

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN J. MCCORMICK,

No. 37399

Petitioner,


vs.

WASHOE COUNTY CLERK, THE SECOND  
JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE  
COUNTY OF WASHOE, AND THE  
HONORABLE BRENT T. ADAMS, DISTRICT  
JUDGE, AND WASHOE COUNTY PUBLIC  
DEFENDER,

Respondents.

**FILED**

JUN 12 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION FOR A WRIT OF MANDAMUS

This is a proper person petition for a writ of mandamus seeking an order from this court directing the district court to file petitioner's motion to quash, pretrial petition for a writ of habeas corpus, and a petition for a writ of mandamus.

Petitioner claims, pursuant to negotiations, he pleaded guilty to uttering charges in district court case number CR99-2059. In exchange for his plea, remaining counts of uttering bad checks were to be dismissed. Petitioner claims that, in violation of the plea agreement, the State has filed another count of uttering in justice's court case number CR2000-003352. In an effort to stop what he considers an improper prosecution, petitioner mailed to the clerk of the Second Judicial District Court a motion to quash, a pretrial

petition for a writ of habeas corpus, and a petition for a writ of mandamus.

According to petitioner, the clerk did not file the documents; instead she forwarded them to Judge Adams, who returned them to her with instructions to send them on to petitioner's former counsel, deputy public defender Eric Nickel. Petitioner claims that he is no longer represented by Mr. Nickel and that the district court clerk had an obligation to file the documents, not send them to petitioner's former counsel. Petitioner seeks a writ of mandamus directing the district court clerk to file the documents so that the court may proceed to resolve the issues raised.

We have consistently held that the district court clerk has a ministerial duty to accept and file documents presented for filing if those documents are in proper form.<sup>1</sup> Thus, it appeared that petitioner may have set forth issues of arguable merit, and that petitioner may not have an adequate remedy in the ordinary course of the law.<sup>2</sup> Therefore, on March 19, 2001, this court ordered the State, on behalf of

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<sup>1</sup>See, e.g., Sullivan v. District Court, 111 Nev. 1367, 904 P.2d 1039 (1995); Bowman v. District Court, 102 Nev. 474, 728 P.2d 433 (1986); Whitman v. Whitman, 108 Nev. 949, 840 P.2d 1232 (1992) (clerk has no authority to return documents submitted for filing; instead, clerk must stamp documents that cannot be immediately filed "received," and must maintain such documents in the record of the case); Donoho v. District Court, 108 Nev. 1027, 842 P.2d 731 (1992) (the clerk of the district court has a duty to file documents and to keep an accurate record of the proceedings before the court).

<sup>2</sup>See NRS 34.160; NRS 34.170.

respondent, to respond and show cause why a writ should not issue directing the district court to file petitioner's documents.

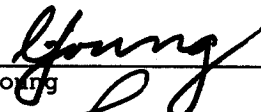
On April 26, 2001, a response was filed by the Washoe County District Attorney's Office. The response informed this court of the practice of the Criminal Filing Office in the Second Judicial District Court and what had happened in this case. The response did not contradict petitioner's statement of what had happened to his proper person documents.

On May 1, 2001, the Attorney General responded on behalf of Judge Adams and the Second Judicial District Court. The Attorney General argues that Judge Adams was correct in forwarding the proper person documents to the Washoe County Public Defender's Office because the district court files indicated that petitioner was still represented by counsel in district court case number CR99-2059. Therefore, the Attorney General argues that petitioner is not allowed to file documents in proper person.

Based upon our review of the documents before this court, we conclude that petitioner is entitled to relief. Because petitioner labeled one of his documents with the prior district court case number, it is understandable that the district court initially concluded that the documents related to that prior case. However, the documents before this court establish that in the three proper person documents at issue

petitioner is seeking to challenge the new charge in justice's court case number CR2000-003352. There is nothing in the documents before this court to indicate that petitioner is represented by counsel in the new justice's court case. Petitioner's prior representation by the Washoe County Public Defender's in district court case number CR99-2059 is not a bar to the filing of proper person documents challenging the new justice's court case. Therefore, the district court must accept and file the documents. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to file petitioner's motion to quash, pretrial petition for a writ of habeas corpus, and a petition for a writ of mandamus challenging the proceedings in justice's court case number CR2000-003352.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Brent T. Adams, District Judge  
Attorney General  
Washoe County District Attorney  
Brian J. McCormick  
Washoe County Clerk