

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN TURNER,
Petitioner,
vs.
SHERIFF, TONY DEMEO,
Respondent.

No. 65719

FILED

JUN 11 2014

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

ORDER DENYING PETITION

This is a proper person petition for a writ of mandamus. Petitioner seeks an order vacating an order of commitment in case 11TR00027 and releasing him from custody because this case was allegedly dismissed pursuant to plea negotiations in CR7099. On May 23, 2014, this court directed the State to file an answer. The State argues that a petition for a writ of mandamus is the improper remedy to challenge the legality of one's restraint or detention and that laches should bar the request because petitioner was aware in 2013 that case 11TR00027 had not been dismissed and that the justice court had rejected his argument that it was dismissed by CR7099. The State further asserts that case 11TR00027 should not, and legally could not, have been included in the plea negotiations in CR7099 because the justice court had already adjudicated the matter. Having reviewed the answer and the documents submitted with this petition, we decline to exercise our original jurisdiction because a petition for a writ of mandamus is not the proper

remedy to challenge the legality of one's restraint or detention.¹ See NRS 34.160; NRS 34.170; NRS 34.360. Accordingly, we

ORDER the petition DENIED.

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

Saitta, J.
Saitta

cc: Brian Turner
Nye County District Attorney
Attorney General/Carson City
Nye County Clerk

¹Notably, a petition for a writ of habeas corpus should be filed in the district court in the first instance. See Nev. Const. art. 6, § 6(1); NRAP 22. If there was an error in including case 11TR00027 in the plea negotiations in CR7099, that error should have been litigated within CR7099. We express no opinion as to whether there is any available remedy in CR7099 at this time.