

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

* * * * *

Brendan Nasby,
Petitioner,

vs.

The 8th Jud. Dist. Court,
Respondents,

and

State Of Nevada,

Real Party In Interest.

Case No. 86434-COA

Dist. Ct. No. 98C154293-2

FILED

SEP 25 2023

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

NRAP RULE 40. PETITION FOR REHEARING

BRENDAN JAMES NASBY

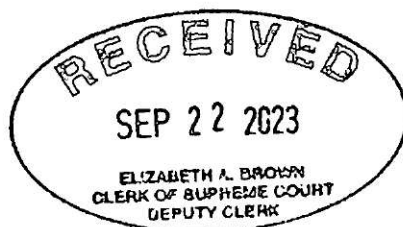
I.D. NO. 63618

SOUTHERN DESERT CORR. CENTER

P.O. BOX 208

INDIAN SPRINGS, NEVADA 89070

(PETITIONER IN PRO SE)



23-31379

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JURISDICTION

On August 17, 2023, this Court's Order Denying Petition was filed. ~~A~~ A time request for extension of time to file the instant petition was made and granted on August 31, 2023. On September 19, 2023, Petitioner mailed the instant Petition to the Clerk of the Court.

This Court has jurisdiction to revisit its own orders and correct its own mistakes, upon Petition for rehearing or sua sponte.

ISSUES PRESENTED

Issue One: This Court Misapprehended Nasby's Claim And Erroneously Believed It Would Be Exercising Its Original Jurisdiction.

Issue Two: This Court Fails To See The Severity Of Nasby's Detriment.

I. STATEMENT OF THE CASE.

On, December 22, 2022, Brendan James Nasby (Nasby) filed his Motion To Correct Clerical Mistake (NRS 176.565). The Stat filed its Opposition on December 29, 2022. On February 1, 2023, Nasby filed his reply. On February 22, 2023, the district court denied Nasby's motion. Its Order denying the motion was filed on March 2, 2023. On, March 20, 2023, Nasby filed a Notice of Appeal. On March 31, 2023, this Court dismissed Nasby's appeal because no statute or court rule permits an appeal from such an order and this Court lacks jurisdiction, to consider the appeal. On April 19, 2023, Nasby filed his Petition For Writ Of Mandamus. On June 26, 2023, this Court issued its Order Directing Answer. On June 28, 2023, the State filed its Answer To Petition For Writ Of Mandamus. On July 11, 2023, Nasby filed his Reply. On August 17, 2023, this Court issued it Order Denying Petition. Nasby made a telephonic request for extension of time to file the instant Petition For Rehearing, which was granted, resulting in its due date being September 19, 2023. What followed is the instant Petition.

II. ARGUMENT FOR REHEARING.

In this Petition for Rehearing, Nasby presents issues, in which, he identifies, (A) when this Court has overlooked or misapprehended a material fact in the record or a material question of law in the case, and (B) when this Court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation, or decision directly controlling a dispositive issue in the case. (NRAP 40(c)(2)(A)(B)). See also - In Re Dunleavy, 104 Nev. 784, 769 P.2d 1271 (1988). Nasby also request clarification of this Court's Denial Order.

Issue One: This Court Misapprehended Nasby's Claim And Erroneously Believed It Would Be Exercising Its Original Jurisdiction.

This Court stated that Nasby's petition contends the district court abused its discretion when it failed to order his sentencing hearing be transcribed, provide Nasby with a copy of the transcripts, and then clarify and correct Nasby's judgment of conviction.¹

Although Nasby suggested that the district court should have done all of the above, the only actual point Nasby focused the Court's attention on, is that the district court denied his motion without reviewing the required portion of record.² The motion is based on the omitted portion of record. The district court ultimately told Nasby that he was wrong, without actually seeing if he was wrong or not.

This Court went on to state that it refused to exercise its original jurisdiction.³ However, this Court would not be exercising original jurisdiction, but instead only reviewing a contested order from the district court. Angell v. 8th Jud. Dist. Ct., 839 P.2d 1329 (1992). Original jurisdiction was exercised by the district court. Further, if Nasby were to file this mandamus petition in the district court, res judicata would bar its review, as the district court has already denied the issue, in Nasby's Motion. Nasby does not challenge ~~the~~ whether the district court's decision was right or wrong, he challenged the fact that, but rather, that the district court made a decision to Nasby's detriment without reviewing the record and without due process of law. How would this Court be exercising original jurisdiction over the district court's decision?

Issue Two: This Court Fails To See The Severity Of Nasby's Detriment.

Without intervention, Nasby is severely prejudiced. Had Nasby's JOC matched the court's oral pronouncement of sentence, Nasby would have gone to the parole board on his first 20 to life sentence in 2018. Had the district court granted Nasby's motion, he would have gone in front of the parole board ~~and~~ immediately. Because Nasby has not had a single write up in over 15 years, has completed a paralegal course, and would have already done 5 years over what was required to be parole eligible for parole, it is more likely than not, that Nasby would have been paroled from his first life sentence and started his second one already. Instead, if nothing is done, Nasby will be forced to do 3 more years before he is parole eligible, for his first life sentence.

A clerical mistake has been extremely detrimental to Nasby. If this Court refuses to correct this injustice, what legal remedy does Nasby have — to have the claim heard after review of ~~the~~ the sentencing transcripts?

III. CONCLUSION

Wherefore, Nasby request this Court: 1) Grant his Petition for Rehearing; 2) Address the merits of Nasby's Petition for Writ of Mandamus; ~~and~~ and/or 3) in the alternative, explain its denial order and inform Nasby of what other legal remedies are available to him to address his issues.

Respectfully Submitted

By:

~~Brendan Nasby #63618
(Petitioner In Prose)~~

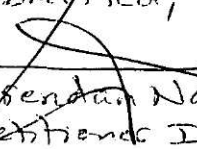
IV. CERTIFICATE OF COMPLIANCE.

1. I hereby certify that this brief complies with the formatting requirements of ~~NRAP~~ NRAP 32(a)(4) and NRAP 32(a)(5) because this petition has been prepared in proportionally spaced hand writing.

2. I further certify that this petition complies with the page limitations of NRAP 40(b)(3) because, excluding the parts of the petition exempted by NRAP 32(a)(4)(C), it does not exceed 10 pages.

3. Finally, I hereby certify that I have read this petition brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable NRAP, in particular NRAP 28(a)(1), which requires every assertion in the petition regarding matters in the record to be supported by reference to the page and volume number, if any, of the transcript or appendix, where the matter relies on is to be found. I understand that I may be subject to sanctions in the event that the accompanying petition^{is} not ~~compliant~~ in conformity with the requirements of the NRAP.

Dated this 19th day of September, 2023.

Submitted,
By: 
Brendan Nasby #63618
(Petitioner In Pro Se)

V. CERTIFICATE OF SERVICE

I, Brendan Nasby, hereby certify that on this 19th day of September, 2023, I mailed to the Clerk of the Nevada Supreme Court, and caused to be served by the Clerk's Electronic Filing/Service, the foregoing "NRAP Rule 40 Petition For Rehearing" to

1) Clark County DA; 200 Lewis Ave.; Las Vegas NV 89155 - 2212; and
Brendan Nasby #63618; SDCC; P.O. Box 208; Indian Springs, NV 89070.
-16

By: ~~Brendan Nasdy #63618~~
(Petitioner In Pro Se)

Affirmation Pursuant To NRS 239B.030

The undersigned does hereby affirm that the preceding "NRAP Rule 40 Petition For Rehearing" does not contain the social security numbers of any person.

Dated this 19th day of September, 2023.

By: ~~Brendan Nasdy #63618~~
(Petitioner In Pro Se)

Footnotes:

- 1- See - Order Denying Petition, Attached, pg. 1
- 2- See - Petition For Writ Of Mandamus, pg. 4.
- 3- See - Order Denying Petition, Attached, pg. 1-2.

EXHIBIT - A

Order Denying Petition For Writ Of Mandamus.

EXHIBIT - A

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BRENDAN JAMES NASBY,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
MONICA TRUJILLO, DISTRICT
JUDGE,

Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

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CLERK OF SUPREME COURT
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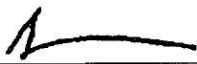
ORDER DENYING PETITION

In this original petition for a writ of mandamus, Brendan James Nasby challenges the district court's denial of a motion to correct a clerical error in a judgment of conviction. In his motion, Nasby claimed that the sentence reflected in his judgment of conviction was greater than that orally pronounced by the sentencing court. In his petition, he contends the district court abused its discretion when it failed to order his sentencing hearing be transcribed, provide Nasby with a copy of the transcripts, and then clarify and correct Nasby's judgment of conviction.

We have reviewed the documents submitted in this matter, and without deciding upon the merits of any claims raised therein, we decline

to exercise our original jurisdiction. See NRS 34.160; NRS 34.170; NRAP 21(b)(1); *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) ("Petitioner[] carr[ies] the burden of demonstrating that extraordinary relief is warranted."). Accordingly, we

ORDER the petition DENIED.¹


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Monica Trujillo, District Judge
Brendan James Nasby
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹The Honorable Michael Gibbons, Chief Judge, did not participate in the decision in this matter.