

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN SAMUEL BRAUNSTEIN,
A/K/A STEVEN S. JALBERT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40677

FILED

APR 09 2003

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY *Richard*
CHIEF DEPUTY CLERK

STEVEN SAMUEL BRAUNSTEIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40678

ORDER OF REVERSAL AND REMAND

Docket Nos. 40677 and 40678 are proper person appeals from orders of the district court denying appellant's post-conviction petitions for writs of habeas corpus.¹

On July 26, 2000, the district court convicted appellant in district court case number C162359, pursuant to a guilty plea, of defacing, altering, substituting or removing a vehicle identification number, a gross misdemeanor. The district court sentenced appellant to serve a term of six months in the Clark County Detention Center, to be served consecutively

¹We elect to consolidate these appeals for disposition. See NRAP 3(b).

to his term in district court case number C159515. This court dismissed appellant's untimely direct appeal for lack of jurisdiction.²

On July 26, 2000, the district court convicted appellant in district court case number C158840, pursuant to a guilty plea, of attempted possession of stolen property. The district court sentenced appellant to serve a term of twelve to thirty-four months in the Nevada State Prison, to be served consecutively to his term in district court case number C159515. This court dismissed appellant's untimely direct appeal for lack of jurisdiction.³

On January 10, 2001, appellant filed proper person documents in each district court case labeled, "post conviction relief petition for direct appeal." On February 27, 2001, and March 9, 2001, appellant filed supplements to the petitions. The State opposed the petitions. On March 22, 2001, the district court conducted an evidentiary hearing outside the presence of appellant and denied the petitions. Appellant filed timely notices of appeal on April 19, 2001.⁴ On July 2, 2001, the district court entered a written order denying appellant's petitions. On appeal, this court entered an order reversing the orders of the district court because

²Braunstein v. State, Docket No. 36714 (Order Dismissing Appeal, January 11, 2001).

³Braunstein v. State, Docket No. 36948 (Order Dismissing Appeal, February 9, 2001).

⁴See NRAP 4(b).

the district court had conducted an ex-parte evidentiary hearing on March 22, 2001.⁵ This court remanded the matters to a different district court judge for an evidentiary hearing on the merits of the claims raised by appellant in his petitions.⁶

On September 23, 2002, appellant filed subsequent petitions for writs of habeas corpus in the district court in each district court case. The State opposed the petitions. On November 25, 2002, the district court orally denied relief and entered written orders on February 7, 2003. These appeals followed.

At the November 25, 2002 hearing, the district court concluded that the issue regarding appellant's petitions was moot because appellant had withdrawn his petitions on July 2, 2001. The records on appeal do not support that conclusion. The records reveal that on July 2, 2001, and on July 12, 2001, the district court granted appellant's motion to vacate a hearing date on a post-conviction petition for a writ of habeas corpus. In that motion, appellant requested that records be forwarded to this court as his appeals were pending in this court. Thus, it does not

⁵See Gebers v. State, 118 Nev. ___, 50 P.3d 1092 (2002).

⁶Braunstein v. State, Docket Nos. 37685, 37761 (Order of Affirmance in Part and Reversal and Remand in Part, September 9, 2002). This court determined that the district court did not err in construing appellant's petitions to be post-conviction petitions for writs of habeas corpus. See NRS 34.724(2)(b).

appear that appellant sought to withdraw his petitions from consideration. Further, the district court was without jurisdiction to consider a motion relating to the substance of the 2001 petitions because the petitions filed in 2001 were the subjects of appeals pending in this court at the time.⁷ Thus, the issue regarding appellant's petitions was not moot.

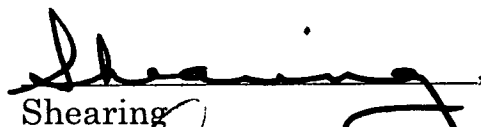
The district court failed to cause the petitions to be transferred to a different district court judge as directed by this court in its previous order of reversal and remand. Thus, we conclude that the district court abused its discretion in considering and ruling upon appellant's petitions filed in the district court on January 10, 2001, February 27, 2001, March 9, 2001, and September 23, 2002. Accordingly, we reverse the orders of the district court and remand these matters to a different district court judge for an evidentiary hearing on the merits of the claims appellant raised in the aforementioned petitions. The district court shall provide for appellant's presence at the hearing.⁸

⁷See Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987).


⁸See NRS 34.390. The district court judge to receive this case upon transfer may exercise its discretion and appoint post-conviction counsel to assist appellant. See NRS 34.750. The district court judge receiving this case upon transfer shall enter a final written order resolving all of the claims raised in the aforementioned petitions.

Having reviewed the records on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in these matters.⁹ Accordingly, we

ORDER the judgments of the district court REVERSED AND REMAND these matters to the district court for proceedings consistent with this order.¹⁰


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Steven Samuel Braunstein
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁰This order constitutes our final disposition of these appeals. Any subsequent appeals shall be docketed as new matters.