

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY BAILEY,
Appellant,
vs.
CITY OF NORTH LAS VEGAS,
Respondent.

No. 51910

FILED

DEC 11 2008

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order denying a petition for a writ of mandamus. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

On February 25, 2008, appellant filed a proper person petition for a writ of mandamus. On July 17, 2008, the district court denied the petition.

In his petition, appellant claimed that (1) the justice court abused its power and violated 42 U.S.C. § 1985 when it imposed sentence based on the judge's personal beliefs rather than the evidence; (2) the justice court retaliated against appellant for exercising his constitutional rights of access to the courts; (3) the justice court refused bail for appellant for 60 days; (4) appellant was never provided notice that a "mere arrest" would subject him to sanctions under his plea agreement; (5) appellant was sentenced without being present in the justice court; (6) the justice court refused to place appellant's motion to correct an illegal sentence on calendar; (7) the justice court instructed the correctional officers to deny appellant access to the mail and legal materials; and (8) appellant's counsel refused to provide him with transcripts and discovery materials.

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.¹ A writ of mandamus may issue only where there is no plain, speedy, and adequate remedy at law.² Further, mandamus is an extraordinary remedy, and it is within the discretion of the court whether a petition will be entertained.³

Our review of the record reveals that the district court did not abuse its discretion in denying appellant's petition. Appellant had adequate remedies at law. Convictions in municipal court are appealable to the district court.⁴ A district court has final appellate jurisdiction over cases arising in municipal courts,⁵ and "if a district court takes jurisdiction of an appeal and acts, its acts are not subject to review through a petition for a writ of mandamus."⁶ Notably, the district court heard appellant's appeal. Appellant could have also challenged the validity of his plea in a post-conviction petition for a writ of habeas corpus filed pursuant to NRS Chapter 34.⁷ In addition, appellant may challenge the conditions of his

¹NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

²NRS 34.170.

³See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983), modified on other grounds by State v. Dist. Ct. (Anzalone), 118 Nev. 140, 147, 42 P.3d 233, 237 (2002).

⁴See Nev. Const. art. 6, § 6.


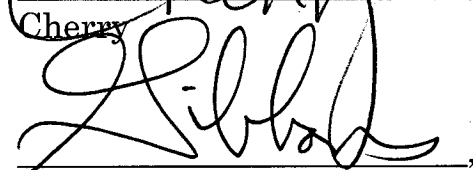
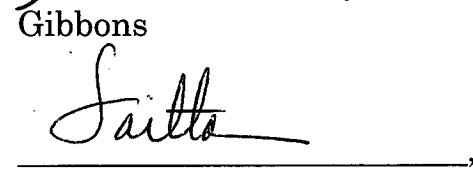
⁵See id.; Tripp v. City of Sparks, 92 Nev. 362, 550 P.2d 419 (1976).

⁶Pan v. Dist. Ct., 120 Nev. 222, 227, 88 P.3d 840, 843 (2004).

⁷See NRS 34.724(2)(b) (A post-conviction petition for a writ of habeas corpus "takes the place of all other common-law, statutory or other remedies which have been available for challenging the validity of the
continued on next page . . .

confinement, including his access to legal materials while incarcerated, through a civil action.⁸ Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


Cheryl, J.

Gibbons, J.

Saitta, J.
Saitta

... continued

[judgment of the] conviction or sentence, and must be used exclusively in place of them.”). We express no opinion as to whether appellant could satisfy the procedural requirements of NRS chapter 34.

⁸See Miller v. Evans, 108 Nev. 372, 373-74, 832 P.2d 786, 787 (1992) (recognizing civil rights claim under 42 U.S.C. § 1983 filed by inmate against prison officials for meaningful access to prison law library).

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁰We 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. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. David B. Barker, District Judge
Anthony Bailey
North Las Vegas City Attorney
Eighth District Court Clerk