

IN THE SUPREME COURT OF THE STATE OF NEVADA

AUSTIN BURKETT,

Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF

WASHOE,

Respondent.

No. 87581

FILED

JAN 29 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

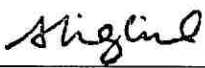
This pro se petition for a writ of mandamus or prohibition seeks compliance with NRS 34.738. According to petitioner, he filed a post-conviction habeas corpus petition challenging the computation of time with the Second Judicial District Court on September 25, 2023. A file-stamped copy of the habeas petition was attached to the writ petition, along with a copy of the district court's "Return Notice," which notated petitioner's location as the High Desert State Prison facility and informed petitioner that court staff is not permitted to give legal advice. Under NRS 34.738, petitioner asserts, the court clerk was supposed to transfer the petition to the court in the county in which he is incarcerated, Clark County, but thus far, no action has been taken on his habeas petition. From the district court's online docket entries, it appears that petitioner is correct.


On January 18, 2024, the Washoe County District Attorney timely filed an answer to the writ petition, as directed, informing this court that it does not represent the Second Judicial District Court for purposes of this petition, and that while it agrees that the habeas petition should be transferred to the county of incarceration, it appears that petitioner has not filed a motion for such transfer. The Second Judicial District Court has not filed a separate answer to the petition.

Under NRS 34.738(1), post-conviction petitions that challenge anything besides the validity of a judgment of conviction or sentence must be filed where the petitioner is incarcerated. NRS 34.738(2) provides that “[a] petition that is not filed in the district court for the appropriate county: (a) Shall be deemed to be filed on the date it is received by the clerk of the district court in which the petition is initially lodged; and (b) Must be transferred by the clerk of that court to the clerk of the district court for the appropriate county.” While it is advisable for petitioner to seek relief from the district court first, under the statute’s language, no motion is required. Accordingly, the clerk of the district court was required to transfer petitioner’s September 25 habeas petition to the county of incarceration but apparently did not do so, warranting mandamus relief. *See State v. Eighth Jud. Dist. Ct. (Zogheib)*, 130 Nev. 158, 161, 321 P.3d 882, 884 (2014), as modified (Apr. 1, 2014) (recognizing that “mandamus lies to enforce ministerial acts” (internal quote marks and citation omitted)). We thus

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the Washoe District Court Clerk to transfer petitioner’s habeas petition to the Eighth District Court Clerk in Clark County.¹


_____, C.J.
Cadish


_____, J.
Stiglich


_____, J.
Herndon

¹In light of this order, petitioner’s alternative request for a writ of prohibition is denied as moot.

cc: Hon. Tammy Riggs, District Judge
Austin Burkett
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk