IN THE SUPREME COURT OF THE STATE OF NEVADA

HARRISTON LEE BASS, JR.,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, THE HONORABLE JACKIE GLASS, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 50920

FILED

JAN 23 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION

This is an original petition for a writ of mandamus or prohibition challenging the district court's decisions denying a motion for a continuance and a motion to disqualify the Attorney General's Office and the district court's scheduling of two other motions for the day after petitioner's criminal trial is scheduled to begin.

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station,[1] or to control an arbitrary or capricious exercise of discretion.[2] A writ of prohibition, which is the counterpart to mandamus, may issue to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the district

[1]NRS 34.160.

[2]Round Hill Gen. Imp. Dist. v. Newmand, 97 Nev. 601, 637 P.2d 534 (1981).

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court.[3] These writs may issue only when there is no plain, speedy, and adequate remedy at law.[4] As extraordinary remedies, it is within this court's discretion to determine whether a petition for a writ of mandamus or prohibition will be considered.[5]

Having considered the petition on file herein, we conclude that our intervention by way of extraordinary writ is not warranted for three reasons. First, petitioner has a plain, speedy, and adequate remedy at law by which to challenge the district court's decision to deny the motion for a continuance—he may file a direct appeal if he is convicted. Second, petitioner has not demonstrated that the district court refused to perform an act that is required or has arbitrarily or capriciously exercised its discretion with respect to the scheduling of petitioner's motions. We are confident that the district court will promptly and expeditiously resolve the motions. And finally, petitioner has not demonstrated that the district court arbitrarily or capriciously exercised its discretion in denying petitioner's motion to disqualify the Attorney General's Office.[6] In

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[3]NRS 34.320.

[4]NRS 34.170 (mandamus); NRS 34.330 (prohibition).

[5]See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 662 P.2d 1338 (1983).

[6]See Collier v. Legakes, 98 Nev. 307, 309-10, 646 P.2d 1219, 1220-21 (1982) (stating that decision whether to disqualify prosecutor's office rests within the sound discretion of the district court and that vicarious disqualification of entire prosecutor's office may be warranted only "in extreme cases where the appearance of unfairness or impropriety is so great that the public trust and confidence in our criminal justice system could not be maintained without such action").

particular, it appears from the documents submitted with the petition that at least eight years have passed since the civil action in which the Attorney General's Office apparently represented petitioner, the prior civil action and the instant criminal case are not related, the attorney who previously represented petitioner apparently is not involved in the prosecution of this case, and the prosecuting attorney in this case has acquired no privileged information from the prior civil action and has been screened from any privileged information regarding the prior civil action.[7] It therefore appears that the district court properly exercised its discretion in denying petitioner's request to disqualify the entire Attorney General's Office. For these reasons, we conclude that our intervention is not warranted and we therefore deny the petition.

It is so ORDERED.

Parraguirre, J.

Douglas, J.

Cherry, J.

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[7]Cf. Brinkman v. State, 95 Nev. 220, 222, 592 P.2d 163, 164 (1979) (explaining that prosecutor may be "disqualified from personally acting in a criminal case if he has previously represented the accused in the same or a similar matter" but that trial court did not err in refusing to recuse entire district attorney's office when six years had passed since prior case, charges were completely unrelated, "there was no threat of the destruction or impairment of a privileged relationship," and the accused's prior counsel "played no part in the prosecution of the subsequent case"); see also RPC 1.9(a) (providing that a lawyer "who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter"); RPC 1.10 (addressing imputation of conflicts of interest and providing for screening of a disqualified lawyer in certain circumstances).

cc: Hon. Jackie Glass, District Judge
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