

## CRIMINAL LAW – HABEAS CORPUS

### Summary

The State of Nevada convicted David Robert Riker (“Riker”) for murder. Riker filed two sets of post-conviction petitions for the writ of habeas corpus—one in 1998 and one in 2004. The district court denied the 1998 petition, but granted the 2004 petition and an evidentiary hearing. The State of Nevada petitioned the Nevada Supreme Court for a writ of mandamus or prohibition arguing that Riker’s habeas corpus claims are procedurally barred and that the district court exceeded its jurisdiction in granting a hearing. The Nevada Supreme Court agreed in part with the State and ordered the district court to apply the appropriate procedural rules to Riker’s claims.

### Factual and Procedural History

In November 1995, the Nevada Supreme Court affirmed Riker’s conviction and death penalty sentence for the murder of Kevin Marble. Riker then filed several post-conviction petitions for the writ of habeas corpus. The Eighth Judicial District Court of the State of Nevada (“district court”) denied Riker’s first post-conviction petition for a writ of habeas corpus in January 1998. In March 2003, Riker filed a second post conviction habeas petition in district court. The State moved to dismiss the petition arguing that the law procedurally barred Riker’s petition. In 2004, Riker filed a motion for leave to conduct discovery, an amended habeas petition, and a motion for a protective order to keep his responses to the State’s discovery requests under seal. The State opposed each one of these filings. In September 2004, the district court issued an order granting Riker’s motions and granted Riker an evidentiary hearing. The State petitioned the Nevada Supreme Court for a writ of mandamus or prohibition contending that Riker’s claims are procedurally barred and that the district court exceeded its jurisdiction in ordering an evidentiary hearing on the merits of the claims.

### Issue

The issue is “whether Riker’s claims are procedurally barred” and whether the “district court abused its discretion in not considering the applicable procedural default rules to decide this question.”<sup>2</sup>

### Disposition

The Nevada Supreme Court granted the State’s request for a writ of mandamus and directed the district court to vacate the order granting Riker’s motions. The writ also directed the district court to “consider and apply the appropriate rules of procedural default to Riker’s

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<sup>1</sup> By Kimberly Lou

<sup>2</sup> *State v. Dist. Court (Riker)*, 121 Nev. Adv. Op. 25, 112 P.3d 1070, 1074 (2005).

claims.”<sup>3</sup> The Court specifically stated that “if the district court concludes that all the claims are barred, it shall issue its order as a final one” and “if it concludes that any claims are not barred, it shall conduct further proceedings in this matter as appropriate.”<sup>4</sup>

### **Commentary**

The Nevada Supreme Court emphasizes in this opinion that writs of mandamus and prohibition are “extraordinary remed[ies]” and are not “means for routine correction and error.”<sup>5</sup> Accordingly, the Court set forth guidelines for when writs of mandamus and prohibition are appropriate remedies regarding post-conviction procedural bars.

First, the Court may issue a writ of mandamus “to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station or to control a manifest abuse of arbitrary or capricious exercise of discretion.”<sup>6</sup> The Court may issue a writ of prohibition to “arrest the proceedings of any tribunal exercising judicial functions in excess of its jurisdiction.”<sup>7</sup> The Court has discretion to issue these writs and considers “judicial economy” and “sound judicial administration.”<sup>8</sup>

Second, the Nevada Revised Statutes provides mandatory procedural default rules to post-conviction habeas petitions. NRS 34.726(1) states “absent a showing of *good cause* for delay, a petition challenging the validity of a judgment or sentence must be filed within one year after this court issues its remittitur on direct appeal.”<sup>9</sup> Pursuant to NRS 34.810(1)(a), if petitioner’s conviction was upon a guilty plea and the guilty plea was not involuntarily or unknowingly entered without effective assistance of counsel, then the court must dismiss the post-conviction habeas conviction.<sup>10</sup> NRS 34.810(2) requires the court to dismiss a second petition if the petition “fails to allege new or different grounds for relief.”<sup>11</sup>

Third, NRS 34.800(1) permits a court to dismiss a petition for writ of habeas corpus if the delay in filing prejudices the State.<sup>12</sup> If the period of delay exceeds five years, there is a rebuttable presumption of prejudice to the State.

Thus in order for a petitioner to succeed on a second post-conviction habeas claim that surpasses the one-year filing period, the petitioner must do the following:

1. Show good cause for the delay in filing by demonstrating that the delay was not petitioner’s fault and that the dismissal of this petition will unduly prejudice him.
2. “[P]lead and prove specific facts that demonstrate good cause for his failure to present claims before or for presenting claims again and actual prejudice.”<sup>13</sup>

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<sup>3</sup> *Id.* at 1082.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 1072.

<sup>6</sup> *Id.* at 1074.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 1075.

<sup>12</sup> *Id.* However, NEV. REV. STAT. 34.800(1) provides an exception: If petitioner “‘shows that the petition is based upon grounds of which he could not have had knowledge by the exercise of reasonable diligence’ before the prejudice arose” the court does not have to dismiss the claim. *Id.*

<sup>13</sup> *Id.*

Petitioner demonstrates “good cause” when he demonstrates “that an impediment external to the defense prevented him from complying with procedural rules.”<sup>14</sup> Petitioner demonstrates “actual prejudice” when he shows that errors at his trial “worked to his actual and substantial disadvantage [by] infecting his entire trial with error of constitutional dimensions,” not that the errors merely created the possibility of prejudice.<sup>15</sup>

### **Effect of *Riker* on Current Law**

Prior to this case, the Nevada Supreme Court received an increasing number of petitions seeking intervention in post-conviction proceedings. This decision will not affect the current law in Nevada because it does not change the law in Nevada. This case only provides guidance to the State in determining when it should file writs of mandamus and prohibition for post-conviction petitions, thus decreasing the number of petitions the Court receives.

### **Other Jurisdictions**

The Court did not look to law in other jurisdictions because the Nevada Revised Statutes specifically addresses the procedural default rules regarding the filing of post-conviction petitions.

### **Unanswered Questions**

This case does not leave any glaring unanswered questions. One does wonder, however, how much effect this case will have on reducing unnecessary writs of mandamus and prohibition for the Court.

### **Conclusion**

*Riker* is a case that provides guidance for the State, petitioners, and district court judges. First, this case provides the State with guidelines on when it should use the extraordinary remedy of a writ of mandamus or prohibition to deal with post-conviction filings. Second, petitioners now know the burden of proof they must show when filing a delayed writ for habeas corpus. Finally, the district court judges know they are required to apply the Nevada Revised Statutes procedural rules to post-conviction proceedings and have no discretion in the matter.

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*