

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CYNDI SELLERS,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JOSEPH T. BONAVENTURE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 74315

FILED

DEC 14 2017

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

ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition challenges a district court order granting in part and denying in part a pretrial petition for a writ of habeas corpus.

Cyndi Sellers previously challenged her indictment in a pretrial habeas petition. The district court found (1) Sellers was not subject to the counts of fraud by a person authorized to provide goods or services upon the presentation of a valid credit card or debit card and (2) the State had established probable cause to sustain the count of conspiracy to use a credit card or debit card or identifying information on the card or account without consent.

Sellers now challenges the partial denial of her pretrial habeas petition. She argues the district court should have dismissed the conspiracy

count because the evidence relied upon to establish the conspiracy count was also the evidence relied upon to establish the fraud counts and the district court dismissed the fraud counts. She further suggests the dismissal of the fraud counts requires the dismissal of the conspiracy count as a matter of law.

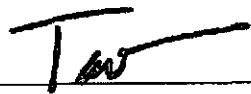
A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station, NRS 34.160, or to control an arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). 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. Mandamus and prohibition are extraordinary remedies, and the decision to entertain a petition for these writs lies within our discretion. *Hickey v. Eighth Judicial Dist. Court*, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989).

Sellers' challenge to the district court's order centers on the fact the conspiracy count was allowed to stand after the fraud counts were dismissed, but the core of her argument is there was insufficient evidence to establish probable cause to believe there was a conspiracy. Our review of a probable cause determination through original writ petitions is disfavored, see *Kussman v. Eighth Judicial Dist. Court*, 96 Nev. 544, 545-46, 612 P.2d 679, 680 (1980), and Sellers has not demonstrated her challenge to the probable cause determination "involves only a purely legal issue," *Rugamas v. Eighth Judicial Dist. Court*, 129 Nev. 424, 431, 305 P.3d

887, 892 (2013) (quoting *Ostman v. Eighth Judicial Dist. Court*, 107 Nev. 563, 565, 816 P.2d 458, 460 (1991)). Therefore, we conclude extraordinary relief is not warranted, and we

ORDER the petition DENIED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Chief Judge, Eighth Judicial District Court
Hon. Joseph T. Bonaventure, Senior Judge
John J. Graves, Jr., P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk