

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES MATTHEW WIRTH,  
Petitioner,  
vs.  
THE FIFTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF NYE,  
Respondent.

No. 71968

**FILED**

JAN 12 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER DENYING PETITION*

This original petition seeks a writ of mandamus directing the district court to vacate its decision in a *Petrocelli*<sup>1</sup> hearing on the ground that NRS 48.045 conflicts with NRS 3.220 and the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution. We conclude that our intervention is not warranted for three reasons. First, petitioner has not provided an appendix containing the portions of the lower court record “that may be essential to understand the matters set forth in the petition.” NRAP 21(a)(4). Second, to the extent that petitioner’s arguments relate to the proceedings in district court case CR 5655, those arguments go to the validity of the judgment of conviction entered in that case<sup>2</sup> and therefore must be raised in a postconviction

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<sup>1</sup>*Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985).

<sup>2</sup>We note that this court affirmed the judgment of conviction in CR 5655 in 2012, *Wirth v. State*, Docket No. 60323 (Order of Affirmance, November 15, 2012), and that the Court of Appeals recently affirmed a district court order denying petitioner’s postconviction petition for a writ of habeas corpus, *Wirth v. State*, Docket No. 69734 (Order of Affirmance, September 20, 2016).

petition for a writ of habeas corpus filed in the district court.<sup>3</sup> See NRS 34.724. Finally, to the extent that petitioner's arguments relate to proceedings in a criminal prosecution that has not yet resulted in a judgment of conviction, the double jeopardy argument lacks merit as the evidentiary use of a prior bad act in a trial for another criminal offense does not constitute a second prosecution or additional punishment for the prior bad act. See generally *Jackson v. State*, 128 Nev. 598, 604, 291 P.3d 1274, 1278 (2012) (explaining that Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction and multiple punishments for the same offense). For these reasons, we

ORDER the petition DENIED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Kimberly A. Wanker, District Judge  
Charles Matthew Wirth  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk

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<sup>3</sup>We express no opinion as to whether petitioner could meet the procedural requirements set forth in NRS chapter 34.