

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUSSELL COHEN,  
Petitioner,

vs.

DIRECTOR JACKIE CRAWFORD;  
WARDEN HELLING; SENIOR  
OFFICER MILLER; SENIOR OFFICER  
GULLIUES; SGT. MELENDREZ; AND  
LT. MODLIN,

Respondents.

No. 44579

**FILED**

SEP 23 2005

JANETTE M. GLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

RUSSELL COHEN,  
Petitioner,

vs.

DIRECTOR JACKIE CRAWFORD,  
WARDEN HELLING; SGT.  
MELENDREZ; LT. MODLIN; SENIOR  
OFFICER GULLUES; SENIOR  
OFFICER LANDA; OFFICER N. ORTIZ;  
OFFICER BAUMAN; AND OFFICER  
CORZINE,

Respondents.

No. 44607

RUSSELL COHEN,  
Petitioner,

vs.

DIRECTOR JACKIE CRAWFORD;  
WARDEN HELLING; AWP BENDETTI;  
AWO RANDY HALLIAN; TONY  
CORDA; AND SGT. BABB,

Respondents.

No. 44659

ORDER DENYING PETITIONS  
FOR EMERGENCY WRITS OF MANDAMUS

These original proper person petitions for emergency writs of mandamus seek to compel respondents to comply with various prison

regulations concerning emergency grievance procedures, retaliation, and prisoner mail.<sup>1</sup>

A writ of mandamus may issue to compel the performance of an act that the law requires as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion.<sup>2</sup> Original petitions for mandamus are addressed to the sound discretion of this court.<sup>3</sup> Under NRAP 21(a), a petition for extraordinary relief must contain, among other things, statements of “the facts necessary to an understanding of the issues presented by the application,” the issues presented and the relief sought, and the reasons why the writ should issue.<sup>4</sup> Thus, because a petitioner bears the burden of demonstrating that extraordinary relief is warranted,<sup>5</sup> he must provide the court with any and all materials that are “essential to an understanding of the matters set forth in the petition.”<sup>6</sup> Since this court is unable to properly evaluate petitions that fail to comply with NRAP 21(a), such petitions must be denied.<sup>7</sup>

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<sup>1</sup>See A.R. 711.10; A.R. 740.

<sup>2</sup>NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

<sup>3</sup>State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983); NRAP 21; see also Nev. Const. art. 6, § 4.

<sup>4</sup>See Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

<sup>5</sup>Id.

<sup>6</sup>NRAP 21(a).

<sup>7</sup>Pan, 120 Nev. at 229, 88 P.3d at 844.

In this case, petitioner has failed to adequately comply with NRAP 21(a)'s requirements, and we are thus unable to evaluate his requests for relief. For instance, petitioner alleges that he has been retaliated against for filing grievances and other court proceedings. In addition, petitioner alleges that respondents have failed to follow administrative emergency grievance procedures. Finally, petitioner asserts that he did not timely receive his mail. But petitioner has not provided documentation detailing his attempts to obtain redress through the grievance process, such as copies of completed grievance forms and any responses, nor has he demonstrated, through affidavit or otherwise, that he was entitled to the mail allegedly delayed.

Moreover, this court will not exercise its discretion to consider writ petitions when factual, rather than legal, issues are presented.<sup>8</sup> Petitioner asserts that respondents failed to comply with various prison regulations, but the allegations underlying those assertions necessarily require inquiry into, and determinations regarding, fact-based issues like whether petitioner's grievances constituted prison emergencies, whether he was in fact retaliated against, and how, and the circumstances under which any mail was delayed. Consequently, these original petitions appear to present significant factual issues, and petitioner inappropriately seeks writ relief in this court. As we recognized in Round Hill General Improvement District v. Newman,<sup>9</sup> when factual issues must be

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<sup>8</sup>Round Hill, 97 Nev. at 604, 637 P.2d at 536.

<sup>9</sup>97 Nev. 601, 637 P.2d 534 (1981).


determined with respect to a petition for an extraordinary writ, the petition should be filed in the district court.<sup>10</sup>

Accordingly, as petitioner has not met his burden to demonstrate that our consideration of his requests for extraordinary relief is warranted, and as it appears that, in any case, such relief was inappropriately sought in this court in the first instance, we deny these petitions.

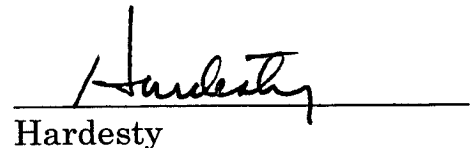
It is so ORDERED.<sup>11</sup>

  
\_\_\_\_\_ J.

Maupin

  
\_\_\_\_\_ J.

Gibbons

  
\_\_\_\_\_ J.

Hardesty

cc: Russell Cohen  
Attorney General Brian Sandoval/Carson City

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<sup>10</sup>See also Nev. Const. art. 6, § 6 (granting district courts authority to issue writs of mandamus); NRS 34.160.

<sup>11</sup>We conclude that petitioner has demonstrated good cause to waive the filing fees in these writ proceedings, see NRAP 21(e); therefore, we grant petitioner's motions for leave to proceed in forma pauperis—no filing fees are due. The clerk of this court shall file the motions, which were provisionally received in Docket No. 44579 on January 26, 2005, in Docket No. 44607 on February 1, 2005, and in Docket No. 44659 on February 9, 2005.