

IN THE SUPREME COURT OF THE STATE OF NEVADA

ESTEVAN ROMERO,
Petitioner,

vs.

THE THIRD JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CHURCHILL, AND THE HONORABLE
DAVID A. HUFF, DISTRICT JUDGE,
Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 55336

FILED

APR 07 2010

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

ORDER GRANTING PETITION

This is an original proper person petition for a writ of mandamus. Petitioner asserts that he filed a post-conviction petition for a writ of habeas corpus in the district court on August 17, 2007, and that Jacob N. Sommer was appointed by the district court to represent him in the post-conviction proceedings on September 12, 2007. Petitioner further asserts that, in more than two years, Sommer has yet to file a supplemental petition and the district court has yet to enter a decision on the petition for a writ of habeas corpus.

On February 12, 2010, this court entered an order instructing the State, as the real party in interest, to file a response to inform this court about the status of the post-conviction proceedings before the district court. On February 22, 2010, the State filed a response informing this court that Jacob N. Sommer has not filed a supplemental petition and the

district court has not filed an order disposing of the petition for a writ of habeas corpus. The State further informed this court that petitioner filed a proper person motion for an order to compel performance of counsel of record in the district court on June 5, 2008, as well as filing two proper person requests for submission, on August 11, 2008, and April 15, 2009, respectively. The State informs this court that the district court has not taken action on any of the proper person motions filed in the district court by petitioner.

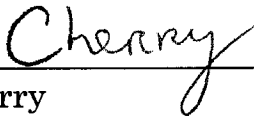
A writ of mandamus may issue to “compel the performance of an act which the law especially enjoins as a duty resulting from an office.” NRS 34.160; NRS 34.170. The district court must examine a petition for a writ of habeas corpus in an expeditious manner. NRS 34.740. Notably, post-conviction counsel has 30 days from the date of appointment to file and serve supplemental pleadings. NRS 34.750(3).

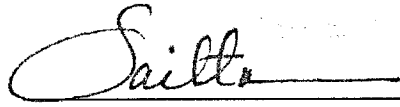
The length of delay in the prosecution of this petition has prevented an expeditious examination. NRS 34.740. The district court shall place the matter on its calendar and shall resolve the petition as expeditiously as its calendar permits.¹ Accordingly, we


ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the

¹The district court may order counsel, Jacob N. Sommer, to comply with its schedule regarding the post-conviction proceedings and the filing of a supplemental petition. If Sommer fails to comply, the district court may impose any sanctions it deems necessary.

district court to place the August 17, 2007 habeas corpus petition on its calendar and resolve the petition as set for above.²


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. David A. Huff, District Judge
Estevan Romero
Jacob N. Sommer, Esq.
Attorney General/Carson City
Churchill County District Attorney
Churchill County Clerk

²The State claims that it was not served a copy of the petition for a writ of mandamus. Petitioner included a certificate of service with his petition indicating that he had served both the Attorney General's Office and the Churchill County District Attorney. To ensure all parties have a copy of the petition, it is attached to this order.

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

JAN 27 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY _____
DEPUTY CLERK

ESTEVAN ROMERO,

Petitioner,

No. 55336

vs.

THE THIRD JUDICIAL DISTRICT
COURT, CHURCHILL COUNTY,

Case no. 32222.

Respondent

PETITION FOR WRIT OF MANDAMUS

Estevan Romero

I.D. no. 93372

Nevada State Prison

P.O. Box 607

Carson City, NV 89702

Catherine Cortez Mastro

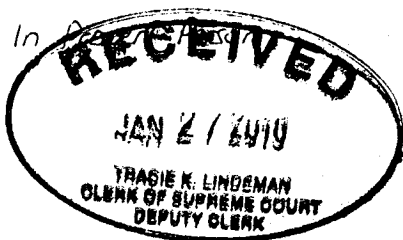
Nevada Attorney General

100 N. Carson Street

Carson City, NV 89701

Petitioner, In Person

Attorney For Respondent



10-02305

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STATEMENT OF ISSUES

1. Whether the Third Judicial District Court of Nevada has complied with the mandatory non-discretionary provisions of Nevada revised statutes (NRS) 34.720 et. seq. Specifically NRS 34.740 34.745 and 34.750. Petitioner requests an order mandating the District Court to comply thereto

BRIEF CASE HISTORY AND STATEMENT OF FACTS

Petitioner was born in Guerrero Mexico and immigrated to the United States shortly prior to his arrest and subsequent conviction in the Third Judicial District Court of Nevada for trafficking in a controlled substance. (NRS 453.3385(3)). Petitioner does not read, write, speak or comprehend the English language. His native language is Spanish. (the instant pleading is prepared by an assistant inmate).

As a result of petitioner's language handicap, the district court appointed an interpreter pursuant to the provisions of NRS 50.051. On or about October 10, 2006 petitioner was sentenced to a term of twenty-five years in prison with parole eligibility after serving ten (10) years. A judgment of conviction was entered accordingly.

Petitioner did not pursue an appeal following the entry of the judgment of conviction. On August 16, 2007 petitioner filed a petition for Writ of Habeas Corpus (post-conviction). In the Third Judicial District Court. (hereinafter "District Court"). (case no. 32222) accompanied by memorandum of Points And Authorities and motion for Appointment of Counsel.

On September 12, 2007 The District Court entered an order appointing Jacob N. Sommer, ESQ. as counsel of record pursuant to NRS 34.750. On or about October 17, 2007 petitioner received a letter from Mr. Sommer indicating he would visit petitioner to discuss the elements of his case and file an amended [supplement] petition. (Exhibit 1 attached hereto).

Without correspondence from counsel for over nine (9) months, petitioner filed a motion for order to compel performance of counsel of record in the

District Court on June 5, 2008. Petitioner filed two (2) requests for submission of the above referenced motion the latest on April 15, 2009.

As of the date of filing of the instant petition for Writ of Mandamus, petitioner has never met Mr. Sommer, the court has failed to order Mr. Sommer to litigate the habeas petition, Mr. Sommer has failed to file an Amended or Supplemental pleading in the action, the District Court has failed to enter any decisions relative to the habeas petition or motion to compel, and Petitioner's Petition is currently in the District Court, awaiting adjudication on the merits of his grounds for relief contained therein, for over twenty-eight (28) months.

Petitioner now brings forth the instant Petition for Writ of Mandamus requesting this Honorable Court to mandate the District Court and counsel of record to comply with the provisions of NRS 34.740, 34.745, and all other applicable statutes and procedures to habeas petitions

POINTS AND AUTHORITIES

Petitioner filed a timely Petition for Writ of Habeas Corpus (post-Conviction) in the Third Judicial District Court on August 16, 2007. NRS 34.726.

NRS 34.720 to 34.830 apply to the habeas petition. (NRS 34.720). The district court appointed Jacob M. Sommer, ESQ., 90 N. Maine Street, Suite 204, Fallon, NV, 89406, to represent petitioner pursuant to NRS 34.750, via written court order on September 12, 2007.

NRS 34.740 Petition: Expeditious Judicial Examination provides as follows:

The original petition must be presented promptly to a district judge or a justice of the Supreme Court by the clerk of the court. The petition must be examined expeditiously by the judge or justice to whom it is assigned.

NRS 34.745 directs the district Court to enter an order directing the district attorney or the attorney general to answer the petition and file a return. (NRS 34.745 (1)). Additionally, NRS 34.745 (h) states the district court is to "take other action that the judge or justice deems appropriate."

In the instant action, petitioner is a non-english speaking native of Mexico. The habeas petition currently pending before the district Court was prepared by other inmates on behalf of Petitioner. The district Court appointed counsel to represent Petitioner, most likely due to his language handicap and the fact that his claims for relief contained in his habeas petition are complex and possibly meritorious. NRS 34.750 (a) and (b).

NRS 34.750 (3) allows for counsel to proceed with discovery and file supplemental pleadings. Petitioner now wholly relies on counsel for access to the Courts, due to his language handicap, the unavailability of legal materials written in the Spanish language, and the unavailability of persons trained in the law at his place of incarceration that lends to a denial of access to the Courts. Casey v. Lewis, 4F3d 1516 (9th cir. 1993).

Petitioner filed a motion to compel in the district Court wherein he advised the Court of the above facts including counsels' failure to confer with Petitioner regarding the status of this case and counsels' plan or strategy to litigate this action in accordance with NRS 34.720 ET. seq. Petitioner subsequently filed two (2) requests for submission of the aforementioned motion and habeas Petition.

As of this date, counsel and the district court have completely failed to comply with the mandatory requirements of the various applicable rules of civil procedure, district court rules, and specifically the non-discretionary provisions of NRS 34.740, 34.745, 34.750 and their progeny.

Petitioner's habeas petition has been pending in the district court for over twenty-eight (28) months, with no action taken by the district court or counsel, failing to address Petitioner's claims which are ripe for adjudication on the merits.

Petitioner has diligently sought a decision on his pending post-conviction pleadings and has no alternate means to compel performance of the district court and counsel except through the instant Petition For Writ Of Mandamus in this Honorable Court.

This Court has jurisdiction in the instant action pursuant to NRAP 21. Poulos v. Eighth Judicial Dist. Court Of The State Of Nevada, 652 P.2d 1177, 98 NEV. 453 (1982) NRS 34.160.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion. Scrimmer v. Eighth Judicial Dist. Ct., 998 P.2d 1190, 116 Nev. 507 (2000).

Here, the Third Judicial District Court has entirely failed to comply with the applicable requirements of all the laws and statutes governing habeas petitions outlined at NRS 34.720 et seq., Accordingly, the instant Writ should be granted to compel performance thereto.

CONCLUSION

Wherefore, based on the foregoing, Petitioner respectfully requests this Honorable Court enter an order mandating The Third Judicial District Court to apply the provisions of NRS 34.740 and 34.745 to his pending habeas petition.

Respectfully submitted this 21 day of January, 2010.

By: Estevan Romero

Estevan Romero

I.D. # 93372

Nevada State Prison

P.O. Box 607

Carson City, NV 89702

Petitioner, In Proper Person

AFFIRMATION PURSUANT TO

NRS 239 B.030

The foregoing Petition for WRIT OF MANDAMUS Does Not contain the Social Security number of any person.

Estevan Romero

Estevan Romero

CERTIFICATE OF SERVICE

I, Estevan Romero certify that on this date I did serve a true and correct copy of the foregoing Petition For Writ Of Mandamus upon all interested parties, by placing same in the US. Postal Service postage fully prepaid and addressed to:

Jacob N. Sommer ESQ.
90 N. Maine Street Ste. 204
Fallon, Nevada 89406

Arthur Mallory ESQ.
District Attorney
365 S. Maine Street
Fallon, Nevada 89406

David A. Huff
District Judge
Third Judicial District Court
73 N. Maine Street
Fallon, NV 89406

Catherine Cortez Mastro
Nevada Attorney General
100 N. Carson Street
Carson City, NV 89702

Dated this 21 day of January, 2010.

By: Estevan Romero.
Estevan Romero
Petitioner, In Proper Person

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

LAW OFFICE OF
JACOB N. SOMMER

90 NORTH MAINE STREET, SUITE 204, FALLON NEVADA 89406 • (775) 423-5507

Mr. Estevan Romero (#93372)
P.O. Box 607
Carson City, NV 89702

October 15, 2007

RE: Petition for Writ of Habeas Corpus

Dear Mr. Estevan,

Thank you for your letter. As you know, I have been appointed to represent you during your Habeas appeal. The District Court provided me a complete copy of their file, and I have reviewed the information contained in those documents. I have also reviewed the petition which you filed on August 16, 2007.

For your information, I plan to file an amended petition which revises and adds arguments you made in the initial petition. These revisions will permit the Court to make a more efficient judgment about the issues presented for review.

In the next few weeks, I will make a trip to Carson City so we can visit about your petition. Unfortunately I do not speak Spanish, but I will bring an interpreter so we can communicate and discuss the issues you feel are important to your case.

If you have any questions or concerns about your case or this letter, please do not hesitate to let me know. Although I do not speak or read Spanish, I am able to have your letters translated, and your communications to me will remain confidential. Feel free to write as you see necessary.

Most Sincerely,



Jacob N. Sommer, Esq.
Attorney at Law
90 North Maine Street, Suite 204
Fallon, NV 89406