

IN THE SUPREME COURT OF THE STATE OF NEVADA

CESAR VILLAGRANA,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
CONNIE J. STEINHEIMER, DISTRICT
JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 61983

FILED

JAN 16 2013

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

ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition challenges an order of the district court denying petitioner's pretrial petition for a writ of habeas corpus contending among other things that (1) there was insufficient evidence to support withholding of notice pursuant to NRS 172.241(3), (2) the district attorney failed to inform the grand jurors of the specific elements of the offense alleged in count 10 of the indictment, and (3) the indictment is defective because count 10 fails to state an offense or apprise petitioner of what he must be prepared to meet because it is not a plain, concise and definite statement of the essential facts constituting the offense charged.

A writ of prohibition is available to halt proceedings occurring in excess of a court's jurisdiction, NRS 34.320, while a writ of mandamus

may issue to compel the performance of an act which the law requires “as a duty resulting from an office, trust or station,” NRS 34.160, or to control a manifest abuse or arbitrary or capricious exercise of discretion, see Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

First, petitioner contends that the district court manifestly abused its discretion by allowing the State to withhold notice that the grand jury was considering an indictment based upon a finding of “adequate cause” to believe “that the notice may endanger the life or property of other persons.” See NRS 172.241(3)(b), (4). Petitioner, a member of the Hell’s Angels motorcycle club, argues that testimony concerning witness intimidation by other members of the Hell’s Angels in unrelated cases was not sufficient to establish adequate cause for withholding notice. Although the petition below contains a portion of the trial court’s November 8, 2011, order indicating that the withholding of notice was based solely on petitioner’s membership in the Hell’s Angels, petitioner has not provided this court with the complete order or a transcript of the evidentiary hearing. The district court denied the petition because the testimony of witnesses during the evidentiary hearing, the volatile relationship between the two motorcycle clubs, and the facts surrounding the incident supported the finding of adequate cause. Petitioner carries the burden of demonstrating that extraordinary relief is warranted, NRAP 21(a); Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004), and we cannot say that the district court manifestly abused its discretion by denying his petition on this claim.

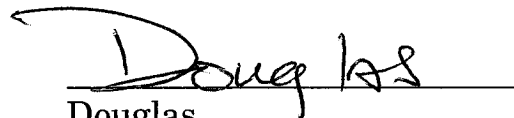
Second, petitioner contends that the grand jury was not instructed on the elements of second-degree murder as required by NRS 172.095(2). However, according to the jury instructions provided by petitioner, the grand jury was instructed on the elements of murder and the definition of express and implied malice. See NRS 200.030(2) (“Murder of the second degree is all other kinds of murder.”). The respondent does not contend that count 10 of the indictment charges second-degree felony murder and therefore the State was not required to inform the grand jury of these elements. See *Rose v. State*, 127 Nev. ___, ___, 255 P.3d 291, 296 (2011) (listing two elements of second-degree felony murder that must be satisfied).

Third, petitioner contends that the indictment is defective because count 10 fails to state an offense or apprise petitioner of what he must be prepared to meet because it is not a plain, concise and definite statement of the essential facts constituting the offense charged. We disagree. Count 10 alleges that petitioner and his co-defendant directly committed second-degree murder by discharging their firearms inside a casino with implied malice and that as a foreseeable result of this act the victim died. Therefore, count 10 of the indictment is not defective. However, the reference in the heading of count 10 to NRS 202.287, discharging a firearm from a structure, should be stricken from the

indictment to avoid confusion because count 10 does not allege second-degree felony murder.¹ Accordingly, we

ORDER the petition DENIED.²


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Connie J. Steinheimer, District Judge
Chesnoff & Schonfeld
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹This court also notes that count 10 references NRS 195.168. No such statute exists.

²We decline to exercise our discretion to address petitioner's other claims because he has an adequate remedy at law. See NRS 34.160; NRS 34.170; NRS 34.320; NRS 34.330; NRS 34.020. We also deny petitioner's motion for a stay of trial.