

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN TU OUIMET,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
JANET J. BERRY, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 57370

FILED

FEB 09 2011

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

ORDER DENYING PETITION


This is an original petition for a writ of mandamus or prohibition. Petitioner Justin Ouimet filed a motion in justice court seeking an evaluation of his competency to stand trial pursuant to NRS 178.405, which the court granted. Upon obtaining new counsel, Ouimet moved to withdraw his prior motion and vacate the evaluation. The district court denied the motion to withdraw.

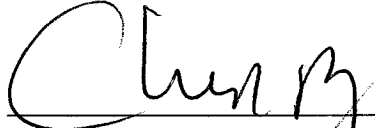
In this petition, Ouimet argues that the district court acted capriciously and in excess of its jurisdiction when it denied his withdrawal motion. The district court found that the record raised a reasonable doubt as to Ouimet's competency, a factual determination that is well within its discretion. See NRS 178.405(1) (stating that court shall suspend proceedings if doubt arises as to defendant's competence); Melchor-Gloria v. State, 99 Nev. 174, 180, 660 P.2d 109, 113 (1983) (stating that finding of doubt raised about defendant's competence within discretion of trial


court). Hence, we conclude that our intervention by way of extraordinary relief is unwarranted.

Accordingly, we

ORDER the petition DENIED.¹


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Pickering

cc: Hon. Janet J. Berry, District Judge
Marc Picker
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹We deny petitioner's motion to stay the proceedings below filed on February 7, 2011.