

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOY WINSTON,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
KATHY A. HARDCASTLE, DISTRICT  
JUDGE,

Respondents,

and

THE STATE OF NEVADA,  
Real Party in Interest.

No. 54130

**FILED**

JUL 14 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER GRANTING PETITION

This original petition for a writ of mandamus challenges a district court order denying a motion to vacate a judgment of conviction and direct the Nevada Department of Corrections to Release petitioner Joy Winston. The petition seeks “immediate” relief.

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, NRS 34.160, or to control an arbitrary or capricious exercise of discretion. See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). A writ of mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law. See NRS 34.170. Further, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered. See 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).

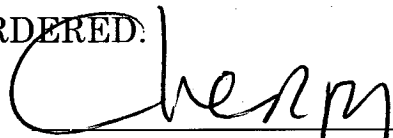
We conclude that mandamus relief is appropriate in this matter. A panel of this court reversed the judgment of conviction against Winston after concluding that the State failed to present sufficient evidence to support the jury's verdict. Winston v. State, No. 51864 (Order of Affirmance, June 3, 2009) (2-1 decision). This court's decision reversed the judgment against Winston without ordering a new trial, and because our decision was based on a determination that the State had presented legally insufficient evidence to support the guilty verdict, the Double Jeopardy Clause of the United States Constitution precludes a second trial. Hudson v. Louisiana, 450 U.S. 40 (1981); Burks v. United States, 437 U.S. 1 (1978); see also Washington v. State, 98 Nev. 601, 604, 655 P.2d 531, 532 (1982) (observing that if evidence is insufficient under standard set forth in Jackson v. Virginia, 443 U.S. 307 (1979), "a new trial is not permitted and the defendant must be released"). The State did not petition for rehearing, and this court's remittitur issued on June 30, 2009.


Winston's counsel represents that since issuance of the remittitur, Winston remains incarcerated and all attempts to obtain her discharge have been unsuccessful. When Winston sought relief in the district court through a motion to vacate the judgment of conviction and direct the Department of Corrections to release her, the district court determined that it lacked jurisdiction to do so and instructed Winston to file a petition for a writ of habeas corpus. Winston argues that the district court erred in determining that it lacked jurisdiction. We agree.

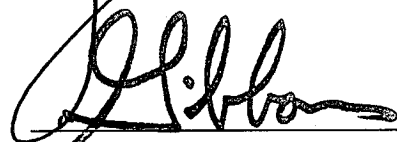
Although a petition for a writ of habeas corpus is an available remedy in the circumstances presented in this case, see NRS 34.360, we disagree with the district court's conclusion that it lacked jurisdiction to enforce this court's judgment on appeal. We acknowledge that this court

had the authority under NRS 177.275 to order Winston's discharge from custody when we reversed the judgment against her without ordering a new trial. However, when the remittitur issued on June 30, 2009, this court was divested of "further jurisdiction of the appeal or of the proceedings thereon." NRS 177.305. Thereafter, under NRS 177.305, the district court had jurisdiction to make "all orders which may be necessary to carry the judgment [of this court] into effect." Accordingly, under the circumstances presented in this case, the district court has jurisdiction to enter an order discharging Winston from custody so as to carry out this court's judgment reversing the judgment of conviction against Winston. Because the district court erroneously concluded that it lacked such jurisdiction, we grant the petition. The clerk of this court shall issue a writ of mandamus directing the district court to enter an order discharging Winston from custody consistent with this court's order reversing the judgment of conviction.

It is so ORDERED:

  
Cherry J.

  
Saitta J.

  
Gibbons J.

cc: Hon. Kathy A. Hardcastle, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk