

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; AND THE HONORABLE

MICHAEL VILLANI, DISTRICT
JUDGE,

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

No. 78405-COA

FILED

APR 05 2019

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

ORDER DENYING PETITION FOR WRIT OF PROHIBITION

This pro se, emergency petition for a writ of prohibition challenges the district court's authority to hold a hearing and resolve a matter when a related writ petition is pending before the appellate court, as well as the district court's authority to proceed under NRS 209.451(1)(d) in a habeas action.

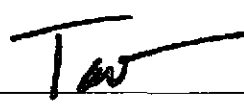
In Docket No. 78105-COA, petitioner seeks extraordinary relief based on his belief that the district court failed to properly comply with our order directing the departmental transfer of his district court habeas petition. Because that writ petition has not yet been resolved, petitioner claims that the district court lacks jurisdiction to rule on the habeas petition. Further, petitioner asserts that a minute order was issued in the district court case on March 21, 2019, indicating the district court's intention to grant real party in interest's motion for a NRS 209.451(1)(d) finding that petitioner filed documents for improper purposes warranting a forfeiture of credits. No copy of that minute order was attached to

petitioner's writ petition, but petitioner argues that NRS 209.451(1)(d) does not apply to habeas petitions under *Dotson v. State*, 114 Nev. 582, 584, 958 P.2d 81, 82 (1998).

Having considered petitioner's arguments, we deny relief. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Writ petitions filed in the appellate court do not divest the district court of jurisdiction to proceed with the underlying matter. *Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 650, 5 P.3d 569, 571 (2000). Further, petitioner fails to acknowledge that NRS 209.451 was amended after the *Dotson* opinion was issued to expressly include petitions for habeas corpus in its purview. 1999 Nev. Stat., ch. 59, §5, at 146-47. Regardless, to the extent the district court's power to issue a finding relating to the forfeiture of credits is challenged, this petition is premature because the district court has not yet finally decided the forfeiture matter by written order, and petitioner can appeal from any order that finally resolves the case below, precluding writ relief. NRS 34.330. Thus, we

ORDER the petition DENIED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

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