

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JEROME T. TAO, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 64809

FILED

FEB 12 2014

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 asks this court to direct the respondent district court judge to strike the notice of intent to seek the death penalty filed in the pending criminal prosecution of petitioner. Alternatively, petitioner asks this court to direct the respondent district court judge to stay the capital proceedings.


Both requests for relief set forth in the petition are based on Assembly Bill 444, which was passed during the recent legislative session. That bill directs the Legislative Auditor to conduct an audit of the fiscal costs associated with the death penalty in this State and present a final written report of the audit on or before January 31, 2015. Nothing in the bill expressly or implicitly precludes the State from seeking the death penalty or the court from imposing the death penalty in capital cases commenced before or after the bill's effective date. Similarly, a legislative subcommittee's decision not to approve funding for a new facility in which to carry out the penalty also does not remove the death penalty from the


statutorily available sentences. Contrary to petitioner's assertion, the Legislature's silence on whether it intended a "moratorium" on the death penalty does not allow the courts to impose one.¹ Instead, we must abide by the plain language of the bill, *State v. Lucero*, 127 Nev. ___, ___, 249 P.3d 1226, 1228 (2011), and the relevant sentencing statutes that remain in effect. In the absence of action or direction by the Legislature, it is not within the authority of the respondent district court or this court to strike the notice of intent or stay the proceedings in this case based on the Legislature's decision to conduct an audit or to delay construction of a new facility. Until the Legislature takes some action to eliminate the death

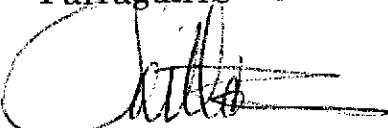
¹We note that nothing in the legislative history suggests that the Legislature intended Assembly Bill 444 to impose a moratorium or to preclude the State from seeking the death penalty in pending cases; it simply wanted to ensure that members at a future legislative session would have information on which to evaluate whether to abolish the death penalty or alter the process in some way. *See, e.g.*, Hearing on A.B. 444 Before the Assembly Comm. on Legislative Operations and Elections, 77th Leg., at 17-18 (May 2, 2013) (addressing concern that bill is "first step to abolition" and noting that other states that have conducted similar studies and found penalty to be expensive nonetheless have not abolished the penalty); Hearing on A.B. 444 Before the Senate Comm. on Legislative Operations and Elections, 77th Leg., at 25 (May 23, 2013) (statement of Assemblyman Ohrenschall) ("As Legislators, we need solid and reliable information in order to craft sound policy. If we do not have that solid and reliable information, I do not know how we can craft sound policy. Whether you are for or against the death penalty, it is important to find out how much it costs us as representatives and taxpayers."); Hearing on A.B. 444 Before the Senate Comm. on Legislative Operations and Elections, 77th Leg., at 19 (May 28, 2013) (statement of Assemblyman Ohrenschall) ("This bill is not procapital punishment or anticapital punishment. It is prudent legislating. . . . The 78th Session of the Nevada Legislature has a right to know what having capital punishment on the books costs the State.").

penalty, it remains an available sentence for first-degree murder provided that a jury finds one or more statutory aggravating circumstances and that any mitigating circumstances are not sufficient to outweigh the statutory aggravating circumstance(s). NRS 200.030(4)(a). Because petitioner has not demonstrated that the district court proceedings are in excess of its jurisdiction, NRS 34.320, or that the district court failed to perform an act that is required by law, NRS 34.160, or exercised its discretion in an arbitrary or capricious manner, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981), we

ORDER the petition DENIED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Saitta

cc: Hon. Jerome T. Tao, District Judge
Patti, Sgro & Lewis
Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk