

IN THE SUPREME COURT OF THE STATE OF NEVADA

CALVIN BRYANT,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND CLERK OF THE EIGHTH
JUDICIAL DISTRICT COURT, IN AND
FOR CLARK COUNTY, NEVADA,
Respondents.

No. 52471

FILED

DEC 02 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING PETITION

This is a proper person petition for a writ of mandamus in which petitioner seeks an order directing the clerk of the district court to file his notice and motion for return of illegally seized currency.

Petitioner asserted that he submitted his notice and motion for return of illegally seized currency relating to justice court case number 05F15084x in the district court for filing, but the clerk of the district court failed to file the document. Petitioner asserted that the document had not been filed because no criminal complaint was filed in justice court case number 05F15084x.

This court has consistently held that the district court clerk has a ministerial duty to accept and file documents presented for filing if

those documents are in proper form and maintain accurate records of the proceedings.¹

It was unclear from the documents before this court why the clerk of the district court had not filed the motion. It was unclear whether there was a valid criminal case in which the motion may be filed, whether a criminal case should be opened for the motion, or whether the relief sought was more appropriately sought in a civil action. It was unclear if the clerk of the district court stamped the motion "received" and maintained a copy of the motion for the record. Thus, it appeared that petitioner may have set forth an issue of arguable merit and that he may not have had an adequate remedy at law.² Thus, this court directed the State, on behalf of the respondent, to file an answer to the petition.

The State opposes the grant of the petition because no such criminal case existed in which to file the motion and there was no authority requiring the clerk to open a criminal case for the filing of the motion. Further, the State argues that the motion was not in the proper form, and thus, the clerk of the district court had not violated any

¹See, e.g., Sullivan v. District Court, 111 Nev. 1367, 904 P.2d 1039 (1995) (holding that the district court had a duty to file an application to proceed in forma pauperis and "receive" a civil complaint); Whitman v. Whitman, 108 Nev. 949, 840 P.2d 1232 (1992) (holding that the clerk has no authority to return documents submitted for filing; instead, clerk must stamp documents that cannot be immediately filed "received," and must maintain such documents in the record of the case); Bowman v. District Court, 102 Nev. 474, 728 P.2d 433 (1986) (holding that the clerk has a ministerial duty to accept and file documents unless given specific directions from the district court to the contrary).

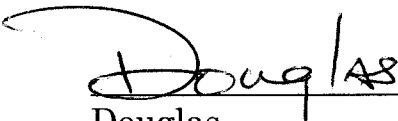
²See NRS 34.160; NRS 34.170.

ministerial duty in failing to file the motion. We agree. Petitioner's remedy, if any, lies in a properly filed civil action. Accordingly, we

ORDER the petition DENIED.³


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Calvin Bryant
Clark County District Attorney David J. Roger
Eighth District Court Clerk

³We have considered all documents submitted in this matter, and we conclude that no relief is warranted for the reason set forth above.