

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEANGELO CARROLL,
Petitioner,

vs.

THE HONORABLE VALERIE ADAIR,
DISTRICT JUDGE, THE EIGHTH
JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE
COUNTY OF CLARK,

Respondents,
and

THE STATE OF NEVADA,
Real Party in Interest.

No. 50576

FILED

SEP 24 2008

TRACIE A. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie A. Lindeman*
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION IN PART

This is an original petition for a writ of mandamus or prohibition challenging a district court order denying a motion to strike the State's notice of intent to seek the death penalty.

Petitioner Deangelo Carroll is awaiting trial on one count each of murder with the use of a deadly weapon and conspiracy to commit murder and two counts of solicitation to commit murder. The State seeks the death penalty, alleging two aggravating circumstances in its notice of intent to seek the death penalty. The first aggravator is based on NRS 200.033(2)(b) and alleges a prior conviction for conspiracy to commit robbery as a felony involving the use or threat of violence to another person. The second aggravator alleges that the victim's murder was committed by a person, for himself or another, to receive money or any other thing of monetary value pursuant to NRS 200.033(6).

On August 16, 2007, Carroll moved the district court to strike the State's notice of intent, arguing that the prior-violent-felony aggravator was invalid because conspiracy to commit robbery does not involve the use or threat of violence to another person under NRS 200.033(2)(b) and that the pecuniary gain aggravator as pleaded is deficient and inapplicable under the circumstances of this case. The district court denied the motion, and this original petition followed.

"This 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 or where discretion has been manifestly abused or exercised arbitrarily or capriciously."¹ The writ will issue where the petitioner has no "plain, speedy and adequate remedy in the ordinary course of law."² The decision to entertain a mandamus petition lies within the discretion of this court, and "[t]his court considers whether judicial economy and sound judicial administration militate for or against issuing the writ."³ "Additionally, this court may exercise its discretion to grant mandamus relief where an important issue of law requires clarification."⁴ The instant petition presents such issues. Further, considerations of judicial economy militate in favor of exercising our discretion to intervene by way of

¹Redeker v. Dist. Ct., 122 Nev. 164, 167, 127 P.3d 520, 522 (2006); see also NRS 34.160.

²NRS 34.170; Redeker, 122 Nev. at 167, 127 P.3d at 522.

³Redeker, 122 Nev. at 167, 127 P.3d at 522.

⁴Id.

extraordinary writ at this time. Therefore, we have addressed the merits of the petition.

Prior-violent-felony aggravator

Carroll argues that his prior conviction for conspiracy to commit robbery does not involve the use or threat of violence to another person as contemplated by NRS 200.033. We recently addressed this issue in Nunnery v. State, concluding that conspiracy to commit a violent act did not involve the use or threat of violence to another as contemplated by NRS 200.033(2)(b).⁵ Therefore, pursuant to Nunnery, the prior-violent-felony aggravator alleged in the notice of intent must be stricken.

Pecuniary gain aggravator

Carroll challenges the pecuniary gain aggravator on several grounds. First, he contends that the pecuniary gain aggravator is invalid because he is alleged to have been hired by someone or hired another person to murder the victim. Carroll argues that the plain language of NRS 200.033(6) precludes the State from applying the aggravator “on both ends of the equation.” He further asserts that the State seeks to establish his culpability for the murder “under aiding and abetting and conspiracy theories, although there is no authority that a go-between who did not do the original hiring or who did not do the actual killing is exposed to this aggravator.” Carroll also argues that the aggravator is unconstitutionally broad. He presents these claims in a cursory fashion, with no legal authority to support them.

⁵124 Nev. ___, ___ P.3d ___ (Adv. Op. No. 46, July 3, 2008).

We reject Carroll's bare assertions. We construe nothing in the plain language of NRS 200.033(6) precluding the State from proceeding on theories that Carroll either procured the killing on behalf of another person or was procured by another person to commit the murder. Nor do we conclude that the pecuniary gain aggravator is unconstitutionally broad. Moreover, to the extent Carroll argues that the State cannot prove his role in the murder, it is unknown what the evidence at trial will prove. Such a factual sufficiency challenge is an inappropriate basis upon which to grant extraordinary relief.

Carroll further challenges the pecuniary gain aggravator as invalid because the evidence supporting it is comprised solely of his contradictory statements to the police, and thus the aggravator violates the corpus delicti rule. However, Carroll misconstrues the corpus delicti rule.⁶ Therefore, we conclude that this argument provides no basis upon which to strike the pecuniary gain aggravator.

Finally, Carroll argues that the notice of intent as pleaded violates SCR 250(4)(c) because it fails to allege with sufficient specificity the facts upon which the State will rely to prove the pecuniary gain aggravator. The State's notice of intent alleges in pertinent part:

The murder was committed by a person, for himself, or another, to receive money or any other thing of monetary value, to-wit: By ANABEL ESPINDOLA (a manager of the PALOMINO

⁶See *Domingues v. State*, 112 Nev. 683, 692, 917 P.2d 1364, 1371 (1996) (rejecting application of corpus delicti rule to sentence enhancement, noting that "[t]he purpose of the corpus delicti rule is to establish that an injury or crime in fact occurred" and that "[a] sentencing enhancement is merely an additional penalty for the primary offense").

CLUB) and/or LUIS HIDALGO, III (a manager of the PALOMINO CLUB) and/or LUIS HIDALGO, JR. (the owner of the PALOMINO CLUB) procuring DEFENDANT DEANGELO CARROLL (an employee of the PALOMINO CLUB) to beat and/or kill TIMOTHY JAY HADLAND; and/or LUIS HIDALGO, JR. indicating that he would pay to have a person either beaten or killed; and/or by LUIS HIDALGO, JR. procuring the injury or death of TIMOTHY JAY HADLAND to further the business of the PALOMINO CLUB; and/or LUIS HIDALGO, III telling DEFENDANT DEANGELO CARROLL to come to work with bats and garbage bags; thereafter, DEFENDANT DEANGELO CARROLL procuring KENNETH COUNTS and/or JAYSON TAOIPU to kill TIMOTHY HADLAND; thereafter, by KENNETH COUNTS shooting TIMOTHY JAY HADLAND; thereafter, LUIS HIDALGO, JR and/or ANABEL ESPINDOLA providing six thousand dollars (\$6,000) to DEFENDANT DEANGELO CARROLL to pay KENNETH COUNTS, thereafter, KENNETH COUNTS receiving said money; and/or by ANABEL ESPINDOLA providing two hundred dollars (\$200) to DEFENDANT DEANGELO CARROLL and/or ANABEL ESPINDOLA and/or LUIS HIDALGO, III providing fourteen hundred dollars (\$1400) and/or eight hundred dollars (\$800) to DEFENDANT DEANGELO CARROLL and/or by ANABEL ESPINDOLA agreeing to continue paying DEFENDANT DEANGELO CARROLL twenty-four (24) hours of work a week from the PALOMINO CLUB even though DEANGELO CARROLL had terminated his position with the club and/or by LUIS HIDALGO, III offering to provide United States Savings Bonds to DEFENDANT DEANGELO CARROLL and/or his family.

We addressed this precise claim concerning the State's notice of intent to seek the death penalty in Hidalgo v. District Court.⁷ The pecuniary gain aggravator in Hidalgo is substantially similar to the one at issue here. In Hidalgo, we acknowledged that the State may "plead alternative fact scenarios in support of an aggravator, but the notice of intent must still be coherent, with a clear statement of the facts and how the facts support the aggravator."⁸ We observed that the primary problem with the notice of intent in Hidalgo was not the lack of factual detail, but that the State alleged the factual details in an incomprehensible "and/or" format that failed to meet the due process requirements of SCR 250(4)(c).⁹ That is, the pecuniary gain aggravator as pleaded fails to provide a defendant with adequate notice of what he must defend against at a death penalty hearing.¹⁰

In addition to concluding in Hidalgo that the pecuniary gain aggravator was pleaded in a confusing manner, we noted that a particular factual assertion in that aggravator was unclear.¹¹ Specifically, the State alleged that a named individual procured the injury or death of the victim to further the business of the Palomino Club.¹² We concluded that the

⁷124 Nev. ___, 184 P.3d 369 (2008).

⁸Id. at ___, 184 P.3d at 375.

⁹Id. at ___, 184 P.3d at 376.

¹⁰Id.

¹¹Id.

¹²Id.

State failed to explain with sufficient factual specificity how the business would be furthered by the victim's death and thus the phrase "to further the business" was impermissibly vague.¹³

We concluded in Hidalgo that although the notice of intent failed to clearly explain the factual allegations supporting the pecuniary gain aggravator, the appropriate remedy was to allow the State to amend the notice of intent to cure the deficiencies rather than strike the aggravator.¹⁴

Here, the State alleges the identical factual allegation as in Hidalgo; therefore, the pecuniary gain aggravator here suffers from the same infirmity identified in Hidalgo. Because Carroll's notice of intent suffers from the identical defects we identified in Hidalgo respecting the pecuniary gain aggravator, we are compelled to conclude that it fails to provide a simple, clear presentation of the critical facts supporting the aggravator, in a comprehensible manner. However, as in Hidalgo, the appropriate remedy is not to strike the pecuniary gain aggravator as Carroll advocates, but to allow the State to amend its notice of intent to cure the identified deficiencies.¹⁵

For the foregoing reasons, we

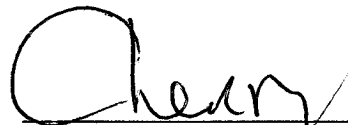
ORDER the petition GRANTED IN PART AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to strike the aggravating circumstance

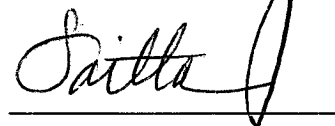
¹³Id.

¹⁴Id. at ___, 184 P.3d at 376.

¹⁵We lift the stay entered by this court on November 29, 2007.

alleging conspiracy to commit robbery as a prior violent felony pursuant to NRS 200.033(2)(b) and to allow the State to amend its notice of intent to seek the death penalty to declare the factual allegations supporting the pecuniary gain aggravator in a clear, comprehensible manner; and to further explain its allegation that the victim's murder served to further the business interests of the Palomino Club.


_____, J.
Cherry


_____, J.
Saitta

MAUPIN, J., concurring in part and dissenting in part:

I concur with the majority's conclusion that, under SCR 250, the imprecise language of the State's notice of intent to seek the death penalty fails to plainly explain how the facts alleged support the aggravating circumstance defined by NRS 200.033(6), *i.e.*, that "[t]he murder was committed by a person, for himself or another to receive money or any other thing of monetary value." I further concur with the majority's conclusion that the State should be allowed to amend the notice of intent to remedy this deficiency. Finally, I concur with the majority's rejection of Carroll's remaining challenges to the validity of the pecuniary gain aggravating circumstance. However, I disagree with the majority's

holding, pursuant to Nunnery v. District Court,¹⁶ that Carroll's prior conviction for conspiracy to commit robbery does not involve the use or threat of violence to another person as contemplated by NRS 200.033(2)(b). In my view, conspiring to commit a violent act sufficiently involves the use or threat of violence to satisfy the statute.¹⁷ Therefore, I dissent from the majority's conclusion that the aggravating circumstance alleged against Carroll pursuant to NRS 200.033(2)(b) must be stricken.



Maupin

cc: Hon. Valerie Adair, District Judge
Bunin & Bunin
Clark County District Attorney David J. Roger
Attorney General Catherine Cortez Masto/Carson City
Eighth District Court Clerk

¹⁶124 Nev. ___, ___ P.3d ___ (Adv. Op. No. 46, July 3, 2008).

¹⁷See Hidalgo v. Dist. Ct., 124 Nev. ___, 184 P.3d 369 (2008) (Maupin, J., concurring in part and dissenting in part).