

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID E. ST. PIERRE,  
Appellant,  
vs.  
THE STATE OF NEVADA; NEVADA  
STATE DEPARTMENT OF  
CORRECTIONS; AND TED D'AMICO,  
Respondents.

No. 43436

**FILED**

**OCT 18 2006**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Ruben*  
CHIEF DEPUTY CLERK

ORDER AFFIRMING AND REMANDING

This is a proper person appeal from a district court order dismissing a complaint for failure to timely serve process. Sixth Judicial District Court, Pershing County; John M. Iroz, Judge.

Asserting that Lovelock Correctional Center medical personnel were ill-trained, and that, as a result, he received insufficient medical attention and treatment, appellant instituted the underlying action, seeking declaratory and monetary relief. Thereafter, respondents moved to dismiss the complaint under NRCP 4(i), because appellant had failed to timely serve process. In the same motion, respondents also requested that the court declare appellant a vexatious litigant and correspondingly impose a court-access restriction on him. The court granted the motion, dismissing the complaint, declaring appellant a

vexatious litigant, and restricting appellant's court-access. This appeal followed.<sup>1</sup>

Appellant has limited his appellate concerns to the court-access restriction and does not challenge the dismissal of his action.<sup>2</sup> Accordingly, before addressing appellant's challenge to the court-access restriction imposed on him, we affirm the district court's order to the extent that it dismissed the underlying action.

Regarding the portion of the district court's order restricting appellant's access to the court, the district court specifically prohibited appellant from filing anything further in the district court without the court's prior permission. On review, we examine this part of the order for an abuse of discretion.<sup>3</sup>

In Jordan v. State, Department of Motor Vehicles, this court adopted a four-factor analysis to determine whether a court-access restriction comported with the implicated due process protections.<sup>4</sup> Two

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<sup>1</sup>On July 5, 2006, this court directed respondents to file and serve a response within 30 days. This court subsequently granted an extension of time to respond, pursuant to respondents' request. To date, however, respondents have failed to file and serve a response or otherwise respond to this court's directive.

<sup>2</sup>See St. Pierre v. State, Docket No. 43436 (Order Granting Motions and Directing Response, July 5, 2006).

<sup>3</sup>Jordan v. State, Dep't of Motor Vehicles, 121 Nev. 44, 62, 110 P.3d 30, 44 (2005).

<sup>4</sup>Id. at 60-62, 110 P.3d at 42-44.

factors are particularly relevant in this case. First, in imposing a court-access restriction, the district court must make “substantive findings as to the frivolous or harassing nature of the litigant’s actions.”<sup>5</sup> Second, the order restricting the litigant’s court-access must be “narrowly drawn to address the specific problem encountered.”<sup>6</sup>

Here, regarding the first noted requirement, although the district court’s order stated that appellant had instituted at least 36 actions “against the State of Nevada, Nevada Department of Corrections and/or employees of the Nevada Department of Corrections,” nothing in the order or the record reveals whether the actions were frivolous or harassing in nature. And merely noting the sheer volume of appellant’s filings does not necessarily demonstrate that the filings were “without an arguable factual or legal basis, or filed with the intent to harass.”<sup>7</sup>

Regarding the second noted requirement, the district court’s order restricting appellant’s court-access is not “narrowly drawn to address the specific problem encountered.”<sup>8</sup> Specifically, the order broadly requires appellant to obtain the court’s permission before filing “any further actions.” But, as noted, the order must address the specific problem encountered and here, the order did not specify what the specific

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<sup>5</sup>Id. at 61, 110 P.3d at 43 (quoting De Long v. Hennessey, 912 F.2d 1144, 1148 (9th Cir. 1990) (internal quotations omitted)).

<sup>6</sup>Jordan, 121 Nev. at 61, 110 P.3d at 43.

<sup>7</sup>See id.

<sup>8</sup>See id.

problem was. For instance, the order in this matter indicates that appellant's purported misuse of the legal system is confined to particular parties, viz., "the State of Nevada, Nevada Department of Corrections and/or employees of the Nevada Department of Corrections." A proper restrictive order might then specifically bar appellant from filing any new actions against these defendants unless the court determines that the proposed action is not meritless.<sup>9</sup>

Because the district court entered the restrictive order without providing specific findings as to the nature of appellant's actions and because the order is not narrowly drawn to address the specific problem encountered, the court-access restriction violated appellant's due process rights. Thus, we conclude that the district court abused its discretion when it issued the order restricting appellant's access to the court.

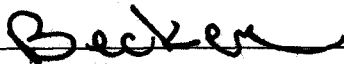
Accordingly, we affirm the dismissal of appellant's district court complaint. We remand this matter, however, with instructions to the district court to vacate the court-access restriction imposed on

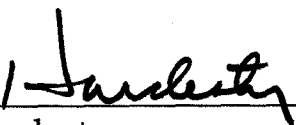
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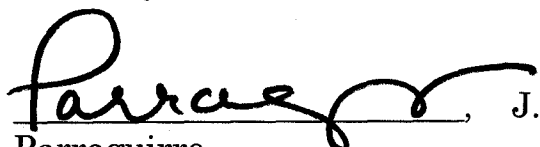
<sup>9</sup>See id. at 62, 110 P.3d at 44. We note that, though this hypothetical seems particularly applicable to this matter—without more fully developed findings or a response we cannot be certain—it is primarily intended to illustrate that the scope of any court-access restriction should be a function of the pervasiveness of the litigant's misuse of the legal system. Therefore, a broader or narrower restriction than the hypothetical suggests, if any, may be appropriate in this matter, depending on the specific nature of appellant's filings.

appellant and to comply with the guidelines adopted in Jordan when issuing any new court-access restriction on remand.<sup>10</sup>

It is so ORDERED.<sup>11</sup>

 J.  
Becker

 J.  
Hardesty

 J.  
Parraguirre

cc: Hon. John M. Iroz, District Judge  
David E. St. Pierre  
Attorney General George Chanos/Carson City  
Pershing County Clerk

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<sup>10</sup>Id. at 60-62, 110 P.3d at 42-44.

<sup>11</sup>We deny as moot appellant's "Motion for Submission and for Review."