

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT JEFFREY FARMER,
Petitioner,

vs.

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

Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 51665

FILED

SEP 17 2008

FRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING PETITION

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

Petitioner Robert Jeffrey Farmer is awaiting a new penalty hearing after the district court, during post-conviction proceedings, struck the sole two aggravating circumstances found at his original penalty hearing pursuant to McConnell v. State.¹

¹120 Nev. 1043, 102 P.3d 606 (2004).

Farmer seeks a writ of mandamus or prohibition directing the district court to strike the notice of intent to seek the death penalty on the ground that double jeopardy principles preclude the State from seeking a death sentence in the instant action. In particular, Farmer argues that the sentencing panel's refusal to consider the prior-violent-felony aggravating circumstances at his original penalty hearing constituted an implied acquittal, and, therefore, the State may not seek the death penalty based on those aggravating circumstances. We disagree. Farmer's original penalty hearing did not result in an acquittal of the death penalty, and only due to a misconstruction of the law did the sentencing panel decline to consider the same prior-violent-felony aggravating circumstances upon which the State relies in pursuing the death penalty in the new penalty hearing.² Therefore, we conclude that our intervention by way of extraordinary writ is not warranted.

Farmer argues in the alternative that this court wrongly decided Gallego v. State,³ thereby rendering the alleged prior-violent-felony aggravating circumstances invalid. Finally, Farmer contends the notice of intent to seek the death penalty is untimely. We conclude that

²See Poland v. Arizona, 476 U.S. 147 (1986); Arizona v. Rumsey, 467 U.S. 203 (1984); Bullington v. Missouri, 451 U.S. 430 (1981).

³101 Nev. 782, 711 P.2d 856 (1985).

neither of these arguments warrants our intervention by way of extraordinary relief.

Accordingly, we

ORDER the petition DENIED.

L. Gibbons, C.J.
Gibbons

Maupin, J.
Maupin

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

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