

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ANGELO DRAKE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54826

FILED

APR 08 2010

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 prohibition.¹ Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Having reviewed the record on appeal, we conclude that substantial evidence supports the decision of the district court to deny relief and that the district court did not err as a matter of law. Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). We therefore affirm the denial of the petition for the reasons stated in the attached district court order. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Steven P. Elliott, District Judge
Michael Angelo Drake
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

1 Code: **2842**
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

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9 MICHAEL A. DRAKE,

10 Petitioner,

Case No.: CV09-01912

11 vs.

Dept. No.: 10

12 STATE OF NEVADA, et al,
13

14 Respondent.
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16 **ORDER DENYING PETITION FOR WRIT OF PROHIBITION**
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18 Presently before the Court is Petitioner MICHAEL A. DRAKE's (hereafter "Petitioner")
19 Petition for Writ of Prohibition (First Amendment Writ) filed against the STATE OF NEVADA
20 (hereafter "Respondent"). Petitioner filed his Petition on June 22, 2009, and submitted the
21 matter for the Court's Consideration on August 31, 2009.

22 In his Petition for Writ of Prohibition, Petitioner seeks to overturn two prior criminal
23 convictions.¹ Petitioner argues that Judge Berry was without jurisdiction to enter a criminal
24 judgment against Petitioner. Petitioner further argues that while his criminal case was
25 pending, Respondents improperly submitted supplemental indictments to the Court in
26 violation of Petitioner's Due Process and First Amendment rights.

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¹ Petitioner seeks to overturn his criminal conviction in cases CR98-2596 and CR98-2597.

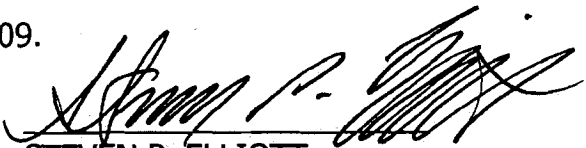
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After considering the Petition, the Court believes it is without merit. The problem is that Petitioner seeks to overturn his two prior criminal convictions through the wrong medium. While a Writ of Prohibition may have been proper at the time of trial, as the case currently stands, such a petition is improper. *See Hylton v. Eighth Judicial District Court*, 103 Nev. 418, 421, 743 P.2d 622, 624 (1987). This is because Judge Berry is no longer exercising any judicial function over the matters Petitioner seeks to overturn.

Because Petitioner has other remedies available to him, the court will not entertain Petitioner's Petition for Writ of Prohibition. *See Walker v. Eight Judicial District Court*, 120 Nev. 815, 819 101 P.3d 787, 790 (2004). If Petitioner wishes to overturn his two prior convictions, the proper method would be through a direct appeal or a Petition for Writ of Habeas Corpus (Post-Conviction), not a civil Petition for Writ of Prohibition.

NOW, THEREFORE, IT IS HEREB ORDERED that Michael A. Drake's Petition for Writ of Prohibition (First Amendment Writ) is **DENIED**.

DATED this 15 day of October 2009.


STEVEN P. ELLIOTT
District Judge