IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL ROBBINS,
Petitioner,
vs.
THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE; AND THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 60869

FILED

JUN 14 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY D. Malone
DEPUTY CLERK

ORDER DENYING PETITION

Petitioner Daniel Robbins has filed an original petition for a writ of habeas corpus for the purposes of bail. See NRS 34.530. According to the petition and supporting documents, Robbins has been charged with multiple felony offenses, including first-degree murder, and the district court set bail on all of the offenses except first-degree murder. Robbins suggests that the district court denied bail on that charge "simply because he was charged with First Degree Murder" and that denial of bail in this case is improper because the murder has not been charged as a capital offense. Although Robbins' position would be accurate under a prior version of the Nevada Constitution, it fails under the current constitutional limitation on bail. We therefore deny the petition.

Before the 1980 general election, Article 1, Section 7 of the Nevada Constitution provided an absolute right to bail except "for Capital Offenses when the proof is evident, or the presumption great." Applying that provision, this court had held that the provision did not preclude bail

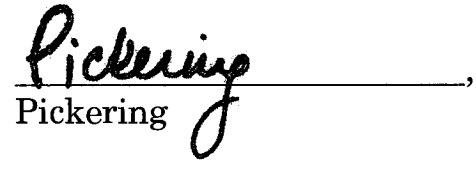
for first-degree murder "[a]bsent a finding that the proof is evident or the presumption great that [an aggravating] circumstance is present" because first-degree murder is a capital offense "only if at least one of the aggravating circumstances listed in NRS 200.033 is found." In re Knast, 96 Nev. 597, 598, 614 P.2d 2, 3 (1980). But during the 1980 general election, the constitutional provision was amended so that bail can be constitutionally denied "for Capital Offenses or murders punishable by life imprisonment without possibility of parole when the proof is evident or the presumption great." Nev. Const. art. 1, § 7 (emphasis added); see also NRS 178.484(4) ("A person arrested for murder of the first degree may be admitted to bail unless the proof is evident or the presumption great by any competent court or magistrate authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense."). As a result, the constitutional limitation on the general right to bail now applies to first-degree murder in general. This is so because first-degree murder is always punishable by life imprisonment without the possibility of parole regardless of whether any statutory aggravating circumstances exist. NRS 200.030(4) (providing that person convicted of first-degree murder shall be punished (a) by death only if one or more aggravating circumstances are found and not outweighed by mitigating circumstances or (b) by imprisonment for life without the possibility of parole, life with the possibility of parole after 20 years, or a term of 20 to 50 years and that finding of aggravating circumstances "is not necessary to fix the penalty at imprisonment for life with or without the possibility of parole").

The district court's order indicates that in denying bail on the first-degree murder charge, the court considered the evidence and the

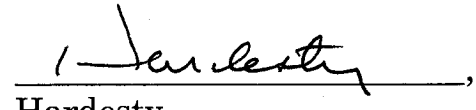
nature and circumstances of the offense and determined that "the proof is evident or the presumption great" as required by the constitution and NRS 178.484(4). Robbins does not dispute that determination. Nor has he provided this court with the record upon which the district court relied in making that determination. For these reasons, we

ORDER the petition DENIED.

_____, J.
Saitta



_____, J.
Pickering



_____, J.
Hardesty

cc: Hon. Robert W. Lane, District Judge
The Law Office of Dan M. Winder, P.C.
Nye County District Attorney
Attorney General/Carson City
Nye County Clerk