

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE W. LUSTER, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41629

FILED

AUG 20 2003

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court dismissing a petition for a writ of mandamus.

On April 14, 2003, appellant filed a proper person petition for a writ of mandamus in the district court in district court case number C132314, a criminal case. The State opposed the petition, arguing among other things that the petition was improperly filed in the criminal case and should have been filed as an independent civil action. On June 12, 2003, the district court dismissed the petition without prejudice. This appeal followed.

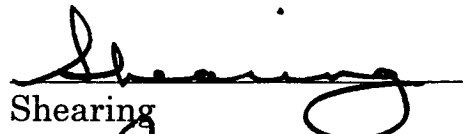
In his petition for a writ of mandamus, appellant claimed that the High Desert State Prison: (1) improperly held his outgoing legal mail for more than seven days and refused to mail the item; (2) refused to grant his written requests to make telephone calls regarding legal matters; and (3) refused to grant his written requests for legal materials and services. Appellant filed the mandamus petition in a criminal case in which there was a pending post-conviction petition for a writ of habeas corpus.


The district court determined that appellant's petition was filed in the wrong proceeding and should have been filed in a separate, civil proceeding. Based upon our review of the record on appeal, we

conclude that the district court did not abuse its discretion in dismissing appellant's petition without prejudice.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.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. John S. McGroarty, District Judge
George W. Luster Jr.
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹See generally Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).

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

³We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.