

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; THE HONORABLE SALLY L.  
LOEHRER, DISTRICT JUDGE,

Respondents,

and

ANTOINE LIDDELL WILLIAMS,  
Real Party in Interest.

No. 51359

**FILED**

JUN 26 2008

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 or prohibition challenging a district court's order striking the State's notice of intent to seek the death penalty.

The State seeks a writ of mandamus or prohibition directing the district court to vacate its order striking the notice of intent to seek the death penalty. 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.<sup>1</sup> A writ of mandamus will not issue, however, if a petitioner has a plain, speedy, and adequate remedy in the ordinary course of law.<sup>2</sup> The decision to entertain an extraordinary writ petition lies within the discretion of this court, and this court considers whether “judicial economy and sound judicial administration militate for or against issuing the writ.”<sup>3</sup> We conclude that extraordinary relief is warranted in this case.

Real party in interest Antoine Liddell Williams was charged on December 1, 1994, with two counts of murder in the killings of Alice and William Nail, along with various other offenses. Four days later, the State filed a notice of intent to seek the death penalty, alleging five aggravating circumstances for each murder. In October 1995, the jury convicted Williams of both murders and the other offenses. After the jury was unable to reach a verdict regarding punishment, a three-judge panel conducted a second penalty hearing and found four circumstances aggravated Alice Nail’s murder and three circumstances aggravated William Nail’s murder and sentenced Williams to death for each murder.

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<sup>1</sup>NRS 34.160; see Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

<sup>2</sup>NRS 34.170.

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

In 1997, this court affirmed Williams' judgment of conviction and sentence on direct appeal.<sup>4</sup> He filed a timely post-conviction petition for a writ of habeas corpus, which the district court denied. In October 2000, this court affirmed the district court on appeal.<sup>5</sup> Four years later, Williams filed a second habeas petition in the district court, which it denied as procedurally barred. On appeal, this court affirmed in part, reversed in part and remanded.<sup>6</sup> In particular, this court struck three aggravating circumstances found in each murder as violative of McConnell v. State<sup>7</sup> and after determining that we could not conclude beyond a reasonable doubt that Williams would be found death eligible and sentenced to death absent the erroneous aggravating circumstances, we remanded the matter to the district court for a new penalty hearing.

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<sup>4</sup>Williams v. State, 113 Nev. 1008, 945 P.2d 438 (1997), receded from in part by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

<sup>5</sup>Williams v. State, Docket No. 35559 (Order of Affirmance, October 9, 2000).

<sup>6</sup>Williams v. State, Docket No. 45796 (Order Affirming in Part, Reversing in Part, and Remanding, June 22, 2007).

<sup>7</sup>120 Nev. 1043, 1069-70, 102 P.3d 606, 624-25 (2004) (holding that it is "impermissible under the United States and Nevada Constitutions to base an aggravating circumstance in a capital prosecution on the felony upon which a felony murder is predicated" and that the State is prohibited "from selecting among multiple felonies that occur during 'an indivisible course of conduct having one principal criminal purpose' and using one to establish felony murder and another to support an aggravating circumstance").

Williams is currently awaiting the penalty hearing on remand. On December 19, 2007, he filed a motion to strike the notice of intent as untimely, arguing that the original notice of intent filed in 1994 did not satisfy the current requirements of SCR 250(4)(c), which obligate the State to “allege with specificity the facts on which the State will rely to prove each aggravating circumstance.” In 1994, SCR 250 did not include such a requirement. Williams further contended that since the State failed to amend the original notice to comport with current SCR 250(4)(c) requirements within 15 days from when this court issued its remittitur in his appeal from the denial of his second habeas petition, the notice of intent was untimely and invalid.

Concluding that SCR 250 is unclear respecting the State’s obligation in this circumstance, the district court struck the notice of intent. This original petition for a writ of mandamus or prohibition followed.

We conclude that SCR 250 is intended to act prospectively and that the State had no obligation to amend its notice of intent to comport with current requirements of SCR 250(4)(c).<sup>8</sup> Nothing in the plain language of the rule or by implication requires the State to file a new notice of intent in any case remanded for a new trial or penalty hearing. Further, Williams’ contention that the State’s time to amend its notice of

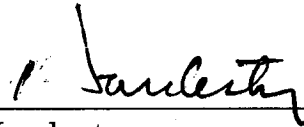
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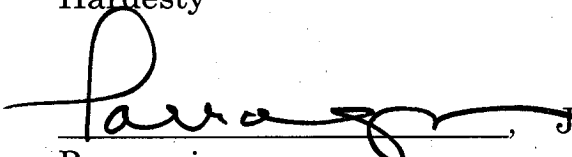
<sup>8</sup>See SCR 250(12) (addressing the prospective application of the rule).

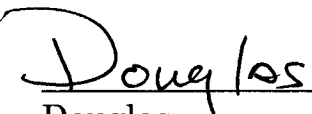
intent began to run upon the issuance of a remittitur finds no support in the plain language of SCR 250 or relevant case law. Rather, the plain language of SCR 250(4)(c) indicates that the time period for filing a notice of intent relates to the commencement of a criminal action, i.e., the filing of a charging document.

As the State's notice of intent satisfied SCR 250 as it existed at the time that the State filed the notice in 1994, we conclude that the notice of intent is timely and valid. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order striking the State's notice of intent to seek the death penalty.

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

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

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

cc: Hon. Sally L. Loehrer, District Judge  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Clark County Public Defender Philip J. Kohn  
Eighth District Court Clerk