

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES FRANCIS MEEGAN, II,

No. 38054

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,

FILED

JUL 12 2001

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

Respondents,

and

THE STATE OF NEVADA,

Real Party
in Interest.

ORDER DENYING PETITION

This is a proper person petition for a writ of mandamus requesting this court's intervention regarding a previously issued writ of mandamus.

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, petitioner 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 petitioner's post-conviction petition for a writ of habeas

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

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

corpus remains pending in this court. However, an appeal from a post-conviction habeas petition does not divest the district court of 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 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 responded and conceded that the district court had jurisdiction. Therefore, we granted the petition and directed 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 The clerk of this court issued the writ of mandamus on April 6, 2001.

Petitioner argues in this petition for a writ of mandamus that the district court has not complied with this court's April 6, 2001 writ of mandamus. Petitioner claims that the district court has not rescinded its prior order and has not considered his motion on the merits. Petitioner requests this court to order Judge Loehrer to comply with the writ of mandamus, to disqualify Judge Loehrer from further

³See Bongiovi v. Bongiovi, 94 Nev. 321, 579 P.2d 1246 (1978); see also Sheriff v. Gleave, 104 Nev. 496, 761 P.2d 416 (1988).

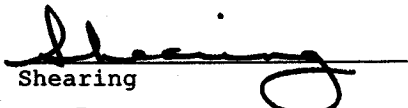
⁴NRS 176.555.

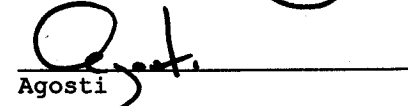
⁵Meegan v. Eighth Judicial District Court, Docket No. 37277 (Order Granting Petition for Writ of Mandamus, April 6, 2001).

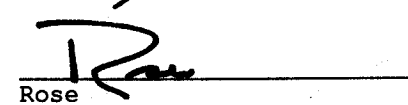
participation, and to find Judge Loehrer in contempt and sanction Judge Loehrer pursuant to NRS 34.290.⁶

We have considered the petition on file herein, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted at this time.⁷ We are confident that Judge Loehrer will rescind the December 15, 2000 order and consider appellant's motion in a reasonably timely fashion and as the court's calendar permits. Accordingly, we

ORDER the petition DENIED.


_____, J.
Shearing


_____, J.
Agosti


_____, J.
Rose

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

⁶NRS 34.290(1) provides:

When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board or person, if it appear to the court that any member of such tribunal, corporation or board, or such person, upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the court may, after notice and hearing, adjudge the party guilty of contempt and upon motion impose a fine not exceeding \$1,000.

⁷See NRS 34.160; NRS 34.170.