

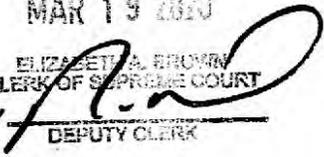
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN SAMUEL BRAUNSTEIN,  
Petitioner,  
vs.  
STEVEN GRIERSON, EIGHTH  
JUDICIAL DISTRICT COURT CLERK,  
IN AND FOR THE COUNTY OF  
CLARK,  
Respondent.

No. 79894-COA

FILED

MAR 19 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER GRANTING PETITION

In this original petition for a writ of mandamus, Steven Samuel Braunstein seeks an order directing respondent to file his amended petition for a writ of habeas corpus.

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station, NRS 34.160, or to control a manifest abuse or arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). A writ of mandamus will not issue, however, if petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170. Further, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered. *See Poulos v. Eighth Judicial Dist. Court*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); *see also State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983). "Petitioner[ ] carr[ies] the burden of demonstrating that extraordinary relief is warranted." *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). Under the circumstances presented,

we conclude Braunstein has no other adequate remedy at law for raising his claim, and we exercise our discretion to entertain the petition.

Braunstein asserts that, in compliance with this court's order of reversal and remand in Docket No. 76788-COA, on August 14, 2019, in district court case number 99-C-158840, the Honorable Stefany Miley orally directed him to file a pleading correcting any procedural defects within 90 days and to request a hearing. Braunstein asserts he has made multiple attempts to timely file his amended petition for a writ of habeas corpus, but respondent refuses to file the petition. He argues respondent does not have the authority to apply the vexatious litigant standard to him because there has been no vexatious litigant order entered against him in case number 99-C-158840.

We directed respondent to file an answer to the petition. Respondent states that a vexatious litigant order was entered in district court case number 99-C-159515 that requires Braunstein to comply with certain requirements. In particular, Braunstein must first seek leave to file documents before he can file anything in the court. Respondent states that in district court case number 99-C-158840 Braunstein submitted a petition on July 29, 2019, for filing and it also appears he attempted to file an amended petition for a writ of habeas corpus on or about October 3, 2019. Respondent explains that because the July 29, 2019, document was captioned as a writ of habeas corpus, a new case file was created and the petition was transmitted to the Honorable Michael P. Villani for review. Respondent further informs this court that on September 12, 2019, Judge Villani determined Braunstein was not complying with the vexatious litigant order and was attempting to litigate matters that were previously ruled upon, and Judge Villani denied leave to file the amended petition.

The amended petition was returned to Braunstein on September 17, 2019, with a document informing him he is a vexatious litigant and unable to file the document. Respondent suggests this court should clarify the scope of the vexatious litigant order and remand this matter to the district court to provide Braunstein an opportunity to cure the defects in his outstanding petition, but also order Braunstein to file the petition in compliance with all provisions in the vexatious litigant order.

The vexatious litigant order in question is a “Pre-filing Injunction” that was filed in district court case number 99-C-159515 on February 28, 2014. That order specifically states that Braunstein, and anyone acting on his behalf, is “enjoined from filing any action in the Eighth Judicial District Court, which arises out of or materially involves his criminal conviction in Case No. 99C159515 and/or his resulting custody status, without first obtaining leave of this Court.” The order further states:

This Order is to be narrowly construed toward the purpose of preventing [Braunstein] from perpetuating his pattern of filing frivolous, vexatious filings regarding his conviction and his imprisonment. Nothing in this Order shall be construed to preclude [Braunstein] from defending himself in any new civil or criminal actions brought against him as a Defendant in the Eighth Judicial District Court that does not arise out of or are not materially related to his conviction in Case No. 99C159515 and/or his resulting custody status.

By its very terms, the vexatious litigant order only enjoins Braunstein from filing documents that challenge the conviction and Braunstein’s custody status in case number 99-C-159515.<sup>1</sup> Braunstein’s amended petition was

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<sup>1</sup>In his petition, Braunstein also argues that the vexatious litigant order was “disavowed” by *Jones v. Eighth Judicial District Court*, 130 Nev.

clearly submitted for filing in district court case number 99-C-158840 and challenged his conviction in that case. Therefore, it was improper to prohibit Braunstein from filing the amended petition based on the application of the vexatious litigant order. Accordingly, we conclude extraordinary relief is warranted, and we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the clerk of the district court to file Braunstein's amended petition for a writ of habeas corpus in district court case number 99-C-158840.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Michael P. Villani, District Judge  
Hon. Stephany Miley, District Judge  
Steven Samuel Braunstein  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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493, 330 P.3d 475 (2014). We decline to address this claim and express no opinion regarding the validity of the vexatious litigant order.