

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER SOUND O'NEILL,
Petitioner,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47455

FILED

SEP 15 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER GRANTING REHEARING AND GRANTING PETITION FOR A

WRIT OF MANDAMUS

On June 9, 2006, Christopher Sound O'Neill filed a proper person petition for a writ of mandamus in this court.¹ On July 10, 2006, this court entered an order denying the petition. O'Neill has submitted a proper person petition for rehearing challenging this court's order denying his petition.

In the proceedings below, O'Neill had submitted a proper person motion for new trial in the district court. The motion was subsequently stricken by the district court as a fugitive document because O'Neill is represented by counsel in a direct appeal pending in this court.² It appeared from the petition he filed in this court that O'Neill was seeking an order compelling the district court to consider his proper person motion for a new trial. After reviewing the petition, this court declined to intervene in the matter and denied the petition.

¹Alternatively, appellant sought a petition for a writ of prohibition.

²O'Neill v. State, Docket No. 45880.

In his petition for rehearing, O'Neill clarifies the relief he is seeking in this court. Specifically, O'Neill maintains that his petition was intended to challenge the district court's determination that a notice of appeal he submitted to the district court was "filed in error." More specifically, it appears that, on March 16, 2006, the clerk of the district court filed O'Neill's proper person notice of appeal from the December 15, 2005 order of the district court striking his motion for a new trial. It further appears, however, that the notice of appeal was subsequently stamped in the district court as having been "filed in error." The March 16, 2006 notice of appeal was never transmitted to this court.

This court has consistently held that the clerk of the district court has a ministerial duty to accept and file documents presented for filing if those documents are in proper form.³ Further, NRAP 3(a)(2) requires the district court clerk to file a notice of appeal despite any perceived deficiencies and to transmit the notice of appeal to this court in accordance with NRAP 3(e) with a notation of any deficiencies. It appears that this procedure was not followed in this case. Further, it is unclear

³See, 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); Whitman v. Whitman, 108 Nev. 949, 840 P.2d 1232 (1992) (holding that the clerk has no authority to return documents submitted for filing; instead, the clerk must stamp documents that cannot be immediately filed "received," and must maintain such documents in the record of the case); 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).

who determined that the notice of appeal was "filed in error" and upon what grounds that determination was based.

Thus, on August 8, 2006, this court directed the State to file an answer addressing this court's concerns about the March 16, 2006 notice of appeal. The State was to specifically address:

1. Was a notice of appeal from the order of the district court striking the motion for a new trial in fact submitted for filing in the district court?
2. If so, was the notice of appeal filed in the district court and later determined to have been filed in error?
3. If the notice of appeal was filed in the district court and later determined to be "filed in error," what was the basis for that determination?
4. Did the district judge or the clerk of the district court determine that the notice of appeal was filed in error?
5. What authority, if any, may permit a district judge or the clerk of the district court to determine that a notice of appeal was "filed in error" and to thereafter decline to transmit the notice of appeal to this court in compliance with NRAP 3?

In its response, the State indicates that the March 16, 2006 notice of appeal cannot be found in the district court case file.⁴ The State further states that staff in the district court indicated that defective

⁴Although the State indicates that it did not receive a copy of the March 16, 2006 notice of appeal, we note that the March 16, 2006 notice of appeal was attached to the petition filed in this court. It appears from the documents before this court that the State was served with a copy of the petition. It is unclear whether the March 16, 2006 notice of appeal was attached to the copy of the petition that O'Neill served upon the State.

notices of appeal are sometimes returned to appellants marked "filed in error" with a description of the error and a statement of how to remedy the error. The court staff further indicated that copies are not retained in the district court's case file. The State has indicated that it was unable to determine who caused the notice of appeal to be stamped "filed in error."


The clerk of the district court erred in stamping O'Neill's March 16, 2006 notice of appeal "filed in error." Further, the court staff's procedures as described in the State's response violate NRAP 3(a)(2) and this court's case law. Despite any perceived deficiencies in a notice of appeal, the clerk of the district court is required to transmit the notice of appeal to this court in compliance with NRAP 3(e) and with a notation of the deficiencies.⁵ Further, if the clerk of the district court believes that a document should not be filed, it must at the minimum stamp the document "received" and maintain that document in the district court case file.⁶

Having reviewed the documents presented to this court, we conclude that the relief requested is warranted. Therefore, we grant the petition for rehearing and the petition for a writ of mandamus. The clerk of the district court shall cause the March 16, 2006 notice of appeal, which is attached to this order, to be filed in district court case number CR04-2915 with a filing date of March 16, 2006. The clerk of the district court shall further transmit the notice of appeal to this court in compliance with NRAP 3(e). Accordingly, we

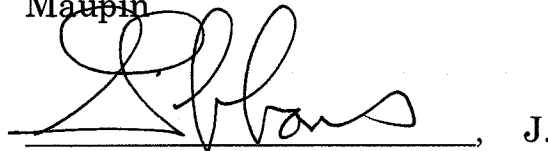
⁵See NRAP 3(a)(2).

⁶See Whitman, 108 Nev. 949, 840 P.2d 1232.

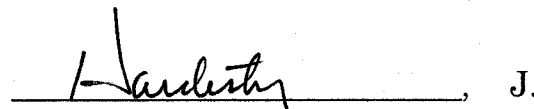
ORDER the petition for rehearing and petition for a writ of mandamus GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the clerk of the district court to file the March 16, 2006 notice of appeal as instructed and transmit the March 16, 2006 notice of appeal to this court in compliance with NRAP 3(e).

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Steven P. Elliott, District Judge
Christopher Sound O'Neill
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

ORIGINAL

No. CR04-2915

Dept. No. 10

FILED

2006 MAR 16 PM 2:52

RONALD A. LAMBERT, JR.

FILED IN ERROR

DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF WASHOE

CHRISTOPHER O'NEILL

Petitioner/Plaintiff,

v.

STATE OF NEVADA

Respondent/Defendant.

NOTICE OF APPEAL

Notice is hereby given that CHRISTOPHER O'NEILL, Petitioner/Defendant above named,
hereby appeals to the Supreme Court of Nevada from the final judgment/order
(STRIKING MOTION FOR NEW TRIAL AND VACATE SENTENCE)

entered in this action on the 15 day of DECEMBER, 2005.

Dated this 12 day of MARCH, 2006.



Appellant
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989