

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD BROWN,
Petitioner,
vs.
CLERK OF THE EIGHTH JUDICIAL
DISTRICT COURT, IN AND FOR
CLARK COUNTY, NEVADA,
Respondent.

No. 48869

FILED

APR 26 2007

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

ORDER DENYING PETITION

This is a proper person petition for a writ of mandamus. Petitioner seeks an order directing the district court to process a notice of appeal that he purportedly submitted for filing on or about November 21, 2006.

Petitioner filed a post-conviction petition for a writ of habeas corpus in the district court in district court case number C212282. Petitioner asserts that the petition was scheduled for a hearing on November 9, 2006, and it appears, that the district court orally denied the petition on November 9, 2006. Petitioner claims that he submitted a notice of appeal to prison officials for mailing on or about November 21, 2006. Subsequent to his submission of the notice of appeal, the district court entered a written order denying the petition on November 30, 2006. Petitioner claims that the clerk of the district court has failed to process his notice of appeal and transmit the notice of appeal 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.¹ 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 was unclear from the documents before this court whether petitioner submitted a notice of appeal to prison officials for mailing on or about November 21, 2006. Further, it was not clear that the clerk of the district court ever received a notice of appeal from petitioner in this matter. Thus, this court directed that the clerk of the district court to inform this court whether a notice of appeal was submitted for filing and/or filed in district court case number C212282. If a notice of appeal was filed, the clerk was to inform this court what had transpired since its filing. The attorney general, as the legal representative of the custodian of records for the Nevada Department of Corrections, was directed to advise this court of whether there was proof that petitioner delivered his notice of appeal to prison officials for mailing on or about November 21, 2006.²

¹See, 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).

²See Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992).

This court has received responses from both the clerk of the district court and the attorney general in this matter. The clerk of the district court informs this court that no notice of appeal was submitted to the district court for filing. The attorney general informs this court that petitioner did not use the notice of appeal log maintained at the prison. However, the attorney general notes that petitioner used the legal mail log on November 20, 2006. The November 20, 2006 log entries indicate that petitioner sent two pieces of legal mail to the clerk of the district court and one piece of legal mail to the Clark County Public Defender's Office. These log entries do not indicate the contents of the legal mail sent. These entries further predate the date handwritten by petitioner on the purported notice of appeal submitted to the district court for filing.³ Thus, it is not clear that either piece of mail sent to the clerk of the district court on November 20, 2006, contained the notice of appeal purportedly sent by petitioner. Notably, the legal mail log entries do not contain any entries on this date for the attorney general or district attorney, and a notice of appeal is required to be served upon all of the parties to an action in the district court.⁴

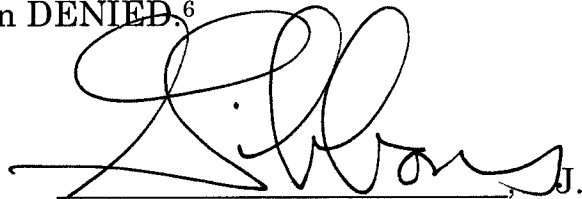
Having considered all of the documents submitted in this matter, this court declines to exercise its original jurisdiction over this

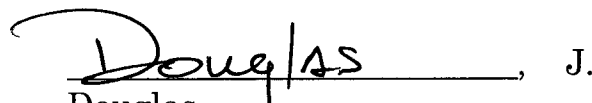
³Petitioner indicated on the face of the notice of appeal that he signed the notice of appeal on November 21, 2006.

⁴See NRAP 3(d). We note that the purported notice of appeal indicates that it was served upon the district attorney. Curiously, there is no entry for the district attorney on November 20, 2006, in the legal mail log.

petition. This court is not a fact-finding tribunal, and this court cannot evaluate petitioner's claim from the documents presented before this court.⁵ Petitioner should file his petition for a writ of mandamus in the district court where the district court may review the entire record on appeal, consider arguments and conduct any necessary hearings on petitioner's notice of appeal claim. Accordingly, we

ORDER the petition DENIED.⁶


Gibbons


Douglas


Cherry

cc: Hon. Valerie Adair, District Judge
Ronald Brown
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁵See Zugel v. Miller, 99 Nev. 100, 659 P.2d 296 (1983).

⁶We have considered all proper person documents submitted in this matter, and we conclude that no relief is warranted for the reasons set forth above.