

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES EDWARD HUEBLER,  
Petitioner,  
vs.  
THE STATE OF NEVADA  
DEPARTMENT OF CORRECTIONS;  
AND THE STATE OF NEVADA,  
Respondents.

No. 45780

**FILED**

OCT 21 2005

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

ORDER DENYING PETITION FOR WRITS  
OF MANDAMUS AND PROHIBITION

This proper person petition for writs of mandamus and prohibition seeks to compel the Nevada Department of Corrections to provide petitioner with appropriate medical care and to prevent his transfer to other facilities.

Specifically, the petition indicates that petitioner Charles Edward Huebler, a prisoner at the Lovelock Correctional Center (LCC), has a medical condition that causes him to shake violently, but is receiving "no care or treatment at all" for that condition. Huebler asserts that several physicians have diagnosed him as suffering from Parkinson's disease, and he specifically names Dr. Ronald Centric, the senior psychiatrist at the Northern Nevada Correctional Center, as the diagnosing physician. But, he alleges, Dr. John Scott, the physician at the LCC, refuses to diagnose or treat his condition unless Huebler agrees to be transferred elsewhere. Huebler, however, believes that transport elsewhere is unnecessary and asserts that it has proven physically

unendurable, and he requests this court to order that all future treatment be provided at the LCC.

On August 29, 2005, we directed respondents to respond to Huebler's petition. Respondents timely filed an answer, attaching the affidavits of Dr. Scott and Dr. Centric.

According to Dr. Scott, he examined Huebler at least five times in the summer of 2005, after Huebler complained of having tremors. Huebler and Dr. Scott apparently agree that, as a result of those examinations, Huebler was prescribed a medication that has proven ineffective.

According to Dr. Centric, he examined Huebler in 2004 and 2005. Despite Huebler's assertion, Dr. Centric avers that Huebler "has not been diagnosed as suffering from Parkinson's disease." But he also notes that none of the various medications he prescribed have been effective.

Both physicians recognize that Huebler might have a condition that requires medical attention, and they state that they would like to obtain additional medical opinions. Dr. Scott, in particular, recommends that Huebler be examined by a physician at the Northern Nevada Correctional Center and evaluated at that site's unique neurology clinic. In Dr. Scott's opinion, the Northern Nevada Correctional Center evaluation is medically necessary, and Huebler's condition is stable enough for transport.

A writ of mandamus may issue to compel the performance of a duty or to control an arbitrary or capricious exercise of discretion.<sup>1</sup> A writ of prohibition, on the other hand, is available only to arrest the extra-jurisdictional proceedings of a tribunal.<sup>2</sup> The Director of the Nevada Department of Corrections and the wardens of correctional institutions have duties to assure that prisoners receive necessary and competent medical care.<sup>3</sup> In this case, the physicians' affidavits establish that Huebler is receiving medical attention. Moreover, Huebler has also indicated that his concerns have received at least some, even if ineffective, medical attention.

Accordingly, it does not appear that respondents have refused to comply with their duties to provide medical care, or that Huebler is receiving "no care or treatment at all." And "[a] claim of total denial of medical care differs from a claim of inadequacy of medical care," as recognized by the Tenth Circuit Court of Appeals, "[t]he prisoner's right is

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<sup>1</sup>NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

<sup>2</sup>NRS 34.320; State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002).

<sup>3</sup>NRS 209.131(4); NRS 209.161(3); see also Estelle v. Gamble, 429 U.S. 97, 103-04 (1976) (recognizing that, under the Eighth Amendment and common law, the government is obliged to provide adequate medical care to persons being punished by incarceration); accord Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982).

to medical care—not to the type or scope of medical care which he personally desires.”<sup>4</sup>

Nonetheless, as Huebler points out, correctional facilities’ physicians must be competent to diagnose and treat prisoners’ medical problems, or to refer those prisoners to others who can.<sup>5</sup> As noted by the Ninth Circuit Court of Appeals, “[s]uch referrals may be to other physicians within the prison, or to physicians or facilities outside the prison.”<sup>6</sup> Here, Dr. Scott notes that he has been unsuccessful at treating Huebler’s condition, and he recommends obtaining a second opinion at a place especially equipped to evaluate Huebler’s condition. Accordingly, it does not appear that, even if Dr. Scott has, as Huebler asserts, “refused” to provide a diagnosis, that refusal constitutes a denial, or arbitrary or capricious provision, of medical care.<sup>7</sup> Further, the petition involves no allegations of any tribunal acting in excess of its jurisdiction. As a result, extraordinary relief is not warranted in this instance.

To the extent that Huebler believes that he is unable to travel to the Northern Nevada Correctional Center for evaluation or that

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<sup>4</sup>Coppinger v. Townsend, 398 F.2d 392, 394 (10th Cir. 1968) (noting that “[a] difference of opinion between a physician and a patient does not give rise to a constitutional right”).


<sup>5</sup>See Hoptowit, 682 F.2d at 1253.


<sup>6</sup>Id.

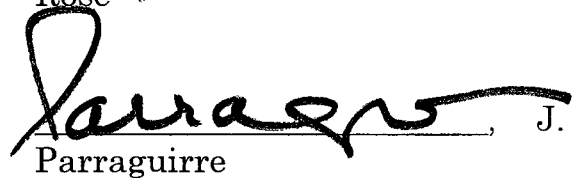
<sup>7</sup>See NRS 209.331 (“All decisions regarding the medical evaluation or treatment of an offender, including, but not limited to, whether the offender needs to see a provider of health care outside of the prison, whether to change providers of health care and whether an offender will receive a course of treatment, are within the discretion of the Director or his designee.”).

respondents refuse to transport him in an appropriate manner, given his medical condition, relief is not properly sought in this court. We have repeatedly stated that we will not exercise our discretion to consider writ petitions when factual, rather than legal, issues are presented.<sup>8</sup> Instead, petitions raising factual issues should be brought in the district court.<sup>9</sup> Consequently, for the above reasons, this petition for writs of mandamus and prohibition is denied.

It is so ORDERED.

 \_\_\_\_\_, J.  
Douglas

 \_\_\_\_\_, J.  
Rose

 \_\_\_\_\_, J.  
Parraguirre

cc: Charles Edward Huebler  
Attorney General Brian Sandoval/Carson City

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

<sup>9</sup>Id.; but see Cates v. Ciccone, 422 F.2d 926, 928 (8th Cir. 1970) (recognizing that, “[i]n the absence of factual allegations of obvious neglect or intentional mistreatment, the courts should place their confidence in the reports of reputable prison physicians that reasonable medical care is being rendered”).