

IN THE SUPREME COURT OF THE STATE OF NEVADA

HUMBOLDT COUNTY PUBLIC
DEFENDER,
Petitioner,

vs.

THE SIXTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
HUMBOLDT, AND, THE HONORABLE
RICHARD A. WAGNER, DISTRICT
JUDGE,
Respondents.

No. 52054

FILED

SEP 05 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of prohibition asks this court to compel the respondent district court judge “to allow nolo contendere pleas or consider nolo contendere pleas.” In the petition, the Humboldt County Public Defender expresses concern that the respondent judge has issued “a proclamation categorically barring all nolo contendere pleas or plea bargains” in sex offense cases in the respondent judicial district court. The concern is based on a statement made by the judge during the sentencing of a defendant who had entered a nolo contendere plea to a sex offense regarding the judge’s feelings about such nolo contendere pleas:

Before you [go to argument on sentencing], gentlemen, I am going to place you both on notice that in the future it is my intention in such cases not to accept nolo contendere pleas.

And the reason for that is very obvious in this case. Because the problem is, in sentencing this young man today, I’m unsure what behavior I’m sentencing him for. And so, in your argument, you’re going to have to tell me what is it that I am

sentencing for. If he is to be punished, what is it for?

And absent a very major issue, the district attorney's office, as the executive branch, has a right to enter into plea negotiations.

What I am telling you however is that in accepting any kind of pleas, that a person has a right to enter a plea of guilty, not guilty or not guilty by reason of insanity . . . but it is up to the Court whether or not to allow a nolo contendere plea with regard to sexual offenses.

That problem is, as in this case, is that when you have a sex offense, which is a difficult case maybe to prove and you plead it nolo contendere, then the defendant has no absolute right to deny any behavior.

So it becomes very problematic. And as a policy of this Court, I'm just going to let all the district attorneys' offices and public defenders know, in the three counties where I preside, that it's my intention not to accept those kind of please in the future because of the obvious problems.

Thus, asserts the Humboldt County Public Defender, the respondent judge has "categorically denied all future nolo contendere please in sex offense prosecutions" in his department of the respondent judicial district.


A writ of prohibition may issue to arrest the proceedings of a district court exercising its judicial functions, when those proceedings are in excess of the jurisdiction of the district court.¹ Petitions for extraordinary writs are addressed to the sound discretion of the court.²

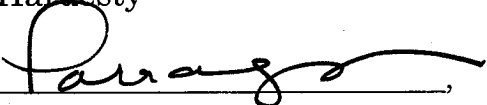
¹NRS 34.320.

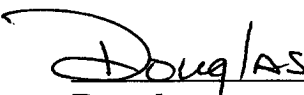
²State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983).

The instant petition does not seek to arrest any specific proceeding in the respondent district court. Rather, the petition essentially seeks an advisory opinion from this court regarding the respondent judge's statements about his intent to take a particular course of action regarding nolo contendere pleas in future sex offense cases. We are confident that the district court will exercise its discretion on a case-by-case basis within the confines of controlling authority when presented with a nolo contendere plea in a sex offense case.³ Accordingly, we are not inclined to grant writ relief on the speculative basis that the district court will not properly exercise its discretion in some future case. We therefore deny the petition.

It is so ORDERED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Richard Wagner, District Judge
Humboldt-Pershing County Public Defender
Humboldt County District Attorney
Humboldt County Clerk

³We note, in particular, that when a defendant knowingly and voluntarily enters a plea of nolo contendere to an offense, he or she is consenting to imposition of a criminal penalty for that offense. See North Carolina v. Alford, 400 U.S. 25, 37 (1970).