

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUSSELL RICHARD HART,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
DONALD M. MOSLEY, DISTRICT
JUDGE,

Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 56238

FILED

JUN 21 2010

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

ORDER DENYING PETITION

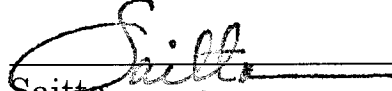
This original petition for a writ of mandamus challenges a decision by the district court to remand petitioner to custody on a justice-court conviction after denying relief on appeal from the justice-court conviction. Having reviewed the petition and supporting documents, we are not convinced that this court's intervention by way of a writ of mandamus is not warranted. See NRS 34.160; NRS 34.170. Assuming that the district court is required to issue a remittitur on appeal from a justice-court judgment,¹ the justice court nonetheless retains jurisdiction

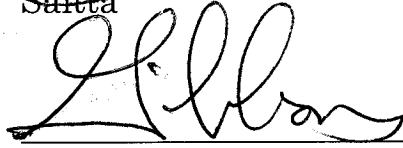
¹We note that petitioner has not cited any statute or court rule requiring the district court to issue a remittitur in this matter, and we have found no such provision in NRS chapter 189 or the district court rules. (NRS 189.060 does not apply here as the district court did not

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to resolve collateral matters that do not affect the appeal's merits. See Mack-Manley v. Manley, 122 Nev. 849, 138 P.3d 525 (2006). Because it appears that petitioner may seek relief in justice court, we decline to intervene and we

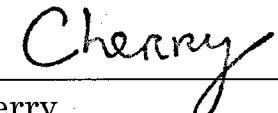
ORDER the petition DENIED.²


Saitta _____ J.


Gibbons _____ J.

CHERRY, J., dissenting:

The district court should not have remanded the 70-year-old petitioner immediately to custody upon denying the appeal. I would grant the motion for a stay and direct the district court to order petitioner released from custody and thereafter to remit this matter to the justice court for further action to enforce the justice court's judgment. I therefore dissent.


Cherry _____ J.

... continued

dismiss the appeal for failure to timely file the appeal or failure to appear in district court when required.) We further note that the provisions in the Nevada Rules of Appellate Procedure regarding the remittitur issued by this court on appeal from a district-court judgment do not apply to appeals in the district court. See NRAP 1(a).

²We deny the motion for a stay as moot.

cc: Hon. Donald M. Mosley, District Judge
Hon. William Jansen, Justice of the Peace
Bailus Cook & Kelesis
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk