

IN THE SUPREME COURT OF THE STATE OF NEVADA

JIMMY EARL DOWNS,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
KATHY A. HARDCASTLE, DISTRICT
JUDGE,
Respondents.

No. 49021

FILED

JUL 18 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY Alvarado
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original proper person petition for a writ of mandamus challenges the district court's alleged failure to file the civil action, entitled Downs v. Napolitano, that petitioner submitted for filing. Having considered the petition, answer and reply,¹ we conclude that the petition is now moot and therefore we deny it.

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,² or to control a manifest abuse of discretion.³ Mandamus is an

¹Although petitioner was not granted permission to file a reply, we have considered the reply, provisionally received on June 12, 2007, and therefore we direct the clerk of this court to file the reply. Additionally, we deny respondent's June 27, 2007 motion to strike petitioner's reply.

²See NRS 34.160.

extraordinary remedy, and it is within this court's discretion to determine if a petition will be considered.⁴ Moreover, "the duty of every judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before it."⁵

Petitioner seeks to compel the district the district court to process and file his civil complaint. Based on respondent's answer, however, it appears that petitioner's civil complaint was transferred to the justice's court, where the complaint was filed and petitioner's motion to proceed in forma pauperis was granted.⁶ Because the complaint has already been filed, we conclude that this petition is now moot.⁷ Moreover, to the extent that petitioner requests any other relief in his petition and

... continued

³See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

⁴See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

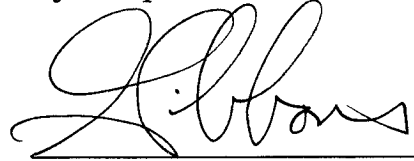
⁵NCAA v. University of Nevada, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981).

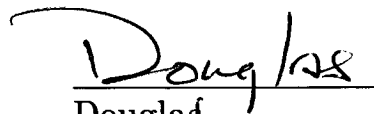
⁶Because the filing fee for this petition has already been waived based on the justice's court's granting petitioner in forma pauperis status, we deny as moot petitioner's motion to proceed in forma pauperis. The clerk of the court shall file petitioner's motion to proceed in forma pauperis, which was provisionally received in this court on May 7, 2007.

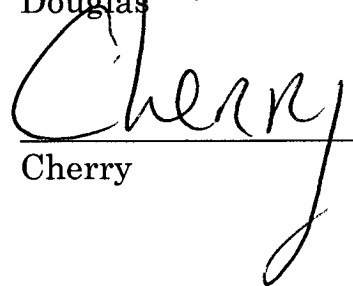
⁷NCAA, 97 Nev. at 57, 624 P.2d at 10.

reply, we conclude that our intervention by way of extraordinary relief is not warranted. Accordingly, we deny the petition.⁸

It is so ORDERED.⁹


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Jimmy Earl Downs
Attorney General Catherine Cortez Masto/Las Vegas
Clark County District Attorney David J. Roger/Civil Division
Eighth District Court Clerk

⁸Id.; Smith, 107 Nev. 674, 818 P.2d 849.

⁹Petitioner has submitted a motion seeking to enjoin the Nevada Department of Corrections from enforcing a new policy which prohibits inmates from possessing typewriters. The clerk of this court shall file the motion, which was provisionally received on June 18, 2007. He asserts that he has already filed a lawsuit regarding this new policy. Because this court is not the appropriate forum for seeking the relief petitioner requests, we deny the motion. Any such motion for injunctive relief must instead be made to the district court. As we deny petitioner's motion, we deny as moot respondents' June 26, 2007 request for a stay with regard to this court's resolution of petitioner's motion. The clerk of this court shall file petitioner's opposition to the request for a stay, provisionally received in this court on July 3, 2007.