

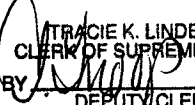
IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH BASSI A/K/A JOSEPH M.
BASSI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48941

FILED

JAN 08 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER AFFIRMING DENIAL OF PETITION FOR WRIT OF
MANDAMUS AND VACATING VERBAL ORDER

This is a proper person appeal from an order of the district court denying appellant's petition for a writ of mandamus. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On November 15, 2006, appellant filed a proper person petition for a writ of mandamus in the district court. After conducting a hearing on appellant's petition, the district court entered an order summarily denying it. This appeal followed.

In his petition, appellant requested an order directing the Las Vegas Metropolitan Police Department to return property and currency in the amount of \$5,700 that was seized from him in case number 00F0419X.¹ The State did not file a written response to appellant's

¹The presentence investigation report filed in this matter indicates that case number 00F0419X was one of several cases incorporated into the
continued on next page . . .

petition. The district court conducted a hearing on the petition on December 6, 2006. Although appellant was not present at this hearing, the district court permitted the State to argue against granting the petition. The State argued that the money appellant sought was not appellant's because he was ordered to pay restitution and had not yet paid the restitution. It appears that the district court denied the petition based upon the argument presented by the State and verbally ordered the seized money to be applied toward the restitution owed by appellant.²

Because our preliminary review of this appeal indicated that the district court may have exceeded its authority when it ruled on appellant's petition, this court entered an order directing the State to show cause why this appeal should not be remanded for further proceedings. The order to show cause specifically stated that (1) it was unclear upon what basis the State opposed appellant's petition, (2) it appeared that the district court may have improperly allowed the State to present argument regarding the petition when appellant was not present, (3) it appeared improper for the district court to enter an order by

... continued

instant case, district court case number C190933, in the grand jury indictment.

²The written order denying appellant's petition did not order the seized money to be applied toward restitution.

stipulation when appellant was not present at the hearing,³ and (4) the district court may not have had authority to order any seized money to be applied toward restitution when it was unclear whether the State had been granted forfeiture of the seized money. In its response, the State argues that appellant failed to demonstrate that he has a right to the \$5,700 that he was seeking because "it was inconclusive as to whether it was the Defendant's money or that of one of his victims, and furthermore, he has yet to pay the court ordered restitution."

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station or to control an arbitrary or capricious exercise of discretion.⁴ A writ of mandamus may issue only where there is no plain, speedy, and adequate remedy at law.⁵ Based upon our review of the record on appeal, we conclude that appellant had a plain, speedy and adequate remedy by way of initiating a civil action pursuant to NRS 179.1171(2) seeking the

³The transcript for the hearing indicates that the district court order was not entered by stipulation.

⁴NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

⁵NRS 34.170.

delivery of seized property that has not been subject to forfeiture. Therefore, we affirm the denial of appellant's petition.⁶

However, we conclude that the district court violated appellant's due process rights by conducting the hearing as it did and ordering the seized money to be applied toward restitution. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment."⁷ The United States Supreme Court has consistently held that "some form of hearing is required before an individual is finally deprived of a property interest."⁸ "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"⁹

Appellant did not have a due process right to a hearing on his petition because a writ of mandamus was not the proper avenue for seeking the desired relief and he did not have a statutory right to a

⁶See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d. 338, 341 (1970) (holding that this court will affirm an order that reaches the correct result, even if based upon an incorrect ground).

⁷Mathews v. Eldridge, 424 U.S. 319, 332 (1976).

⁸Id. at 333.

⁹Id. (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)).

hearing on his petition for a writ of mandamus.¹⁰ Nevertheless, because appellant had a reasonable expectation of entitlement to the money that was seized from him, once the district court decided to have a hearing on the merits of the petition, appellant had a right to be present. Appellant was deprived of his interest in the money without receiving proper notice of the State's basis for opposition or an opportunity to be heard. Therefore, we conclude that appellant's due process rights were violated and we vacate the verbal order directing the State to apply the seized money toward restitution.

We admonish the State for failing to adequately respond to this court's order to show cause. Despite the fact that this court clearly identified four issues of concern, the State completely failed to address three of the identified issues. Additionally, the State referenced the district court minutes rather than the hearing transcript, although the transcript of the hearing was filed in the district court more than two weeks before the State filed its response.¹¹

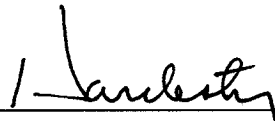
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that briefing and oral argument are unwarranted.¹² Accordingly, we

¹⁰See NRS 34.260 (providing that if no answer to a petition for a writ of mandamus is made, the case shall be heard on the papers of the applicant).

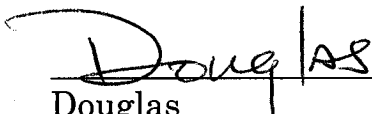
¹¹See NRAP 28(e).

¹²See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

ORDER the judgment of the district court denying appellant's petition AFFIRMED and we VACATE the verbal order applying the seized money toward restitution.¹³


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Stewart L. Bell, District Judge
Joseph M. Bassi
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹³We 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.