

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER HABERLAND,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
KENNETH C. CORY, DISTRICT
JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 54732

FILED

FEB 03 2010


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


ORDER GRANTING PETITION

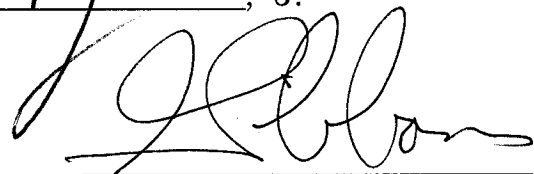
This original petition for a writ of mandamus or prohibition challenges a district court order denying petitioner's motion to dismiss two counts in a criminal complaint added after petitioner's preliminary hearing on the ground that the district court improperly remanded the case to the justice court after the State withdrew from plea negotiations. Pursuant to plea negotiations, petitioner unconditionally waived his right to a preliminary hearing. Subsequently, the State withdrew from plea negotiations at the arraignment. At that time, the State requested that the matter be remanded to the justice court for a preliminary hearing. The district court minutes indicate that "following arguments by [defense counsel] as to why the case should not be remanded," the district court ordered the matter remanded back to the justice court. Petitioner argues that the remand was improper under NRS 171.208 and consequently the two charges added to the criminal complaint after a preliminary hearing must be dismissed.

NRS 171.208 provides that “[i]f a preliminary examination has not been had and the defendant has not unconditionally waived the examination, the district court may for good cause shown at any time before a plea has been entered . . . remand the defendant for a preliminary examination” The plain language of the statute indicates that a remand to the justice court is not authorized where a preliminary hearing has not been held and a defendant has unconditionally waived his right to a preliminary hearing. See Bailey v. State, 120 Nev. 406, 409, 91 P.3d 596, 598 (2004) (stating that if words of statute have ordinary meaning, this court will not look beyond plain language of statute unless that meaning was clearly not intended). Such is the case here, where no preliminary hearing had been held and petitioner had unconditionally waived his right to a preliminary hearing. Therefore, we conclude that the district court exceeded its jurisdiction by remanding the matter to the justice court. See NRS 34.320. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF PROHIBITION instructing the district court to vacate its order denying petitioner’s motion to dismiss counts 3 (battery constituting domestic violence with the use of a deadly weapon) and 4 (attempted murder with the use of a deadly weapon) in the information.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Kenneth C. Cory, District Judge
Ciciliano & Associates, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk