

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
ELISSA F. CADISH, DISTRICT JUDGE,  
Respondents,  
and  
MAURICE CARROLL,  
Real Party in Interest.

No. 59000

FILED

DEC 27 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Ingel*  
DEPUTY CLERK

ORDER DENYING PETITION

In this original petition for a writ of mandamus or prohibition, petitioner State of Nevada challenges a district court order granting real party in interest Maurice Carroll's motion for a new trial. A jury convicted Carroll of 17 counts of perjury and 18 other counts related to 17 falsified affidavits of service that he executed and presented to the Las Vegas Justice Court in furtherance of his unlicensed process server business. Following a post-trial evidentiary hearing at which the notary public—who was not a witness at trial but whose name appeared on each affidavit—testified that the signatures were not hers, the district court granted Carroll's motion for a new trial as to the 17 perjury counts. The State appealed the district court's order, but this court dismissed the appeal for lack of jurisdiction. See State v. Carroll, Docket No. 58268 (Order Dismissing Appeal, May 27, 2011). In this subsequent petition—which Carroll has answered—the State contends that extraordinary relief is warranted to reverse the district court's decision. We disagree.

The district court has broad discretion to grant or deny a timely motion for a new trial. See Servin v. State, 117 Nev. 775, 792, 32 P.3d 1277, 1289 (2001). Here, Carroll based his new trial motion on the notary's contention that, although her stamp appeared on the affidavits, she had neither signed nor affixed her stamp to the documents. When asked at the evidentiary hearing why she had not testified to this at trial, the notary explained that she had ignored 23 phone calls from both defense counsel and the prosecution in their pretrial attempts to obtain her testimony.

The district court determined that this evidence was newly discovered, material, non-cumulative, probable to lead to a different result as to the perjury charges, and that the defense had exercised reasonable diligence in attempting to procure the notary's testimony before trial. See Funches v. State, 113 Nev. 916, 923-24, 944 P.2d 775, 779-80 (1997) (reciting factors district court must consider when defendant moves for new trial). In making its determination that a different result was probable upon retrial, the court construed NRS 199.120 (defining perjury) and this court's opinions in State v. Pray, 64 Nev. 179, 179 P.2d 449 (1947), and White v. State, 102 Nev. 153, 717 P.2d 45 (1986), to stand for the proposition that the affidavits of service at issue must have either been sworn to by the affiant or notarized. Because after considering the notary's testimony neither condition would obtain, the district court granted Carroll's motion as to the perjury counts and suspended pronouncing sentence on the other 18 counts.

We agree with the district court's interpretation of the applicable law and, from our review of the record, we conclude that the district court's exercise of discretion in making its factual determinations

was neither arbitrary nor capricious, see Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981), and that the court did not act in excess of its jurisdiction, see NRS 34.320.

Having considered petitioner's arguments, we  
ORDER the petition DENIED.

Douglas, J.  
Douglas

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

cc: Attorney General/Carson City  
Clark County District Attorney  
Clark County Public Defender  
Eighth District Court Clerk