IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES LEE LIKE,

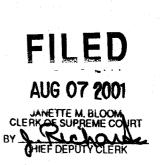
No. 38035

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.



ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's petition for a writ of mandamus.

On March 14, 2001, appellant filed a proper person petition for a writ of mandamus in the district court. In his petition, appellant requested the district court order the Nevada Department of Prisons to temporarily transfer him to Logan, Utah for the purpose of attending a hearing on a petition filed in Utah. Appellant attached to his petition a copy of an order of the Utah court setting a hearing date for May 7, 2001. The State opposed the petition for a writ of mandamus. Appellant filed a reply. On May 22, 2001, the district court denied appellant's petition for a writ of mandamus. This appeal followed.

On July 17, 2001, the State filed a motion to dismiss this appeal because the issue raised is moot. Specifically, the State argues that the issue is moot because the date of the hearing, May 7, 2001, has passed. On July 26, 2001, this court received a proper person opposition to the motion to dismiss. Appellant argues that the appeal is not moot because on April 4, 2001, the Utah court stayed the date of the hearing pending resolution of the petition for a writ of mandamus filed in Nevada. We deny the State's motion to dismiss this appeal as moot because the date of the hearing has been stayed. We have reviewed the record on appeal, and for the reasons stated in the attached order of the district court, we conclude that the district court did not abuse its discretion in denying appellant's petition.¹

Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.³

J. Youn J. Leavitt

J.

cc: Hon. Richard A. Wagner, District Judge
Attorney General
James Lee Like
Pershing County Clerk

¹See NRS 34.160; <u>Round Hill Gen. Imp. Dist. v. Newman</u>, 97 Nev. 601, 637 P.2d 534 (1981); <u>see also Poulos v. District</u> <u>Court</u>, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).

²<u>See</u> <u>Luckett v. Warden</u>, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), <u>cert</u>. <u>denied</u>, 423 U.S. 1077 (1976).

³We have considered all proper person documents filed or received in this matter.

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| 3 | DISTRICT COURT CLERK CLERK OF DIST. COURT |
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| 6 | IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA |
| 7 | IN AND FOR THE COUNTY OF PERSHING |
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| 9 | JAMES LEE LIKE, |
| 10 | Petitioner, |
| 11 | vs.) <u>FOR WRIT OF MANDAMUS</u> |
| 12 | THE STATE OF NEVADA, et al., |
| 13 | Respondent. |
| 14 |) |
| 15 | This matter having come before this Court and the Court having reviewed all pleadings, |
| 16 | documents and exhibits on file and being fully advised of the premises, makes the following |
| 17 | conclusions and Order. |
| 18 | James Lee Like (hereinafter Like) has filed a petition for writ of mandamus. Like is in |
| 19 | the custody of the Nevada Department of Prisons for a term of life without the possibility of |
| 20 | parole following his adjudication as a habitual criminal. Like seeks to compel the State of |
| 21 | Nevada, et al., to temporarily transfer him to Utah so that he can attend a hearing regarding a |
| 22 | petition for extraordinary relief in the First Judicial District Court, State of Utah, County of |
| 23 | Cache. Like bases his petition on his contentions that the Nevada Department of Prisons has |
| - 24 | procedures or regulations to temporarily transfer an inmate to an out-of-state court and his |
| 25 | petition in Utah is directly related to his current sentence because that conviction was used, in |
| 26 | part, as the basis to adjudicate him a habitual criminal. Like, citing Barrett v. Baird, 111 Nev. |
| 27 | 1496, 1512, 908 P.2d 689, 700 (Nev. 1995), contends that due process concerns are at issue and |
| 28 | he should be given the opportunity to be temporarily transferred to Utab to attend the hearing. |
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and and the

requires Neva to finance that challenge or transport him to Utah so that he can pursue his challenge. Neither Barrett v. Baird, 111 Nev. 1496, 908 P.2d 689 (1995), nor the other cases 2 cited by Like support his proposition. Like initiated the challenge to his conviction in Utah. He must bear the expense of it.

5 In the Utah court's order attached to his petition, the court notes that it is up to Like to 6 arrange his appearance there. The Utah court also notes that its order shall in no way be 7 construed to create any duty on the part of the State of Utah or any other law enforcement agency of the State of Utah or any of its political subdivisions to pay for Like's transportation costs. Just 8 9 as obviously, none of the costs are Nevada's.

10 If the Utah court deems Like's presence necessary, it is up to that court or to Like to ensure his presence there. Contrary to Like's representation, there may be a plain, speedy and 11 adequate remedy. It is at least remotely conceivable that Like or the Utah court could utilize the 12 process for the interstate rendition of a material witness. Of course, it remains to be seen 13 whether the Utah court would authorize such a process if it knew the true state of affairs 14 regarding Like's status as an inmate. 15

If Utah believes that Like needs to be at that or any other hearing, that State can make 16 17 arrangements for his appearance and bear the cost.

It is hereby ORDERED, ADJUDGED and DECREED, that the petition for writ of

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19 mandamus is DENIED.

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DATED this _ . _ day of May, 2001.

Richard a. Wagner

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