

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PETER MARK COCA,
Petitioner,

vs.

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

Respondent,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 72600

FILED

MAY 16 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING PETITION

This original petition for a writ of mandamus and/or prohibition seeks an order directing the district court to set a status hearing on his pending postconviction petition for a writ of habeas corpus. Petitioner asserts he filed his petition in district court case number CR-FP-11-0267 on January 28, 2015, and the district court has not taken any action on the petition since March 23, 2015, when it denied a motion. Petitioner has provided this court with a copy of the docket sheet that demonstrates he filed a petition for a writ of habeas corpus on January 28, 2015.


On April 19, 2017, we ordered the real party in interest to inform this court of the status of the petition, including any scheduled hearings on the petition. In its status report, the real party in interest informs this court it received a copy of the petition on January 28, 2015, with a note attached to the filing which read: "Petitioner incorrectly filed

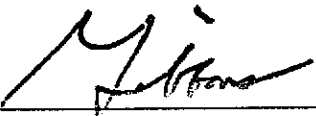
this in criminal case—sent to Judge McGee who may deny petition.” Real party in interest further informs this court it has checked periodically and has never found a separate “writ” opened, it has never received an order from the district court regarding the petition, and it is not aware of any hearings being scheduled on the petition.

A writ of mandamus may issue “to compel the performance of an act which the law especially enjoins as a duty resulting from an office.” NRS 34.160. NRS 34.740 requires the district court to provide an expeditious examination of a postconviction petition for a writ of habeas corpus. The length of delay in the prosecution of this petition has prevented an expeditious examination. Therefore, we conclude mandamus relief is warranted and we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to place the January 28, 2015, postconviction petition for a writ of habeas corpus on its calendar and resolve the petition.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Nancy L. Porter, District Judge
Hon. Alvin R. Kacin, District Judge
Hon. Charles McGee, Senior Judge
Peter Mark Coca
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk