

IN THE SUPREME COURT OF THE STATE OF NEVADA

PERRY MONROE,
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. 60713

FILED

OCT 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER DENYING PETITION


This original petition for a writ of mandamus or prohibition requests this court to order the district court to dismiss an indictment due to alleged deficiencies in the grand jury proceedings. In particular, petitioner complains that the State's service of a notice of intent to seek an indictment by facsimile transmission was inadequate under NRS 172.241 and the district court abused its discretion by ignoring NRS 172.241's personal service requirement and instead relying on a local district court rule, see EDCR 7.26, to uphold the service of the notice of intent to seek an indictment by facsimile transmission. Having considered the petition and supporting documents and the State's answer, we conclude that petitioner


has failed to demonstrate that the district court manifestly abused its discretion or exercised its discretion in an arbitrary or capricious manner, see NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).


We reject petitioner's argument that NRS 172.241(2) requires personal service such that a facsimile transmission of the notice of intent constituted inadequate service. NRS 172.241(2) requires that "reasonable notice" shall be served "upon a person whose indictment is being considered by a grand jury" and "[t]he notice is adequate if it: (a) [i]s given to the person, the person's attorney of record, or an attorney who claims to represent the person." Nothing in the plain language of the statute requires personal service upon the person who is the subject of the indictment. Where, as here, personal service is not required, NRS 178.589(1) provides that a person represented by counsel may be served with any motion, notice or other legal document by facsimile transmission if "(a) [t]he document is transmitted to the office of the attorney representing the person; and (b) [t]he facsimile machine is operational and maintained by the attorney representing the person or the employer of that attorney." See also EDCR 7.26 (permitting service of orders and "other papers" by facsimile transmission). Petitioner does not contend

that the facsimile transmission failed to meet the requirements of subsection 1(a) or (b).¹ Accordingly, we

ORDER the petition DENIED.²


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Jennifer P. Togliatti, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹Although in his petition, petitioner describes in detail what he contends is exculpatory evidence that was not presented to the grand jury, the argument portion of his petition is devoted solely to his challenge that service of the notice of intent to seek an indictment by facsimile transmission was inadequate under NRS 172.241. To the extent he argues that extraordinary relief is warranted because the State failed to present exculpatory evidence, we conclude that his claim lacks merit as the evidence about which he complains did not explain away the charge of attempted sexual assault with the use of a deadly weapon. See NRS 172.145(2).

²We deny petitioner's motion for a stay of the district court proceedings filed on April 23, 2012.