

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOUGLAS R. DEBUONO,
Petitioner,

vs.

THE FIFTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF NYE,
THE HONORABLE JOHN P. DAVIS,
DISTRICT JUDGE,

Respondents,

and,

THE STATE OF NEVADA,
Real Party in Interest.

No. 45407

FILED

FEB 16 2006

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

ORDER DENYING PETITION

This petition for a writ of mandamus or prohibition challenges an order of the district court invalidating a plea agreement, vacating petitioner's guilty plea, and ordering the original charges to be reinstated. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

We have considered the petition on file herein, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted.¹ In particular, we conclude that petitioner's statutory and constitutional right to be free from double jeopardy was not violated by the filing of the second complaint re-alleging the felony charges of driving while under the influence (DUI) causing substantial bodily harm.

¹See NRS 34.160; NRS 34.320.

Although jeopardy generally attaches upon the acceptance of a guilty plea, in this case it did not because the plea agreement was unlawful and prohibited by NRS 484.3795(2).² NRS 484.3795(2) provides that a prosecutor shall not dismiss a charge of felony DUI in exchange for a guilty plea "to a lesser charge or for any other reason unless he knows or it is obvious that the charge is not supported by probable cause or cannot be proved at the time of trial." Here, the record contained sufficient evidence to support a finding of probable cause to believe that petitioner committed the crime of felony DUI causing substantial bodily harm, *i.e.*, that petitioner was driving while under the influence of alcohol and marijuana and caused substantial injuries to the victims. Despite the district court's inquiry, the prosecutor was unable to identify any specific evidentiary problems supporting the dismissal of the felony DUI charge. The prosecutor could only state that he thought there were "some problems with the proof." Under the circumstances, we conclude that the prosecutor's explanation was insufficient to satisfy the requirements of NRS 484.3795(2).

We further conclude that the district court did not encroach upon the prosecutorial role in violation of the doctrine of separation of powers by sua sponte striking the plea agreement reached between the prosecutor and defendant and ordering the prosecutor to reinstate the felony DUI charges. Judges have authority to reject a plea agreement

²See People v. Shiu Yan Yee, 451 N.Y.S.2d 965 (N.Y. Sup. Ct. 1982); see also Jenkins v. District Court, 109 Nev. 337, 340, 849 P.2d 1055, 1057 (1993).

"when there has been an abuse of prosecutorial discretion."³ This court has specifically recognized that a district court has authority to reject a plea agreement that circumvents the legislative intent of NRS 484.3795(2) -- to prevent defendants from escaping a conviction for felony DUI by pleading to a lesser charge.⁴ Because the plea agreement in this case was prohibited by NRS 484.3795(2), and the prosecutor was unable to offer a satisfactory explanation of why the charge was not supported by probable cause or could not be proved at trial, the district court properly exercised its authority to strike the plea and order the original charges reinstated.

Finally, we conclude that the district court did not err in denying petitioner's motion to disqualify Judge Davis because petitioner failed to demonstrate actual or implied bias.⁵

³Sandy v. District Court, 113 Nev. 435, 440, 935 P.2d 1148, 1150-51 (1997) (judicial power to reject plea bargains serves as a check on prosecutorial abuse of the charging prerogative and is wholly consistent with the doctrine of the separation of powers).

⁴Jenkins, 109 Nev. at 340, 849 P.2d at 1057 (district court acted properly in ordering the prosecutor to amend the information to reinstate felony DUI charge because the plea bargain was prohibited by NRS 484.3795(2)). We also reject petitioner's contention that the plea bargain was not prohibited by NRS 484.3795(2) because category B reckless driving with substantial bodily harm is not a "lesser charge" of felony DUI. See id. (concluding that guilty plea to involuntary manslaughter was "lesser charge" for purposes of NRS 484.3795(2)).

⁵See PETA v. Bobby Berolini, Ltd., 111 Nev. 431, 437-38, 894 P.2d 337, 340-41 (1995), overruled on other grounds by Towbin Dodge, LLC v. Dist. Ct., 121 Nev. ___, 112 P.3d 1063 (2005).

Having considered petitioner's contentions and concluded that they lack merit, we

ORDER the petition DENIED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. John P. Davis, District Judge
Marquis & Aurbach
Attorney General George Chanos/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk