

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD KEVIN SCOTT,
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. 57884

FILED

MAR 17 2011

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

ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition asks this court to (1) order the respondent district court to “accept guilty pleas from criminal defendants, at the district court’s option, using the prevalent Guilty Plea Agreement deemed valid on or before December 31, 2010 or orally, as permitted by NRS 174.063”; (2) prohibit the State from using plea agreements such as that offered to petitioner; and (3) provide guidance as to how defendants should object to provisions in a proffered plea agreement. Petitioner complains that the proffered guilty plea agreement is an adhesion contract with unconscionable terms, contains provisions that are not included in the form written plea agreement set forth in NRS 174.063 and therefore are illegal, violates his Sixth Amendment right to the effective assistance of counsel.

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, 637 P.2d 534 (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 petitioner has a plain, speedy and adequate remedy in the ordinary course of law. See NRS 34.170; NRS 34.330. 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). We are not convinced that our intervention is warranted at this time for four reasons.

First, petitioner has not asserted or demonstrated that the district court has refused to take action that is required by law, has exercised its discretion in an arbitrary or capricious manner, or has exceeded its jurisdiction. In this, we note that petitioner has no right to a plea bargain. Weatherford v. Bursey, 429 U.S. 545, 561 (1977). If petitioner feels that the terms offered by the State are not acceptable, he is free to reject them and proceed to trial or enter a plea of guilty without negotiations.¹ See U.S. v. Hare, 269 F.3d 859, 862 (7th Cir. 2001).

¹We note that “[a] criminal defendant does not have an absolute right under the Constitution to have his guilty plea accepted by the court” and the district court has discretion to refuse a guilty plea. State of Nevada v. Dist. Ct., 116 Nev. 127, 139 n.10, 994 P.2d 692, 699 n.10 (2000) (quoting North Carolina v. Alford, 400 U.S. 25, 38 n.11 (1970)); see also Jefferson v. State, 108 Nev. 953, 954, 840 P.2d 1234, 1235 (1992)

continued on next page . . .

Second, petitioner has an adequate remedy at law to the extent that he challenges the lawfulness and enforceability of terms in the plea agreement. If he accepts the State's offer, he may challenge the validity of provisions in the agreement on the grounds that they violate state or federal law either on direct appeal, if appropriate, or through post-conviction proceedings. Cf. Sparks v. State, 121 Nev. 107, 110 P.3d 486 (2005) (considering challenge to validity of failure-to-appear provision in guilty plea agreement); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995) (considering challenge to validity of waiver of post-conviction remedies as part of plea agreement); Cruzado v. State, 110 Nev. 745, 879 P.2d 1195 (1994) (considering challenge to validity of waiver of right to appeal in guilty plea agreement), overruled on other grounds by Lee v. State, 115 Nev. 207, 985 P.2d 164 (1999).

Third, several of petitioner's substantive challenges are speculative as he has not signed the agreement and entered a guilty plea and the State has not attempted to enforce the challenged provisions in the manner that petitioner fears. Addressing those concerns now would require this court to render an advisory opinion, which we will not do. See

... continued


(observing that defendant "had no right to enter a guilty plea to any particular charge" and concluding that district court did not abuse discretion in refusing guilty plea where there was no plea agreement and defendant only offered to plead guilty to lesser included offense of another charge). If a criminal defendant proffers a guilty plea that is rejected by the district court, the defendant may challenge that decision on appeal from a subsequent judgment of conviction. See Jefferson, 108 Nev. 953, 840 P.2d 1234.

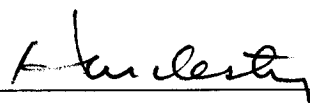
Applebaum v. Applebaum, 97 Nev. 11, 12, 621 P.2d 1110, 1110 (1981) (“This court will not render advisory opinions on moot or abstract questions.”).

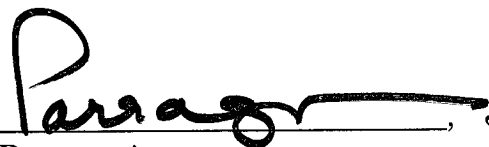
Fourth, we have rejected the argument that provisions in a guilty plea agreement are “contrary to Nevada law merely because [they are] not included in the statutory form agreement set forth in NRS 174.063,” Sparks, 121 Nev. at 111, 110 P.3d at 488, and have explained that we “will enforce unique terms of the parties’ plea agreement even in cases where there has not been substantial compliance with NRS 174.063, provided that the totality of the circumstances indicates that the guilty plea was knowing, voluntary and intelligent,” id. at 112, 110 P.3d at 489. The district court therefore had no duty under the law to reject provisions of the guilty plea agreement merely because they are not included in the statutory form agreement.

Because petitioner has not demonstrated that our intervention is warranted, we

ORDER the petition DENIED.

 _____, J.
Saitta

 _____, J.
Hardesty

 _____, J.
Parraguirre

cc: Hon. James M. Bixler, District Judge
Jonathan E. MacArthur
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

