

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN LAURENCE KENNEDY,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, THE HONORABLE DAVID  
WALL, DISTRICT JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 50855

FILED

JUN 26 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Ingersoll*  
DEPUTY CLERK

ORDER DENYING PETITION

This petition for a writ of prohibition challenges a district court decision that all competency matters must be transferred to Department 5 of the Eighth Judicial District Court pursuant to an administrative order issued by the chief judge of the district. Petitioner asks this court to prohibit the enforcement of the administrative order. Having considered the petition and answer, we deny the petition.

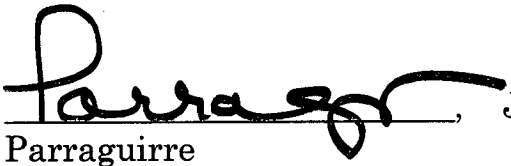
In Ferguson v. State, this court addressed the competency procedures adopted in the Eighth Judicial District Court and held that the Eighth Judicial District Court has authority to assign the determination of all initial competency matters to a particular district court judge but that “the determination of a defendant’s ongoing competency thereafter and during trial must vest with the trial judge who has been assigned to hear the matter.” 124 Nev. \_\_\_, \_\_\_, 192 P.3d 712, 714 (2008). This court has since reiterated that ongoing competency concerns following the initial competency determination must be addressed by the trial judge. Olivares

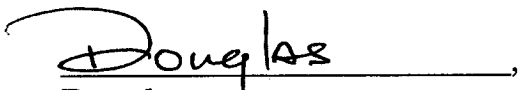
v. State, 124 Nev. \_\_\_, 195 P.3d 864 (2008). More recently, this court has clarified in two opinions some of the procedural requirements in competency proceedings. First, in Scarbo v. District Court, this court held that “prior to a competency hearing held pursuant to NRS 178.415, the court that ordered the examination shall cause full and complete copies of the competency examination reports to be delivered forthwith to the office of the district attorney and to defense counsel, or the defendant personally if not represented by counsel.” 125 Nev. \_\_\_, \_\_\_, 206 P.3d 975, 979 (2009). And second, in Sims v. District Court, this court held that “defense counsel may introduce [independent competency evaluations during competency hearings under NRS 178.415] if they are relevant to the issue of the defendant’s competency and their probative value is not substantially outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” 125 Nev. \_\_\_, 206 P.3d 980, 981 (2009).

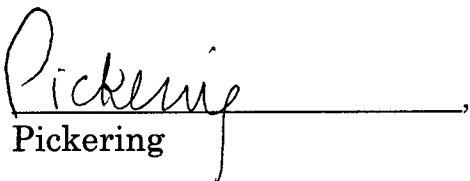
Here, we conclude that extraordinary relief is not warranted for three reasons. First, as noted above, in Ferguson this court generally approved of the procedure of assigning initial competency determinations to a single department. The district court therefore did not exceed its jurisdiction in this matter by complying with that procedure. Second, to the extent that the petition suggests that procedures that may be used in the department assigned to make initial competency determinations might result in an arbitrary or capricious exercise of discretion, those complaints are premature as this case has not yet been through the process of an initial competency determination. Moreover, to the extent that petitioner’s predictions are based on the competency department’s handling of prior cases, this court’s recent decisions in Scarbo and Sims

address many of those concerns. Third, to the extent that the petition suggests that our intervention is required because the judge assigned to make initial competency determinations is biased and must be disqualified, we conclude that petitioner must first seek relief in the district court pursuant to NRS 1.235. We are confident that if petitioner seeks disqualification of a district court judge in compliance with NRS 1.235, the request will be handled by the district court as provided in that statute, including the requirement that the challenged judge either transfer the case to another department or answer the allegations with another judge then deciding the disqualification question. NRS 1.235(5). Because petitioner has not demonstrated that our intervention by way of extraordinary writ is warranted, we

ORDER the petition DENIED.

 J.  
Parraguirre

 J.  
Douglas

 J.  
Pickering

cc: Hon. David Wall, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk