

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,

vs.


THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, THE HONORABLE CONNIE
J. STEINHEIMER, DISTRICT JUDGE,
Respondents,

and

ROBERTO HUERTO MARTINEZ,
Real Party in Interest.

No. 50990

FILED

NOV 14 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 procedendo challenging a district court's order granting real party in interest Roberto Martinez's application to participate in a rehabilitation program pursuant to NRS 484.37941.

The State seeks a writ of mandamus or procedendo directing the district court not to apply NRS 484.37941 retroactively, to conduct a felony sentencing hearing to determine if Martinez's prior convictions are valid, and impose the sentence allowed by law on the date the crime was committed. 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.¹ A writ of mandamus will not issue, however, if a petitioner has a “plain, speedy and adequate remedy in the ordinary course of law.”² 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.”³ We conclude that extraordinary relief is unwarranted in this case.

Martinez was charged with committing a third-offense DUI on June 29, 2007. On October 4, 2007, Martinez pleaded guilty to that offense. Prior to sentencing, Martinez filed an application for treatment pursuant to NRS 484.37941. On January 15, 2008, the district court granted that application and indefinitely continued the sentencing hearing pending the period of treatment. This original petition for a writ of mandamus or procedendo followed.

The State argues that the district court abused its discretion in granting Martinez’s application for treatment because he committed his crime prior to the effective date of NRS 484.37941. The State argues that the district court must sentence Martinez in accord with the law in effect

¹NRS 34.160; see Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

²NRS 34.170.

³Redeker v. Dist. Ct., 122 Nev. 164, 167, 127 P.3d 520, 522 (2006).

at the time he committed his crime. In the writ petition, the State specifically states that it is only seeking a ruling on the retroactive application of NRS 484.37941, and therefore the State's petition does not raise any other issues regarding the statute. The State also argues that the district court failed to determine the validity of Martinez's prior convictions.

In Picetti v State, this court held "that NRS 484.37941 applies to those defendants entering guilty pleas on or after the statute's effective date."⁴ The statute's effective date is July 1, 2007.⁵ Martinez entered his guilty plea on October 4, 2007. Thus, the district court appropriately considered Martinez's application for treatment pursuant to NRS 484.37941, and we conclude that intervention by way of extraordinary writ is not warranted.

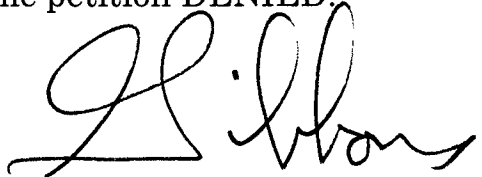
Further, we reject the State's claim that the district court did not rule on the validity of Martinez's prior convictions. On January 16, 2008, the district court issued an order pursuant to NRS 484.37941 specifically stating that it had reviewed Martinez's prior convictions. The district court found that he had suffered two or more constitutionally valid prior DUI convictions within 7 years. Thus, we conclude that intervention by way of extraordinary writ is not warranted on this basis.

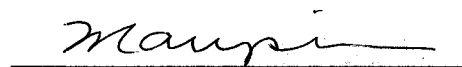
⁴124 Nev. ___, ___ P.3d ___, ___ (Adv. Op. No. 68, September 11, 2008).

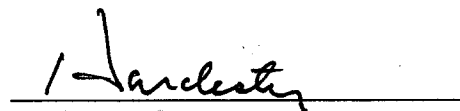
⁵2007 Nev. Stat., Ch. 288, § 6, at 1064.

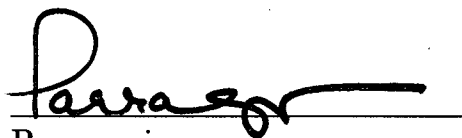
We have considered the petition, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted. Accordingly, we

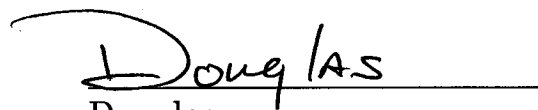
ORDER the petition DENIED.

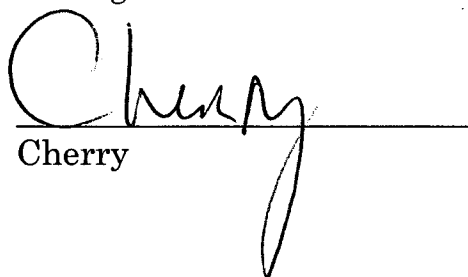

Gibbons, C.J.



Maupin, J.


Hardesty, J.


Parraguirre, J.


Douglas, J.


Cherry, J.


Saitta, J.

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe County Public Defender
Washoe District Court Clerk