

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARTY ANDREW SCOTT,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
VALORIE J. VEGA, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 61043

FILED

SEP 12 2012

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

ORDER DENYING PETITION

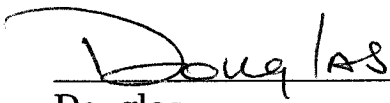
This is an original petition for a writ of prohibition or, alternatively, mandamus. Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.


Petitioner Barty Andrew Scott contends that the district court acted arbitrarily and capriciously by refusing to rule on his "Motion to Set Aside Conviction and Correct Illegal Sentence." Therein, Scott asserted that he had been illegally prosecuted for a felony violation of the current version of NRS 213.1243 because, at the time of the alleged offense and guilty plea, that statute had been permanently enjoined by the United States District Court for the District of Nevada, see Am. Civil Liberties Union v. Cortez Masto, 719 F. Supp. 2d 1258, 1260 (D. Nev. 2008), reversed in part, appeal dismissed in part by American Civil Liberties Union of Nevada v. Masto, 670 F.3d 1046 (9th Cir. 2012), and the district court must vacate that conviction and find him guilty of a misdemeanor violation of the 2005 version of that statute, 2005 Nev. Stat., ch. 507, § 35,

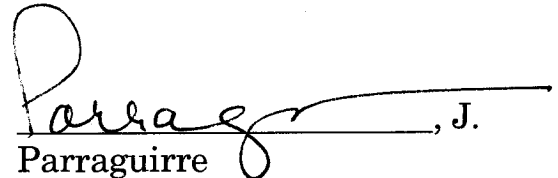
at 2879-80, see Finger v. State, 117 Nev. 548, 576, 27 P.3d 66, 84 (2001) (when amendments to a statute are declared unconstitutional, the prior version remains in effect). The district court declined to rule on Scott's motion pending resolution of the federal litigation regarding the 2007 version of NRS 213.1243, 2007 Nev. Stat., ch. 528, § 8, at 3256-58; the district court specifically sought to delay a ruling until it became clear whether the parties would enter into a consent decree ending that litigation.

The result of the federal litigation could impact the merits of Scott's motion. Specifically, Scott's ability to obtain relief could depend on whether, if the injunction is lifted, its lifting is given retroactive effect. Therefore, we cannot conclude that the district court manifestly abused its discretion by deferring ruling on Scott's motion. See NRS 34.160; NRS 34.330; 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. Valorie J. Vega, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk