

IN THE SUPREME COURT OF THE STATE OF NEVADA

EUGENE HOLLIS NUNNERY,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; THE HONORABLE LEE A.  
GATES, DISTRICT JUDGE; THE  
HONORABLE ROBERT ROSE, SENIOR  
JUDGE,

Respondents,

and

THE STATE OF NEVADA,  
Real Party in Interest.

No. 50961

**FILED**

JUL 10 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *T. K. Linde*  
DEPUTY CLERK

ORDER DENYING PETITION

This is an original petition for a writ of mandamus or prohibition.

Petitioner Eugene Nunnery is awaiting trial on one count each of murder with the use of a deadly weapon, attempted murder with the use of a deadly weapon, and battery with the use of a deadly weapon resulting in substantial bodily harm. The State is pursuing the death penalty.

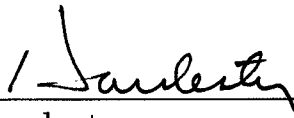
Nunnery seeks a writ of mandamus or prohibition directing the district court to dismiss the notice of intent to seek the death penalty


on the ground that it was untimely filed pursuant to SCR 250(4)(c). Having reviewed the petition, the answer, and the accompanying documentation, we conclude that the district court did not act arbitrarily or capriciously by determining that the State had demonstrated good cause under SCR 250(4)(d) for the untimely filing of the notice of intent to seek the death penalty. Consequently, we conclude that this court's intervention by way of extraordinary writ is not warranted on this issue.


Nunnery also challenges the district court's ruling that the great-risk-of-death aggravator was not duplicative of the prior-violent-felony aggravators. However, Nunnery's argument is grounded in a factual sufficiency challenge. What the evidence will prove at trial is unknown, and we will not speculate how the evidence will unfold. Therefore, we conclude that this court's intervention is not warranted at this time.

Based on the foregoing reasons, we deny the petition.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Hardesty

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

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

cc: Chief Judge, Eighth Judicial District  
Hon. Robert E. Rose, Senior Justice  
Special Public Defender David M. Schieck  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk