

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,

vs.

THE FIFTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF NYE,
AND THE HONORABLE JOHN P.
DAVIS, DISTRICT JUDGE,
Respondents,
and
ROBERT STEVEN YOWELL,
Real Party in Interest.

No. 53926

FILED

SEP 25 2009

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

ORDER GRANTING PETITION

This original petition for a writ of mandamus or prohibition challenges a district court's order setting aside its verdict.

On February 8, 2007, Robert Steven Yowell was found guilty, pursuant to a jury verdict, of robbery with the use of a deadly weapon, kidnapping with the use of a deadly weapon, and sexual assault with the use of a deadly weapon. On April 9, 2007, during the sentencing hearing, Yowell addressed the court. The content of Yowell's statements raised doubt as to Yowell's competency, and the district court suspended the proceedings and ordered Yowell's competency to be evaluated. While he was being evaluated, Yowell's counsel requested that the doctors determine whether Yowell was competent during his trial. On March 25, 2008, the district court concluded that Yowell was not competent during his trial and set aside the verdict.

On June 2, 2009, the State filed the instant petition for a writ of mandamus or prohibition in this court challenging the district court's

decision to set aside the jury verdict. We conclude that the district court exceeded its authority and instruct the district court to reinstate the jury verdict.

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 prohibition is the counterpart to mandamus and may issue to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the district court. NRS 34.320. Neither writ will issue, however, if the petitioner has “a plain, speedy and adequate remedy in the ordinary course of law.” See NRS 34.170 (mandamus); NRS 34.330 (prohibition). Further, mandamus and prohibition are extraordinary remedies, and it is within the discretion of this court to determine if a petition will be considered. See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also State ex rel. Dep’t Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983), modified on other grounds by State v. Dist. Ct. (Anzalone), 118 Nev. 140, 147, 42 P.3d 233, 238 (2002).

When exercising its discretion, this court may entertain mandamus petitions when judicial economy and sound judicial administration militate in favor of writ review. See State v. Babayan, 106 Nev. 155, 175-76, 787 P.2d 805, 819-20 (1990). Additionally, this court may exercise its discretion and entertain a writ petition when “an important issue of law requires clarification.” State v. Dist. Ct.

(Epperson), 120 Nev. 254, 258, 89 P.3d 663, 665-66 (2004) (quotation marks and citation omitted).

We conclude that writ review is appropriate in the interest of judicial economy and sound judicial administration. In this court's order dismissing the State's appeal from the district court order setting aside the verdict, this court held that the order was an intermediate order that was not independently appealable. See State v. Yowell, Docket No. 51400 (Order Dismissing Appeal, June 12, 2008). While the State may retry Yowell, to compel it to do so where the district court was without authority to vacate the jury's verdict would unnecessarily waste judicial resources. Thus, mandamus is an appropriate remedy. See Babayan, 106 Nev. at 175-76, 787 P.2d at 819-20.

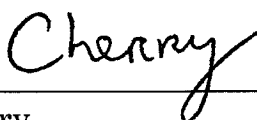
The State challenges the district court's order setting aside the verdict on two grounds: (1) the district court exceeded its authority under NRS 175.381(2) when it set aside the verdict on a ground other than the sufficiency of the evidence, and (2) the district court exceeded its authority and abused its discretion when it made a determination as to Yowell's past competency that was not supported by substantial evidence. We agree.

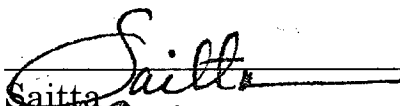
First, a trial court may "set aside the verdict and enter a judgment of acquittal if the evidence is insufficient to sustain a conviction." NRS 175.381(2). In the instant case, the district court set aside the verdict because it believed that Yowell was not competent during his trial. There was no allegation, let alone a finding by the district court, that the evidence presented by the State was insufficient to sustain a conviction. Therefore, we conclude that the district court exceeded its authority under NRS 175.381(2) by setting aside the verdict.

Second, NRS 176.515(1) provides that “[t]he court may grant a new trial to a defendant if required as a matter of law or on the ground of newly discovered evidence.” However, Nevada law does not permit a trial court to vacate prior proceedings based on present doubt as to past competency. Moreover, considering Yowell’s trial testimony, testimony from the evaluating psychiatrist and psychologist, and statements by counsel, the district court’s conclusion that Yowell was incompetent at the time of trial, which was based solely on Yowell’s statements at the sentencing hearing and subsequent treatment, was not supported by substantial evidence. See Calvin v. State, 122 Nev. 1178, 1182, 147 P.3d 1097, 1099 (2006) (providing that district court’s determination as to defendant’s competency “will not be overturned if it is supported by substantial evidence”). Therefore, we conclude that the district court abused its discretion in setting aside the verdict and ordering a new trial.

Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to reinstate the jury verdict.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. John P. Davis, District Judge
Nye County District Attorney/Tonopah
Attorney General Catherine Cortez Masto/Carson City
Nye County Public Defender
Nye County Clerk