

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES FRANCIS MEEGAN,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, AND THE
HONORABLE SALLY L. LOEHRER,
DISTRICT JUDGE,

Respondents,

and

THE STATE OF NEVADA,

Real Party
in Interest.

No. 37277

FILED

APR 06 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. S. Rubin*
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION

FOR WRIT OF MANDAMUS

This is a proper person petition for a writ of mandamus challenging a district court order taking petitioner's motion to correct an illegal sentence off calendar.

Petitioner was convicted of first-degree murder in 1996. This court affirmed the conviction.¹ In 1999 petitioner filed a post-conviction petition for a writ of habeas corpus. An appeal from the district court order denying that petition is currently pending in this court.²

On November 28, 2000, Meegan filed in the district court a motion to correct an illegal sentence. On December 15, 2000, the district court entered an order stating that the motion "cannot be considered as [the] court has no jurisdiction." Apparently the district court concluded it lacked jurisdiction because the appeal from the order denying Meegan's post-conviction petition for a writ of habeas corpus remains pending in this court. However, an appeal from a post-conviction habeas petition does not divest the district court of

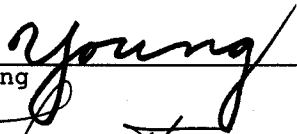
¹Meegan v. State, 114 Nev. 1150, 968 P.2d 292 (1998).

²See Meegan v. State, Docket No. 35811.

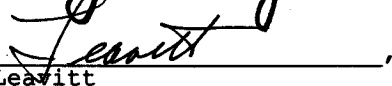
jurisdiction to consider a collateral motion to correct.³ Moreover, the court may correct an illegal sentence at any time.⁴

Because it appeared that petitioner had set forth an issue of arguable merit, and that he might have no adequate remedy in the ordinary course of the law, we directed the State, on behalf of respondent, to respond and show cause why a writ should not issue directing the district court to vacate its order and consider petitioner's motion on its merits. The State has responded and concedes that the district court has jurisdiction; consequently the State does not oppose issuance of a writ. Accordingly, we


ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to rescind its decision to take petitioner's motion to correct an illegal sentence off calendar and to consider the motion on its merits.⁵



Young J.



Leavitt J.



Becker J.

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
James Francis Meegan
Clark County Clerk

³See Bongiovi v. Bongiovi, 94 Nev. 321, 579 P.2d 1246 (1978) (district court retains jurisdiction over matters collateral to and independent from that part of case taken up on appeal); see also Sheriff v. Gleave, 104 Nev. 496, 761 P.2d 416 (1988).

⁴NRS 176.555.

⁵We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.