

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARIST WELLS,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
DOUGLAS W. HERNDON, DISTRICT
JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 63957

FILED

NOV 14 2013

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

ORDER DENYING PETITION

This original petition for a writ of certiorari, prohibition, or mandamus challenges the respondent judge's decision to deny a motion to suppress evidence. Relying on *Missouri v. McNeely*, 133 S. Ct. 1552 (2013), petitioner argues that the district court erred in failing to suppress evidence obtained as a result of a warrantless blood draw because Nevada's implied consent statute, NRS 484C.160, is unconstitutional. We are not convinced that our review by certiorari or intervention by writ of prohibition or mandamus is warranted.

First, a writ of certiorari is not available. A petition for a writ of certiorari may be granted where (1) an inferior tribunal has exceeded its jurisdiction and there is no right to appeal or any plain, speedy and adequate remedy, NRS 34.020(2), or (2) a person has been prosecuted for violating a statute or municipal ordinance, an appeal has been taken from a justice court or municipal court, and on appeal, the district court has

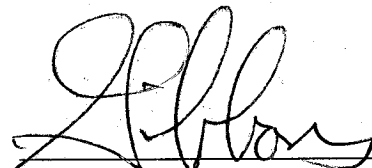
“passed upon the constitutionality or validity of such statute or ordinance,” NRS 34.020(3). None of these circumstances apply here. The district court has not exceeded its jurisdiction as petitioner was charged by indictment with two felony offenses committed in Clark County, Nevada. *See Nev. Const. art. 6, § 6* (“The District Courts in the several Judicial Districts of this State have original jurisdiction in all cases excluded by law from the original jurisdiction of justices’ courts.”); NRS 4.370(3) (“Justice courts have jurisdiction of all misdemeanors and no other criminal offenses except as otherwise provided by specific statute.”). Although the decision to deny the suppression motion is not independently appealable, *see NRS 177.015(2)*, it may be reviewed on a direct appeal from a judgment of conviction should petitioner be convicted, *see NRS 177.015(3); NRS 177.045*; therefore, there is an adequate remedy at law. And the district court did not pass on the constitutionality of the implied consent statute on appeal from a justice or municipal court; it was acting pursuant to its original jurisdiction over the felony charges. Accordingly, the petition cannot be entertained to the extent that it seeks our review by certiorari.

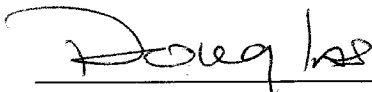
Second, a writ of prohibition is not available. A writ of prohibition may issue to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the district court, NRS 34.320, and it may issue only where there is no plain, speedy, and adequate remedy at law. NRS 34.330. As explained above, the district court did not act in excess of its jurisdiction and there is an adequate remedy at law to review the district court’s pretrial decision. Accordingly, the petition cannot be entertained to the extent that it seeks a writ of prohibition.

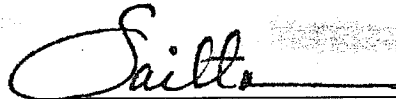
Finally, a writ of mandamus is not warranted. Although a writ of mandamus is available to control an arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981), it will not issue if the petitioner has a plain, speedy and adequate remedy in the ordinary course of law, NRS 34.170. Because, as explained above, petitioner has a plain, speedy, and adequate remedy at law, we decline to exercise our discretion to entertain the petition to the extent that it requests a writ of mandamus. *See Poulos v. Eighth Judicial Dist. Court*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); *see also State ex rel. Dep't Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983).

Because petitioner has not demonstrated that our review by certiorari or intervention by writ of prohibition or mandamus is warranted, we

ORDER the petition DENIED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Douglas W. Herndon, District Judge
Mueller Hinds & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk