

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN RODNEY ORTH,
Appellant(s),

vs.

BRIAN WILLIAMS, WARDE AT HIGH
DESSERT STATE PRISON, NV,
Respondent(s),

Electronically Filed
Aug 21 2023 02:22 PM
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-23-869964-W

Docket No: 87007

RECORD ON APPEAL VOLUME 2

ATTORNEY FOR APPELLANT
SEAN ORTH #96723,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
AARON D. FORD,
ATTORNEY GENERAL
555 E. WASHINGTON AVE., STE. 3900
LAS VEGAS, NV 89101-1068

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

I N D E X

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A-23-869964-W

Sean Orth, Plaintiff(s)

vs.

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

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
		Motion for Enlargement of Time/ Petitioner's Motion to Strike Respondent's Motion to Dismiss Petition for a Writ of Habeas Corpus/ Petitioner's Motion to Strike Order of the Court Granting Respondent's Motion to Dismiss Petition for a Writ of Habeas Corpus.	



1 **NOTC**
2 AARON D. FORD
3 Attorney General
4 Katrina A. Lopez (Bar No. 13394)
5 Deputy Attorney General
6 State of Nevada
7 Office of the Attorney General
8 555 E. Washington Ave., Ste. 3900
9 Las Vegas, Nevada 89101-1068
10 (702) 486-3770 (phone)
11 (702) 486-2377 (fax)
12 KSamuels@ag.nv.gov
13 Attorneys for Respondents

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 SEAN ORTH,

11 Petitioner,

12 vs.

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

15 Respondent(s).

Case No. A-23-869964-W
Dept No. X

Date of Hearing: 06/28/2023
Time of Hearing: 8:30 am

16 **NOTICE OF MANUAL FILING OF EXHIBIT J, IN SUPPORT**
17 **OF THE STATE'S MOTION TO DISMISS**

18 The undersigned, AARON D. FORD, Attorney General of the State of Nevada, by and through
19 Deputy Attorney General KATRINA A. LOPEZ, hereby gives notice that Exhibit J, in support of the
20 State's Motion to Dismiss, a DVD bearing copies of the videos of parole board hearings from January
21 12, 2021 through March 22, 2022, is being manually filed with the Court and mailed to the Warden of
22 High Desert State Prison.

23 Dated this 22nd day of June 2023.

24 Submitted by:

25 AARON D. FORD
26 Attorney General

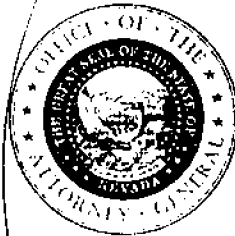
27 By: /s/ Katrina A. Lopez
28 KATRINA A. LOPEZ
Deputy Attorney General

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I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or e-mail; or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days to the following unregistered participant:

/s/ M. Landreth
An employee of the Office of the Attorney General

Orth v. Warden
Sean Orth A-23-869964-W



Prepared by
Marsha Landreth:
6/22/2023

Exhibit J
Parole Revocation Videos
01/12/2021-03/22/2022



AARON D. FORD
Attorney General

CRAIG A. NEWBY
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Ave., Suite 3900
Las Vegas, Nevada 89101

TERESA BENITEZ-
THOMPSON
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

June 22, 2023

Sean Orth,
Offender ID #96723
c/o High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070-0650

**Re: First Amended Petition for Writ of Habeas Corpus
A-23-869964-W, 8th Judicial District Court**

Dear Mr. Orth:

Attached are copies of our Response to your First Amended Petition for Writ of Habeas Corpus and the index and exhibits referenced in the Response. The video files are forwarded to the Warden on a CD. You will need to submit a kite to the Warden to arrange to have the videos played for you.

Sincerely,

/s/ Katrina A. Lopez

Katrina A. Lopez
Deputy Attorney General
Tel. (702) 486-3770
ksamuels@ag.nv.gov

AARON D. FORD
Attorney General

KYLE F. N. GEORGE
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave., Suite 3900
Las Vegas, Nevada 89101

TERESA BENITEZ-
THOMPSON
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

June 23, 2023

Via U.S. Mail

Warden Brian Williams
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

Re: Sean Orth, Offender ID 96723

Dear Warden Williams:

Enclosed, please find a CD which contains the videos of parole revocation hearings held in reference to Mr. Orth dated between January 12, 2021 through March 22, 2022. It is an exhibit to the response our office filed in response to a habeas petition he filed with the District Court. I have also enclosed a copy of the letter provided to Mr. Orth regarding this CD.

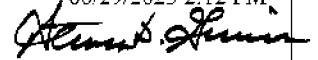
If and when Mr. Orth sends a kite, please arrange to have these videos played for him. He is not to be given possession of the CD under any circumstances. Please contact us with any questions.

Sincerely,

/s/ Katrina A. Lopez

Katrina A. Lopez
Deputy Attorney General
(702) 486-3770
ksamuels@ag.nv.gov

KAL:mll
Atch


CLERK OF THE COURT

1 **DAO**

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

5 SEAN ORTH,

Case No. A-23-869964-W

6 Petitioner,

Dept. No. X

7 vs.

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

10 Respondent.

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 response¹ 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 ¹ 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 CR06-2177.² 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, 2020³ (*C-20-*
3 *352701-1*). 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-20-352701-1* 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 *20-352701-1*). 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-20-352701-1*. 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-20-352701-1*). 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.

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

25 ³ 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-20-352701-1*. 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 parole⁴ 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


27
28 **0C9 10B F32E FE4C**
Tierra Jones
District Court Judge

⁴ The Board determined that Mr. Orth violated the following terms and conditions of his parole:
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-20-352701-1* (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



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:

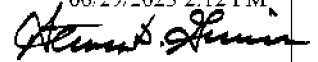
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☒ 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.

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20 (CR06-2177). The Second Judicial District Court adjudicated Mr. Orth guilty of Robbery with Use of a
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7 counsel, Mr. Orth's case in *C-20-352701-1* 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 *20-352701-1*). 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-20-352701-1*. 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-20-352701-1*). 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.

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

25 ³ 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-20-352701-1*. 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 parole⁴ 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


27
28 **0C9 10B F32E FE4C**
Tierra Jones
District Court Judge

⁴ The Board determined that Mr. Orth violated the following terms and conditions of his parole:
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-20-352701-1* (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

1. Stan Rodney CRTA #96723

2. P.O. Box 650

3. Indian Springs, Nevada 89026

4.

5.

6.

DISTRICT COURT

7.

Clark County, Nevada

8.

9. Stan Rodney CRTA,

10. Petitioner,

CASE NO. A-23-869964-W

11. VS.

12. Brian Williams, Warden

Dep. No. X

13. High Desert State Prison,

14. Respondent,

15. _____

16.

17. Petitioner's Reply to State's Response to Petitioner's

18. Petition for a writ of HABEAS CORPUS

19.

20. Comes now, Stan Rodney CRTA, Petitioner pro se, who

21. Appears to respectfully Reply to the State's Response to

22. Petitioner's Petition for a writ of HABEAS CORPUS,

23. This Reply is supported by all papers, pleadings

24. and documents on file in this case and the points and

25. authorities below.

26. /

27. /

28. /

MEMORANDUM OF PETITION AND AUTHORITIES.

A. LEGAL ARGUMENT.

I. THE PETITION FOR A WRIT OF HABEAS CORPUS¹ SHOULD BE GRANTED.

District Attorney FOR Clark County HAS ANSWERED THE HABEAS PETITION ALLEGING ITS OPPOSITION THAT PETITIONER SHOULD SERVE HER VADA ATTORNEY GENERAL AND THE PETITION IS NOT COGNIZABLE UNDER NRS 31.720. STATE'S RESPONSE TO PETITIONER'S PETITION FOR A WRIT OF HABEAS CORPUS AT 2-3.

PETITIONER DID SERVE THE NEVADA ATTORNEY GENERAL², PETITIONER WILL SERVE THIS REPLY ON THE ATTORNEY GENERAL AND RESPONDENT'S ARGUMENT THIS PETITION IS NOT COGNIZABLE IS CONTRARY TO THE NEVADA SUPREME COURT'S DECISION IN STATE V. SIMON, 506 P.3d 325 (NEV. 2022) ALLEGED IN THE PETITION AT 5-7.

PETITIONER WAS RETURNED TO THE CUSTODY OF NDOC ON NOVEMBER 9, 2020 AND THE PAROLE BOARD DID NOT TAKE ACTION UNTIL MARCH 1, 2022 SANCTIONING PETITIONER TO THE YEARS LESSON PAROLE LIBERTIES WITHOUT TIME DEDUCTED FOR THE SIXTEEN (16) MONTHS PETITIONER WAS IN NDOC'S CUSTODY, STARTING THE SANCTION MARCH 1, 2022 TO MARCH 1, 2024 FOR PETITIONER'S COUNTY PLED TO STOP

1. PETITIONER REFERS TO THE FIRST AMENDED PETITION FOR A WRIT OF HABEAS CORPUS FILED MAY 02, 2023.

2. PLEASE SEE CERTIFICATE OF SERVICE ATTACHED TO PETITION.¹

1. RECALLED AT SUBMIT OF PETITION IN STATE V. DEAN KEENEY
2. ORTH, NO. C-20-352701-1 (Ct. Jud. Dist. Ct. 2020).²

3.

4. PETITIONER'S CASE IS THE EXACT SAME SITUATION IN SMITH.³ SMITH WAS
5. RETURNED TO NDCJ CUSTODY, THE PAROLE BOARD TOOK NO ACTION FOR A
6. YEAR AND THEN DETERMINED SMITH TO A YEAR REVOCATION OF PAROLE
7. WITHOUT TIME SERVED FOR THE YEAR IN CUSTODY FOR A NEW BURGLARY
8. CONVICTION. THE SMITH CASE UPHOLD THE DISTRICT COURT'S GRANT
9. OF PETITION FOR A WRIT OF HABEAS CORPUS AND HEID;

10. "HENCE THE PAROLE BOARD ISSUED A REVOKE WARRANT IN APRIL 2018, AT
11. WHICH POINT SMITH WAS RETURNED TO THE CUSTODY OF NDCJ AND RETU-
12. RNEED TO INCARCERATION AT THE PRISON. HIS PAROLE REVOCATION
13. HEARING WAS CONCLUDED ON AN ADEQUATE AUTOMATICALLY ON HIS
14. NEW CRIMINAL CHARGES IN JUNE 2019 - WITH IN EXCESS OF SIXTY
15.

16.

17. 3. PETITIONER WAS FREE TWO YEARS ON PAROLE IN CRO5-1459 / CRO6-2177.
18. PETITIONER WAS RETURNED TO NDCJ CUSTODY NOVEMBER 9, 2020 FOR
19. THE REVOCATION THAT RESULTED IN COURT PLAN TO STOP RECALLED AT
20. SUBMIT OF PETITION ON NOVEMBER 9, 2021 IN STATE V. ORTH, NO. C-20-
21. 352701-1. AS DEMONSTRATED IN EXHIBIT 4 ATTACHED TO THE PETITION.¹
22. PETITIONER'S PAROLE WAS REVOKED FOR TWO YEARS FOR THE COURT
23. PLAN TO STOP RECALLED AT SUBMIT OF PETITION. DETERMINING WILL NOT
24. OCCUR FOR STOP RECALLED UNTIL AUGUST 1, 2022. PETITIONER'S
25. REVOCATION OCCURRED WITHIN 1, 2022.

1 Days allowed by NRS 213.1517. We therefore conclude
2 that the parole Board exercised its authority under
3 statute and the District Court properly ordered MDCC
4 to reflect a parole revocation date of June 12, 2018⁴ to
5 ensure that any credits, expiration of his parole revocation
6 case and the start of sentence for the new case reflect
7 "June 12, 2018, Parole Revocation Date"
8 SOG P.31 at 328.

9
10 The remedy under Smith would be to order MDCC to
11 compute time starting the twelve (12) to thirty (30) months
12 present sentence in No. C-20-352701-1 to begin running
13 ~~the~~ from January 8, 2021⁴. Respondent's assertion that claim is
14 not cognizable under NRS 34.720 is rejected. Respondent has
15 not disputed the facts/credits.

16
17 Petitioner's sentence of twelve (12) to thirty (30) months
18 in No. C-20-352701-1 has expired if Smith is applied.
19
20

21 4. In Smith we was returned to MDCC custody April 2018, the
22 sixty days to his revocation under NRS 213.1517(3) was by
23 June 12, 2018 so the Smith court entered the new sentence
24 for burglary to begin on June 12, 2018. Id., the sixty day
25 in my case was January 8, 2021 which is when the stop
26 revocation sentence in No. C-20-352701-1 should begin.

B. conclusion.

4. PERSONNEL plays this HONORABLE COURT will grant the
5. PETITION AND ORDER NO. 10 TO CALCULATE THE TIME BETWEEN
6. JANUARY 8, 2021 AND NOW TO PERSONNELS SENTENCE IN C-20-
7. 352201-1.

Respectfully Submitted, JUNE 12, 2023.

16
17

Jean Oeth
JEAN OETH

CERTIFICATE OF SERVICE.

I, SEAN O'LEARY, DO HEREBY CERTIFY THAT ON JUNE 12, 2023
I DID MAIL A TRUE AND CORRECT COPY OF THE FOREGOING
REPLY TO JAMES'S RESPONSE TO JAMES'S PETITION FOR A WRIT
OF HABEAS CORPUS TO:

AA RON FORD

NEWARK ATTORNEY GENERAL

100 N. CARSON STREET

CARSON CITY, NEVADA 89701

AND

ALEXANDER CHEN

CHIEF DEPUTY DISTRICT ATTORNEY

200 LEWIS AVE

LAS VEGAS, NEVADA 89155-2212.

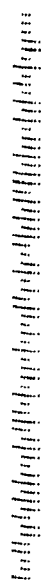

SEAN O'LEARY

Seav Cith 96723
Pe Box 650
Tulsa Spring, N.C.
89070

LAS VEGAS NV 890
16 JUN 2023 PM 3 L
3762

STEVEN D. CLIFFERSON,
OWNER OF THE CROWN
2nd FLOOR
LV, NV, 89155-1160

89101-630000



Steven D. Grierson

SEAN RODNEY ORTH #96723

PO Box 650

Indian Springs, NEVADA

89070

Pris Se

DISTRICT COURT

CLARK COUNTY, NEVADA

SEAN RODNEY ORTH,

PETITIONER,

CASE NO. A-23-869964-W

VS.

DEPT NO. X

BRIAN WILLIAMS, WARDEN

HOSP,

Respondent.

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, SEM ORTA DE HENRICH, CERTIFY THAT ON JULY 9, 2023
I DID MAIL A TRUE AND CORRECT COPY OF THE FOREGOING
NOTICE OF APPEARANCE TO KATRINA LOPEZ, DEPUTY NEVADA ATTORNEY
GENERAL, 555 E. WASHINGTON AVE, STE. 3100, LV, NV.
89101-1068.

Sem Orta

Sean Orth 96723

PO Box 650

Indian Springs, NV, 89070

RECEIVED

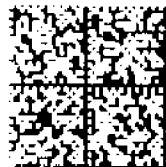
JUL 17 2023

CLERK OF THE COURT

3762

CLERK OF THE COURT
DISTRICT COURT
CLARK COUNTY NEVADA
200 LEWIS AVE - 3rd Floor
LV, NV, 89155-1160

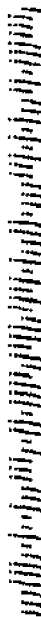
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ASTA

**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



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

July 31, 2023

Attorney:	C. Benjamin Scroggins	Case Number:	A-23-869964-W
	The Law Firm of C Benjamin	Department:	C-20-352701-1
	Scroggins Chtd		Department 10
	C Benjamin Scroggins		
	629 S Casino Center Blvd		
	Las Vegas NV 89101		

Defendant: Sean Rodney Orth

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: **1) Petitioner's Opposition to Respondents Motion to Dismiss... 2) Petitioner's Motion for Enlargement of Time / Motion to Strike Respondents Motion to Dismiss.. / Motion to Strike Order...et al**

Rule 3.70. Papers which May Not be Filed

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,
DC Criminal Desk # 27
Deputy Clerk of the Court

A-23-869964-W

Dept: X

LEFT SIDE
OF FILE PLEASE

Dear Clerk,

Please Find Enclosed For Filing Two Documents.

Thank you

Sean C. H.

SEAN RODNEY ORTH #16763

Post Office Box 650

Indian Springs, Nevada 89010

Pro Se

DISTRICT COURT
CLARK COUNTY, NEVADA

SEAN RODNEY ORTH

Petitioner,

CASE NO. A-23-86964

vs,

DEPT. NO. X

BRIAN WILLIAMS, WARDEN

HIGH DESERT STATE PRISON,

Respondent.

PETITIONERS OPPOSITION TO RESPONDENTS MOTION
TO DISMISS PETITION FOR A WRIT OF HABEAS CORPUS

Comes now, SEAN ORTH, Petitioner, who respectfully
appears to oppose Respondents motion to dismiss Petition
for a writ of Habeas Corpus.

This opposition is supported by all papers, pleadings and
documents on file in this case and the attached memorandum
of points and authorities.

RECEIVED

JUL 11 2023

CLERK OF THE COURT

POINTS AND AUTHORITIES.

A. INTRODUCTION.

PETITIONER PROCEEDS IN THIS HONORABLE COURT ON THE FIRST AMENDED PETITION FOR A WRIT OF HABEAS CORPUS FILED MAY 02, 2023 CHALLENGING A LOSS OF PAROLE LIBERTY FOR TWO YEARS IMPOSED BY THE NEVADA BOARD OF PAROLE COMMISSIONERS ("PAROLE BOARD") ON MARCH 22, 2022 WHICH IS A VIOLATION AND EFFECTS COMPLETION OF TIME FOR TERMS OF IMPRISONMENT PETITIONER IS SERVING AND EXCEEDS PETITIONER'S CURRENT IMPRISONMENT.

A HEARING ON THE PETITION WAS CALENDARED FOR JUNE 28, 2023.

ON JUNE 22, 2023 RESPONDENT FILED A MOTION TO DISMISS PETITION FOR A WRIT OF HABEAS CORPUS SERVED ON PETITIONER BY NOCC OFFICIALS IN THE EARLY MORNING HOURS OF JUNE 26, 2023.

PETITIONER WAS NOT TRANSPORTED TO THE COURT BY RESPONDENT ON JUNE 28, 2023 TO APPEAR IN THE HEARING ON THE PETITION. PETITIONER HAS BEEN ADVISED BY COUNSEL REPRESENTING PETITIONER IN AN APPEAL FOR THE SUPREME COURT OF NEVADA OF POLICE CONDUCT IN NO. C 20-352 (2021) THAT THIS HONORABLE COURT GRANTED RESPONDENT'S MOTION TO DISMISS PETITION FOR A WRIT OF HABEAS CORPUS ON JUNE 28, 2023 WHEN RESPONDENT FAILED TO TRANSPORT ME. THIS COURT DID NOT ALLOW PETITIONER AN OPPORTUNITY TO OPPOSE THE RESPONDENT'S MOTION TO DISMISS. PETITIONER FILES A MOTION REQUESTING AN ENFORCEMENT OF TIME / MOTION TO STRIKE MOTION TO DISMISS PETITION FOR A WRIT OF HABEAS CORPUS AND THE ORDER GRANTING IT SIMULTANEOUSLY TO FILING THIS OPPOSITION TO RESPONDENT'S MOTION TO DISMISS PETITION FOR A WRIT OF HABEAS CORPUS. RESPONDENT MISREPRESENTS THE LAW APPLICABLE TO THE ISSUES RAISED

IN THE PETITION AND PETITIONER DEMONSTRATES PETITIONER'S PETITION IS PROPERLY BEFORE THE COURT AND PETITIONER IS ENTITLED TO VIND THE SANCTION REVOKING PAROLE LIBERTIES AND IS ENTITLED TO A COURT ORDER ORCULING NDOC TO CALCULATE THE EXACT TIME SERVED ON THE LATEST SANCTION TOWARDS THE TWELVE (12) TO THIRTY (30) MONTH SENTENCE OF IMPRISONMENT IMPOSED FOR THE STOP RECEIVED AT SIGNAL OF POLICE CONCERNING THE STATE OF NEVADA. LESEAN ORTH, NO. 020-352801-1.

B. LEGAL ARGUMENTS.

I. PROCEEDING BY PETITION FOR A WRIT OF HABEAS CORPUS IS THE APPROPRIATE VEHICLE. RESPONDENT'S ARGUMENT PETITION FOR A WRIT OF HABEAS CORPUS IS NOT THE APPROPRIATE VEHICLE TO LITIGATE THE CLAIMS PRESENTED IS CONTRARY TO RE SMITH, 506 P.3d 325, 326 N.3 (NEV. 2022)

RESPONDENT ARGUES IN THE MOTION TO DISMISS PETITION FOR A WRIT OF HABEAS CORPUS THAT THE CLAIMS IN THE PETITION ARE NOT COGNIZABLE IN A HABEAS PETITION. Id. AT 3-4. RESPONDENT'S ARGUMENT MUST FAIL. PETITIONER'S CLAIMS MIRROR THOSE IN RE SMITH, 506 P.3d 325 (NEV. 2022) UPHOLDING THE DISTRICT COURT'S ORDER GRANTING PETITION FOR A WRIT OF HABEAS CORPUS SUCCESSFULLY VINDING SANCTIONS IMPOSED BY THE NEVADA BOARD OF PAROLE COMMISSIONERS FOR THE BEARD DEFERING ACTION TO PROCEED IN A REENTRY HEARING AND BEYOND THE SIXTY (60) DAY LIMIT TO CONDUCT REENTRY HEARING IN NRS 213.1517(3).

In upholding the District Court's granting of a Petition for a writ of Habeas Corpus for the Parole Board not providing a revocation hearing within sixty days of Smith's return to the custody of NDCC for parole violations alleged as required by N.D.S. 13.1-17(3) the Second Supreme Court recently held:

"Here, the parole board issued a retake warrant on in April 2016 at which point Smith was immediately returned back into the custody of NDCC and returned to incarceration in the prison. His parole hearing was continued until after adjudication on his new criminal charges in June 2019 - well in excess of the sixty days allowed by N.D.S. 13.1-17. We therefore conclude that the parole board exercised its authority under that statute and that the District Court properly entered NDCC to reflect a parole revocation date of June 12, 2016 and to insure that any credits, expiration date of his parole revocation case and start date of the sentence for his new case reflect June 12, 2016, parole revocation date.

.....

Because here the parole board issued a retake warrant and returned Smith to the custody of NDCC before Smith's new criminal charges were adjudicated, this [N.D.S. 13.1-17(4)] exception did not apply and the parole board exercised its authority by denying the revocation hearing beyond sixty days after Smith's return to the custody of NDCC accordingly, we affirm the District Court's order granting Smith's Petition for a writ of Habeas Corpus. "

See P.3d At 322-324.

Respondent argues Petition for a writ of Habeas Corpus is not the appropriate vehicle for Petitioner to seek relief. *Id.* at 4. Respondent's Argument is contrary to *In re Smith*, 506 P.3d at 328-329 as quoted above. The Nevada Supreme Court upheld the District Court's granting of Smith's Petition for a writ of Habeas Corpus. *Id.*

Respondent then admits Petitioner's first appearance before the Nevada Board of Parole Commissioners was not until January 12, 2021. *Id.* at 5. Respondent files Exhibit 9 which is a Doc containing recordings of Petitioner's appearances before the Parole Board which confirms Petitioner's first appearance was not until January 12, 2021. *Id.* Respondent then argues:

"If Cuth thought the Board was fulfilling its duty to hold a timely hearing under Nev. Rev. Stat. 213.1517 the time for him to file a writ of Habeas Corpus was when the Board had not held a recalculation hearing within the statutorily required sixty days of his return to High Desert State Prison, which expired on January 8, 2021 - Cuth was returned to High Desert State Prison on November 9, 2020 marking January 8, 2021 the deadline for holding Cuth's recalculation hearing." *Id.*

Respondent has admitted the Parole Board did not provide a recalculation hearing within 60 days of my return to NDOC's custody. The argument that I did not use mandamus by the sixty day limit lapsing has no merit. The Board held a recalculation hearing much later on March 22, 2022 and at that point exceeded its authority for the institutional reasons set forth in *Smith*. I filed the recommendation

IT'S TO HOLD RECREATION HEARINGS "WITHIN SIXTY DAYS" AFTER HIS RETURN TO PRISON. NRS Z13.1517(3X) "3. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION 4, IF A DETERMINATION HAS BEEN MADE THAT PROBABLE CAUSE EXISTS FOR THE CONTINUED DETENTION OF A PAROLED PRISONER, THE BOARD SHALL CONTINUE THE PRISONER'S CASE WITHIN 60 DAYS AFTER HIS RETURN TO THE DEPARTMENT OF CORRECTIONS."

AT THIS JUNCTURE THE REMEDY IS TO CREDIT THE TIME SPENT IMPRISONED AGAINST RECREATION PROCEEDINGS FROM THE DATE THE SIXTY DAY LIMIT TO HOLD RECREATION PROCEEDINGS BY 7 JANUARY 8, 2022 TO PETITIONER'S SENTENCE FOR VOLUNTARY STOP RECREATION IN STATE OF NEVADA V. SEAN CRAFT, NO. C-20-352101-1. See JANIS SMITH, 506 P.3D AT 328 ("WE THEREFORE CONCLUDE THAT THE PAROLE BOARD EXCEEDED ITS AUTHORITY UNDER THE STATUTE AND THE DISTRICT COURT PROPERLY ORDERED NIDES TO REFLECT A PAROLE RECREATION OF FINE DOLLARS, AND TO ENSURE THAT ANY CREDIT, EXPARATION OF HIS PAROLE RECREATION CASE REFLECT THE JUNE 12, 2018 PAROLE RECREATION DATE")

THE SANCTION OF TWO YEARS LOSS OF PAROLE LIBERTIES SANCTIONED JANUARY 22, 2022 AS A LEGAL PETERSON ALSO WAS GIVEN A CREDIT FOR TIME SAVED DURING THE BOARD TAKING NO ACTION FROM NOVEMBER 9, 2020 TO THE MARCH 22, 2022 RECREATION HEARING. IN TOTAL THREE YEARS AND FIVE MONTHS CAN BE SAVED ALLEGEDLY. THE SITUATION ALLEGEDLY AFFECTS THE SENTENCE OF IMPRISONMENT OF FIVE (5) TO THIRTY (30) MONTHS FOR THE STOP RECREATION CONVICTION DATED DECEMBER 1, 2023 IN NO. C-20-352101-1, SUCH THATS CREDIT REMEDY. THE SITUATION AS RECORDED BY JANIS SMITH TO CREDIT THE TIME THE BOARD SANCTIONED PETERSON TO LOSS OF PAROLE IN PROCESS TO ITS AUTHORITY ON MARCH 22, 2022 TO MARCH 1, 2024 PETERSON WILL HAVE EXPANDED THE 12 TO 36 MONTHS SENTENCE IN NO. C-20-352101-1

THE ABOVE STATE (AND SOMEONE ELSE'S) LINGUALLY INTERPRETATION RECEIVED BY U.S. CONSTITUTION. XIV.

III. STEP RECALLED AT SIGNATURE PLACE AS A NEW CHARGE CONSTRUCTING A VIOLATION OF RULE WAS NOT NOTICED PLACE TO THE RELOCATION HEARING MAKING THE TWO YEAR SANCTION FOR THE STEP RECALLED CHARGE ILLEGAL.

RESPONDENT TELLS THIS HONORABLE COURT STEP RECALLED WAS NOTICED AS A VIOLATION PLACE TO RELOCATION PROCEEDINGS. 10. AT 4-5, RESPONDENT PRESENTS THE VIOLATION REPORTS DATED NOVEMBER 3, 2020 AND JANUARY 7, 2021 FOR SUPPLY OF ITS ASSIGNMENT AT RESPONDENT'S EXHIBIT 6 AT 1-9. BOTH VIOLATION REPORTS STATE AS CAUSE FOR A LAWS AND CONDUCT VIOLATION THE FOLLOWING:

"MR. ORTH IS IN CUSTODY AND HE WAS DECKED ON THE FOLLOWING NEW CHARGES: RESIST ROB COFF (M) AND CARRY / POSSESS COFF BY PRISONER PAPER (P)... 10. AT 9, 9."

THE RELOCATION AUTHORITY MUST GIVE THE PRISONER NOTICE OF THE ALLEGED PRISONER VIOLATION PRIOR TO THE RELOCATION HEARING. MONTGOMERY V. BREWER, 408 U.S. 471, 489 (1972); MRS 213.1513(1)(C) ("1. THE BOARD OR DETAILING AUTHORITY SHALL GIVE THE ALLEGED PRISONER ADVANCE NOTICE OF (C) WHAT VIOLATIONS OF THE CONDITIONS OF HIS OR HER PRISON HAVE BEEN ALLEGED").

THE SANCTION OF TWO YEARS FOR STEP RECALLED IS ILLEGAL BECAUSE IT WAS CHARGED BY A PRISONER OFFICER ORIGINALLY FOR THE RELOCATION HEARING.

ITSELF THERE WAS NO NOTICE OF VIOLATION OR PRELIMINARY INQUIRY
PRECEDED FOR STOP REQUIRED BEING CHALLENGED. THE SANCTION WAS IMPOSED
MARCH 22, 2022. JUDGMENT OF CONVICTION FOR STOP REQUIRED WAS FILED
AUGUST 8, 2023. Respondent's Exhibit M (JUDGMENT OF CONVICTION).

NRS 215.151(4) PROVIDES:

4. Any conviction for violating a Federal or State law or a local
ordinance, except a minor traffic offense, which is committed
while the person is on parole constitutes the basis for a
revocation of probation and the inquiry required herein
need not be held.

Id.

BECAUSE NO CONVICTION WAS ENTERED BETWEEN THE RIGHT TO A
PRELIMINARY INQUIRY GIVEN TO THE BOARD DETERMINING STOP REQ
URED AT SIGNATURE PLACE AS A VIOLATION OF PAROLE. THE TWO
YEAR DETENTION WHICH WAS FOR THE STOP REQUIRED ARREST ONLY
(Respondent's Ex. L) IS SUFFICIENT FOR STOP REQUIRED NOT BEING
NOTICED AS A VIOLATION OF PAROLE OR PRELIMINARY INQUIRY APPROVED
BEFOREHAND FIRST.

C. CONCLUSION.

Petitioner Prays this Honorable Court will Deny the Motion to Dismiss Petition For writ of HABEAS CORPUS and issue an ORDER DIRECTING NDCC TO CARRY MY SENTENCE WITH THE APPROPRIATE AMOUNT OF CREDITS. PETITIONER PRAYS THIS HONORABLE COURT WILL GRANT THE PRAYER ON THE MERITS.

Respectfully Submitted, June 30, 2023

CERTIFICATE OF SERVICE

I, Sheriff DeHoney certify that on July 30, 2013 I did
mail a true and correct copy of the foregoing Petitioner's
opposition to Respondent's Motion to Dismiss the Charges to
Deputy Attorney General Katrina Lopez, 555 E. Washington Ave.,
Ste 300, Las Vegas, NV 89101-1000.

DeHoney

SEAN REDNEY ORTH #16723
Post Office Box 650
Indian Springs, Nevada 89020
PRE 50

DISTRICT COURT
CLARK COUNTY, NEVADA

SEAN REDNEY ORTH,
Petitioner;

CASE NO. A-23-268964-W

vs.

DEPT. NO. X

Brian Williams, WARDEN
Nevada Desert State Prison,
Respondent.

PETITIONER'S MOTION FOR ENLARGEMENT OF TIME /

PETITIONER'S MOTION TO STRIKE RESPONDENT'S MOTION

TO DISMISS PETITION FOR A WRIT OF HABEAS CORPUS /

PETITIONER'S MOTION TO STRIKE ORDER OF THE COURT

GRANTING RESPONDENT'S MOTION TO DISMISS PETITION

FOR A WRIT OF HABEAS CORPUS.

Comes now, SEAN REDNEY ORTH, Petitioner in the above-entitled
matter, who respectfully appears to move this Honorable Court
to Grant Petitioner an Enlargement of Time to File Petitioner's

RECEIVED
JUL 11 2023
CLERK OF THE COURT

OPPOSITION TO RESPONDENT'S MOTION TO DISMISS PETITION FOR A
WRIT OF HABEAS CORPUS FOR CAUSE AND TO MOVE TO STRIKE RESPONDENT'S
MOTION TO DISMISS PETITION FOR A WRIT OF HABEAS CORPUS AND
TO STRIKE THE ORDER OF THIS COURT GRANTING RESPONDENT'S MOTION TO
DISMISS PETITION FOR A WRIT OF HABEAS CORPUS ENTERED JUNE 28, 2025.

THIS MOTION IS SUPPORTED BY ALL PAPERS, PLEADINGS AND DOCUMENTS
ON FILE WITH THE COURT IN THIS CASE, THE MEMORANDUM OF POINTS
AND AUTHORITIES BELOW AND THE ATTACHED EXHIBITS.

MEMORANDUM OF POINTS AND ADHERENCES.

A. BACKGROUND.

ON MAY 2, 2023 JEAN ERIC PERMONEK FILED A PETITION FOR A WRIT OF HABEAS CORPUS CHALLENGING A RELOCATION OF PAROLE LIBERTIES FOR ALLEGED VIOLATIONS OF THE CONDITIONS OF PAROLE ALLEGEDLY EFFECTING THE COMPUTATION OF TIME FOR TERMS OF IMPRISONMENT PERMONEK IS SERVING IN THE NEVADA DEPARTMENT OF CORRECTIONS (NDOC). BRIAN WILLIAMS IS WARDEN AT HIGH DESERT STATE PRISON WHERE PERMONEK ALLEGES TO BE UNLAWFULLY IMPRISONED AND IS NAMED RESPONDENT.

ON JUNE 7, 2023 CHIEF DEPUTY DISTRICT ATTORNEY ALEXANDER CHEN FILED STATE'S RESPONSE TO PERMONEK'S PETITION FOR A WRIT OF HABEAS CORPUS CLAIMING PROCEDURAL DEFECTS AND INFORMING THE COURT PERMONEK SHOULD SEND NEVADA ATTORNEY GENERAL AARON FORD A COPY OF THE PETITION. A COPY OF THE PETITION HAD BEEN SERVED ON THE ATTORNEY GENERAL WHEN IT WAS FILED.

THIS HONORABLE COURT CALENDARIZED THE PETITION FOR A HEARING ON JUNE 28, 2023.

ON JUNE 22, 2023 DEPUTY ATTORNEY GENERAL KATHINA A. LOPEZ FILED A MOTION TO DISMISS PETITION FOR A WRIT OF HABEAS CORPUS WITH RESPONDENT'S EXHIBITS A TRUE D. ATTORNEY LOPEZ INITIALLY FILED A DIS CONTAINING RECORDINGS OF PERMONEK'S APPEARANCES IN PAROLE RELOCATION HEARINGS BEFORE THE NEVADA BOARD OF

PAROLE COMMISSIONERS. ATTORNEY LOPEZ DID NOT SEND A COPY OF THE DISC ON PENNERER. ATTORNEY LOPEZ SENT THE DISC ON HER CLERK WARDEN WILLIAMS AND SIGNED A LETTER TO PENNERER STATING SHE HAD DONE SO INSTRUCTING PENNERER TO WRITE A KITE TO WARDEN WILLIAMS TO REQUEST TO VIEW THE CONTENTS OF THE DISC. EXHIBIT 1 (LETTER TO PENNERER FROM DEPUTY ATTORNEY GENERAL LOPEZ).

PENNERER RECEIVED THE MOTION TO DISMISS PENNERER FOR A WRIT OF HABEAS CORPUS THE MORNING OF JUNE 28, 2023. PENNERER KNEW WARDEN WILLIAMS TO VIEW THE DISC IMMEDIATELY. PENNERER VIEWED THE CONTENT OF THE DISC WITH THE ASSISTANCE OF MY COUNSELOR ON ~~ON~~ JUNE 29, 2023. EXHIBIT 2 (KITE SIGNED BY PENNERER AND COUNSELOR)

PENNERER WAS NOT TRANSPORTED TO COURT FOR THE HEARING ON JUNE 28, 2023. ACCORDING TO THE MINUTES OF THIS COURT THE COURT GRANTED RESPONDENT'S MOTION TO DISMISS PENNERER FOR A WRIT OF HABEAS CORPUS JUNE 28, 2023 WITHOUT AFFORDING PENNERER OPPORTUNITY TO OPPOSE THE MOTION TO DISMISS.

SIMULTANEOUSLY TO THE FILING OF THIS PLEADING PENNERER FILES AN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS PENNERER FOR A WRIT OF HABEAS CORPUS.

B. LEGAL ARGUMENT.

I. AN EXTENSION OF TIME SHOULD BE GRANTED TO ALLOW PETITIONER TO FILE AN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS PETITION FOR A WRIT OF HABEAS CORPUS FOR CAUSE AND/OR THE COURT SHOULD STRIKE RESPONDENT'S MOTION TO DISMISS PETITION FOR A WRIT OF HABEAS CORPUS AND THE COURT'S ORDER GRANTING IT.

PETITIONER IS IN LACROSSE AGAINST RESPONDENT WARDEN WILLIAMS. DEPUTY ATTORNEY GENERAL KATRINA LOPEZ MANUALLY FILED WITH THIS COURT EXHIBIT J WHICH IS A DISC CONTAINING RECORDINGS OF PETITIONER'S APPEARANCES BEFORE THE ALABAMA BOARD OF PAROLE COMMISSIONERS. ATTORNEY LOPEZ THEN SERVED A COPY OF THE DISC ON HER CLIENT WARDEN WILLIAMS AND SENT PETITIONER A COMMUNICATION STATING SHE HAD SERVED WARDEN WILLIAMS A COPY OF THE DISC AND PETITIONER WOULD HAVE TO KITE WARDEN WILLIAMS TO JURY IT. EX. 1 AT 1. PETITIONER IS UNAWARE OF ANY LEGAL AUTHORITY THAT ALLOWS A PARTY TO SERVE THE OPPOSING PARTY EXHIBITS (EVIDENCE IN SUPPORT OF ITS PLEADINGS) BY SERVING A COPY ON ITSELF. PETITIONER'S RECOLLECTION IS THAT ALL DOCUMENTS AND/OR EXHIBITS IN SUPPORT OF PLEADINGS FILED IN THIS COURT MUST CONTAIN A CERTIFICATE AFFIRMING SERVICE OF SAME ON THE OPPOSING PARTY OCCURRED UNDER PROVISIONS OF NRC RULE 5.¹

1. PETITIONER IS CURRENTLY ON A FADING LOCKDOWN CONTRACT ACCESS TO THE prison law library AND CITES ACTUALLY FROM MEMORY.

EITHER WAY THE DISC HAD TO TRAVEL FROM LOS ANGELES TO A CASEWORKER
TO VIEW AT HIS CONVENIENCE WHICH TOOK AN ADDITIONAL DAY AFTER IT
WAS RECEIVED. PETITIONER WAS UNABLE TO VIEW THE CONTENT UNTIL JUNE
29, 2022. EX. 2 (LINE SIGNED BY PETITIONER AND CASEWORKER).

ALSO, RESPONDENT'S MOTION TO DISMISS PETITION FOR A WRIT OF HABEAS
CORPUS WAS NOT PRECISED TO THE JUDGE OFFICIAL UNTIL THE EARLY MORNING
HOURS OF ~~DECEMBER~~ JUNE 28, 2023. PETITIONER WAS THEN NOT TAKEN TO
THE HEARING THAT DAY TO ADDRESS THE COURSE OF THESE HINDERANCES.

PETITIONER IS PREJUDICED. A MOTION MUST BE MADE IN WRITING WITH
AT LEAST FIVE (5) DAYS NOTICE PRIOR TO A HEARING, NAS 178.476, 178.476
WITHOUT THE ABILITY TO FILE AN OPPOSITION TO RESPONDENT'S MOTION
RESPONDENT'S VANDERBOS LITIGATION OF THE CENTRAL ISSUE IN
THE PETITION WILL PREVAIL WITHOUT THE COURT OR PETITIONER
HAVING FAIR OPPORTUNITY TO DEMONSTRATE THAT THE CLAIMS
ON THE OPPOSITION ARE ACCURATE AND PETITIONER IS ENTITLED
TO THE RELIEF REQUESTED. PETITIONER'S MOTION IS PRIMA FACIE.

PETITIONER PRAYS THE MOTION WILL BE GRANTED.

C. CONCLUSION.

Petitioner Prays this Honorable Court will find that for the above stated reasons there is cause to provide time to allow Petitioner to file an opposition to Respondents motion to dismiss Petition for a writ of HABEAS CORPUS and/or strike Respondents motion and/or the order granting the motion.²

Respectfully Submitted, June 30, 2023.

Sean Cuth.

2. Petitioner has not received the order of this court entered June 27, 2023 granting Respondents motion to dismiss Petition for a writ of HABEAS CORPUS at the time of preparing this pleading and files the pleading for an abundance of caution to not be said to have been then proceeding in this litigation.

CERTIFICATE OF SERVICE

I, DEAN CRON, DO HEREBY CERTIFY THAT ON JUNE 30, 2023 I DID MAIL A TRUE AND CORRECT COPY OF THE FOREGOING PETITIONS: MOTION FOR ENLARGEMENT OF TIME / MOTION TO STRIKE RESPONDENT'S MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS / MOTION TO STRIKE ORDER GRANTING RESPONDENT'S MOTION TO DISMISS PETITION FOR A WRIT OF CORPUS TO: NICHOLAS DEPUY, ATTORNEY GENERAL RICHARD LEPET, 535 E. WASHINGTON STREET, STE. 3400, LAS VEGAS, NEVADA 89101-1088.

Dean Cron

DEAN CRON

EXHIBIT ONE

AARON D. FORD
Attorney General

CRAIG A. NEWBY
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave., Suite 3900
Las Vegas, Nevada 89101

TERESA BENITEZ-
THOMPSON
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

June 22, 2023

Sean Orth.
Offender ID #96723
c/o High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070-0650

**Re: First Amended Petition for Writ of Habeas Corpus
A-23-869964-W, 8th Judicial District Court**

Dear Mr. Orth:

Attached are copies of our Response to your First Amended Petition for Writ of Habeas Corpus and the index and exhibits referenced in the Response. The video files are forwarded to the Warden on a CD. You will need to submit a kite to the Warden to arrange to have the videos played for you.

Sincerely,

/s/ Katrina A. Lopez

Katrina A. Lopez
Deputy Attorney General
Tel. (702) 486-3770
ksamuels@ag.nv.gov

EXHIBIT TWO

INMATE REQUEST FORM

1.) INMATE NAME	DOC #	2.) HOUSING UNIT	3.) DATE

4.) REQUEST FORM TO: (CHECK BOX) ☐ MENTAL HEALTH ☐ CANTEEN
☐ CASEWORKER ☐ MEDICAL ☐ LAW LIBRARY ☐ DENTAL
☐ EDUCATION ☐ VISITING ☐ SHIFT COMMAND
☐ LAUNDRY ☐ PROPERTY ROOM ☐ OTHER _____

5.) NAME OF INDIVIDUAL TO CONTACT: _____

6.) REQUEST: (PRINT BELOW) _____

7.) INMATE SIGNATURE _____ DOC # _____

8.) RECEIVING STAFF SIGNATURE _____ DATE _____

9.) RESPONSE TO INMATE

10.) RESPONDING STAFF SIGNATURE _____ DATE _____

Sean O'Hara #96723
PO Box 650

Madison Springs, Nev

89070

CONFIDENTIAL

Clark County Court
Domestic Court

200 Lewis Ave. 3rd Floor

Las Vegas Nevada

89155-1160

3762

3762

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Legal Mail



**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

June 28, 2023

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

June 28, 2023 8:30 AM All Pending Motions

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

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)

PRINT DATE: 08/21/2023

Page 1 of 1

Minutes Date: June 28, 2023

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated August 2, 2023, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises two volumes with pages numbered 1 through 304.

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 21 day of August 2023.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk