

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD ALLEN SHRADER,

No. 38609

Appellant,

vs.

RONALD PIERINI, SHERIFF,

Respondent.

FILED

FEB 14 2002

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

ORDER OF AFFIRMANCE

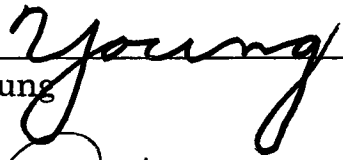
This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.

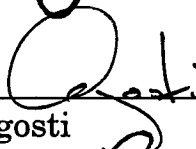
We have reviewed the record on appeal and for the reasons stated in the attached order of the district court, we conclude that the district court properly denied appellant's petition.¹ Therefore, briefing and

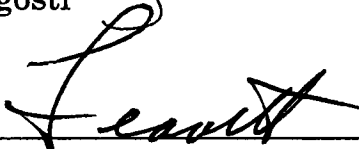
¹Even assuming that appellant's petition could be characterized as a habeas corpus petition pursuant to NRS 34.360, we conclude that appellant was precluded from obtaining relief in his petition. Pursuant to the Nevada Constitution, the district courts may issue a writ of habeas corpus on petition by "any person who is held in actual custody in their respective districts, or who has suffered a criminal conviction in their respective districts and has not completed the sentence imposed pursuant to the judgment of conviction." Nev. Const. art. 6, § 6(1); see also NRS

continued on next page . . .

oral argument are not warranted in this case.² Accordingly, we
ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Michael P. Gibbons, District Judge
Douglas County District Attorney/Minden
Richard Allen Shrader
Douglas County Clerk

... continued

34.360. Appellant was not in custody at the time he filed his habeas corpus petition. Appellant did not allege that he was in actual custody in the Ninth Judicial District Court or that he had a sentence to serve that he had not yet completed. Thus, appellant failed to meet this threshold jurisdictional requirement, and we conclude that the district court properly concluded that it lacked jurisdiction to consider his petition.

²See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

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Case No. 01-CV-0238

FILED
NO. _____

Dept. No. II

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DOUGLAS COUNTY
DISTRICT COURT

SANFORD A. BERT
BY: *[Signature]* DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

RICHARD ALLEN SHRADER,
Petitioner,

vs.

O R D E R

SHERIFF PIERINI,
Respondent.

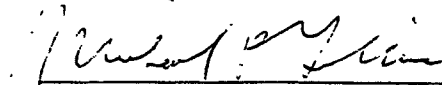
Richard Shrader has filed a Petition For Writ of Habeas Corpus against Sheriff Pierini. The basis for the Petition is that the East Fork Justice Court entered a Temporary Protective Order regarding stalking or harassment under NRS 200.591. The Petition was filed using the form described in NRS 34.735.

NRS 34.724 allows any person convicted of a crime and under a sentence of imprisonment to file a post-conviction petition for writ of habeas corpus. In this case, a protective order was entered apparently in a civil proceeding. The Petitioner has not alleged he was convicted of a crime nor that he was imprisoned. Therefore, the court has no jurisdiction to consider the Petition.

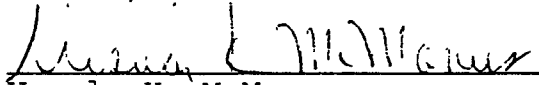
1 If the Petitioner was charged with a crime for violating
2 the protective order, and he was convicted and imprisoned, then
3 the court could consider such a petition. The Sheriff may then
4 be a proper party, but at this point, the sheriff is not
5 legally a proper party.

6 Accordingly, the Petition is DISMISSED.

7 DATED this 3 day of October, 2001

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9 
10 MICHAEL P. GIBBONS
District Judge

11
12 Copies served by mail this 3rd day of October, 2001, to:
13 Richard Shrader, P. O. Box 637, Minden, NV 89423; R. Michael
14 McCormick, Deputy District Attorney, P. O. Box 218, Minden, NV
15 89423; Sheriff Pierini, P. O. Box 218, Minden, NV 89423; East
16 Fork Justice Court, P. O. Box 218, Minden, NV 89423.

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Ursula K. McManus