

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUSSELL COHEN,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, THE HONORABLE NANCY M.
SAITTA, DISTRICT JUDGE, AND THE
HONORABLE SHIRLEY B.
PARRAGUIRRE, CLARK COUNTY
CLERK,
Respondents.

No. 43579

FILED

SEP 29 2004

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

ORDER GRANTING PETITION

This is a proper person petition seeking, among other things, an order directing the clerk of the district court to file petitioner's motion for return of seized property.

Petitioner claims that he attempted to file a proper person motion for return of seized property in the district court on or about March 9, 2001, but the district court clerk refused to file his motion because he was represented by counsel on appeal. The district court then sent his motion to his attorney appointed to represent him on appeal, Valerie Fujii. However, it appears that Ms. Fujii declined to file the motion.

Petitioner filed a petition for a writ of mandamus in this court. Petitioner sought an order directing the clerk of the district court to file his motion for return of seized property. On May 29, 2001, this court

granted the writ and issued a writ of mandamus directing the clerk of the district court to file petitioner's motion for return of seized property.¹

In the instant petition, petitioner claims that the clerk of the district court has failed to file his motion for return of seized property. We have consistently held that the district court clerk has a ministerial duty to accept and file documents presented for filing if those documents are in proper form.² This court has further recognized that the clerk of the district court has a duty to maintain accurate files.³

It appeared from this court's review of the documents before it that petitioner had set forth issues of arguable merit, and petitioner had no adequate remedy at law.⁴ Therefore, this court directed the State, on behalf of the respondent, to file a response to the petition. The State has filed a timely response to this court's order. The State has informed this

¹Cohen v. District Court, Docket No. 37623 (Order Granting Petition, May 29, 2001).


²See, e.g., Sullivan v. District Court, 111 Nev. 1367, 904 P.2d 1039 (1995) (holding that the district court had a duty to file an application to proceed in forma pauperis and "receive" a civil complaint); Bowman v. District Court, 102 Nev. 474, 728 P.2d 433 (1986) (holding that the clerk has a ministerial duty to accept and file documents unless given specific directions from the district court to the contrary).


³See Whitman v. Whitman, 108 Nev. 949, 840 P.2d 1232 (1992) (holding that clerk has no authority to return documents submitted for filing; instead, clerk must stamp documents that cannot be immediately filed "received," and must maintain such documents in the record of the case); Donoho v. District Court, 108 Nev. 1027, 842 P.2d 731 (1992) (holding that the clerk of the district court has a duty to file documents and to keep an accurate record of the proceedings before the court).

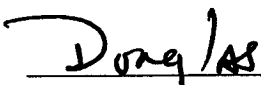
⁴See NRS 34.160; NRS 34.170.

court that a review of the files indicate that the clerk of the district court is in possession of the original proper person motion for return of seized property received on March 9, 2001, however, the motion has not been filed.⁵ The State submits that it does not oppose entry of an order directing the clerk to file petitioner's motion for return of seized property. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the clerk of the district court to file the motion for return of seized property received on March 9, 2001.⁶


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

⁵The State opines that the motion has not yet been filed because Ms. Fujii has not formerly withdrawn as counsel of record. However, the motion for return of seized property is a collateral matter, and thus, Ms. Fujii's failure to formerly withdraw should not impact petitioner's ability to prosecute the motion at this time.

⁶On September 13, 2004, this court received a response from petitioner. We conclude that petitioner is not entitled to the other measures of relief sought.

cc: Hon. Nancy M. Saitta, District Judge
Russell Cohen
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk