

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
JANET J. BERRY, DISTRICT JUDGE,
Respondents,
and
BOBBY JEHU STROUP,
Real Party in Interest.

No. 54077

FILED

MAR 11 2010

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

ORDER DENYING PETITION

This original petition for a writ of mandamus challenges a district court order denying petitioner's motion to dismiss real party in interest Bobby Jehu Stroup's post-conviction petition for a writ of habeas corpus for lack of prosecution. After five years elapsed from the filing of Stroup's post-conviction petition, petitioner filed a motion to dismiss Stroup's petition for lack of prosecution pursuant to NRCP 41(e). The district court denied the motion to dismiss, concluding that NRCP 41(e) did not apply because that rule is specific to civil actions and habeas proceedings are neither criminal nor civil for all purposes. The district court further concluded that even if it had discretion to dismiss Stroup's post-conviction petition under NRCP 41(e), the circumstances did not warrant dismissal, observing that the State did not answer the petition until three years after it was filed and numerous continuances were required due to a congested court docket and logistical difficulties in arranging communication with Stroup at Ely Prison.

We have considered the petition and appendix on file herein, and we are not satisfied that extraordinary relief is warranted. NRS 34.780 provides that the Nevada Rules of Civil Procedure apply to post-conviction proceedings to the extent that they are not inconsistent with post-conviction habeas statutes. We have explained that because of the unique nature of habeas corpus proceedings, “reference to the rules of civil procedure is only appropriate when the statutes governing post-conviction practice do not address the issue presented.” Means v. State, 120 Nev. 1001, 1019, 103 P.3d 25, 37 (2004). We have rejected attempts to apply civil procedure rules to post-conviction habeas proceedings in several contexts.

For example, in Beets v. State, we considered the district court’s denial of a motion for partial summary judgment in the post-conviction context, concluding that the district court erred by entertaining the motion. 110 Nev. 339, 341, 871 P.2d 357, 358 (1994). We reasoned that the habeas statutes did not provide for summary judgment as a method of determining the merits of a post-conviction habeas petition; rather, NRS Chapter 34 specifically addressed how the district court must make its determinations in post-conviction habeas petitions. Id.

And, in Means, this court rejected a contention that the default provisions of NRCP 55 applied to post-conviction habeas proceedings to allow a default judgment based on the State’s untimely filing of a response to the defendant’s post-conviction petition. 120 Nev. at 1019, 103 P.3d at 37. We concluded, as we did in Beets, that the statutes governing post-conviction habeas proceedings specifically identify the manner in which those proceedings may be resolved. Id.

We conclude that the same reasoning applies here. NRS Chapter 34 outlines how a district court must make its determinations related to post-conviction proceedings, including on what grounds a post-conviction petition may be dismissed, see NRS 34.810; a failure to prosecute is not among those conditions. See also NRS 34.770 (relating to judicial determination of evidentiary hearing and dismissal of petition if no hearing required). Therefore, we conclude that the district court did not manifestly abuse its discretion or act arbitrarily or capriciously in denying petitioner's motion to dismiss Stroup's post-conviction habeas petition pursuant to NRCP 41(e). See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). Accordingly, we deny the petition. See NRAP 21(b).

It is so ORDERED.¹

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Janet J. Berry, District Judge
Washoe County District Attorney
Scott W. Edwards
Washoe District Court Clerk
Bobby Jehu Stroup

¹We deny petitioner's motion for stay and motion for judgment on the pleadings or other relief.