

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARVIN KENTI EDWARDS,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
VALORIE J. VEGA, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 53737

FILED

MAR 17 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION

This is an original petition for a writ of prohibition or mandamus challenging district court decisions denying a motion to dismiss an indictment and a motion for an extension of time to file a pretrial petition for a writ of habeas corpus.

Petitioner Arvin Kenti Edwards was charged by grand jury indictment with three counts of attempted murder with a deadly weapon, three counts of battery with the use of a deadly weapon resulting in bodily harm, and one count of being an ex-felon in possession of a firearm. Approximately six months after he was arraigned, new evidence was provided to Edwards's counsel by real party in interest State of Nevada that was not presented to the grand jury. Edwards's counsel then filed a motion to dismiss the indictment. The district court denied Edwards's motion, finding that the motion was in fact a petition for a writ of habeas corpus and was not timely filed. Edwards subsequently filed a motion for

extension of time to file a petition for writ of habeas corpus, which the district court also denied.¹

In his petition, Edwards argues that: (1) he is entitled to a writ of mandamus, or in the alternative, prohibition, because he will not have a plain, speedy, or adequate remedy at law to redress the district court's denial of his motion to dismiss the indictment and motion for extension of time to file a petition for writ of habeas corpus after a trial; and (2) the district court abused its discretion in dismissing his motion to dismiss indictment for lack of jurisdiction as an untimely petition for writ of habeas corpus. Having considered the petitions and the State's answer, we conclude that our intervention is not warranted.

Edwards argues that a writ of mandamus is the appropriate remedy in this case because he does not have a plain, speedy, and adequate remedy in the ordinary course of law to redress the district court's refusal to reach the merits of his motion to dismiss the indictment and motion for extension of time to file a petition for a writ of habeas corpus. Edwards contends that this issue can only be reviewed prior to trial because there will be no post-trial review regardless of the ultimate outcome of a trial. We disagree because we conclude that Edwards will have an adequate remedy at law to redress the district court's ruling after a trial is completed.

Standard of review

We "may issue a writ of mandamus to compel the performance of an act which the law requires as a duty resulting from an office or

¹The parties are familiar with the facts, and we do not recount them further except as necessary to our disposition.

where discretion has been manifestly abused or exercised arbitrarily or capriciously.” Redeker v. Dist. Ct., 122 Nev. 164, 167, 127 P.3d 520, 522 (2006); NRS 34.160. “The writ does not issue where the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law.” Redeker, 122 Nev. at 167, 127 P.3d at 522; NRS 34.170. Writs of prohibition are “the counterpart of the writ of mandate. [They] arrest the proceedings of any . . . board or person exercising judicial functions, when such proceedings are without or in excess of the[ir] jurisdiction.” NRS 34.320. We have consistently held a writ is an “an extraordinary remedy.” Cheung v. Dist. Ct., 121 Nev. 867, 869, 124 P.3d 550, 552 (2005).

Edwards has plain, speedy and adequate remedy at law

We have “generally declined to entertain petitions for review of a district court decision where that decision was appealable.” Ashokan v. State, Dep’t. of Ins., 109 Nev. 662, 665, 856 P.2d 244, 246 (1993). Moreover, we have held that irregularities in a grand jury proceeding are cured when a defendant is tried under the higher criminal burden of proof. Detloff v. State, 120 Nev. 588, 596, 97 P.3d 586, 591 (2004).

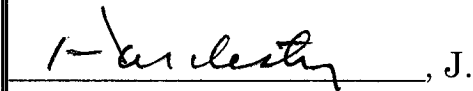
We conclude that our intervention in this matter is unwarranted because the issues brought by Edwards in this writ petition are issues that are amenable to being addressed on appeal following a trial. The only issues properly addressed in this writ petition are whether the district court abused its discretion in dismissing Edwards’s motion to dismiss the indictment and his motion for an extension of time to file a petition for a writ of habeas corpus. These issues revolve around the timing of the filing of Edwards’s petition for writ of habeas corpus and the divulging of evidence to Edwards’s counsel by the State. The issue of whether there were irregularities in the grand jury proceeding because of the untimeliness of the State’s divulgence of additional evidence to

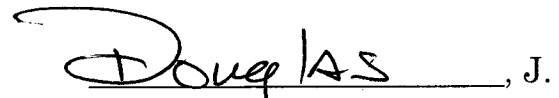
Edwards's counsel is not appropriately at issue here because the district court never reached this issue. Instead, it denied Edwards's petition for a writ of habeas corpus for being untimely filed pursuant to NRS 34.710. Thus, because the only issues set forth in this writ petition are those for which Edwards has a plain, speedy, and adequate remedy at law, we must conclude that a writ of prohibition, or in the alternative, mandamus, is not the appropriate remedy in this case and we decline to exercise our discretion to hear Edwards's petition.

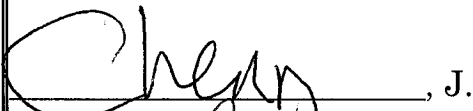
For these reasons, we conclude that this court's intervention is not warranted and therefore we

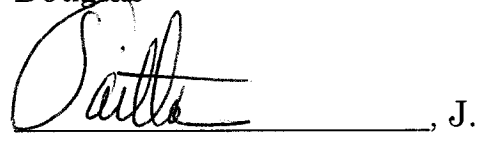
ORDER the petition DENIED.

 , C.J.
Parraguire

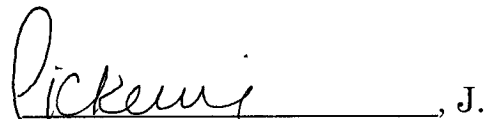
 , J.
Hardesty

 , J.
Douglas

 , J.
Cherry

 , J.
Saitta

 , J.
Gibbons

 , J.
Pickering

cc: Hon. Valorie Vega, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk