

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD FINLEY,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
VALERIE ADAIR, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 59650

FILED

JAN 12 2012

TAAQIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

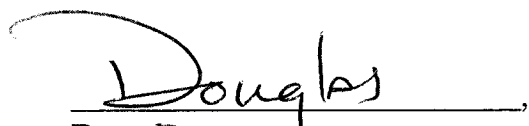
ORDER DENYING PETITION


This original petition for a writ of mandamus or prohibition challenges an order of the district court denying a motion to dismiss a criminal charge based on vindictive prosecution. Petitioner Richard Finley is currently awaiting trial on a charge of lewdness with a child under the age of 14 involving his girlfriend's daughter.

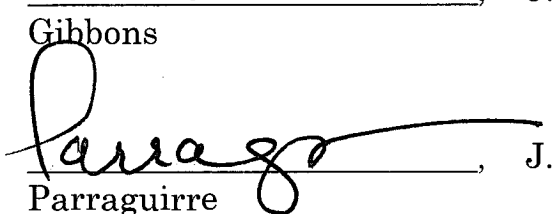
Finley contends that the district court manifestly abused its discretion in denying his motion to dismiss a criminal charge on the ground that the State filed the charge against him because he sought reunification with the victim and her family under NRS Chapter 432B and reported a disparaging remark made about him by a prosecutor. We discern no manifest abuse of discretion for two reasons. First, as witnesses gave different accounts of whether the prosecutor stated that he would have the "last laugh," the purported direct evidence of actual vindictiveness was disputed. See U.S. v. Montoya, 45 F.3d 1286, 1299 (9th Cir. 1995) ("To establish a prima facie case of prosecutorial vindictiveness,

a defendant must show either direct evidence of actual vindictiveness or facts that warrant an appearance of such.” (internal quotation marks and citation omitted)). Second, Finley did not demonstrate an appearance of vindictiveness. See id. The record indicates that the decision to prosecute Finley was made over a year after he sought reunification and nearly a year after he reported the prosecutor’s comment. Moreover, the decision to prosecute was not made by the prosecutor who Finley reported. Therefore, we conclude that Finley failed to demonstrate that the district court manifestly abused its discretion by denying the motion to dismiss the charge and therefore, our intervention by way of an extraordinary writ is unwarranted. See NRS 34.160, NRS 34.320; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). Accordingly, we

ORDER the petition DENIED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Valerie Adair, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk