

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN BERRY,

Petitioner,

vs.

JUSTICE COURT, LAS VEGAS
TOWNSHIP, STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK;
AND DIANA SULLIVAN, JUSTICE
COURT JUDGE,

Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 59732

FILED

JAN 12 2012

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

ORDER DENYING PETITION

In this original petition for a writ of mandamus, petitioner John Berry challenges an order of the justice court denying a motion to dismiss. Berry pleaded guilty to one count of attempted burglary in 2009. The written agreement memorializing that plea stated that several pending cases would be dismissed and that no other charges would be filed arising "from incidents occurring between August 1, 2009 and October 10, 2009 and involving Pawn Shop Burglaries or Possession of Stolen Property ONLY." After Berry completed a prison term on the attempted burglary conviction, the State filed a complaint charging him with several counts related to a home invasion that occurred on September 29, 2009.

Berry moved to dismiss the complaint in the justice court, contending that the 2009 plea agreement incorporated the home invasion incident and that the State was therefore precluded from pursuing those charges. The justice court concluded that the terms of the written agreement were ambiguous and that Berry's proffered construction of the

ambiguous clause—that the State was precluded from charging him with any criminal incident between those dates—would lead to absurd results.¹ Additionally, the lower court looked to the record of the preliminary hearing, which seemed to indicate that the parties understood the disputed clause to mean only that the State would not charge Berry with any counts related to burglaries of pawn shops that he committed, or stolen property that he possessed, between those dates.

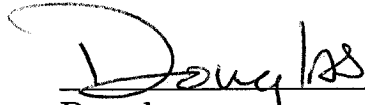
Plea agreements are interpreted using principals of contract law, State v. Crockett, 110 Nev. 838, 842, 877 P.2d 1077, 1079 (1994), and Berry argues that the justice court “unreasonably” employed parol evidence in construing the disputed terms of the agreement. However, Berry did not argue that the agreement was a completely integrated writing and cites no authority for the proposition that consideration of parol evidence in interpreting the objective intent of the parties is otherwise impermissible. Cf. U.S. v. Floyd, 1 F.3d 867, 870 (9th Cir. 1993) (concluding that the district court erred when it “looked to prior or contemporaneous negotiations or agreements” in interpreting ambiguous term of fully integrated plea agreement). The justice court’s interpretation of the plea agreement appears reasonable under the circumstances, and we therefore conclude that the order denying Berry’s motion to dismiss was not an arbitrary or capricious exercise of discretion

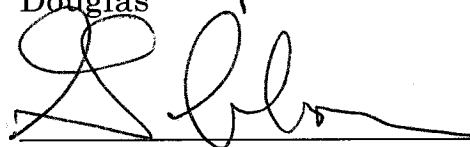
¹The justice court mused that if it adopted Berry’s interpretation, it would be compelled to dismiss an indictment for murder if the State alleged that Berry committed the crime between the dates recited in the 2009 plea agreement.

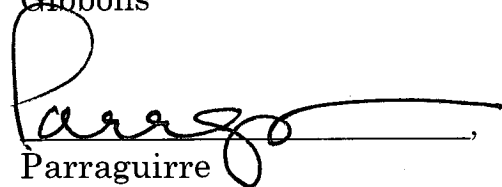
warranting extraordinary relief. See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

Accordingly, we

ORDER the petition DENIED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Diana Sullivan, Las Vegas Justice Court
The Law Office of Dan M. Winder, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk