

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES JUDD,  
Appellant,  
vs.  
HON. NOLA HOLTON, ALAMO  
JUSTICE COURT JUDGE,  
Respondent.

No. 47529

**FILED**

**NOV 09 2006**

ORDER OF AFFIRMANCE


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

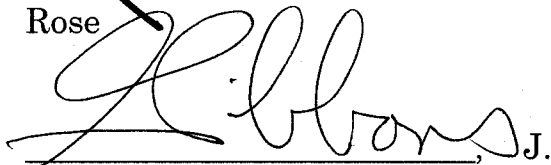
This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Seventh Judicial District Court, Lincoln County; Steve L. Dobrescu, Judge.

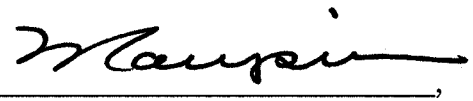
We have reviewed the record on appeal and we conclude that the district court did not err in dismissing appellant's petition for the reasons stated in the attached order. Therefore, briefing and oral

argument are not warranted in this case.<sup>1</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Maupin

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<sup>1</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>2</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Steve L. Dobrescu, District Judge  
James Judd  
Attorney General George Chanos/Carson City  
Lincoln County District Attorney  
Lincoln County Clerk

RECEIVED

FILED

2006 MAY -9 P 1:35

Case No. HC-0931005

Dept. No. 1

CLERK OF DISTRICT COURT  
LINCOLN COUNTY, NEVADA

*C. Logan*

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF LINCOLN

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JAMES M. JUDD,

Petitioner,

-vs-

NOLA HOLTON,

Respondent.

**ORDER DISMISSING PETITION FOR  
WRIT OF HABEAS CORPUS**

PROCEDURAL HISTORY

On February 20, 2005 Petitioner James M. Judd ("Judd") was cited near Alamo, Lincoln County, Nevada for Following Too Closely in violation of NRS 484.307. Judd signed the citation, which included a promise to appear at the Alamo Justice Court on March 23, 2005. On March 21, 2005 the Alamo Justice Court received a money order from Judd in the amount of \$132.00, the amount indicated in the "Total Bail" box on the front of the citation. On June 7, 2005 Judd filed a Motion to Dismiss Complaint and Motion to Exonerate Bail by Special Appearance Only in the Alamo Justice Court. The Alamo Justice Court denied the Motion.

On September 28, 2005 Judd filed a Petition for Writ of Habeas Corpus in

SEVENTH JUDICIAL DISTRICT COURT  
STEVE L. DOBRESCU  
DISTRICT JUDGE  
DEPARTMENT 1  
WHITE PINE, LINCOLN AND EUREKA COUNTIES  
STATE OF NEVADA



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1 the Seventh Judicial District Court. On October 31, 2005 Respondent Nola Holton, Alamo  
2 Justice of the Peace ("Judge Holton"), by and through the Lincoln County District Attorney's  
3 office, filed an Opposition to Petition for Writ of Habeas Corpus. On November 10, 2005  
4 Judd filed a Reply to Respondent's Opposition to Petitioner's Petition for Writ of Habeas  
5 Corpus (Post Conviction). On November 28, 2005 Judd filed a Motion to Disqualify Lincoln  
6 County District Attorney. On December 29, 2005 Judge Holton filed an Opposition to  
7 Motion to Disqualify Lincoln County District Attorney. The Court has reviewed the matter  
8 and finds that no additional briefing or oral argument is necessary.

#### 9 DISCUSSION

10 Under NRS 34.360, "Every person unlawfully committed, detained, confined  
11 or restrained of his liberty, under any pretense whatsoever, may prosecute a writ of habeas  
12 corpus to inquire into the cause of such imprisonment or restraint." Relief under NRS  
13 34.360 is not available when one is not unlawfully confined.<sup>1</sup> Such a writ is available to one  
14 admitted to bail.<sup>2</sup> Here the Petitioner is not confined. Nor is he admitted to bail, despite  
15 the fact that the \$132.00 fine he forfeited was indicated in a box on the citation labeled  
16 "Total Bail." Rather, Petitioner, when he failed to appear at his scheduled court  
17 appearance, was convicted of violating NRS 484.307 and the \$132.00 bail paid by  
18 Petitioner was then forfeited as a fine.

19 Under NRS 34.724, a post conviction petition for writ of habeas corpus may  
20 be filed by "Any person convicted of a crime and *under sentence of death or imprisonment*"  
21 who claims the conviction was illegally obtained (emphasis added). A person found to

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<sup>1</sup>In re Sheply, 66 Nev. 33 (1949).

<sup>2</sup>Jacobson v. State, 89 Nev. 197 (1973).



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have violated NRS 484.307 is guilty of a misdemeanor. Under NRS 193.150 a person guilty of a misdemeanor is subject to imprisonment for no more than six months in the county jail, a maximum fine of \$1,000.00, or both.

In this case the penalty imposed was merely a \$132.00 fine and a report of his conviction to the Department of Motor Vehicles. Because this case involves neither a sentence of death nor imprisonment, it is not cognizable under NRS 34.724.

As the petition is not cognizable under a petition for writ of habeas corpus, the Court cannot consider the merits of Petitioner's Motion to Disqualify Lincoln County District Attorney.

Good cause appearing;

IT IS HEREBY ORDERED that the Petitioner's Petition for Writ of Habeas Corpus is **DISMISSED**.

DATED this 8<sup>TH</sup> day of May, 2006.

A handwritten signature in black ink, appearing to be "S. L. Dobrescu", written over a horizontal line.

DISTRICT JUDGE