

IN THE SUPREME COURT OF THE STATE OF NEVADA

HEATHER SHARMAYN PALEY,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
FRANCES DOHERTY, DISTRICT
JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 61029

FILED

SEP 27 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Maline*
DEPUTY CLERK

ORDER DENYING PETITION

This is a petition for a writ of mandamus. Petitioner Heather Sharmayn Paley seeks an order directing the juvenile court to vacate its order filed May 3, 2012, holding Paley in direct contempt of court and sentencing her to twenty-five days in the Washoe County Detention Facility, without counsel and without an Order to Show Cause Hearing.

Paley contends that the juvenile court manifestly abused its discretion by holding her in direct contempt for testing positive for methamphetamine immediately prior to her appearance in court in the absence of a specific order prohibiting such conduct or any other act of contempt in the immediate view and presence of the court. In addition, Paley contends that she was denied due process of law when she was placed in custody without a hearing or the benefit of counsel.

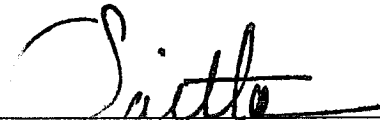
Respondent contends that the petition is moot because the juvenile court suspended Paley's twenty-five day sentence after she spent


seven days in custody and later vacated the finding of contempt by written order on July 6, 2012. See Personhood Nevada v. Bristol, 126 Nev. ___, ___, 245 P.3d 572, 574 (2010) (“The question of mootness is one of justiciability. This court’s duty is not to render advisory opinions but, rather, to resolve actual controversies by an enforceable judgment.”). Paley and the real party in interest both contend that the writ falls within an exception to the mootness doctrine because the contested issue is likely to arise again but will evade review. See Stephens Media v. Dist. Ct., 125 Nev. 849, 858, 221 P.3d 1240, 1247 (2009) (“[W]e will exercise our discretion to adjudicate a moot case when (1) the contested issue is likely to arise again, and (2) the challenged action is too short in its duration to be fully litigated prior to its natural expiration.” (internal quotations omitted)).

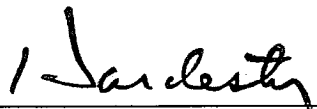
We conclude that Paley’s petition does not fall under an exception to the mootness doctrine. This issue is not likely to arise again because it is abundantly clear that “a positive drug test result alone is not a sufficient basis to sustain a finding of direct contempt.” In re J.H., 213 P.3d 545, 549 (Okla. 2008); NRS 22.010 (defining contempt); NRS 22.030(1) (“If a contempt is committed in the immediate view and presence of the court . . . the contempt may be punished summarily.”); Ex Parte Hedden, 29 Nev. 352, 374, 90 P. 737, 744 (1907) (“[W]hen we say immediate view and presence of the court we mean in the ocular view of the court, or where the court has direct knowledge of the contempt.”); see also Bloom v. Illinois, 391 U.S. 194, 202 (1968) (“The court has long recognized the potential for abuse in exercising the summary power to imprison for contempt—it is an arbitrary power which is liable to abuse.” (internal quotations omitted)). Furthermore, the challenged action is not

too short in its duration to be fully litigated prior to its natural expiration. See Cunningham v. District Court, 102 Nev. 551, 558, 729 P.2d 1328, 1332 (1986) (noting that order of contempt had been stayed pursuant to writ five hours after officer was incarcerated). Therefore, we

ORDER the petition DENIED.¹


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Frances Doherty, District Judge, Family Court Division
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹Paley's motion for a stay is also denied.