

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT A. SMITH,  
Petitioner,


vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
MICHELLE LEAVITT, DISTRICT  
JUDGE,  
Respondents.

No. 49703

**FILED**

SEP 10 2007

MANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER DENYING PETITION

This is a proper person petition for a writ of mandamus. Petitioner seeks an order compelling Judge Michelle Leavitt to take action on a post-conviction petition for a writ of habeas corpus pending in the district court.

Petitioner asserts that he filed a post-conviction petition for a writ of habeas corpus in the district court on August 25, 1998. Petitioner further asserts that the district court appointed attorney Garrett Ogata to serve as his post-conviction counsel, but that Mr. Ogata has not contacted him, nor taken any action to supplement or prosecute his petition in the years since his appointment. It appears that Mr. Ogata was appointed and confirmed as counsel in 2001. Petitioner complains that the delay in prosecuting his petition is excessive, and he seeks an order compelling Judge Leavitt to take action on his post-conviction petition for a writ of habeas corpus pending in the district court.

NRS 34.740 provides that a post-conviction petition for a writ of habeas corpus will be "examined expeditiously by the judge or justice to

whom it is assigned." NRS 34.750 further provides that if post-conviction counsel is appointed, post-conviction counsel may file and serve supplemental pleadings, exhibits, transcripts and documents within 30 days after the date the court orders the filing of an answer or the date of post-conviction counsel's appointment, whichever is later.<sup>1</sup>

This court's preliminary review of this matter indicated that petitioner may have a meritorious claim and may have no adequate remedy in the ordinary course of law to redress his claim.<sup>2</sup> The post-conviction petition for a writ of habeas corpus has apparently remained pending in the district court for almost nine years. Further, it appeared that most of the delay appears to have been occasioned by Mr. Ogata and the former post-conviction counsel appointed in this case. It did not appear from the documents before this court that Mr. Ogata had formally withdrawn as petitioner's counsel. Nor did it appear that Mr. Ogata had filed a supplement or any documents on petitioner's behalf in these proceedings. This appeared patently unreasonable conduct in the prosecution of the petition.

Accordingly, this court directed the State to file a response informing this court whether: (1) the August 24, 1998, petition remained pending in the district court; (2) Mr. Ogata was counsel of record in the post-conviction proceedings; and (3) what action had been taken by the district court to move the prosecution of this petition forward. The State has filed a timely response indicating that the petition remains pending in

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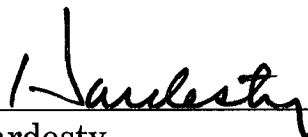
<sup>1</sup>See NRS 34.750(3).

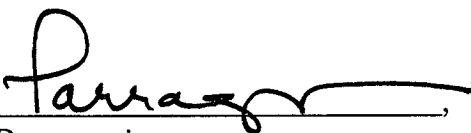
<sup>2</sup>See NRS 34.160; NRS 34.170.


the district court and that Mr. Ogata is counsel of record in the post-conviction proceedings. The State further informs this court that the matter was calendared on August 9, 2007, and that Mr. Ogata represented that he would meet with petitioner regarding the prosecution of the petition. The State further indicates that the matter will be calendared upon their motion in 30 days if no action is taken.

As it appears that the prosecution of the petition is moving forward, we conclude that this court's intervention in this matter is not warranted at this time.<sup>3</sup> Accordingly, we

ORDER the petition DENIED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Michelle Leavitt, District Judge  
Robert A. Smith  
Garrett Ogata  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>3</sup>See NRS 34.160; NRS 34.170.