

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA; THE STATE OF NEVADA DEPARTMENT OF CORRECTIONS; JAMES DZURENDA, DIRECTOR OF THE NEVADA DEPARTMENT OF CORRECTIONS; IHSAN AZZAM, PH.D., M.D., CHIEF MEDICAL OFFICER OF THE STATE OF NEVADA IN HIS OFFICIAL CAPACITY; AND JOHN DOE, ATTENDING PHYSICIAN AT PLANNED EXECUTION OF SCOTT RAYMOND DOZIER IN HIS OFFICIAL CAPACITY,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ELIZABETH GOFF GONZALEZ, Respondents,

and

ALVOGEN, INC.; HIKMA PHARMACEUTICALS USA, INC.; AND SANDOZ INC.,

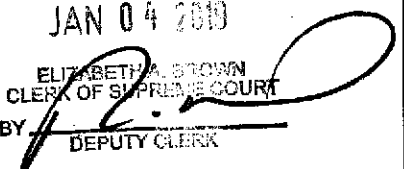
Real Parties in Interest.

THE STATE OF NEVADA; THE STATE OF NEVADA DEPARTMENT OF CORRECTIONS; JAMES DZURENDA, DIRECTOR OF THE NEVADA DEPARTMENT OF CORRECTIONS, IN HIS OFFICIAL CAPACITY; IHSAN AZZAM, PH.D., M.D., CHIEF MEDICAL OFFICER OF THE STATE OF NEVADA, IN HIS OFFICIAL CAPACITY; AND JOHN DOE, ATTENDING PHYSICIAN AT PLANNED EXECUTION OF SCOTT RAYMOND DOZIER, IN HIS OFFICIAL CAPACITY,

No. 76485

FILED

JAN 04 2019

ELIZABETH A. STOWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

No. 76510 ✓



19-00599

Appellants,
vs.
ALVOGEN, INC.,
Respondent.

*ORDER DISMISSING PETITION TO DISSOLVE STAY AND
FOR WRIT OF MANDAMUS OR PROHIBITION AND APPEAL*

The original writ petition in Docket No. 76485 challenges a district court temporary restraining order (TRO) precluding petitioners from using a certain drug in executions pending a decision on motions for a preliminary injunction. Petitioners/appellants filed a protective notice of appeal from that same order, which was assigned to Docket No. 76510.


On September 28, 2018, the district court resolved the preliminary injunction motions in this matter, and petitioners have appealed. *See State v. Alvogen, Inc.*, Docket No. 77100. Because it consequently appeared that the TRO challenged in these matters is no longer in effect, we ordered petitioners/appellants to show cause why this writ petition and protective appeal should not be dismissed as moot. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). Petitioners/appellants timely responded, and real parties in interest/respondent timely filed a reply.


Petitioners/appellants argue that the matter is not moot because a question exists as to whether the TRO was an improper stay of execution under NRS 176.415, and the appeal from the preliminary injunction cannot resolve TRO-specific issues. They also assert that the matter falls within the capable-of-repetition-yet-evading-review exception to the mootness doctrine. Finally, they contend that their potential ability to recover on the TRO bond renders the controversy live.

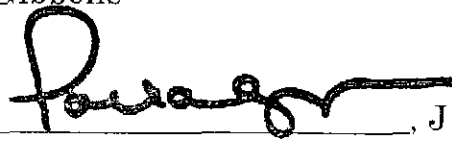
We conclude that this petition and appeal are moot, as we can grant no effective relief from the dissolved TRO even if it amounted to an

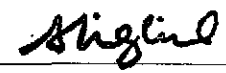
improper stay of execution. *See id.* (noting that an appeal is moot when the court can grant no effective relief). Petitioners/appellants have not demonstrated that it is likely that a similar issue will arise in the future and evade review; thus, no exception to the mootness doctrine applies. *Id.* Further, the TRO bond does not save the petition and appeal from being dismissed as moot, as petitioners/appellants have not shown a substantial possibility that they can recover under the TRO bond, which is now providing security for the preliminary injunction. *See Japan Air Lines Co. v. Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO*, 538 F.2d 46, 51 (2d Cir. 1976) (refusing to depart "from the well-founded rule that an appeal from a TRO is rendered moot by the dissolution of the underlying order," when the appellants were unable to articulate any compensable damages caused by the TRO). Accordingly, we dismiss this petition and appeal as moot.

It is so ORDERED.¹


_____, J.
Gibbons


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Stiglich

¹In light of this order, petitioners'/appellants' motion to consolidate these matters with Docket No. 77100 and to hold Docket No. 76510 in abeyance is denied as moot.

cc: Hon. Elizabeth Goff Gonzalez, District Judge
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