

IN THE SUPREME COURT OF THE STATE OF NEVADA

GERMAN ORLANDO GONZALEZ,
Petitioner,

vs.

THE SIXTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
HUMBOLDT; AND THE HONORABLE
MICHAEL MONTERO, DISTRICT
JUDGE,

Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 60310

FILED

MAY 10 2012

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Anderson*
DEPUTY CLERK

ORDER DENYING PETITION

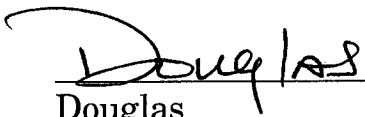
This original petition for a writ of mandamus challenges a district court order reversing petitioner German Gonzalez's misdemeanor conviction for driving under a revoked license. In its appellate capacity, the district court concluded that the evidence supporting the conviction was "problematic for several reasons" and that several issues "crucial to the determination of whether Mr. Gonzalez committed the charged offense" were left unresolved by the trial. The district court then reversed Gonzalez's conviction and "remanded for further proceedings consistent with this order." Gonzalez construes the latter part of the district court's order to be a remand for retrial in violation of his double jeopardy rights and seeks a writ of mandate from this court to bar such an outcome. We disagree with Gonzalez's interpretation of the district court's order.


This court will not entertain a writ petition that requests review of a district court decision when that court is acting in its appellate capacity "unless the district court has improperly refused to exercise its

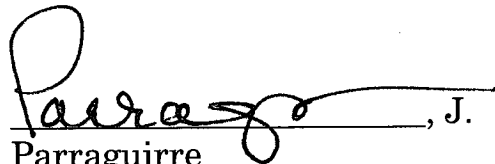
jurisdiction, has exceeded its jurisdiction, or has exercised its discretion in an arbitrary or capricious manner.” State of Nevada v. Dist. Ct., 116 Nev. 127, 134, 994 P.2d 692, 696-97 (2000). The district court’s order evidently reversed Gonzalez’s conviction because the evidence adduced at trial was insufficient to support it; in this petition, Gonzalez merely speculates that the justice court will retry him on remand in violation of his constitutional rights.¹ See State v. Purcell, 110 Nev. 1389, 1395, 887 P.2d 276, 279 (1994) (recognizing that retrial after finding of insufficient evidence violated double jeopardy); State v. Walker, 109 Nev. 683, 686, 857 P.2d 1, 2-3 (1993); cf. Washington v. State, 98 Nev. 601, 604, 655 P.2d 531, 532 (1982) (noting that retrial permitted where trial judge disagrees with jury’s resolution of conflicting evidence). Therefore, we discern no act in excess of the district court’s jurisdiction or discretion and conclude that our intervention is not warranted at this time.

Accordingly, we

ORDER the petition DENIED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

¹In its answer to Gonzalez’s petition, the State dissents from the district court’s conclusions and asserts that the evidence was sufficient. However, district courts have final appellate jurisdiction over cases arising in justice court, Nev. Const. art. 6, § 6, and the purpose of the writ is not to correct lower-court decisions that may be error. State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005).

cc: Hon. Michael Montero, District Judge
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk