orth is challenging the actions of the Board regarding the  
8 timeliness of his parole revocation hearing and the application of credits earned based solely on the timing  
9 of the Board’s revocation hearing under NEV. REV. STAT. 213.1517(3) and (4). Because NEV. REV. STAT.  
10 34.720 does not permit a petitioner to challenge the actions of the Board, Mr. Orth fails to state a claim  
11 for post-conviction habeas relief. Therefore, Mr. Orth’s amended petition is dismissed because he fails  
12 to present a cognizable claim for habeas relief under NEV. REV. STAT. 34.720.

13 WHEREFORE THE COURT FURTHER CONCLUDES that conceivably, this Court could  
14 exercise its discretion to treat Mr. Orth’s amended petition as a petition for writ of mandamus. But it  
15 would be futile for this Court to undertake such action because Mr. Orth’s amended petition still fails to  
16 present a viable claim for mandamus relief. The proper vehicle to remedy the Board’s purported failure  
17 to comply with the timing requirements of NEV. REV. STAT. 213.1517(3) and (4) – if such a failure  
18 occurred at all – would have been for Mr. Orth to file a petition for writ of mandamus requiring the Board  
19 to fulfill its statutory mandate to hold a timely revocation hearing. *See, e.g., Brewery Arts Center v. State*  
20 *Bd. Of Examiners*, 108 Nev. 1050, 1053-54, 843 P.2d 369, 372 (1992); *see also Anselmo*, 133 Nev. at  
21 319, 396 P.3d at 850. That issue, however, is moot because the Board already held a hearing. *See, e.g.,*  
22 *Personhood of Nevada v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (Recognizing that an  
23 issue is moot when the court can no longer grant effective relief). If Mr. Orth thought the Board was  
24 evading its duty to hold a timely hearing under NEV. REV. STAT. 213.1517, the time for him to file a  
25 mandamus petition was when the Board had not held a revocation hearing within the statutorily required  
26 sixty days of his return to High Desert State Prison, which expired on January 8, 2021 – Mr. Orth was  
27 returned to High Desert State prison on November 9, 2020, making January 8, 2021, the deadline for  
28 holding Mr. Orth’s revocation hearing. And when it held the necessary hearing, the Board exercised its

1 discretion to revoke Mr. Orth's parole until a specific date – March 1, 2024. The decision to revoke Mr.  
2 Orth's parole until the specified date of March 1, 2024, was well within the Board's discretion under  
3 NEV. REV. STAT. 213.1519(1)(b), even if the Board had held Mr. Orth's revocation hearing within 60  
4 days of Mr. Orth's return to High Desert State Prison. Mr. Orth cites no authority to the contrary. Instead,  
5 Mr. Orth's Exhibit 4 – a letter from the Board addressing a request from Mr. Orth for a change to the  
6 period of revocation – correctly cites statutes granting the Board the authority to revoke Mr. Orth's parole  
7 for up to 5 years because Mr. Orth committed a new felony offense. *See* NEV. REV. STAT. 213.1519(1)(b);  
8 NEV. REV. STAT. 213.142(2). And in *Matter of Smith*, 506 P.3d 325, 328 n.3 (Nev. 2022), the Nevada  
9 Supreme Court expressly declined to address an argument that the state district court has no authority to  
10 recalculate the Board's parole revocation if the Board did not hold a timely hearing under NEV. REV.  
11 STAT. 213.1517 when deciding *Smith*, leaving that an open issue that is ripe for this Court's consideration.  
12 In other words, even if the Board held Mr. Orth's revocation hearing by the statutory deadline of January  
13 8, 2021, the Board could have revoked Mr. Orth's parole until January 8, 2026, which is nearly two years  
14 beyond the March 1, 2024, date the Board selected. And Mr. Orth cites nothing to demonstrate that the  
15 Board would have selected a different date if the Board had conducted an earlier hearing. The best Mr.  
16 Orth can do is speculate as to what might have happened at an earlier hearing, but speculation about what  
17 the Board might do is no basis for granting relief. *See Niergarth v. State*, 105 Nev. 26, 29, 768 P.2d 882,  
18 884 (1989). Therefore, Mr. Orth's amended petition is dismissed because even if this Court considers it  
19 as a request for mandamus relief, he fails to plead a viable theory for mandamus relief.

20 WHEREFORE THE COURT FURTHER CONCLUDES that even if Mr. Orth could challenge  
21 the Board's decisions in a habeas petition, he cannot proceed to an evidentiary hearing on his amended  
22 petition if his factual allegations are "belied or repelled by the record." *Hargrove v. State*, 100 Nev. 498,  
23 503, 686 P.2d 222, 225 (1984). Mr. Orth is correct that a parole revocation proceeding may involve a  
24 loss of liberty, and therefore requires certain procedural due process protections for the parolee. *Anaya*  
25 *v. State*, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980); *see also Hornback v. Warden, Nevada State Prison*,  
26 97 Nev. 98, 100, 625 P.2d 83,84 (1981). Still, as a parole revocation hearing differs from a criminal  
27 prosecution, the full panoply of constitutional protections afforded a criminal defendant do not apply. *Id*;  
28 *see also Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *Morrissey v. Brewer*, 408 U.S. 471 (1972). And Mr.

1 Orth fails to show a violation of the flexible standard of due process applies here. The United States  
2 Supreme Court, in *Gagnon* and *Morrissey*, outlined the minimal procedures necessary to revoke parole.  
3 Those procedures include a preliminary inquiry to determine whether there is probable cause to believe  
4 the parolee violated the conditions of his parole, notice of the alleged parole violations, a chance to appear  
5 and speak on his own behalf and to bring in relevant information, an opportunity to question persons  
6 giving adverse information, and written findings by the hearing officer, who must be “someone not  
7 directly involved in the case.” *Morrissey*, 408 U.S. at 485-87. If probable cause is found, the parolee is  
8 then entitled to a formal revocation hearing at which the same rights attach. *Gagnon*, 411 U.S. at 786.  
9 The function of the final revocation hearing is two-fold, as the parole board must determine whether the  
10 alleged violations occurred, and if “the facts as determined warrant revocation.” *Morrissey*, 408 U.S. at  
11 480; *see also Anaya*, 96 Nev. at 122, 606 P.2d at 157. As explained below, Mr. Orth’s claims of violations  
12 of due process are repelled by the record. Mr. Orth’s claims about the lack of notice and delays in his  
13 revocation hearing are inconsistent with the factual record, which shows that the Board delayed the  
14 revocation hearing at Mr. Orth’s request to allow for plea negotiations. Similarly, Mr. Orth’s claims  
15 addressing the preliminary inquiry also fail because Mr. Orth waived the preliminary inquiry. Because  
16 Mr. Orth’s claims are belied by the record, Mr. Other’s amended petition is dismissed.

17 WHEREFORE THE COURT FURTHER CONCLUDES that on November 4, 2020, Mr. Orth  
18 received his Notice of Rights, which included violations for directives, conduct, weapons, special  
19 condition 1 and special condition 3. Mr. Orth waived his right to a preliminary inquiry. After waiving his  
20 preliminary inquiry, Mr. Orth continued his parole revocation hearing six times with counsel present at  
21 every hearing. According to Mr. Orth’s counsel, Mr. Orth’s case in *C-20-352701-1* was pending  
22 adjudication and counsel advised Mr. Orth’s parole revocation hearing would not proceed while his  
23 pending criminal matter remained unresolved. Thus, although the charges in the underlying criminal  
24 proceeding changed throughout plea negotiations, Mr. Orth always knew that the revocation proceeding  
25 was tied to the new criminal offenses that were the subject of the underlying criminal proceedings that  
26 led to his guilty plea. For those reasons, the record unequivocally shows that Mr. Orth had proper notice  
27 of the basis for the revocation, and he waived his right to a preliminary inquiry. Mr. Orth subsequently  
28 withdrew his counsel and represented himself. Mr. Orth advised the Board that he was moving to

1 withdraw his plea in *C-20-352701-I*. The Board continued his hearing to allow Mr. Orth to litigate his  
2 issues in district court regarding his plea before proceeding with the revocation hearing. The Board then  
3 held Mr. Orth's parole revocation hearing on March 22, 2022, because Mr. Orth still insisted on going  
4 forward after the Board advised him that his hearing regarding the withdrawing of his plea was set for  
5 the next week in district court. At the revocation hearing, Mr. Orth testified and presented evidence.  
6 Then, after the Board deliberated, the Board revoked Mr. Orth's parole<sup>4</sup> through March 1, 2024, and  
7 restored his forfeited credits that were earned prior to his parole revocation. Since Mr. Orth received  
8 proper notice of his violation, waived his right to a preliminary inquiry, knowingly waived his parole  
9 revocation hearing within the time required by NEV. REV. STAT. 213.1517 with counsel present, and made  
10 representations that he wanted to withdraw his plea but insisted on proceeding with the revocation hearing  
11 despite the issues regarding his plea remaining unresolved, Mr. Orth fails to demonstrate a violation of  
12 his right to procedural due process. *See, e.g., Matter of Smith*, 506 P.3d at 328 n.2 ("We note, however,  
13 that a petitioner may not leverage an error he or she invited or waived. Thus, where a parolee delays the  
14 revocation hearing by requesting continuances pending the outcome of the parolee's new criminal  
15 charges, neither due process nor NRS 213.1517 will require the Parole Board to hold the revocation  
16 hearing within 60 days of the parolee's return to NDOC.") (citation omitted).

17 **Dated this 29th day of June, 2023**  
THEREFORE, IT IS HEREBY ORDERED that Mr. Orth's First Amended Petition for Writ of  
18 Habeas Corpus (Post-Conviction) is DISMISSED.

19  
20  
21 Submitted by:

22 AARON D. FORD  
23 Attorney General

24 /s/ Katrina A. Lopez  
25 Katrina A. Lopez (Bar No. 13394)  
26 Deputy Attorney General

  
**0C9 10B F32E FE4C**  
**Tierra Jones**  
**District Court Judge**

27 <sup>4</sup> The Board determined that Mr. Orth violated the following terms and conditions of his parole:  
28 directives, conduct, weapons, special condition 1, and special condition 3. The Board also determined  
that Mr. Orth fled or attempted to elude law enforcement in *C-20-352701-I* (laws) based on his guilty  
plea agreement.

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Sean Orth, Plaintiff(s)

CASE NO: A-23-869964-W

7 vs.

DEPT. NO. Department 10

8 Brian Williams, Warden at High  
9 Desert State Prison, NV,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Decision and Order was served via the court's electronic eFile system  
to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 6/29/2023

16 Marsha Landreth

mlandreth@ag.nv.gov

17 Rikki Garate

rgarate@ag.nv.gov

18 Katrina Lopez

KSamuels@ag.nv.gov

19 Cheryl Martinez

cjmartinez@ag.nv.gov

20

21

22

23

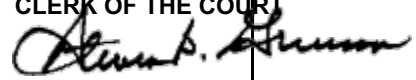
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NEOJ

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SEAN ORTH,

Petitioner,

Case No: A-23-869964-W

Dept. No: X

vs.

BRIAN WILLIAMS, WARDEN AT HIGH  
DESERT STATE PRISON, NV,

Respondent,

**NOTICE OF ENTRY OF ORDER**

**PLEASE TAKE NOTICE** that on June 29, 2023, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on July 3, 2023.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Cierra Borum

Cierra Borum, Deputy Clerk

**CERTIFICATE OF E-SERVICE / MAILING**

I hereby certify that on this 3 day of July 2023, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

Clark County District Attorney's Office  
Attorney General's Office – Appellate Division-

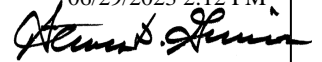
☒ The United States mail addressed as follows:

Sean Orth # 96723  
P.O. Box 650  
Indian Springs, NV 89070

/s/ Cierra Borum

Cierra Borum, Deputy Clerk



  
CLERK OF THE COURT

1 **DAO**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5 SEAN ORTH,

6 Petitioner,

7 vs.

8 BRIAN WILLIAMS, WARDEN AT HIGH  
9 DESERT STATE PRISON, NV,

10 Respondent.

Case No. A-23-869964-W

Dept. No. X

11 **DECISION AND ORDER**

12 THIS CAUSE came before the Honorable Tierra Jones on June 28, 2023, for a hearing of  
13 Petitioner Sean Orth's First Amended Petition for a Writ of Habeas Corpus (Post-Conviction) filed on  
14 May 2, 2023. The State filed a response<sup>1</sup> on June 7, 2023, and Respondents filed a motion to dismiss on  
15 June 22, 2023. Deputy Attorney General Katrina A. Lopez appeared on behalf of Respondents. Petitioner  
16 Sean Orth was not present. At the hearing, the Court did not entertain argument and made its decision  
17 based solely upon the pleadings.

18 THE COURT FINDS that Petitioner Sean Orth ("Mr. Orth") is currently incarcerated at High  
19 Desert State Prison. He is serving time for criminal acts he committed in 2005 and 2006 (CR05-1459)  
20 (CR06-2177). The Second Judicial District Court adjudicated Mr. Orth guilty of Robbery with Use of a  
21 Deadly Weapon, Conspiracy to Commit Robbery with Use of a Deadly Weapon, and Eluding an Officer  
22 (CR05-1459). The Court also adjudicated Mr. Orth guilty of Trafficking in a Controlled Substance and  
23 two counts of Ex-Felon in Possession of a Firearm (CR06-2177). The Court sentenced Mr. Orth under  
24 the large habitual offender statute, imposing 6 concurrent sentences of life with the possibility of parole  
25 after 10 years. On November 26, 2018, the Board of Parole Commissioners ("the Board") paroled Mr.

26 ///

27  
28 <sup>1</sup> The State argued in its response that Petitioner Sean Orth's challenge to the decisions made by  
the Board of Parole Commissioners is not cognizable in habeas proceedings and requested that the  
Attorney General's Office respond if additional briefing is needed.

1 Orth in CR05-1459 and CR06-2177.<sup>2</sup> After being paroled, Mr. Orth violated various terms and conditions  
2 of his parole including fleeing or attempting to elude law enforcement on November 3, 2020<sup>3</sup> (*C-20-*  
3 *352701-I*). After his arrest, the Board and the Division of Parole and Probation issued a retake warrant  
4 returning Mr. Orth to High Desert State Prison.

5 THE COURT FURTHER FINDS that after waiving his preliminary inquiry, Mr. Orth continued  
6 his parole revocation hearing six times with counsel present at every hearing. According to Mr. Orth's  
7 counsel, Mr. Orth's case in *C-20-352701-I* was pending adjudication and counsel advised Mr. Orth's  
8 parole revocation hearing would not proceed while his pending criminal matter remained unresolved. On  
9 November 4, 2021, Mr. Orth pled guilty to the crime of Stop Required on Signal of Police Officer (*C-*  
10 *20-352701-I*). Mr. Orth subsequently withdrew his counsel and represented himself. Mr. Orth advised  
11 the Board that he was moving to withdraw his plea in *C-20-352701-I*. The Board continued his hearing  
12 to allow Mr. Orth to litigate his issues in district court regarding his plea before proceeding with the  
13 revocation hearing. On March 22, 2022, the Board held a parole revocation hearing and revoked Mr.  
14 Orth's parole to March 1, 2024, and restored all of Mr. Orth's forfeited statutory credit earned prior to  
15 the date of revocation. On August 8, 2022, the Eighth Judicial District Court sentenced Mr. Orth to twelve  
16 to thirty months in prison to run concurrent with his life sentences (*C-20-352701-I*). On May 2, 2023,  
17 Mr. Orth filed a petition claiming that the Board deferred holding a timely parole revocation hearing and  
18 requested a recalculation of his credits earned toward cases CR05-1459, CR06-2177 and *C-20-352701-*  
19 *1* based on the alleged delayed timeframe between his return to High Desert State Prison and his  
20 revocation hearing.

21 WHEREFORE THE COURT CONCLUDES that NEV. REV. STAT. 34.720(1) allows a petitioner  
22 to seek habeas relief by challenging his judgment of conviction or sentence in a criminal case. NEV. REV.

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23  
24 <sup>2</sup> Since Mr. Orth's sentences carry a maximum life sentence, his parole expiration date is "life"  
in cases CR05-1459 and CR06-2177.

25 <sup>3</sup> Mr. Orth's other parole violations include: associating with convicted felons and failing to pay  
26 monthly supervision fees (directives), failing to provide updates regarding an overnight stay, proof of  
27 employment and remaining at a certain residence after being directed to move out (conduct), ingesting  
28 methamphetamines (controlled substances), having beer in his possession (intoxicants), possessing a  
firearm and ammunition (weapons), failing to provide proof of completion of mandatory substance abuse  
treatment (special condition 1) and failing to provide proof of completion of mandatory mental health  
treatment (special condition 3). The State withdrew the controlled substances and intoxicants violations  
due to insufficient evidence.

STAT. 34.720(2) also allows a petitioner to seek habeas relief by challenging the computation of time he served pursuant to a judgment of conviction. However, NEV. REV. STAT. 34.720 does not permit a petitioner to challenge the actions of the Board. *See Anselmo v. Bisbee*, 133 Nev. 317, 319, 396 P.3d 848, 850 (2017) (“[T]here is no applicable statutory vehicle through which [a petitioner] may challenge the Board’s actions.”) (alterations added). In this case, Mr. Orth is neither challenging his judgments of conviction or the sentences in his criminal cases nor the computation of time he served pursuant to his judgments of conviction. Instead, Mr. Orth is challenging the actions of the Board regarding the timeliness of his parole revocation hearing and the application of credits earned based solely on the timing of the Board’s revocation hearing under NEV. REV. STAT. 213.1517(3) and (4). Because NEV. REV. STAT. 34.720 does not permit a petitioner to challenge the actions of the Board, Mr. Orth fails to state a claim for post-conviction habeas relief. Therefore, Mr. Orth’s amended petition is dismissed because he fails to present a cognizable claim for habeas relief under NEV. REV. STAT. 34.720.

WHEREFORE THE COURT FURTHER CONCLUDES that conceivably, this Court could exercise its discretion to treat Mr. Orth’s amended petition as a petition for writ of mandamus. But it would be futile for this Court to undertake such action because Mr. Orth’s amended petition still fails to present a viable claim for mandamus relief. The proper vehicle to remedy the Board’s purported failure to comply with the timing requirements of NEV. REV. STAT. 213.1517(3) and (4) – if such a failure occurred at all – would have been for Mr. Orth to file a petition for writ of mandamus requiring the Board to fulfill its statutory mandate to hold a timely revocation hearing. *See, e.g., Brewery Arts Center v. State Bd. Of Examiners*, 108 Nev. 1050, 1053-54, 843 P.2d 369, 372 (1992); *see also Anselmo*, 133 Nev. at 319, 396 P.3d at 850. That issue, however, is moot because the Board already held a hearing. *See, e.g., Personhood of Nevada v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (Recognizing that an issue is moot when the court can no longer grant effective relief). If Mr. Orth thought the Board was evading its duty to hold a timely hearing under NEV. REV. STAT. 213.1517, the time for him to file a mandamus petition was when the Board had not held a revocation hearing within the statutorily required sixty days of his return to High Desert State Prison, which expired on January 8, 2021 – Mr. Orth was returned to High Desert State prison on November 9, 2020, making January 8, 2021, the deadline for holding Mr. Orth’s revocation hearing. And when it held the necessary hearing, the Board exercised its

1 discretion to revoke Mr. Orth's parole until a specific date – March 1, 2024. The decision to revoke Mr.  
2 Orth's parole until the specified date of March 1, 2024, was well within the Board's discretion under  
3 NEV. REV. STAT. 213.1519(1)(b), even if the Board had held Mr. Orth's revocation hearing within 60  
4 days of Mr. Orth's return to High Desert State Prison. Mr. Orth cites no authority to the contrary. Instead,  
5 Mr. Orth's Exhibit 4 – a letter from the Board addressing a request from Mr. Orth for a change to the  
6 period of revocation – correctly cites statutes granting the Board the authority to revoke Mr. Orth's parole  
7 for up to 5 years because Mr. Orth committed a new felony offense. *See* NEV. REV. STAT. 213.1519(1)(b);  
8 NEV. REV. STAT. 213.142(2). And in *Matter of Smith*, 506 P.3d 325, 328 n.3 (Nev. 2022), the Nevada  
9 Supreme Court expressly declined to address an argument that the state district court has no authority to  
10 recalculate the Board's parole revocation if the Board did not hold a timely hearing under NEV. REV.  
11 STAT. 213.1517 when deciding *Smith*, leaving that an open issue that is ripe for this Court's consideration.  
12 In other words, even if the Board held Mr. Orth's revocation hearing by the statutory deadline of January  
13 8, 2021, the Board could have revoked Mr. Orth's parole until January 8, 2026, which is nearly two years  
14 beyond the March 1, 2024, date the Board selected. And Mr. Orth cites nothing to demonstrate that the  
15 Board would have selected a different date if the Board had conducted an earlier hearing. The best Mr.  
16 Orth can do is speculate as to what might have happened at an earlier hearing, but speculation about what  
17 the Board might do is no basis for granting relief. *See Niergarth v. State*, 105 Nev. 26, 29, 768 P.2d 882,  
18 884 (1989). Therefore, Mr. Orth's amended petition is dismissed because even if this Court considers it  
19 as a request for mandamus relief, he fails to plead a viable theory for mandamus relief.

20 WHEREFORE THE COURT FURTHER CONCLUDES that even if Mr. Orth could challenge  
21 the Board's decisions in a habeas petition, he cannot proceed to an evidentiary hearing on his amended  
22 petition if his factual allegations are "belied or repelled by the record." *Hargrove v. State*, 100 Nev. 498,  
23 503, 686 P.2d 222, 225 (1984). Mr. Orth is correct that a parole revocation proceeding may involve a  
24 loss of liberty, and therefore requires certain procedural due process protections for the parolee. *Anaya*  
25 *v. State*, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980); *see also Hornback v. Warden, Nevada State Prison*,  
26 97 Nev. 98, 100, 625 P.2d 83,84 (1981). Still, as a parole revocation hearing differs from a criminal  
27 prosecution, the full panoply of constitutional protections afforded a criminal defendant do not apply. *Id*;  
28 *see also Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *Morrissey v. Brewer*, 408 U.S. 471 (1972). And Mr.

1 Orth fails to show a violation of the flexible standard of due process applies here. The United States  
2 Supreme Court, in *Gagnon* and *Morrissey*, outlined the minimal procedures necessary to revoke parole.  
3 Those procedures include a preliminary inquiry to determine whether there is probable cause to believe  
4 the parolee violated the conditions of his parole, notice of the alleged parole violations, a chance to appear  
5 and speak on his own behalf and to bring in relevant information, an opportunity to question persons  
6 giving adverse information, and written findings by the hearing officer, who must be “someone not  
7 directly involved in the case.” *Morrissey*, 408 U.S. at 485-87. If probable cause is found, the parolee is  
8 then entitled to a formal revocation hearing at which the same rights attach. *Gagnon*, 411 U.S. at 786.  
9 The function of the final revocation hearing is two-fold, as the parole board must determine whether the  
10 alleged violations occurred, and if “the facts as determined warrant revocation.” *Morrissey*, 408 U.S. at  
11 480; *see also Anaya*, 96 Nev. at 122, 606 P.2d at 157. As explained below, Mr. Orth’s claims of violations  
12 of due process are repelled by the record. Mr. Orth’s claims about the lack of notice and delays in his  
13 revocation hearing are inconsistent with the factual record, which shows that the Board delayed the  
14 revocation hearing at Mr. Orth’s request to allow for plea negotiations. Similarly, Mr. Orth’s claims  
15 addressing the preliminary inquiry also fail because Mr. Orth waived the preliminary inquiry. Because  
16 Mr. Orth’s claims are belied by the record, Mr. Other’s amended petition is dismissed.

17 WHEREFORE THE COURT FURTHER CONCLUDES that on November 4, 2020, Mr. Orth  
18 received his Notice of Rights, which included violations for directives, conduct, weapons, special  
19 condition 1 and special condition 3. Mr. Orth waived his right to a preliminary inquiry. After waiving his  
20 preliminary inquiry, Mr. Orth continued his parole revocation hearing six times with counsel present at  
21 every hearing. According to Mr. Orth’s counsel, Mr. Orth’s case in *C-20-352701-1* was pending  
22 adjudication and counsel advised Mr. Orth’s parole revocation hearing would not proceed while his  
23 pending criminal matter remained unresolved. Thus, although the charges in the underlying criminal  
24 proceeding changed throughout plea negotiations, Mr. Orth always knew that the revocation proceeding  
25 was tied to the new criminal offenses that were the subject of the underlying criminal proceedings that  
26 led to his guilty plea. For those reasons, the record unequivocally shows that Mr. Orth had proper notice  
27 of the basis for the revocation, and he waived his right to a preliminary inquiry. Mr. Orth subsequently  
28 withdrew his counsel and represented himself. Mr. Orth advised the Board that he was moving to

1 withdraw his plea in *C-20-352701-I*. The Board continued his hearing to allow Mr. Orth to litigate his  
2 issues in district court regarding his plea before proceeding with the revocation hearing. The Board then  
3 held Mr. Orth's parole revocation hearing on March 22, 2022, because Mr. Orth still insisted on going  
4 forward after the Board advised him that his hearing regarding the withdrawing of his plea was set for  
5 the next week in district court. At the revocation hearing, Mr. Orth testified and presented evidence.  
6 Then, after the Board deliberated, the Board revoked Mr. Orth's parole<sup>4</sup> through March 1, 2024, and  
7 restored his forfeited credits that were earned prior to his parole revocation. Since Mr. Orth received  
8 proper notice of his violation, waived his right to a preliminary inquiry, knowingly waived his parole  
9 revocation hearing within the time required by NEV. REV. STAT. 213.1517 with counsel present, and made  
10 representations that he wanted to withdraw his plea but insisted on proceeding with the revocation hearing  
11 despite the issues regarding his plea remaining unresolved, Mr. Orth fails to demonstrate a violation of  
12 his right to procedural due process. *See, e.g., Matter of Smith*, 506 P.3d at 328 n.2 ("We note, however,  
13 that a petitioner may not leverage an error he or she invited or waived. Thus, where a parolee delays the  
14 revocation hearing by requesting continuances pending the outcome of the parolee's new criminal  
15 charges, neither due process nor NRS 213.1517 will require the Parole Board to hold the revocation  
16 hearing within 60 days of the parolee's return to NDOC.") (citation omitted).

17 **Dated this 29th day of June, 2023**  
THEREFORE, IT IS HEREBY ORDERED that Mr. Orth's First Amended Petition for Writ of  
18 Habeas Corpus (Post-Conviction) is DISMISSED.

19  
20  
21 Submitted by:

22 AARON D. FORD  
23 Attorney General

24 /s/ Katrina A. Lopez  
25 Katrina A. Lopez (Bar No. 13394)  
26 Deputy Attorney General

  
\_\_\_\_\_  
**0C9 10B F32E FE4C**  
**Tierra Jones**  
**District Court Judge**

27 <sup>4</sup> The Board determined that Mr. Orth violated the following terms and conditions of his parole:  
28 directives, conduct, weapons, special condition 1, and special condition 3. The Board also determined  
that Mr. Orth fled or attempted to elude law enforcement in *C-20-352701-I* (laws) based on his guilty  
plea agreement.

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Sean Orth, Plaintiff(s)

CASE NO: A-23-869964-W

7 vs.

DEPT. NO. Department 10

8 Brian Williams, Warden at High  
9 Desert State Prison, NV,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Decision and Order was served via the court's electronic eFile system  
to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 6/29/2023

16 Marsha Landreth

mlandreth@ag.nv.gov

17 Rikki Garate

rgarate@ag.nv.gov

18 Katrina Lopez

KSamuels@ag.nv.gov

19 Cheryl Martinez

cjmartinez@ag.nv.gov

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**June 28, 2023**

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A-23-869964-W	Sean Orth, Plaintiff(s)
	vs.
	Brian Williams, Warden at High Desert
	State Prison, NV, Defendant(s)

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<b>June 28, 2023</b>	<b>8:30 AM</b>	<b>All Pending Motions</b>
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<b>HEARD BY:</b> Jones, Tierra	<b>COURTROOM:</b> RJC Courtroom 14B
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**COURT CLERK:** Kory Schlitz

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- PETITION FOR WRIT OF HABEAS CORPUS... DEFENDANT'S MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS...

Defendant not present; Deputy District Attorney Cal Thoman present on behalf of the State; Deputy Attorney General Katrina Lopez present.

COURT INDICATED the State filed a response, and the Attorney General's Office filed a motion to dismiss and ORDERED Motion to Dismiss GRANTED which renders the States Opposition MOOT. Ms. Lopez stated she would prepare an order.

NDC

CLERK'S NOTE: A copy of this Minute Order has been mailed to: Sean Orth #96723, PO BOX 650, Indian Springs, Nevada 89070. (ks 6-28-2023)



# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT  
DOCKET ENTRIES; CIVIL COVER SHEET; DECISION AND ORDER; NOTICE OF ENTRY OF  
ORDER; DISTRICT COURT MINUTES

SEAN RODNEY ORTH,

Plaintiff(s),

vs.

BRIAN WILLIAMS, WARDEN, HIGH  
DESERT STATE PRISON, NEVADA,

Defendant(s),

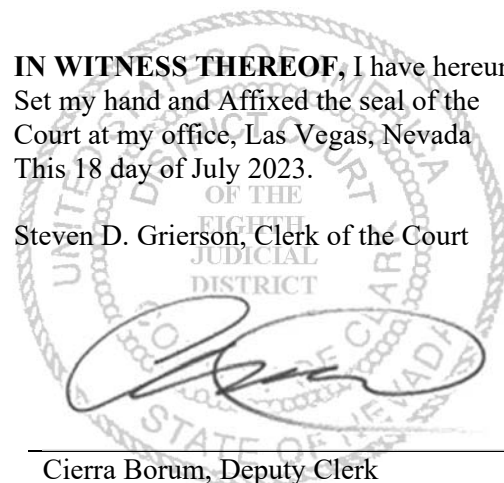
Case No: A-23-869964-W

Dept No: X

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 18 day of July 2023.

Steven D. Grierson, Clerk of the Court



Cierra Borum, Deputy Clerk