IN THE SUPREME COURT OF THE STATE OF NEVADA

GABRIEL YATES,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JENNIFER P. TOGLIATTI, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 59579

FILED

NOV 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY H. Ingersoll
DEPUTY CLERK

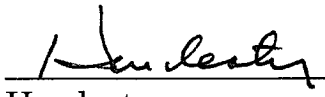
ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition requests this court to preclude the State from seeking the death penalty on the grounds that (1) the State has no evidence establishing that petitioner killed or participated in the killing of the victim, (2) the sole use of post-mortem mutilation to support a death sentence violates the Eighth Amendment, and (3) mutilation as a prohibited activity to support a death sentence is unconstitutionally vague and overbroad. Having considered the petition and supporting documents, we conclude that extraordinary relief is not warranted because petitioner has an adequate remedy by way of an appeal should he be convicted and sentenced to death. NRS 34.170;

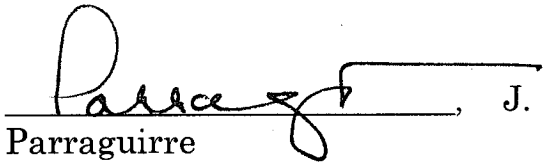
NRS 34.330; State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Accordingly, we deny the petition. See NRAP 21(b).

It is so ORDERED.

_____, J.
Douglas



_____, J.
Hardesty



_____, J.
Parraguirre

cc: Hon. Jennifer P. Togliatti, District Judge
Cristalli & Saggese, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk