

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK,  
Respondent.

No. 74878

FILED

MAR 14 2018


ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK


*ORDER DENYING PETITION*

This original petition for a writ of mandamus seeks an order vacating the denial of Brian Kerry O'Keefe's motion for order to have the Division of Parole and Probation amend O'Keefe's presentence investigation report (PSI). O'Keefe asserts his PSI incorrectly lists his Ohio convictions for criminal non-support of a dependent as felonies, rather than misdemeanors. O'Keefe asserts that, although the district court acknowledged he was only sentenced to serve a term of nine months for each of the Ohio convictions, the district court still determined the PSI did not need to be corrected.

We conclude O'Keefe has not demonstrated the district court manifestly, arbitrarily, or capriciously abused its discretion by denying his motion to amend the PSI. See NRS 34.160; *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) ("Petitioner[ ] carr[ies] the burden of demonstrating that extraordinary relief is warranted."). The violation of Ohio Revised Code 2919.21 "Nonsupport or contributing to nonsupport of dependents" can be either a misdemeanor or felony offense.

ORC 2919.21(G)(1). O'Keefe has not provided this court with any documentation, including copies of the Ohio judgments of conviction, that would support his assertion the Ohio convictions were misdemeanor convictions. See NRAP 21(a)(4). Rather, citing the federal definition of a felony, he argues that because his convictions carried a penalty of six, seven, eight, nine, ten, eleven, or twelve months and he was only sentenced to a term of nine months, he could not be convicted of a felony. O'Keefe's stated sentence of nine months on each count is consistent with a conviction for a fifth degree felony in Ohio, see ORC 2929.14(A)(5) (prison term for a fifth degree felony shall be for a definite term of six, seven, eight, nine, ten, eleven, or twelve months), and exceeds the maximum sentence available in Ohio for a misdemeanor conviction, see OCR 2929.24(A)(1) (person convicted of first degree misdemeanor may not be sentenced to more than one hundred eighty days). Thus, it appears the district court correctly determined O'Keefe's convictions were felony convictions. Accordingly, we ORDER the petition DENIED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Michael Villani, District Judge  
Brian Kerry O'Keefe  
Attorney General/Carson City  
Eighth District Court Clerk