

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENNETH LYN MORRELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68941

FILED

JUN 21 2016

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a petition for a writ of mandamus.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Kenneth Morrell filed a petition for a writ of mandamus in the district court seeking the return of \$93, which was seized by the Las Vegas Municipal Police Department (LVMPD) during his arrest. The State responded that the petition was barred by the doctrines of law of the case and res judicata and the district court lacked jurisdiction to issue a writ of mandamus against itself. The district court summarily denied the petition and this pro se appeal followed.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, NRS 34.160, or control discretion when it is manifestly abused or exercised arbitrarily or capriciously, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981); see also *State v.*

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

Eighth Judicial Dist. Court (Armstrong), 127 Nev. 927, 931, 267 P.3d 777, 780 (2011) (defining manifest abuse and arbitrary or capricious exercise of discretion in context of mandamus). The writ will not issue if the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170. And, because a writ of mandamus is an extraordinary remedy, the decision to entertain a petition for a writ of mandamus lies completely within the court's discretion. *Hickey v. Eighth Judicial Dist. Court*, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989). As a general rule, we review a district court's decision to grant or deny a writ petition under an abuse-of-discretion standard. *Koller v. State*, 122 Nev. 223, 226, 130 P.3d 653, 655 (2006).

Our initial review of the record on appeal revealed that the LVMPD failed to initiate forfeiture proceedings or return Morrell's property. See NRS 179.1171(2) (requiring the State to "file the complaint for forfeiture within 60 days after the property is seized"). Morrell was convicted of a misdemeanor—not a felony. See NRS 179.1164(1); *Ferguson v. Las Vegas Metro. Police Dep't.*, 131 Nev. ___, ___, 364 P.3d 592, 595-96 (2015) (To support a forfeiture action "the State must establish by clear and convincing evidence . . . a felony was committed or attempted."). The district court summarily denied each of Morrell's four motions seeking the return of his property. And the Nevada Supreme Court dismissed Morrell's appeal from the order denying his fourth motion for return of his property because it lacked jurisdiction to consider such a motion. *Morrell v. State*, Docket No. 67730 (Order Dismissing Appeal, May 13, 2015).

Based on this record, Morrell appeared to be entitled to mandamus relief and the district court appeared to have abused its discretion by denying Morrell's writ petition. Accordingly, we ordered the

State to show cause why Morrell's appeal should not be granted and the district court ordered to enter a writ of mandamus directing LVMPD to return Morrell's money and the interest it earned.


In response to our order to show cause, the State argues the district court properly denied Morrell's petition for a writ of mandamus because a district court does not have jurisdiction to issue a writ against itself. However, the State's argument lacks merit because Morrell's petition did not ask the district court to issue a writ against itself but rather asked the district court for an order directing the LVMPD to either return his money or correct its due process violation.


The State also argues that Morrell's appeal is moot because it "has contacted the detective initially assigned to this case and the Las Vegas Metropolitan Police Department is currently in the process of releasing the funds to Morrell." However, "a case becomes moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Murphy v. Hunt*, 455 U.S. 478, 481 (1982) (internal quotation marks omitted). Morrell's appeal is not moot because there is no evidence that the \$93 and the interest it earned has been returned to him.

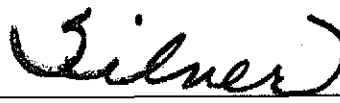
We conclude the district court abused its discretion by denying Morrell's petition for a writ of mandamus because the LVMPD had a duty to either initiate forfeiture proceedings or return Morrell's property, the LVMPD failed to perform this duty, and Morrell did not have an adequate remedy in the ordinary course of law. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court with instructions to grant Morrell's petition and issue a writ directing the LVMPD to return

Morrell's \$93 and the interest it earned or should have earned while in an interest-bearing account as required by NRS 179.1175(2).


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Michelle Leavitt, District Judge
Kenneth Lyn Morrell
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk