

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN RODNEY ORTH,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, THE HONORABLE ROBERT
H. PERRY, DISTRICT JUDGE,

Respondents,

and

SHERIFF, WASHOE COUNTY AND
WASHOE COUNTY DISTRICT
ATTORNEY,

Real Parties in Interest.

No. 47152

FILED

JUN 30 2006

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

ORDER GRANTING PETITION IN PART

This is a proper person petition for a writ of mandamus or prohibition. Among other things, petitioner alleges that he is being unlawfully detained because the district court lacked jurisdiction over his case when it issued a re-take bench warrant.

On February 17, 2006, this court entered an order in Docket No. 46176, which reversed a district court order granting a pretrial habeas corpus petition and remanded the matter to the district court for further proceedings.¹ On February 22, 2006, the district court held an ex-parte hearing on the State's motion for a bench warrant, granted the motion, and issued a re-take bench warrant for petitioner. Petitioner was arrested

¹Sheriff, Washoe County v. Orth, Docket No. 46176 (Order of Reversal and Remand, February 17, 2006).

pursuant to the re-take bench warrant on February 23, 2006, and remains in custody at this time. On February 27, 2006, petitioner filed a petition for rehearing in Docket No. 46176. On April 21, 2006, this court denied the petition for rehearing. The remittitur issued on May 17, 2006. On May 31, 2006, the district court granted the State's motion to reset bail.

"[A] district judge lacks jurisdiction over a case until the remittitur is issued."² The filing of the petition for rehearing stayed the issuance of the remittitur in Docket No. 46176 pending resolution of the petition for rehearing. Because the remittitur had not issued in Docket No. 46176 when the district court issued the re-take bench warrant for petitioner, it appeared that the district court had acted without jurisdiction, rendering the re-take bench warrant invalid, and petitioner may have been unlawfully detained. Therefore, this court directed the State to file a response addressing whether the district court had jurisdiction to issue the re-take bench warrant, and if the district court lacked jurisdiction, whether the re-take bench warrant is null and void.

The State argues that the district court had jurisdiction to issue the re-take bench warrant. The State asserts that the holding in Buffington that "[j]urisdiction in an appeal is vested solely in the supreme court until the remittitur issues to the district court"³ applies to facts and law at issue in the appeal, and does not apply to collateral issues of custodial status or bail. The State therefore reasons that because issuance of the warrant involved a determination on the collateral issue of

²Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994).

³Id.

petitioner's bail status, issuance of the remittitur was not necessary for the district court to have jurisdiction. We disagree.

In Buffington this court held that "a district judge lacks jurisdiction over a case until the remittitur is issued."⁴ Although the district courts have concurrent jurisdiction with this court over bail issues, granting bail contemplates that a defendant has charges pending against him and he is in custody. Here, by granting petitioner's petition for a writ of habeas corpus, the district court dismissed the case against petitioner and petitioner was released from custody. Although this court reversed the district court's order granting the habeas corpus petition, until the remittitur issued, the district court case had not been reinstated, and the district court lacked jurisdiction to issue any orders or take any action in the case. Therefore, the district court lacked jurisdiction to issue a warrant upon the information under NRS 173.145. Further, we note that the re-take bench warrant authorizes petitioner's arrest based upon his failure to appear. However, petitioner had no obligation to appear before the district court on those charges until after the remittitur had issued and the district court case had been reinstated.

Next, the State argues that NRS 177.085 and NRS 34.590 support the district court's order because they allow for the rearrest of an individual after this court orders the reversal of an order granting a motion to set aside an indictment or information. Although NRS 177.085 allows for the rearrest and trial of an individual after a reversal by this court, such rearrest and trial shall be upon the indictment or information.⁵

⁴Id. (emphasis added).

⁵NRS 177.085(1).

As noted above, until the remittitur issued, the district court case had not been reinstated and, therefore, there was no information upon which petitioner could have been rearrested.

Finally, the State argues that public policy supports the district court's authority for issuing the re-take bench warrant because this court has no mechanism or procedure whereby the State may obtain emergency relief to re-take an individual who seeks to flee and poses an imminent threat to the public. We disagree.

Contrary to the State's assertion, the State had a mechanism for relief before this court. The State could have moved for an order shortening the time for the issuance of the remittitur under NRAP 41(a). Additionally, the State could have moved this court for an order of limited remand, requesting this court to remand jurisdiction to the district court for the purpose of rearresting petitioner.⁶

We conclude that the district court lacked jurisdiction when it issued the re-take bench warrant. However, we note that the remittitur has since issued, jurisdiction has been returned to the district court, and the district court has held a bail hearing. Accordingly, we grant the petition in part, and we direct the district court to reissue the re-take bench warrant, nunc pro tunc to the date of issuance of the remittitur.

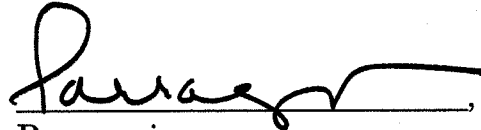
We have reviewed the other claims raised in the petition and we conclude extraordinary relief is not warranted as to those claims. We therefore deny the petition with respect to those claims.

Having reviewed the documents submitted before this court, we

⁶See NRAP 27.

ORDER the petition GRANTED IN PART AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to reissue the re-take bench warrant, nunc pro tunc, to the date of issuance of the remittitur in Docket No. 46176.⁷


_____, J.
Douglas


_____, J.
Parraguirre


_____, Sr. J.
Shearing

cc: Hon. Robert H. Perry, District Judge
Hon. Jerome M. Polaha, District Judge
Sean Rodney Orth
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁷We have considered the documents submitted in proper person in this matter, and we conclude that petitioner is entitled only to the relief granted herein.

The Honorable Miriam Shearing, Senior Justice, participated in the decision of this matter under general orders of assignment entered January 6, 2006.