

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND, THE HONORABLE
JOSEPH T. BONAVENTURE,
DISTRICT JUDGE,

Respondents,

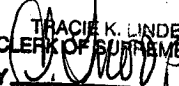
and

LIBORIOUS AGWARA,
Real Party in Interest.

No. 51895

FILED

OCT 22 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING PETITION

This petition for a writ of mandamus or prohibition challenges an order of the district court affirming the municipal court's judgment of acquittal, denying petitioner City of Las Vegas' appeal, and denying real party in interest Liborious Agwara's cross-appeal.

On appeal in the district court, the City claimed that the municipal court erred by imposing a civil penalty for an act that is criminal under the Las Vegas Municipal Code and asked the district court to order the municipal court to enter a conviction based on the trial record. The district court found that the municipal court refused to find Agwara guilty as charged; noted that "[i]t is a violation of the Double Jeopardy Clause to permit a second trial after an acquittal, however mistaken the

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acquittal may have been;”¹ and ruled that “[t]he lower court’s decisions and judgment acquitting the Defendant of the criminal charge are affirmed.” The City subsequently filed this petition.

The City contends that a writ of mandamus or prohibition should issue to correct the district court’s affirmance of the municipal court’s decision to treat the charge of sale of alcoholic beverages without a valid alcoholic beverage license as a civil infraction instead of a criminal offense and to correct the district court’s “beliefs” that the municipal court acquitted Agwara of the criminal charge and that the Double Jeopardy Clause prevented the district court from granting the City’s requested relief.

This court may issue a writ of mandamus to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station; to control a manifest abuse of discretion; or to clarify an important issue of law.² It may issue a writ of prohibition to arrest the proceedings of any tribunal exercising judicial functions in excess of its jurisdiction.³ “The purpose of the writ of prohibition is not to correct errors, but to prevent courts from transcending the limitation of

¹Quoting from State v. Combs, 116 Nev. 1178, 1181, 14 P.3d 520, 521 (2000).

²See NRS 34.160; Smith v. District Court, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997); Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

³See NRS 34.320; Hickey v. District Court, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989).

their jurisdiction in the exercise of judicial power.”⁴ Neither writ will issue where the petitioner has a “plain, speedy, and adequate remedy in the ordinary course of law.”⁵ Both writs are extraordinary remedies and therefore this court’s decision to entertain a petition for either writ is discretionary.⁶

A district court has final appellate jurisdiction over cases arising in municipal courts,⁷ and “if a district court takes jurisdiction of an appeal and acts, its acts are not subject to review through a petition for a writ of mandamus.”⁸ Here, the district court took jurisdiction of the City’s appeal. The district court acted on the appeal and did not transcend its jurisdiction, despite erroneously upholding the municipal court’s interpretation of the Las Vegas Municipal Code.

We are not convinced that an important issue of law needs to be clarified. Nonetheless, we remind both the district and municipal courts that the construction of a municipal code or an ordinance is controlled by the same rules of construction that are used to construe

⁴Goicoechea v. District Court, 96 Nev. 287, 289-90, 607 P.2d 1140, 1141 (1980).

⁵See NRS 34.170; NRS 34.330; Hickey, 105 Nev. at 731, 782 P.2d at 1338.

⁶Hickey, 105 Nev. at 731, 782 P.2d at 1338.

⁷See Nev. Const. art. 6, § 6; Tripp v. City of Sparks, 92 Nev. 362, 550 P.2d 419 (1976).

⁸Pan v. Dist. Ct., 120 Nev. 222, 227, 88 P.3d 840, 843 (2004).

statutes:⁹ “Statutory construction is a question of law subject to de novo review.”¹⁰ “Statutes should be given their plain meaning and ‘must be construed as a whole and not read in a way that would render words or phrases superfluous or make a provision nugatory.’”¹¹ “Statutes within a scheme and provisions within a statute must be interpreted harmoniously with one another in accordance with the general purpose of those statutes and should not be read to produce unreasonable or absurd results.”¹² Ambiguous statutes are “construed ‘in line with what reason and public policy would indicate the legislature intended.’”¹³ And, “ambiguities in criminal statutes must be liberally interpreted in the accused’s favor.”¹⁴

The Las Vegas Municipal Code provisions at issue are not ambiguous. When given their plain meaning and read as a whole, they clearly provide that the sale of alcoholic beverages without a valid alcoholic beverage license is prohibited;¹⁵ a violation of the alcoholic

⁹Carson City v. Red Arrow Garage, 47 Nev. 473, 484, 225 P. 487, 490 (1924).

¹⁰State v. Sargent, 122 Nev. 210, 213, 128 P.3d 1052, 1054 (2006).

¹¹Mangarella v. State, 117 Nev. 130, 133, 17 P.3d 989, 991 (2001) (quoting Charlie Brown Constr. Co. v. Boulder City, 106 Nev. 497, 502, 797 P.2d 946, 949 (1990)).

¹²Washington v. State, 117 Nev. 735, 739, 30 P.3d 1134, 1136 (2001).

¹³Robert E. v. Justice Court, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983) (quoting Cannon v. Taylor, 87 Nev. 285, 288, 486 P.2d 493, 495 (1971)).

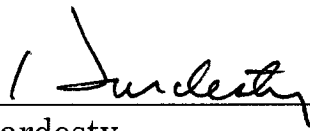
¹⁴Moore v. State, 122 Nev. 27, 32, 126 P.3d 508, 511 (2006).

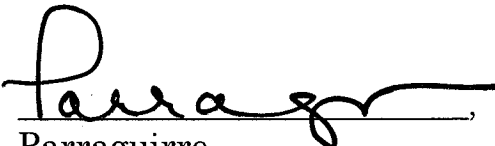
¹⁵LVMC 6.50.280.

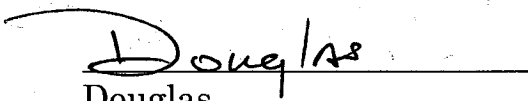
beverage license requirement is “unlawful,”¹⁶ and acts declared “unlawful” are punished by a \$1,000 fine, six months imprisonment, or a combination of a fine and imprisonment.¹⁷ Accordingly, the sale of alcoholic beverages without a valid alcoholic beverage license is a criminal offense.

Having considered the petitioner’s contentions and concluded that our intervention by way of extraordinary relief is unwarranted, we

ORDER the petition DENIED.¹⁸


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Chief Judge, Eighth Judicial District
Hon. Joseph T. Bonaventure, Senior Judge
Hon. Cedric Kerns, Municipal Judge
Las Vegas City Attorney
Malik W. Ahmad
Eighth District Court Clerk

¹⁶LVMC 6.02.370.

¹⁷LVMC 1.24.010.

¹⁸Agwara’s request for attorney’s fees for filing an answer in this matter is denied.