IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE,
Respondent,
and
THE STATE OF NEVADA; AND TIM GARRETT, WARDEN,
Real Parties in Interest.

No. 83042-COA

ORDER DENYING PETITION

Ferrill Joseph Volpicelli seeks extraordinary relief in this original "rule 60(b)(4) motion, or in the alternative, writ of certiorari or mandamus." Volpicelli contends the district court did not finally dispose of all claims raised in his 2005 postconviction petition for a writ of habeas corpus and, accordingly, the Nevada Supreme Court lacked subject matter jurisdiction over his appeal when it affirmed the district court's denial of his petition. *See Volpicelli v. State*, Docket No. 51622 (Order of Affirmance, December 3, 2009).

Volpicelli asks this court to acknowledge the jurisdictional issue; render the Nevada Supreme Court's 2009 order of affirmance void for lack of subject matter jurisdiction, and remand this matter to the district court for a proper adjudication of two grounds raised in his 2005 petition that Volpicelli contends were never resolved.

21-23036

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 certiorari is available only where the lower court has exceeded its jurisdiction or the district court has addressed the constitutionality of a statute or ordinance on appeal from a final judgment in a justice or municipal court. NRS 34.020(2), (3). Petitions for extraordinary writs are addressed to the sound discretion of the court, *see Zamarripa v. First Judicial Dist. Court*, 103 Nev. 638, 640, 747 P.2d 1386, 1387 (1987); *Poulos v. Eighth Judicial Dist. Court*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982), and the "[p]etitioner[ ] 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).

To the extent Volpicelli seeks an order directing the district court to resolve his allegedly unresolved grounds (ground 12 and 23), we conclude he has failed to demonstrate he is entitled to relief. This court has previously addressed his claim as regards ground 12 of his petition, and that holding is the law of the case. *See Volpicelli v. Second Judicial Dist. Court*, Docket No. 82726-COA (Order Denying Petition, June 7, 2021) (rehearing

pending)[1]; *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Further, the documents Volpicelli has provided to this court clearly demonstrate the district court summarily denied ground 23. Accordingly, Volpicelli has not demonstrated the district court failed to perform a duty or abused its discretion.

Volpicelli's remaining claims are inappropriate for extraordinary relief. First, claims brought pursuant to the Nevada Rules of Civil Procedure must be raised in the district court in the first instance. *See* NRCP 1 ("These rules govern the procedure in all civil actions and proceedings in the district courts . . . ."). Second, Volpicelli makes no allegations that would bring his claims within the scope of a writ of certiorari. Third, his request that this court acknowledge the jurisdictional issue does not implicate any duty or abuse of discretion by an "inferior tribunal, corporation, board or person" and thus does not come within the scope of a writ of mandamus. *See* NRS 34.160. Finally, this court lacks the authority to render void a Nevada Supreme Court Order. *See People v. Solorzano*, 63 Cal. Rptr. 3d 659, 664 (Ct. App. 2007), *as modified* (Aug. 15, 2007) ("The Court of Appeal must follow, and has no authority to overrule, the decisions of the California Supreme Court." (quotation marks and internal punctuation omitted)).

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[1]Should this court's decision in Docket No. 82726-COA be altered on rehearing or review, Volpicelli would be entitled to whatever relief is provided in that case.

Moreover, Volpicelli's claims do not implicate the Nevada Supreme Court's subject matter jurisdiction. "Subject matter jurisdiction is the court's authority to render a judgment in a particular category of case." *Landreth v. Malik*, 127 Nev. 175, 183, 251 P.3d 163, 168 (2011) (internal quotation marks omitted). And the appellate courts have the authority to render a judgment on appeal from the denial of postconviction petitions for a writ of habeas corpus. *See* Nev. Const. art. 6, § 4.

For the foregoing reasons, we conclude Volpicelli is not entitled to relief, and we

ORDER the petition DENIED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Ferrill Joseph Volpicelli
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

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FILED
OCT 20 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Ferrill Joseph Volpicelli
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

Appendix F-5

21-30141

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
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No. 83042

FILED

NOV 16 2021

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

ORDER DENYING PETITION FOR REVIEW

Review denied. NRAP 40B.

It is so ORDERED.[1]

/ Hardesty, C.J.

Parraguirre, J.

Stiglich, J.

Cadish, J.

Pickering, J.

Herndon, J.

[1] The Honorable Abbi Silver, Justice, did not participate in the decision of this matter.

Appendix F-6

Additional material from this filing is available in the Clerk's Office.