

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY GRANT,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
JAMES M. BIXLER, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 54721

FILED

SEP 09 2010

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

ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition challenges a district court order denying petitioner's pretrial petition for a writ of habeas corpus and alternative motion to dismiss the indictment. Petitioner Gregory Grant claims that (1) the district court erred by denying his challenges to the indictment as untimely, (2) discovery violations mandate dismissal of the charges, (3) the district court erred by failing to hold a competency hearing, and (4) the district court violated his due process rights and ADA requirements by failing to accommodate his disabilities. Grant seeks a writ of mandamus or prohibition directing the district court to dismiss the case against him or, alternatively, consider his petition and motion to dismiss on the merits.

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). 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. 330, 341, 184 P.3d 369, 377 (2008). For the reasons set forth below, we conclude that this court’s intervention by way of extraordinary relief is unwarranted.

First, Grant claims that the district court erred by denying his petition and alternative motion to dismiss as untimely.¹ The district court did not err.

NRS 34.700(1)(a) states that a pretrial petition for a writ of habeas corpus alleging a lack of probable cause or otherwise challenging

¹Grant claims that the indictment is invalid and the district court lacks jurisdiction because (1) the grand jury proceedings should have been suspended due to his alleged incompetence, (2) he requested the opportunity to present evidence to the grand jury but was not informed of the time and location of the hearing, and (3) the grand jury’s finding of probable cause was invalid because the State violated the best evidence rule by failing to play recordings of Grant’s conversations with police officers. Because we conclude that the district court properly denied these claims as untimely, we do not address their merits.

the district court's jurisdiction may not be considered unless it is filed within 21 days of the petitioner's first appearance in district court. Grant made his first appearance in the district court on November 14, 2007, yet his pretrial petition for a writ of habeas corpus was not filed until October 8, 2009. Therefore, the district court properly refused to consider the petition.

Grant claims that the district court erred by failing to find good cause for the late filing. See NRS 34.700(3) (“[T]he court may extend, for good cause, the time to file a petition.”); EDCR 3.40(e) (“Applications for extensions of time to file writs of habeas corpus must be for not more than 14 days. Further extensions of time will be granted only in extraordinary cases.”). He asserts that he had good cause to excuse the late filing because: (1) the petition was based in part on recently discovered exculpatory evidence and (2) he was incompetent and unable to consent to an earlier petition. He also claims that his alternative motion to dismiss was not subject to the same time restrictions as the petition. He fails to demonstrate that the district court erred.

Grant has not provided this court with his petition below or the “new” evidence upon which he claimed to base it. However, to the extent that the evidence provided reason to challenge the indictment, Grant alleges that it was provided to him in the spring of 2009, several months prior to the filing of his petition. He has failed to explain the additional delay.² Moreover, Grant's claims that he did not receive notice

²Any assertion that the late filing is excused by evidence discovered after the petition was filed is patently without merit.

of the grand jury proceedings and was incompetent when they took place were available regardless of any new evidence.

As for Grant's claim that he was not competent to consent to an earlier filing of the petition, that claim is belied by the record. He was competent when he was indicted in November of 2007.³ He was again declared competent on April 26, 2008. His petition was not filed until October of 2009.

As for Grant's claim that his alternative motion to dismiss the indictment was not subject to the provisions of NRS Chapter 34, that assertion lacks merit. The use of alternative nomenclature does not change the nature of his challenges to the indictment and the district court's jurisdiction nor excuse the almost two-year delay in raising his claims. Furthermore, even if the petition is considered as a motion to dismiss, it was still untimely. EDCR 3.20(a) provides that "all motions must be served and filed not less than 15 days before the date set for trial," and the district court "may decline to consider any motion filed in violation of this rule." Grant's petition/motion was filed less than 15 days prior to trial.

³Grant's claim that he raised a second challenge to his competency before the grand jury hearing took place is belied by the record. After initial competency proceedings, Grant was declared competent by the district court on August 28, 2007. On October 4, 2007, the State served Grant with notice of its intent to initiate grand jury proceedings pursuant to Sheriff v. Marcum, 105 Nev. 824, 783 P.2d 1389 (1989). At a hearing on October 18, 2007, Grant stated his intention to challenge the "competency process"—not his competency—and acknowledged that the State was free to proceed to a grand jury. The grand jury proceedings commenced on November 6, 2007.

Second, Grant claims that the case should be dismissed based on the State's failure to comply with Brady v. Maryland, 373 U.S. 83 (1963). Brady is not applicable at pre-trial stages. United States v. Frick, 490 F.2d 666, 671 (5th Cir. 1973), abrogated on other grounds by U.S. v. Johnson, 834 F.2d 1191, 1198 (5th Cir. 1987), withdrawn and superseded by 846 F.2d 279 (5th Cir. 1988). Accordingly, this court's intervention is unwarranted. And to the extent that the State withholds any material evidence, Grant has a plain, speedy, and adequate remedy in the ordinary course of the law: he can raise a Brady claim on direct appeal if he is convicted.

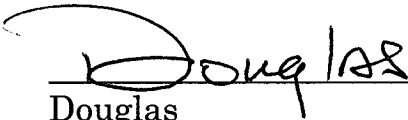
Third, Grant claims that the district court erred by failing to hold a competency hearing. "The United States Constitution and the Nevada Constitution compel a district court to hold a formal competency hearing when there is 'substantial evidence' that the defendant may not be competent to stand trial." Olivares v. State, 124 Nev. 1142, 1148, 195 P.3d 864, 868 (2008) (quoting Melchor-Gloria v. State, 99 Nev. 174, 180, 660 P.2d 109, 113 (1983)). Grant had twice been found competent to stand trial and presented no new evidence of incompetence. Therefore, the district court's refusal did not constitute "an arbitrary or capricious exercise of discretion."

Fourth, Grant claims that the district court violated his constitutional rights and federal law when it failed to investigate his needs and provide appropriate accommodations for his disabilities. The record before this court reflects that the district court was prepared to provide all possible accommodations, including real-time transcription and daily transcripts. Grant fails to specify any requested accommodation that was denied. We therefore conclude that our intervention is unwarranted.

Having considered the petition, answer, and documentation submitted to this court,⁴ we

ORDER the petition DENIED.⁵


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. James M. Bixler, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk
Gregory Grant

⁴Because Grant is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action on and shall not consider the proper person documents Grant has submitted to this court in this matter.

⁵We vacate the stay entered on October 12, 2009.