IN THE SUPREME COURT OF THE STATE OF NEVADA

HARRISTON LEE BASS, JR., M.D., Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE JACKIE GLASS, DISTRICT JUDGE, Respondents, and THE STATE OF NEVADA, Real Party in Interest.	No. 51094 FILED FEB 22 2008 TRACIE K. LINDEMAN CLERK OF SUPREME COURT BY DEPUTY CLERK

ORDER DENYING PEITION

This is an original petition for a writ of mandamus or prohibition challenging the district court's denial of a motion for an evidentiary hearing and a motion for rearraignment. Petitioner also seeks a stay of the criminal trial, scheduled to begin on Monday, February 25, 2008, pending our resolution of the petition.

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

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[1]NRS 34.160.

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

08-04375

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 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. As to the district court's denial of the motion for an evidentiary hearing, petitioner has a plain, speedy, and adequate remedy at law by which to challenge the district court's decision on the motion and the apparently related motion to dismiss—he may file a direct appeal if he is convicted.[6] As to the district court's denial of the motion for rearraignment, petitioner has not demonstrated that the district court failed to perform an act required by law, acted in excess of its jurisdiction, or exercised its discretion in an arbitrary or capricious manner. In particular, based on

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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 NRS 177.015(3) (providing that the defendant may appeal from a final judgment in a criminal case).

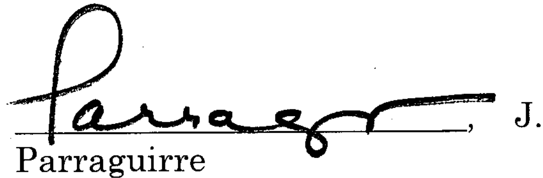
the documents submitted, it does not appear that the second amended information materially changed the indictment and information on which petitioner had been arraigned in the underlying criminal cases. The documents submitted indicate that the State commenced two criminal actions against petitioner on different, but related charges—one by indictment and the other by information. Petitioner was arraigned in district court on the indictment and information and entered not guilty pleas. Thereafter, the district court granted the State's motion to consolidate the two cases.[7] Several months later, in August 2007, the State filed in open court a document entitled "Second Amended Information." The second amended information incorporates all of the charges from the indictment and information into a single charging document. Petitioner has not demonstrated that the State made any material changes to the charges on which petitioner previously was arraigned.[8] Accordingly, it does not appear that the district court ignored a duty imposed by law or arbitrarily or capriciously exercised its discretion

[7]See NRS 174.155 (providing that trial court may order that "two or more indictments or informations or both" be tried together).

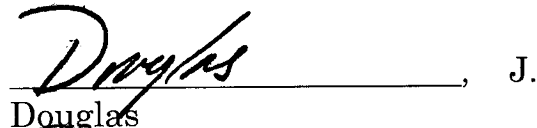
[8]Our review of the charging documents indicates slight changes in the dates alleged in seven of the counts in the second amended information when comparing those counts to the indictment and information. But petitioner has not demonstrated that time is an element of any of the charged offenses or that the change in the dates is inconsistent with the evidence presented to the grand jury or the justice court. We therefore are not convinced that this was a material change.

in denying the motion for rearraignment.[9] For these reasons, we deny the petition and the motion for a stay.

It is so ORDERED.



_______________________, J.
Parraguirre



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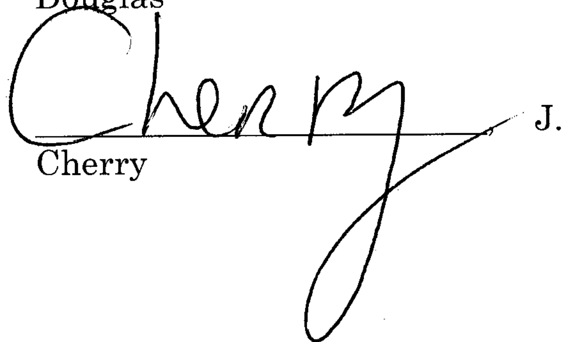

_______________________, J.
Cherry

cc: Hon. Jackie Glass, District Judge
R. Paul Sorenson
Attorney General Catherine Cortez Masto/Las Vegas
Eighth District Court Clerk

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[9]See Hanley v. Zenoff, 81 Nev. 9, 12, 398 P.2d 241, 242 (1965) (stating that "[w]hen an amended information is filed which changes materially the information to which the defendant has entered a plea," the defendant must be arraigned on the amended information); see also NRS 173.095(1) (providing that the court "may permit an indictment or information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced").