

BENNETT G. GRIMES #1098310  
HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA 89010.

NO. 81335

FILED

IN THE SUPREME COURT  
OF THE STATE OF NEVADA

JUN 17 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *A. Brown*  
DEPUTY CLERK

BENNETT G. GRIMES,  
PETITIONER,

v.

THE STATE OF NEVADA,  
JUDGE MICHELLE LEAVITT,  
RESPONDENT,

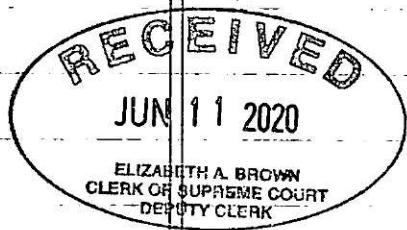
SUPREME COURT

CASE NO. 81042  
DISTRICT COURT  
CASE NO. C276163

PETITION FOR WRIT OF MANDAMUS  
DIRECTING RESPONDENT TO HONOR RELIEF  
REQUESTED IN "MOTION TO CORRECT/MODIFY  
ILLEGAL SENTENCE"  
(NRS. 34.150 THRU 34.320) (34.720-724)

BENNETT G. GRIMES, PETITIONER IN PROPER  
PERSON UNDER PENALTY OF PERJURY, BEING  
DULY SWORN, DEPOSES AND SAYS,

1.) THERE IS NO APPEAL FROM RESPONDENT'S  
ACTIONS AND THAT PETITIONER HAS NO OTHER  
PLATIN, SPEEDY, OR ADEQUATE REMEDY OTHER  
THAN MANDAMUS.



20-22600

(1)

## JURISDICTION

JURISDICTION OF THIS COURT IS INVOKED PURSUANT TO NRS. 34.150 THRU NRS. 34.320. PETITIONER SUBMITS THAT MANDAMUS PROHIBITION IS THE PROPER VEHICLE, SINCE THE CONTROVERSY PETITIONER IS CONCERNED IS NOT A CHALLENGE TO HIS CONVICTION, BUT A CHALLENGE TO THE ILLEGAL SENTENCE.

## LEGAL STANDARD

THE PEREMPTORY WRIT OF MANDAMUS HAS TRADITIONALLY BEEN USED IN FEDERAL COURTS "TO COMPEL AN INFERIOR COURT TO A LAWFUL EXERCISE OF ITS PRESCRIBED JURISDICTION OR COMPEL IT TO EXERCISE HIS AUTHORITY WHEN IT IS HIS DUTY TO DO SO." WILL V. UNITED STATES, 389 U.S. 90, 95, 19 L. ED. 2d 305, 88 S. CT. 269 (1967), QUOTING ROCHE V. EVAPORATED MILK ASS'N, 319 U.S. 21, 26, 87 L. ED. 1185, 63 S. CT. 933 (1943). RECENT DECISIONS OF THE SUPREME COURT HAVE ESTABLISHED THE RULES THAT MANDAMUS "WILL LIE IN A PROPER CASE TO DIRECT A SUBORDINATE FEDERAL COURT TO DECIDE A PENDING CASE." INSURANCE COMPANY V. CONSTOCK, 93 U.S. (16 WALL.) 258, 270, 21 L. ED. 493 (1872); TERATEXON PRODS., INC V. HERMANNSDORFER,

423 U.S. 336, 352, 46 L. Ed. 2d. 542,  
96 S. Ct. 584 (1976); WILL V. CALVERT FIRE  
INS. CO. 437 U.S. 655, 662, 57 L. Ed. 2d. 504,  
98 S. Ct. 2552 (1978). SEE ALSO STATE FARM MUT.  
AUTO INS. CO. V. SCHOLESS, 601 F.2d. 1151, 1154  
(10<sup>th</sup> Cir. 1979).

### ARGUMENT PROCEDURE

BY THIS APPLICATION FOR WRIT OF MANDAMUS,  
PETITIONER SEEKS AN ORDER OF THIS COURT  
DIRECTING RESPONDENT TO HONOR RELIEF  
REQUESTED. 1.) THERE IS CLEAR ABETT TO THE  
RELIEF SOUGHT, A PLAINLY DEFINED AND PERCEPTORY  
DUTY ON THE PART OF THE HONORABLE MICHELLE  
LEAVITT, JUDGE, EIGHTH DISTRICT COURT FOR THE  
COUNTY OF CLARK, RESPONDENT TO DO THE ACTION  
IN QUESTION, AND NO OTHER ADEQUATE REMEDY IS  
AVAILABLE. HADLEY MEMORIAL HOSP., INC. V.  
SCHWEIKER, 689 F.2d. 905, 912 (10<sup>th</sup> Cir. 1982),  
SEE ALSO FED. R. APP. P. 34(a); 10<sup>th</sup> Cir.R. 34.1.9.  
AFTER EXAMINING THE BRIEFS AND APPELLATE RECORD,  
THIS PANEL HAS DETERMINED UNANIMOUSLY THAT ORAL  
ARGUMENT WOULD NOT MATERIALLY ASSIST THE DETERMINATION  
OF THIS APPEAL. THIS CASE IS THEREFORE ORDERED  
SUBMITTED WITHOUT ORAL ARGUMENT. 2.) ORDER TO  
REMAND AND REVERSE ACTION TO STATE COURT TO

GRANT WRIT WITH REASONABLE PROMPTNESS "MOTION TO  
MODIFY / CORRECT ILLEGAL SENTENCE", PROPERLY FILED  
IN DISTRICT COURT BASED ON CORRECT MERITS.

PETITIONER'S SHOWN THAT HIS RIGHT TO THE WRIT  
IS "CLEAR AND INDESTRUCTIBLE." MALLARD V. UNITED  
STATES DISTRICT FOR THE S. DIST. AT 18WT, 490

U.S. 296, 109 S. CT. 1814, 1822, 104 L. ED. 2d 318

(1989); ALLIED CHEMICAL CORP. V. DAIFLON, INC.,  
449 U.S. 33, 35-36, 66 L. ED. 2d 193, 101 S. CT.  
188 (1980); IN RE VARGAS, 723 F.2d 1461,  
1467 (10<sup>th</sup> CIR. 1983); UNITED STATES V.  
CARRIGAN, 778 F.2d 1454, 1466 (10<sup>th</sup> CIR. 1985).

AT THIS POINT, JUSTICE DELAYED

IS JUSTICE DENIED.

THIS SUGGESTS THAT EXTRAORDINARY  
RELIEF IS WARRANTED UNDER A WRIT OF  
MANDAMUS TO COMPEL THE PERFORMANCE  
OF AN ACT THAT THE LAW AND JUSTICE  
REQUIRES.

DATED THIS 2<sup>nd</sup> DAY OF JUNE, 2020.

RESPECTFULLY SUBMITTED

BENNETT R. GRIMES #1093810  
*Bennett R. Grimes*

IN PRO SE, H.D.S.P.

P.O. Box 650

INDIAN SPRINGS, NEVADA 89070.

CERTIFICATE OF SERVICE BY MAILING

I, BENNETT R. GRIMES, HEREBY DECLARE  
PURSUANT TO NRCP 5(3) THAT ON THE  
7<sup>TH</sup> DAY OF JUNE, 2020, I SENT A  
COPY OF THE ENCLOSED "WRIT OF MANDAMUS"  
TO THE FOLLOWING:

SUPERIOR (DISTRICT) COURT OF NEVADA

OFFICE OF THE CLERK

201 S. CARSON STREET STE. #201

CARSON CITY, NEVADA 89701.

STEVEN B. WOLFSON

AARON D. FORD

DISTRICT ATTORNEY

ATTORNEY GENERAL

200 LEWIS AVE

100 NORTH CARSON ST.

P.O. BOX 552212

CARSON CITY, NEVADA

LAS VEGAS, NEVADA

89701-4712.

89155-2212.

DATED THIS 7<sup>TH</sup> DAY OF JUNE, 2020.

RESPECTFULLY SUBMITTED

BENNETT R. GRIMES #1098810



IN PROPER PERSON, H.D.S.P.

P.O. Box 650

INDIAN SPRINGS, NEVADA 89020.