

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHEILA MARIE MONAHAN,  
Petitioner,

vs.

THE THIRD JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF LYON;  
THE HONORABLE ROBERT E. ESTES,  
DISTRICT JUDGE; THE HONORABLE  
LEON ABERASTURI, DISTRICT  
JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 50923

**FILED**

**APR 15 2009**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER GRANTING PETITION

This is an original petition for a writ of mandamus challenging a district court's decision to refuse to consider petitioner's request to apply for treatment pursuant to NRS 484.37941.

Petitioner Sheila Marie Monahan seeks a writ of mandamus directing the district court to consider her application to participate in a treatment program pursuant to NRS 484.37941. Monahan also sought a stay in the proceedings, which this court granted on February 7, 2008. Monahan v. State, Docket No. 50923. (Order Directing Answer from Attorney General, Directing Petitioner to Serve Attorney General, and Granting Stay, February 7, 2008). 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” or to control an arbitrary or capricious exercise of discretion. NRS 34.160; see Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). A writ of mandamus will not issue, however, if a petitioner has a “plain, speedy and adequate remedy in the ordinary course of law.” NRS 34.170. The decision to entertain an extraordinary writ 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.” Redeker v. Dist. Ct., 122 Nev. 164, 167, 127 P.3d 520, 522 (2006). We conclude that extraordinary relief is warranted in this case.

Monahan was charged with committing a third-offense DUI on July 23, 2007. She pleaded guilty to that offense after the district attorney’s office agreed that it would not oppose her application for treatment pursuant to NRS 484.37941. On September 24, 2007, the district court held a status conference and indicated that it would not honor the notice of election for treatment pursuant to NRS 484.37941 because the treatment program was “not an option in the Third Judicial District Court.” The district court continued Monahan’s sentencing hearing until October 29, 2007, to give her the opportunity to complete her alcohol evaluation, determine her eligibility for the diversion program created by NRS 484.37941, and file a writ of mandamus in the event her evaluation indicated that she was eligible for treatment.

On October 29, 2007, Monahan appeared for sentencing and indicated that she intended to file an application for treatment. She made a motion to withdraw her guilty plea because she had entered that plea with the understanding that she could apply for treatment under NRS 484.37941. Monahan indicated that she wanted to plead not guilty and have the matter set for trial “until we can sort through what is going to happen here.” The State did not oppose the motion. The district court granted Monahan’s motion to withdraw her guilty plea, entered a plea of not guilty, and set the matter for trial. This original petition for a writ of mandamus followed.

Monahan argues that the district court abused its discretion by refusing to consider her application for treatment. We agree. Pursuant to this court’s recent decisions in Stromberg v. District Court, 125 Nev. \_\_\_, 200 P.3d 509 (2009) and Savage v. District Court, 125 Nev. \_\_\_, 200 P.3d 77 (2009), we conclude that the district court abused its discretion by failing to consider the merits of Monahan’s application for treatment. In Stromberg, this court reiterated that third-offense DUI offenders entering pleas after July 1, 2007, may apply for treatment pursuant NRS 484.37941. 125 Nev. at \_\_\_, 200 P.3d at 510. In Savage, this court determined that because the plain language of NRS 484.37941 gives rural offenders the right to apply for treatment, the district court was obligated to consider the merits of the petitioners’ applications for treatment. 125 Nev. at \_\_\_, 200 P.3d at 82. We further concluded that the district court had jurisdiction to order the Department of Parole and Probation to

supervise offenders diverted to treatment under the statute. Id. at \_\_\_, 200 P.3d at 83-84.

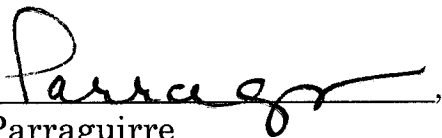
Here, Monahan pleaded guilty on July 23, 2007. Therefore, she is entitled to apply for treatment pursuant to NRS 484.37941, and the district court abused its discretion by refusing to consider the merits of her application for treatment.<sup>1</sup>

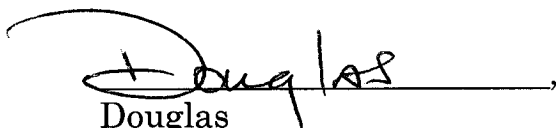
For the foregoing reasons, we

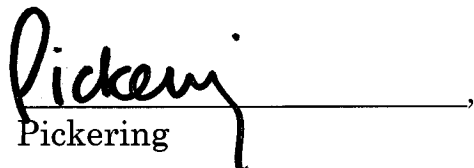
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<sup>1</sup>We reject the State's argument that this writ petition is not ripe for review because Monahan withdrew her guilty plea after the court refused to consider the merits of her application for treatment. Monahan only withdrew her plea so that she could have the opportunity to pursue writ relief prior to sentencing. Under these circumstances, we conclude that Monahan's failure to enter a guilty plea does not preclude her from seeking extraordinary relief. Savage, 125 Nev. at \_\_\_, 200 P.3d at 81. We also reject the State's contention that Monahan's petition is deficient because she failed to name an indispensable party. Specifically, the State argues that Monahan failed to articulate who is responsible for funding and providing the program. In Savage, we concluded that while NRS 484.37941 requires the district court to consider the merits of an offender's application for treatment, it does not require either the county or the district court to establish a program of treatment or do anything other than stay the matter, place the offender on probation, and administer the program of treatment in a manner similar to that required by other diversion programs whenever it decides to grant an application for treatment. 125 Nev. at \_\_\_, 200 P.3d at 82-83. Therefore, Monahan is not required to name any additional parties under NRCP 19(a) when the relief sought is a writ directing the district court to consider an application for treatment on the merits.

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to consider Monahan's request to plead guilty and apply for treatment pursuant to NRS 484.37941.<sup>2</sup>

  
Parraguirre J.

  
Douglas J.

  
Pickering J.

cc: Hon. Leon Aberasturi, District Judge  
Hon. Robert E. Estes, District Judge  
Paul G. Yohey  
Attorney General Catherine Cortez Masto/Carson City  
Lyon County District Attorney  
Lyon County Clerk

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<sup>2</sup>We lift the stay imposed by this court on February 7, 2008.