

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS KRIEGER,  
Appellant,  
vs.  
MUNICIPAL/JUSTICE COURT OF  
CARSON CITY TOWNSHIP AND  
DEPARTMENT OF ALTERNATIVE  
SENTENCING,  
Respondents.

No. 50636

**FILED**

DEC 03 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court denying appellant Dennis Krieger's post-conviction petition for a writ of habeas corpus or, in the alternative, a writ of mandamus or, in the alternative, a writ of prohibition. First Judicial District Court, Carson City; James Todd Russell, Judge.

On September 20, 2006, the municipal court convicted Krieger, pursuant to a guilty plea, of one count of driving under the influence, second offense, in violation of Carson City Municipal Code 10.22.020. The municipal court sentenced Krieger to serve a jail term of 175 days, ordered the sentence suspended for one year, and placed Krieger on probation with the conditions that he not possess or consume alcohol and that he attend substance abuse counseling.

On July 3, 2007, Krieger sent a letter to the municipal court requesting permission to travel to Costa Rica while he was still on probation. The municipal court referred the request to the Department of Alternative Sentencing, the Department recommended against allowing

Krieger to travel out of the country, and the municipal court denied Krieger's request.

On July 16, 2007, Krieger was arrested for violating the terms of his probation. At his arraignment, the municipal court ordered Krieger to surrender his passport as a condition of bail. During the probation violation hearing, Krieger admitted his violations. The municipal court ordered Krieger to serve three days in jail, reinstated his probation, and imposed the surrender of his passport as a condition of probation reinstatement.


On August 27, 2007, Krieger filed a petition for a writ of habeas corpus or, alternatively, a writ of mandamus or, alternatively, a writ of prohibition in the district court. In his petition, Krieger claimed that he was unlawfully restrained because his passport was held by the Department of Alternative Sentencing and therefore his ability to travel was unconstitutionally restricted. The State filed an answer, Krieger filed a reply, and the district court denied the petition. This appeal followed.


The record on appeal indicated that Krieger's period of probation had expired and presumably the State had returned his passport. Accordingly, we directed Krieger's counsel to show cause why this appeal should not be dismissed as moot. On October 15, 2008, Krieger's counsel filed a response to our order: she stated that Krieger's passport was returned to him on July 30, 2008, acknowledged that Krieger completed his probation on September 30, 2008, and argued that the issue of whether the municipal court acted in excess of its jurisdiction by requiring Krieger to surrender his passport as a condition of his probation remained justiciable because it goes to the authority of the municipal court to act and is capable of repetition yet evading review.


Krieger contends that municipal court (1) acted in excess of its jurisdiction by requiring him to surrender his passport as a condition of probation, (2) violated his right to due process by requiring him to surrender his passport without notice or benefit of a hearing, and (3) violated his constitutional right to travel by requiring him to surrender his passport. We conclude that these issues are moot. Moreover, even if Krieger's jurisdiction issue was capable of repetition and yet evading review, we conclude that it lacks merit. The plain language of NRS 5.055(1)(f) provides the municipal court with broad authority to order an offender to engage in or refrain from any conduct the municipal court deems appropriate as a condition of suspension of sentence.

Accordingly, we

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. James Todd Russell, District Judge  
State Public Defender/Carson City  
Attorney General Catherine Cortez Masto/Carson City  
Carson City District Attorney  
Carson City Clerk