

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAUL LOPEZ,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
MICHELLE LEAVITT, DISTRICT
JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 58271

FILED

JUN 08 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, in the alternative, writ of prohibition, challenges district court decisions denying a pretrial motion to dismiss an indictment and a pretrial petition for a writ of habeas corpus. Petitioner Raul Lopez claims that the State violated his speedy trial rights and his right to counsel, failed to present exculpatory evidence to the grand jury, and presented misleading instructions to the grand jury. Lopez seeks a writ of mandamus or prohibition directing the district court to dismiss his indictment. See NRS 34.160; NRS 34.320; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.3d 534, 536 (1981).

First, Lopez claims that the State violated his right to a speedy trial by failing to proceed to a preliminary hearing or obtain an

indictment within 15 days of his arrest. Because Lopez has an adequate remedy at law by way of a direct appeal should he be convicted, we decline to consider this claim. See NRS 34.170; NRS 34.330.

Second, Lopez claims that the State violated his right to counsel by proceeding to a bail setting without Lopez's counsel and then by seeking to reassign appointed counsel when Lopez challenged the bail determination. Because Lopez has an adequate remedy at law by way of a motion to reduce bail and direct appeal should he be convicted, see, e.g., Nika v. State, 120 Nev. 600, 608-09, 97 P.3d 1140, 1146 (2004) (evaluating claim that State violated defendant's right to counsel on direct appeal); Brown v. State, 113 Nev. 275, 283-84, 934 P.2d 235, 240-41 (1997) (reviewing district court's bail determination on appeal), we decline to consider these claims. See NRS 34.170; NRS 34.330.

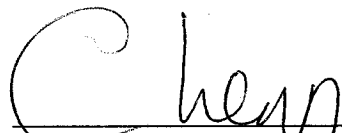
Third, Lopez claims that the State failed to present exculpatory evidence to the grand jury. This court has considered the failure to present exculpatory evidence to the grand jury as grounds for granting an extraordinary writ. See Ostman v. District Court, 107 Nev. 563, 564-65, 816 P.2d 458, 459 (1991). However, Lopez has not demonstrated that the State failed to present exculpatory evidence in violation of NRS 172.145(2), which requires the prosecutor to present "any evidence which will explain away the charge" if the prosecutor is aware of the evidence. In particular, the allegedly exculpatory evidence primarily concerns prior inconsistent statements by the alleged victims. Such evidence, however, does not have the tendency to "explain away the charge" as contemplated by NRS 172.145(2). Lay v. State, 110 Nev. 1189,

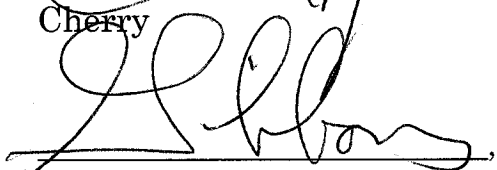
1198, 886 P.2d 448, 453 (1994). Accordingly, Lopez has not demonstrated that extraordinary relief is warranted.

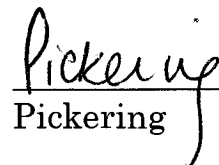
Fourth, Lopez claims that the instructions provided to the grand jury were deficient and misleading. We conclude that extraordinary relief is not warranted on this claim for the following reasons. First, many of Lopez's challenges to specific instructions concern whether the State produced sufficient evidence to support the instructions and are therefore not appropriate grounds for extraordinary relief. See Kussman v. District Court, 96 Nev. 544, 545-46, 612 P.2d 679, 680 (1980) (providing that this court's review of a pretrial probable cause determination through an original writ petition is disfavored). Second, Lopez has an adequate remedy at law by way of a direct appeal through which he may challenge the constitutionality of the school property sentencing alternative. See NRS 34.170; NRS 34.330. Third, while the challenge-to-fight instruction was incomplete, the indictment cited the relevant statute and set forth the elements of the crime. See NRS 200.450. Fourth, the State was not required to give a limiting instruction concerning the significance of evidence given by a certain witness. See Schuster v. District Court, 123 Nev. 187, 160 P.3d 873 (2007) (providing that statutory scheme regulating grand juries does not require the State to instruct the grand jury on the legal significance of certain evidence). Lastly, as the evidence produced during the grand jury proceedings indicated the Lopez had engaged in the crimes as a principal, not an aider and abettor, our intervention is not necessary to address the State's failure to instruct on vicarious liability for specific intent crimes.

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

ORDER the petition DENIED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Michelle Leavitt, District Judge
Osvaldo E. Fumo, Chtd.
Palm Law Firm, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk