

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANGEL L. ROMERO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52092

ANGEL L. ROMERO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52093

**FILED**

JAN 22 2009

FRANIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court dismissing petitions for writs of mandamus. Eighth Judicial District Court, Clark County; Valerie Adair, Judge and Lee A. Gates, Judge. We elect to consolidate these appeals for disposition. NRAP 3(b).

On January 12, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of sale of a controlled substance in district court case number C216900. The district court sentenced appellant to serve a term of 24 to 60 months in the Nevada State Prison, suspended the sentence, and placed appellant on probation for a period not to exceed 3 years. On November 30, 2006, the district court revoked the probationary term and executed the original sentence imposed.

On March 9, 2007, the district court convicted appellant, pursuant to an Alford plea,<sup>1</sup> of one count of possession of a controlled substance with the intent to sell in district court case number C225538. The district court sentenced appellant to serve a term 24 to 60 months, to be served concurrently to the term imposed in district court case number C216900.

On May 30, 2008, appellant filed a petition for a writ of mandamus in each of the district court cases. The State filed motions to dismiss the petitions. On August 1, 2008, and on September 26, 2008, the district court dismissed the petitions. These appeals followed.

In his petitions, appellant asserted that he was denied a timely parole hearing and argued that he should be immediately released as a result. The district court dismissed the petition as procedurally defective on the ground that a petition for a writ of mandamus may not be filed in a criminal case and appellant failed to personally serve the parties with a copy of his petition.

In an order entered in Docket No. 52093 on December 3, 2008, this court noted that it did not appear that any alleged procedural defects required the dismissal of the petition. Even assuming that a petition for a writ of mandamus should be filed in a separate civil action, the filing of a petition for a writ of mandamus in a criminal case appeared to be a filing issue for the district court clerk's office.<sup>2</sup> Further, it did not appear that

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<sup>1</sup>North Carolina v. Alford, 400 U.S. 25 (1970).

<sup>2</sup>Even if a petitioner designated a criminal case number on the face of his petition, nothing would prevent the clerk of the district court from filing the petition as a separate action.

there was a requirement that the petition for a writ of mandamus be personally served in the instant case and it appeared fundamentally unfair to require a prisoner to perfect personal service of the petition. Nothing in the provisions in NRS chapter 34 relating to writs of mandamus required personal service of the petition for a writ of mandamus. NRS 34.200 expressly recognizes that the application for a writ of mandamus may in actuality be made without notice to the adverse party, although the court would issue an alternative writ if the writ is allowed.<sup>3</sup>

Regardless of the propriety of the district court's reasons for the dismissal, this court noted that the dismissal may have been proper in the instant case. Specifically, if petitioner had received a parole hearing after the filing of his petition, the petition would be rendered moot as the only remedy available under the petition is a parole hearing. Accordingly, this court directed the Attorney General to file a response indicating whether a parole hearing had been conducted, and if so, to provide appropriate documentation. The Attorney General filed a timely response indicating that appellant had been provided with a parole hearing on August 20, 2008. Because no remedy was available by way of a petition for a writ of mandamus to challenge any alleged delay in the parole hearing, the dismissal of the petitions was proper, and for that reason, we affirm the orders of the district court.

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<sup>3</sup>However, if the district court determines to issue or grant the writ, the writ itself must be treated and served in the same manner as a summons in a civil action. See NRS 34.280(1). A petition or application for a writ of mandamus is distinct from the writ that is issued by the court.

Having reviewed the records 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. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

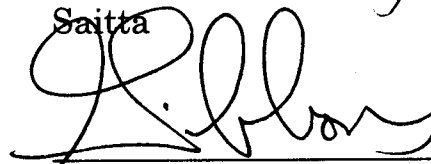
ORDER the judgments of the district court AFFIRMED.

 J.

Cherry

 J.

Saitta

 J.

Gibbons

cc: Hon. Valerie Adair, District Judge  
Hon. Lee A. Gates, District Judge  
Angel L. Romero  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk