

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANE PATRICK EALEY,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
DONALD M. MOSLEY, DISTRICT
JUDGE,

Respondents,


and

THE STATE OF NEVADA,
Real Party in Interest.

No. 53910

FILED

SEP 25 2009

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER GRANTING PETITION

This original petition for a writ of mandamus or prohibition challenges an order of the district court granting the real party's motion to conduct a videotaped deposition.

Petitioner Dane Ealey seeks a writ of mandamus or prohibition directing the district court to deny the State's motion to conduct a videotaped deposition of Gaylynn Ives. 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," NRS 34.160, or to control an arbitrary or capricious exercise of discretion. See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). A writ of mandamus will not issue, however, if the petitioner has "a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170. 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.” Redeker v. Dist. Ct., 122 Nev. 164, 167, 127 P.3d 520, 522 (2006), holding limited on other grounds by Hidalgo v. Dist. Ct., 124 Nev. ___, ___ 184 P.3d 369, 377 (2008). Having considered the petition, answer, and supporting documentation, we conclude that this court’s intervention by way of extraordinary relief is warranted in this case.

Petitioner Dane Ealey was charged with murder with the use of a deadly weapon, burglary while in possession of a firearm, possession of a firearm by an ex-felon, battery with the use of a deadly weapon, conspiracy to commit robbery, and robbery with the use of a deadly weapon stemming from his participation in the robbery and shooting of Francisco Valdivia-Urbe. The State alleges that Ealey conspired with Ryan Zwiesler and Gaylynn Ives to rob Valdivia-Urbe at the Lamplighter Motel in Las Vegas. Prior to trial, the State filed a motion to take a videotaped deposition of Ives based on NRS 174.175(1), which the district court granted. This petition followed.

We conclude that the district court clearly exceeded its authority in granting the State’s motion. While NRS 174.175(1) permits the deposition of a prospective witness who may be unable to attend trial, NRS 174.175(3) provides that the statute “does not apply to . . . an accomplice in the commission of the offense charged.” Ives, who conspired with Ealey to rob the victim, called the victim and arranged for him to come to her hotel room, admitted Ealey into her room after the victim was present, remained in the room during the commission of the crime, and pleaded guilty to conspiracy to commit robbery based on the incident, was clearly Ealey’s accomplice. Accordingly, NRS 174.175(1) does not apply to Ives and her deposition cannot be ordered pursuant to that statute.

Nothing in the plain language of the statute implies otherwise. Therefore, 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 prior order and deny the State's motion to conduct a videotaped deposition of Gaylynn Ives.¹

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Donald M. Mosley, 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

¹We lift the stay imposed by this court on June 3, 2009.