

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRY D. BRIGGS, SR.,
Petitioner,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47838

FILED

FEB 02 2007

ORDER GRANTING PETITION

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

This is a proper person petition for a writ of mandamus. Petitioner seeks an order directing the clerk of the district court to comply with an order of this court entered on August 16, 2005.¹

In 2004, petitioner submitted a proper person post-conviction petition for a writ of habeas corpus to the district court for filing in case numbers C202798 and C53751. However, on November 9, 2004, the petition was filed only in district court case number C202798. On March 29, 2005, the district court entered an order denying the petition in district court case number C202798. Petitioner appealed, and this court affirmed the order of the district court on appeal.² This court further directed the clerk of the district court, however, to file the petition of November 9, 2004, in district court case number C53751.

¹Briggs, Sr. v. State, Docket No. 45129 (Order of Affirmance and Directing the Clerk of the District Court to Cause the November 9, 2004 Habeas Corpus Petition to be filed in C53751, August 16, 2005).

²Id.

In the instant petition, petitioner complains that his petition of November 9, 2004, has never been filed in district court case number C53751.

Because it was not clear from the documents before this court whether petitioner was entitled to relief, on September 6, 2006, this court directed the State to file a response within 30 days informing this court whether petitioner's November 9, 2004 post-conviction habeas petition was filed in district court case number C53751 as this court previously directed, and whether that petition remained pending in the district court. Because this court did not receive a response, on November 6, 2006, this court ordered the Clark County District Attorney to file a response informing this court whether the November 9, 2004 post-conviction habeas petition was filed in district court case number C53751 as this court previously directed, and whether that petition remained pending.

On November 20, 2006, the district attorney filed a response in this court. The district attorney stated that the November 9, 2004 habeas petition was denied in a written order on January 3, 2006, and that the matter was appealed and docketed in this court in Docket No. 46699. Thus, the district attorney argues that the petition was "clearly meritless and should be denied."

Our review of the documents before this court did not support the district attorney's assertions. The post-conviction petition for a writ of habeas corpus that was the subject of Docket No. 46699 was a petition filed on July 13, 2005—a seemingly, entirely separate petition from the

November 9, 2004 habeas petition.³ In fact, in reviewing the docket entries available on the Clark County Web Site, it appeared that the November 9, 2004 habeas petition had been transferred to the district court case number C53751, but that no action had been taken on that petition.

Because it was not clear that this petition is "clearly meritless," this court directed the district attorney to file a response informing this court whether the November 9, 2004 habeas petition had in fact been denied in district court case number C53751. If the July 13, 2005 habeas petition raised the same claims as those raised in the November 9, 2004 habeas petition, the district attorney was to inform this court of this fact.


On January 16, 2007, the district attorney filed a response and informed this court that the November 9, 2004 habeas petition remained pending in district court case number C53751. The district attorney further informed this court that the July 13, 2005 habeas petition did not involve the same issues as those raised in the November 9, 2004 habeas petition.

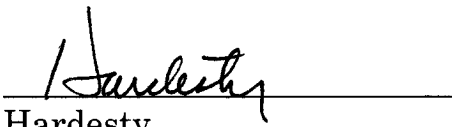
Having reviewed the documents presented to this court, we grant the petition for a writ of mandamus and direct the issuance of a writ of mandamus instructing the district court to place the November 9, 2004 habeas petition on calendar to be resolved within a reasonable time from the issuance of the writ. The district court shall ensure that all necessary steps are taken in the processing of the petition in order to promote the

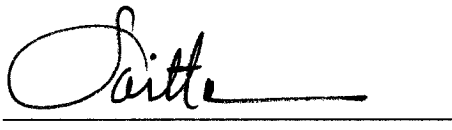
³See Briggs, Sr. v. State, Docket No. 46699 (Order of Affirmance, July 28, 2006).

expeditious examination of the petition, including ordering an answer or response from the State if necessary.⁴ Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to place the November 9, 2004 habeas petition on calendar and take whatever steps necessary to promote the expeditious examination of the petition.⁵

 J.
Parraguirre

 J.
Hardesty

 J.
Saitta

⁴See NRS 34.430; NRS 34.745. We decline to direct the district court to appoint counsel or conduct an evidentiary hearing. The district court may exercise its discretion in deciding whether the appointment of counsel is necessary or whether an evidentiary hearing is required in the instant case.

⁵We have considered all proper person documents submitted in this matter, and we conclude that petitioner is only entitled to the relief described herein.

cc: Hon. David Wall, District Judge
Terry D. Briggs Sr.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk