

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE LUIS VALENCIA, JR.,  
Petitioner,

vs.

THE THIRD JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CHURCHILL, THE HONORABLE  
DAVID A. HUFF, DISTRICT JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 47137

**FILED**

**OCT 18 2006**

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

ORDER GRANTING PETITION IN PART

This original petition for a writ of mandamus challenges the district court's order denying petitioner Jose Luis Valencia Jr.'s motion for additional funds for investigative services. Third Judicial District Court, Churchill County; David A. Huff, Judge.

Petitioner was charged by an information filed in November, 2005, with one count each of first degree murder by means of child abuse; abuse, neglect or endangerment of a child causing substantial bodily harm; possessing, transferring or receiving a stolen firearm; and possession of stolen property. He is also charged with two counts of unlawful use or being under the influence of a controlled substance. The trial was continued twice at defense counsel's request. Trial was finally set to begin on April 24, 2006.

Shortly prior to trial, defense counsel Paul G. Yohey filed a motion for additional funds for investigative services. Without conducting a hearing, the district court denied the motion. The district court's ruling

on the issue, in its entirety, reads: "The Court is not convinced that additional funds are required and accordingly, finds that additional funds should not be given."

In Widdis v. District Ct., we concluded that "the State has a duty to provide reasonable and necessary defense services at public expense to indigent criminal defendants."<sup>1</sup> In Widdis, however, the district court had made no specific findings respecting the defendant's indigency or whether the defense request was reasonably necessary.<sup>2</sup> Therefore, this court was "unable to determine whether the district court had acted arbitrarily or capriciously in denying Widdis' motion for defense services at public expense."<sup>3</sup>

Similarly, in the instant case we are unable to determine whether the district court acted arbitrarily or capriciously in denying the defense request. Although the record before us suggests that the district court may have been legitimately exasperated by defense counsel's dilatory performance, the district court did not conduct a hearing on the motion for funds, and its order denying the motion contains no specific findings respecting whether the funds requested are reasonably necessary for petitioner's defense. As in Widdis, petitioner's request for an order directing payment of the fees is therefore premature. Under these circumstances, we conclude that the district court's order denying the defense request for payment of fees must be vacated. We further conclude

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<sup>1</sup>114 Nev. 1224, 1228, 968 P.2d 1165, 1167 (1998).

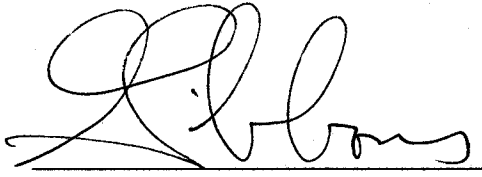
<sup>2</sup>Id.

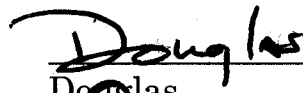
<sup>3</sup>Id. at 1230, 968 P.2d at 1168.

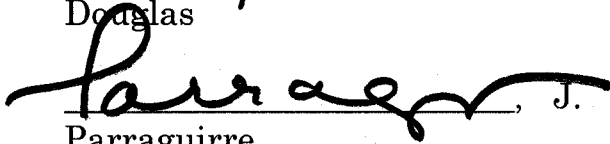
that the district court must conduct a hearing on the matter and issue specific findings regarding whether the requested fees are reasonably necessary. At that hearing, "the burden shall be squarely on the defendant to demonstrate . . . reasonable need for the services in question."<sup>4</sup> We are confident that the district court will consider the gravity of the charges against petitioner, and the amount of investigative work required in order to assure a fair trial.

Accordingly, we grant the petition in part. The clerk of this court shall issue a writ of mandamus directing the district court to vacate its order denying petitioner's motion for investigative fees, to conduct further proceedings in accordance with this order, and to grant the motion if the defense satisfies its burden of demonstrating that the requested fees are reasonably necessary.<sup>5</sup>

It is so ORDERED.<sup>6</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

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<sup>4</sup>Id. at 1229, 968 P.2d at 1168.

<sup>5</sup>We note that in addressing any dilatory performance of defense counsel, the district court should consider appropriate measures other than denial of the motion, especially if the funds requested are reasonably necessary to the defense.

<sup>6</sup>We vacate the stay previously imposed by this court.

cc: Hon. David A. Huff, District Judge  
Paul G. Yohey  
Attorney General George Chanos/Carson City  
Churchill County District Attorney  
Churchill County Clerk