IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK CORDOVA,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE MICHAEL VILLANI, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 64933

FILED

MAR 12 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus asks this court to order the respondent to grant petitioner's pretrial petition for a writ of habeas corpus and dismiss his charges for statutory sexual seduction. 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. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). However, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered. *See Poulos v. Eighth Judicial Dist. Court,* 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982). We are not convinced that our intervention is warranted for two reasons.

First, petitioner failed to argue in his petition below that the temporary custody record relied upon by the justice court was not a source "whose accuracy cannot reasonably be questioned," NRS 47.130(2)(b), and petitioner admitted that there were no Nevada cases that prohibited the justice court from taking judicial notice of an element of the offense and that jurisdictions across the country are split on this issue.[1] Therefore, we cannot say that the district court's denial of the petition was a manifest abuse or arbitrary or capricious exercise of discretion.

Second, our review of a pretrial probable cause determination through an original writ petition is disfavored, *see Kussman v. Eighth Judicial Dist. Court*, 96 Nev. 544, 545-46, 612 P.2d 679, 680 (1980), and petitioner has not demonstrated that his challenge to the probable cause determination fits the exceptions we have made for purely legal issues, *see Ostman v. Eighth Judicial Dist. Court*, 107 Nev. 563, 565, 816 P.2d 458,

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[1]In counsel's brief he contended that *Commonwealth v. Green*, 556 N.E.2d 387, 389 (Mass. 1990), stands for the proposition that, "It is inappropriate to supply an essential element of proof by taking judicial notice of a fact[.]" The actual sentence reads, "It is inappropriate to supply an essential element of proof by taking judicial notice of a fact *at the appellate level*." *Green*, 556 N.E.2d at 389 (emphasis added). Obviously, these two propositions are significantly different. The first directly supports petitioner's argument. The second does not. Moreover, *Green* explicitly states that it is permissible for a trial judge to take judicial notice of an essential element of proof. *Id.* We caution counsel in this case to refrain from citing case law in a misleading manner in the future. *See* RPC 3.3(a)(1) (prohibiting a lawyer from knowingly making a false statement of law to a tribunal).

459-60 (1991); *State v. Babayan*, 106 Nev. 155, 174, 787 P.2d 805, 819-20 (1990).

Because petitioner has not demonstrated that our intervention is warranted, we

ORDER the petition DENIED.

_______________, J.
Hardesty

_______________, J.
Douglas

_______________, J.
Cherry

cc: Hon. Michael Villani, District Judge
The Pariente Law Firm, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk