

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LEONETTI,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
JACKIE GLASS, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 46369

FILED

MAR 07 2006

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

ORDER GRANTING PETITION

This is a proper person petition for a writ of mandamus. Petitioner seeks an order compelling the district court to enter a final order resolving all the post-conviction documents filed below. Petitioner further seeks an order compelling the disqualification of Judge Glass.

On October 24, 2000, the district court convicted petitioner, pursuant to a guilty plea, of one count of attempted sexual assault of a minor under the age of sixteen. The district court sentenced petitioner to serve a minimum term of ninety-six months to a maximum term of two hundred and forty months in the Nevada State Prison. This court dismissed petitioner's direct appeal.¹

¹Leonetti v. State, Docket No. 36980 (Order Dismissing Appeal, January 2, 2002).

On May 9, 2001, while his direct appeal was pending in this court, petitioner filed a proper person post-conviction petition for a writ of habeas corpus and a motion to withdraw a guilty plea in the district court. The State opposed the petition and motion. Petitioner filed a response. On August 27, 2001, Mr. Taylor, petitioner's appellate counsel, appeared in the district court. Mr. Taylor advised the district court that it lacked jurisdiction to consider the habeas corpus petition and motion because the direct appeal was pending in this court. The district court took the matters off calendar and never resolved the merits of the claims raised in petitioner's May 9, 2001 habeas corpus petition and motion to withdraw a guilty plea.

On February 19, 2002, after this court had dismissed petitioner's direct appeal, petitioner filed the following proper person documents: (1) a motion to return his habeas corpus petition to the court's calendar; (2) a document labeled, "judicial notice" relating to the appointment of counsel, (3) a motion to renew petitioner's motion for an evidentiary hearing, motion for the appointment of counsel, and motion for assignment of an investigator, (4) and a supplemental habeas corpus petition. On March 4, 2002, the district court orally denied petitioner's motion to place his habeas corpus petition on the court's calendar. The State opposed petitioner's judicial notice, and the district court denied relief. On March 13, 2002, petitioner filed a habeas corpus petition labeled, "good cause exists for the filing of a second or successive petition for writ of habeas corpus." On April 9, 2002, the district court denied petitioner's good cause petition. On appeal, this court determined that the district court had erroneously resolved petitioner's good cause petition without first resolving the 2001 habeas corpus petition and motion to

withdraw a guilty plea. This court reversed the order of the district court and remanded the matter with specific directions to the district court to consider on the merits petitioner's May 9, 2001 habeas corpus petition, petitioner's May 9, 2001 motion to withdraw a guilty plea, and all of the subsequent documents filed by petitioner in an effort to litigate his petition and motion.²

Upon remand, petitioner filed a supplemental petition on September 6, 2002, and motions to withdraw his guilty plea on December 5, 2002, and July 14, 2003. The district court conducted a hearing on January 8, 2004. According to the district court minutes, the district court found that all of the claims raised by petitioner were without merit except one. The remaining claim alleged that petitioner's counsel at the time he entered his plea had a conflict of interest because the attorney was also representing petitioner's wife in their divorce proceedings. As to that issue, the district court ordered an evidentiary hearing.

On January 14, 2004, petitioner filed a proper person notice of appeal from the "District Court's Order denying his MOTION TO WITHDRAW GUILTY PLEA that was entered during the hearing on January 8, 2004." On January 20, 2004, the district court entered an order, prepared by the State, purporting to deny petitioner's motion to withdraw his guilty plea. The order entered on January 20, 2004, made no mention of the conflict issue from petitioner's motion to withdraw his plea, nor did it mention that the district court had ordered, but not yet conducted an evidentiary hearing on that issue. In addition to the

²Leonetti v. State, Docket No. 39531 (Order of Reversal and Remand, August 20, 2002).

confusion as to whether this was a final, appealable order, the order was replete with errors. Specifically, the order: (1) listed the wrong district court department number; (2) contained the wrong date for the hearing; (3) stated that the hearing was before Judge Donald Mosley, when in fact, it was before Judge Glass; (4) stated that petitioner was not present and was acting in proper person, when in fact, petitioner was present and was represented by counsel; and (5) was inexplicably stamped with Judge McGroarty's signature.

On April 2, 2004, the district court conducted an evidentiary hearing on the conflict of interest issue. At the conclusion of the hearing, the district court found that there was no conflict and that counsel was not ineffective. The district court entered an order on April 28, 2004, which was again prepared by the State. The order stated that petitioner was not present for the hearing, while the transcript clearly showed that he was present. The order contained findings of fact and conclusions of law, regarding whether petitioner's counsel was ineffective because of the conflict of interest. The order ultimately purported to deny petitioner's petition for a writ of habeas corpus, with no mention of petitioner's motion to withdraw his plea.

In reviewing all of these proceedings on appeal, this court determined that the January 20, 2004 order was not a final appealable order because it left one issue pending and unresolved. Further, in light of the number of serious errors contained in the order entered on January 20, 2004, this court entertained serious doubt as to whether it constituted a valid enforceable order. As to the order entered on April 28, 2004, this court was unable to determine whether that order was intended to resolve petitioner's habeas petition or whether it was intended to resolve the

motions to withdraw his plea. Rather, it appeared that the district court's orders of January 20, 2004, and April 28, 2004, did not finally resolve either the habeas petition or the motions to withdraw the guilty plea that petitioner filed below. Thus, this court determined that it lacked jurisdiction to entertain the appeal and dismissed the appeal with specific instructions to the district court to enter an order or orders finally resolving petitioner's habeas petition and the motions to withdraw his guilty plea. The orders were to accurately describe the proceedings below and contain specific findings of fact and conclusions of law.³

It appears that the district court attempted to comply with this court's order by entering another order on November 3, 2004. However, that order specifically states that it denies only a post-conviction petition for a writ of habeas corpus. Although the order sets forth the procedural history, the order does not specifically address which habeas corpus petition it denied. Nor does it finally resolve the myriad of other documents filed throughout these proceedings. It does not appear that petitioner filed an appeal from this order.

On November 2, 2004, petitioner filed a second notice of appeal from the January 20, 2004 order. This court dismissed the appeal, noting that this court had previously determined that the January 20, 2004 order was not a final, appealable order.⁴

³Leonetti v. State, Docket No. 42674 (Order Dismissing Appeal, September 15, 2004).

⁴Leonetti v. State, Docket No. 44202 (Order Dismissing Appeal, December 6, 2004).

The proceedings at issue in this writ are tortured. It appears from this court's review of the documents before it that the district court has failed to enter a written order or written orders that finally and expressly resolve all of the documents filed in the district court as required by this court's prior orders. The list of documents at issue includes: (1) May 9, 2001 post-conviction petition for a writ of habeas corpus; (2) May 9, 2001 motion to withdraw a guilty plea; (3) February 19, 2002 supplemental post-conviction petition for a writ of habeas corpus; (4) March 13, 2002 post-conviction petition for a writ of habeas corpus labeled, "good cause exists for the filing of a second or successive petition for writ of habeas corpus"; (5) September 6, 2002 supplemental post-conviction petition for a writ of habeas corpus; (6) December 5, 2002 motion to withdraw a guilty plea; and (7) July 14, 2003 motion to withdraw a guilty plea. The district court's previous orders mention some of these documents, however, the orders fail to specifically set forth what claims were raised in each document or the resolution of those claims. This court has thus far been unable to review petitioner's post-conviction challenges to the validity of his judgment of conviction because of the failure of the district court to enter written orders that expressly set forth the document, the claims raised in each document, and the resolution of those claims.⁵ Further, the documents before this court do not indicate

⁵See, e.g., NRS 34.830(1) ("Any order that finally disposes of a petition, whether or not an evidentiary hearing was held, must contain specific findings of fact and conclusions of law supporting the decision of the district court.").

whether the district court properly handled petitioner's motion for disqualification.⁶

Thus, it appeared that petitioner may have set forth issues of arguable merit and that he may not have an adequate remedy at law.⁷ This court directed the State, on behalf of the respondent, to show cause why a writ of mandamus should not be granted compelling the district court to enter a written order or orders finally resolving the documents listed in the paragraph above with specific findings of fact and conclusions of law relating to the claims raised in each document and compelling the district court to conduct disqualifications procedures pursuant to NRS chapter 1.

The State filed a timely response indicating that it did not oppose the issuance of a writ of mandamus in the instant case. Accordingly, we grant the petition for a writ of mandamus and direct the district court to consider petitioner's motion for disqualification pursuant to the procedures set forth in NRS chapter 1. After resolution of the motion for disqualification, the district court shall enter a final order(s) resolving the following documents: (1) May 9, 2001 post-conviction petition for a writ of habeas corpus; (2) May 9, 2001 motion to withdraw a guilty plea; (3) February 19, 2002 supplemental post-conviction petition for a writ of habeas corpus; (4) March 13, 2002 post-conviction petition for a writ of habeas corpus labeled, "good cause exists for the filing of a second or successive petition for writ of habeas corpus"; (5) September 6, 2002 supplemental post-conviction petition for a writ of habeas corpus; (6)

⁶See NRS 1.230; NRS 1.235.

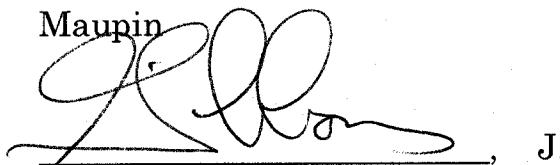
⁷See NRS 34.160; NRS 34.170.

December 5, 2002 motion to withdraw a guilty plea; and (7) July 14, 2003 motion to withdraw a guilty plea.⁸ The district court shall expressly set forth the document, the claims raised in each document, and the resolution of those claims in the written order(s).⁹ Accordingly, we

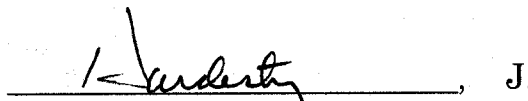
ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to RESOLVE THE MOTION FOR DISQUALIFICATION AND OTHER DOCUMENTS AS SET FORTH ABOVE.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

⁸We express no opinion as to whether petitioner set forth a proper ground for disqualification or whether petitioner followed the procedures set forth in NRS chapter 1. If it is determined that disqualification is necessary, the district court to whom these matters are transferred shall enter a written order resolving the documents as directed above.

⁹See, e.g., NRS 34.830(1) ("Any order that finally disposes of a petition, whether or not an evidentiary hearing was held, must contain specific findings of fact and conclusions of law supporting the decision of the district court.").

cc: Honorable Jackie Glass, District Judge
Michael Leonetti
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk