

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUSSELL COHEN,

No. 37623

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, AND THE
HONORABLE MARK W. GIBBONS,
DISTRICT JUDGE, AND VALERIE FUJII,

Respondents.

FILED

MAY 29 2001

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

ORDER GRANTING PETITION

FOR WRIT OF MANDAMUS

This is a proper person petition for a writ of mandamus. Petitioner is seeking to have this court order the district court to file his motion for return of seized property.

Petitioner claims that he attempted to file a proper person motion for return of seized property in the district court on or about March 9, 2001, but the district court clerk refused to file his motion because he is represented by counsel on appeal.¹ The district court then sent his motion to his attorney appointed to represent him on appeal, Valerie Fujii. However, it appears that Ms. Fujii has declined to file the motion.

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.²

¹Eighth Judicial District Court Rule 3.70 (stating, "all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to that attorney for such consideration as counsel deems appropriate").

²See generally *Sullivan v. District Court*, 111 Nev. 1367, 904 P.2d 1039 (1995).

Ms. Fujii was appointed for the limited purpose of representing appellant on direct appeal. A motion for return of seized property is a separate action from his direct appeal. Thus, petitioner may pursue an independent action in proper person in the district court.

Because it appeared that petitioner had set forth issues of arguable merit and had no adequate remedy at law, on April 11, 2001, this court ordered the State, on behalf of respondents, to show cause why a writ should not issue directing the district court clerk to file petitioner's motion for return of seized property. The State responded on April 18, 2001 and stated that it did not oppose the issuance of the writ directing the district court clerk to file petitioner's motion for the return of seized property.

Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the clerk of the district court to file appellant's motion for return of seized property.³

Young, J.
Young

Leavitt, J.
Leavitt

Becker, J.
Becker

cc: Hon. Mark W. Gibbons, District Judge
Attorney General
Clark County District Attorney
Russell Cohen
Clark County Clerk

³We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted. We deny as moot the application to proceed in forma pauperis.