

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS ABBOTT,
Petitioner,

vs.

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

No. 48795

FILED

APR 09 2007

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

ORDER GRANTING PETITION IN PART

This petition for a writ of mandamus challenges an order of the district court denying petitioner's motion for release on bail pending trial. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Petitioner Thomas Abbott seeks a writ of mandamus directing the respondent district court to comply with its statutory obligation to set bail. See NRS 178.484(1) ("a person arrested for an offense other than murder of the first degree must be admitted to bail"). Abbott further requests this court to set bail in the sum of \$11,000.

In its answer to the petition, the State concedes that the statutory directive to set bail in NRS 178.484(1) "is mandatory, not permissive," and that "the district court cannot deny any bail." Thus, the State "has no objection" to this court's issuance of a writ directing the district court to set bail for petitioner. The State, however, opposes

Abbott's additional request that this court set bail in the amount of \$11,000.

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion.¹ Here, as the State concedes, the district court's refusal to set bail in any amount is contrary to the requirements of the law. We agree with the State, however, that the district court is a better position than this court to determine the appropriate amount of bail that is warranted under the circumstances. Accordingly, we grant this petition in part. The clerk of this court shall issue a writ of mandamus directing the district court to comply with NRS 178.484(1) and to set bail for petitioner in a reasonable, appropriate amount.

It is so ORDERED.

Parraguirre, J.
Parraguirre

Hardesty, J.
Hardesty

Douglas, J.
Douglas

¹See State v. Dist. Ct. (Epperson), 120 Nev. 254, 258, 89 P.3d 663, 665-66 (2004).

cc: Hon. Donald M. Mosley, District Judge
Kirk T. Kennedy
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk