

IN THE SUPREME COURT OF THE STATE OF NEVADA

HANOI RAMOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52114

FILED

JAN 22 2009

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a petition for a writ of mandamus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On May 29, 2008, appellant filed a petition for a writ of mandamus in the district court. The State filed a motion to dismiss the petition. On September 4, 2008, the district court dismissed the petition. This appeal followed.

In his petition, 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 this matter on December 3, 2008, this court noted that it did not appear that any alleged procedural defects required the dismissal of the petition in the instant case. 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.¹ Further, it did not appear that 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.²

Regardless of the propriety of the district court's reasons for the dismissal, this court noted that the dismissal of the petition 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

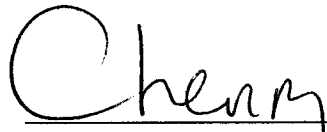
¹Even if a petitioner designated a criminal case number on the face of his petition, nothing would prevent the clerk of the district court from filing the petition as a separate action.


²However, 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.

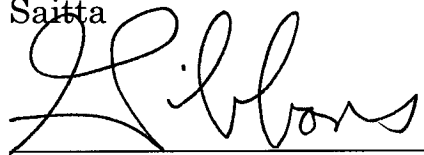
hearing on July 24, 2008. Because no remedy was available in this action to challenge any alleged delay in the parole hearing, the dismissal of the petition was proper, and for that reason, we affirm the order of the district court.

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

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Hanoi Ramos
Attorney General Catherine Cortez Masto/Las Vegas
Clark County District Attorney David J. Roger
Eighth District Court Clerk