

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, THE HONORABLE
PATRICK FLANAGAN, DISTRICT
JUDGE,

Respondents,

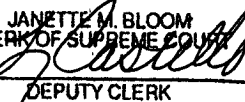
and

YURIK MIKAYELYAN,
Real Party in Interest.

No. 49366

FILED

JUL 09 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION

This original petition for a writ of mandamus, certiorari or prohibition challenges an order of the district court allowing the real party in interest to remain free on bail during a post-conviction habeas corpus action. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Real party in interest Yurik Mikayelyan was convicted, pursuant to a jury verdict, of one count of sexual assault. After sentencing, the district court granted bail pending appeal. On direct appeal, this court affirmed the judgment of conviction.¹ Mikayelyan subsequently filed in the district court a post-conviction petition for a writ

¹Mikayelyan v. State, Docket No. 46583 (Order of Affirmance, November 13, 2006).

of habeas corpus and a motion for bail pending the habeas corpus action. After listening to the parties' arguments, the district court allowed Mikayelyan to remain free on bail. The State filed the instant petition.

NRS 178.4871 is the statute controlling the granting of bail pending review of a post-conviction habeas petition. That statute provides that bail must not be granted pending a review of a post-conviction petition for habeas corpus unless:

- (a) The petition is filed in the proper jurisdiction;
- (b) The petition presents substantial questions of law or fact and does not appear to be barred procedurally;
- (c) The petitioner has made out a clear case on the merits; and
- (d) There are exceptional circumstances deserving of special treatment in the interests of justice.

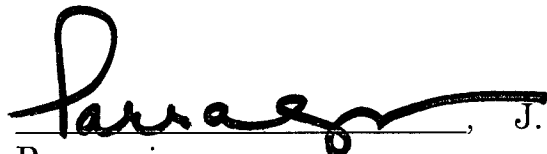
Notably, the statute requires that all four conditions be satisfied before bail is to be allowed. In this case, the district court specifically found that there were "no special, exceptional circumstances deserving of any special treatment." Nonetheless, the district court allowed Mikayelyan to remain free on bail.

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.²

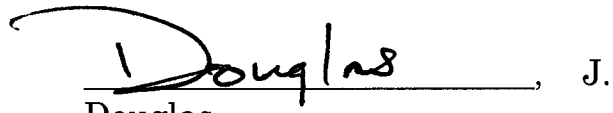
²See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

Because the district court's decision was not clearly based on a showing of all four of the factors enumerated in the statute, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order allowing bail and conduct further proceedings consistent with this order.


Parraguirre, J.


Hardesty, J.


Douglas, J.

cc: Hon. Patrick Flanagan, District Judge
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Chesnoff & Schonfeld
Washoe District Court Clerk