

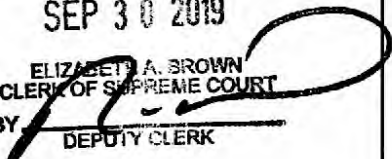
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AMBER CLARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78229-COA

FILED

SEP 30 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Amber Clark appeals from an order of the district court denying a petition for a writ of prohibition or certiorari. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Clark argues the district court abused its discretion by denying her August 31, 2018, petition. Clark was convicted, pursuant to a guilty plea, of possession of drug paraphernalia. The justice court sentenced her to serve one day in the county jail and credited her with one day of time served. The justice court also ordered her to successfully complete a program of treatment for the abuse of alcohol or drugs pursuant to the provisions of NRS 484C.360. Clark did not complete the program of treatment.

Clark later filed a motion in the justice court contending that the court only has the authority to order her to participate in a treatment program if it does so as a condition of the suspension of her sentence. See NRS 4.373(1). Clark contended her sentence was not suspended, she had already served her jail time, and the justice court therefore did not have the authority to require her participation in a treatment program. The justice court held a hearing concerning this issue. The court found it had the

authority to order Clark to complete a treatment program and could enforce such an order through civil contempt.

In the district court, Clark filed a petition for a writ of prohibition or certiorari again arguing the justice court lacked the authority to order her to participate in a drug counseling program because it did not also suspend her sentence. Clark therefore contended the justice court could not lawfully order her to complete a treatment program and requested the district court to issue a writ prohibiting further proceedings in the justice court concerning the court's attempt to enforce that order. The district court denied the petition and Clark appeals.

A writ of prohibition may issue to arrest the proceedings of a lower court exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the lower court. NRS 34.320. A petition for a writ of certiorari may issue where the lower court has exceeded its jurisdiction. NRS 34.020(2). "We generally review a district court's grant or denial of writ relief for an abuse of discretion." *Koller v. State*, 122 Nev. 223, 226, 130 P.3d 653, 655 (2006).


"[J]ustice courts are courts of limited jurisdiction and have only the authority granted by statute." *Grace v. Eighth Judicial Dist. Court*, 132 Nev. 511, 513, 375 P.3d 1017, 1018 (2016) (internal quotation marks omitted). A justice court may suspend the sentence of a person convicted of a misdemeanor and may order that person to "[a]ctively participate in a program of professional counseling" as a condition of the suspended sentence. NRS 4.373(1)(c).

Here, the justice court did not suspend Clark's sentence, but nevertheless ordered her to participate in a treatment program. The State concedes the justice court lacked statutory authority to order Clark to

complete the treatment program and its order was therefore unlawful. In light of the State's concession and our review of the record, we conclude the district court abused its discretion by denying Clark's petition. Therefore, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court to grant Clark's petition and issue a writ prohibiting the justice court from enforcing its order directing Clark to complete a program of treatment.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Lynne K. Simons, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk