

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERNESTO MANUEL GONZALEZ,
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. 62392

FILED

JAN 31 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angel*
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 there was insufficient evidence to support withholding of notice pursuant to NRS 172.241(3).


Petitioner contends that there was not adequate cause to withhold notice under NRS 172.241(3)(b). We disagree. Evidence was presented that several members of the Vagos motorcycle club intimidated a witness immediately after the incident for which petitioner was being indicted. This was "adequate cause" to believe "that the notice may endanger the life or property of other persons." See NRS 172.241(3)(b), (4).

As to petitioner's other arguments,¹ we are not satisfied that this court's intervention by way of extraordinary writ is warranted for two reasons. First, he has a plain, speedy, and adequate remedy in the ordinary course of the law through an appeal should he be convicted, see NRS 177.015; NRS 177.045, and therefore a writ of mandamus or prohibition is not warranted, NRS 34.170; NRS 34.330. Second, petitioner has not demonstrated to our satisfaction that the district court refused to take action that is required by law, NRS 34.160, exercised its discretion in an arbitrary or capricious fashion, see Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981), or acted in excess of its jurisdiction, NRS 34.320, and therefore a writ of mandamus or prohibition is not warranted. Accordingly, we deny the petition. See NRAP 21(b); see also State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983) (petitions for extraordinary writs are addressed to the court's sound discretion), as modified by State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 147, 42 P.3d 233, 238 (2002); Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (petitioner carries the

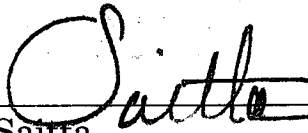
¹Petitioner's attempt to incorporate the arguments made by his codefendant in a separate petition by reference is not appropriate and we decline to consider those arguments. NRAP 28(e)(2).

burden of demonstrating that extraordinary relief is warranted).

It is so ORDERED.²


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

²We also deny petitioner's motion for a stay of trial and motion to transmit grand jury exhibit.