

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES NOTTINGHAM,
Petitioner,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46962

FILED

SEP 29 2006

ORDER DENYING PETITION

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

This is a proper person petition for a writ of habeas corpus, or alternatively, writ of mandamus.

It appears that petitioner was charged with one count of possession of a stolen vehicle and two counts of assault with a deadly weapon and that petitioner was originally represented by the Clark County Public Defender's Office in the proceedings in the justice court.¹ The justice court granted the public defender's request to bind petitioner over to the district court for the purpose of determining his competency. The district court determined that petitioner was competent and transferred jurisdiction back to the justice court for a preliminary hearing. After a preliminary hearing, the justice court found probable cause for the charges and bound petitioner over to the district court. It appears that petitioner has since entered a guilty plea in the district court.

Prior to the finding of competence, petitioner filed an original petition in this court and asserted that the justice court exceeded its

¹Petitioner is represented by Mr. Michael P. Villani at the present time.

jurisdiction in binding him over to the district court for the purpose of conducting a competency evaluation without first conducting a preliminary hearing and determining whether probable cause supported the charges.

In Woerner v. Justice Court, this court held that a justice court exceeded its statutory authority by failing to conduct a preliminary hearing and instead ordering a competency evaluation.² This court stated that "competency is not within the scope of the preliminary hearing."³ This court suggested that even where there was an issue as to competency, the justice court should conduct a preliminary hearing to determine probable cause, and if bound over, the petitioner may seek a competency determination in the district court.⁴

Although the justice court in the instant case avoided the error discussed in Woerner, expressly ordering a competency evaluation, it was not clear whether there was statutory or other legal authority permitting the justice court to bind defendant over to the district court for the limited purpose of ordering a competency evaluation without first conducting a preliminary hearing and determining if probable cause supported the charges.

Because it was not clear whether the procedures were in compliance with the statutory scheme, this court directed the district attorney, the public defender, and Mr. Villani to file a response briefing

²116 Nev. 518, 525, 1 P.3d 377, 381(2000).

³Id.

⁴Id. at 526, 1 P.3d at 382.

the issue of what authority (statutory, case law, or constitutional) permitted the justice court to bind petitioner over to the district court for the limited purpose of determining competency.

The parties argue that this court should overrule Woerner and that NRS 178.415(2) was amended in 2003 to allow the justice court to order a competency evaluation of a criminal defendant. After reviewing the responses of the parties and the facts in the instant case, we have determined that this court's intervention into this matter is unwarranted because the matter has been rendered moot by subsequent proceedings in the lower courts.

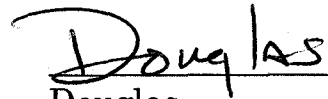
Further, it is not clear that the justice court violated any statutory provisions governing its authority. NRS 4.370(3) provides that "Justice Courts have jurisdiction of all misdemeanors and no other criminal offenses except as provided by specific statute." The justice courts are provided with statutory authority to preside over preliminary hearings for offenses triable within the counties of their jurisdictions.⁵ As the parties point out, NRS 178.415(2) was amended in 2003 to recognize that a justice court may order a competency examination of a defendant who is charged with a gross misdemeanor or felony; however, the district court is responsible for receiving the report of the competency examination.⁶ Because the justice court may order a competency evaluation and because the district court must receive the report of the


⁵See NRS chapter 171 (setting forth the proceedings to commitment); NRS 169.095(3) (providing that the term magistrate includes a justice of the peace).

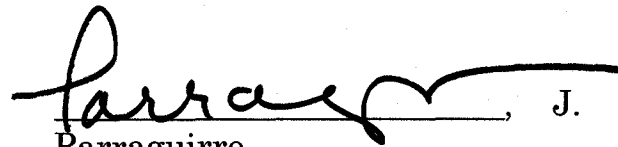
⁶See 2003 Nev. Stat., ch. 203, § 2, at 1018.

competency evaluation, it does not appear that the justice court violated its statutory authority in the instant case by binding petitioner over to the district court for the purpose of determining competency. The continued viability of the holding in Woerner that the justice court has no authority to order a competency evaluation is highly questionable given the 2003 amendment to NRS 178.415(2), but we decline to overrule Woerner in this proper person original petition rendered moot by subsequent proceedings in the lower court. Accordingly, we

ORDER the petition DENIED.⁷


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

cc: Hon. Nancy M. Saitta, District Judge
Clark County Public Defender Philip J. Kohn
Michael P. Villani & Associates
James Nottingham
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁷We have received all proper person documents submitted in this matter, and we conclude that no relief is warranted.