IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTOINE LIDDELL WILLIAMS,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE STEFANY MILEY, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 63636

FILED

JUL 25 2013

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 challenges the district court's denial of a motion to declare Nevada's manner and method of execution unconstitutional and request for discovery regarding lethal injection protocols. Petitioner contends that the district court's ruling was an arbitrary and capricious exercise of power because no legal authority precludes discovery of the execution process and the district court was unaware of whether the lethal injection protocols comply with Supreme Court law. He argues that extraordinary relief is warranted because the district court's order is not appealable and therefore he is left without an adequate remedy at law.

Having considered the petition and the documents submitted, we are not satisfied that extraordinary relief is warranted considering that petitioner has not been sentenced to death, as he is awaiting a new penalty hearing after this court granted post-conviction relief. Moreover, should he receive a death sentence after the penalty hearing, he has an adequate remedy at law to challenge the lethal injection protocol. *See*

McConnell v. State, 125 Nev. 243, 249 n.5, 212 P.3d 307, 311 n.5 (2009) (observing that post-conviction petitioner was not left without remedy for his challenge to lethal injection protocol because Supreme Court in *Hill v. McDonough*, 547 U.S. 573 (2006), made clear that "a challenge to lethal injection protocol may be brought in an action under 42 U.S.C. § 1983"). Accordingly, we deny the petition. *See* NRAP 21(b).

It is so ORDERED.[1]

_____, J.
Hardesty

_____, J.
Parraguirre

CHERRY, J., dissenting:

I would grant the petition and allow discovery regarding lethal injections and protocols. I would also grant the motion for a stay pending completion of the proposed discovery.

_____, J.
Cherry

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[1]In light of our order, we deny petitioner's emergency motion for a stay of the district court proceedings filed on July 22, 2013.

cc: Hon. Stefany Miley, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk