

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

No. 36708

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF CLARK, AND THE  
HONORABLE ROBERT E. GASTON,  
DISTRICT JUDGE, FAMILY COURT  
DIVISION,

**FILED**

DEC 04 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Bloom*  
CHIEF DEPUTY CLERK

Respondents,

and

BRIAN L., A MINOR,

Real Party in Interest.

ORDER CONSTRUING APPEAL AS PETITION FOR WRIT OF MANDAMUS  
AND DENYING PETITION

This is an appeal from an order of the district court (hereinafter referred to as "juvenile court") denying the State's request to certify the juvenile to stand trial as an adult.

We conclude that the order from which the State seeks to appeal is not appealable. The statute governing appeals in juvenile court proceedings provides that "[a]ppeals from the orders of the court may be taken to the supreme court in the same manner as appeals in civil cases are taken." NRS 62.291. Appeals in civil cases are governed generally by NRAP 3A(b)(1), which provides that an appeal may be taken from "a final judgment in an action or proceeding commenced in the court in which the judgment was rendered."

This court has held that when no statute or court rule provides for an appeal, no right to appeal exists. See

Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990). An order of the juvenile court refusing to certify a juvenile to stand trial as an adult is not a final order of the juvenile court, and no statute or court rule provides for an appeal from such an order.

Further, we have considered the State's arguments that the juvenile court's order is a final order because it effectively terminates any criminal prosecution of the juvenile, and that the attachment of jeopardy will effectively deprive the State of obtaining appellate review of the juvenile court's decision. See United State v. Leon, D.M., 132 F.3d 583, 587-89 (10th Cir. 1997); United States v. Doe, 94 F.3d 532, 535 (9th Cir. 1996); In Interest of McCord, 664 A.2d 1046, 1049 (Pa. Super. Ct. 1995); NRS 62.195(2). However, in light of this court's jurisdictional rules, we do not find the State's arguments persuasive. See NRAP 3A(b)(1); Castillo, 106 Nev. at 352, 792 P.2d at 1135. Accordingly, we conclude that we lack jurisdiction to consider this appeal.

Under the special circumstances of this case, however, we elect to treat the State's appeal as an original petition for a writ of mandamus.<sup>1</sup> A writ of mandamus is appropriate when there is no plain, speedy and adequate remedy in the ordinary course of law. See NRS 34.170. While a writ

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<sup>1</sup>The clerk of this court shall amend the caption on this court's docket so that it is consistent with the caption on this order.

The State must comply with the procedural requirements of NRS 34.170 and NRAP 21(a). While the State has submitted an affidavit pursuant to NRS 34.170, the State has not filed in this court proof of service of the petition on the respondent judge pursuant to NRAP 21(a). We deem this procedural deficiency harmless, as it is clear that the respondent judge received a copy of the petition in light of the judge's written response to the petition filed in this court.

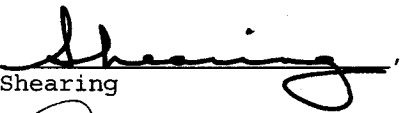
of mandamus will not lie to control a discretionary act, it will issue when the lower court's discretion is manifestly abused, or exercised arbitrarily and capriciously. See Washoe County Dist. Attorney v. District Court, 116 Nev. \_\_\_, 5 P.3d 562 (2000); Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). Further, 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. District Court, 98 Nev. 453, 652 P.2d 1177 (1982); see also State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 662 P.2d 1338 (1983).

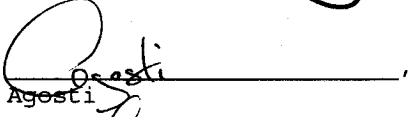
Having reviewed the record before this court, we conclude that the juvenile court's decision to deny certification of the juvenile was not a manifest abuse of discretion. This court has articulated a decisional matrix to be applied by the juvenile court in determining whether to certify; the matrix consists of three categories: (1) the nature and seriousness of the offense or offenses; (2) persistency and seriousness of past criminal offenses; and (3) subjective factors such as age, maturity, character, personality, and family relationships. See In the Matter of Seven Minors, 99 Nev. 427, 434-35, 664 P.2d 947, 952 (1983). The primary and most weighty consideration should be given to the first two categories. Id. at 435, 664 P.2d at 952.

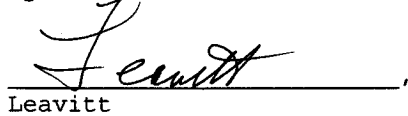
Here, the juvenile court carefully considered the facts of this case, and properly applied the three categories guiding juvenile certification decisions set forth in Seven Minors. Consequently, the juvenile court did not manifestly

abuse its discretion in refusing to certify the juvenile.  
Accordingly, we deny this petition for a writ of mandamus.<sup>2</sup>

It is so ORDERED.

  
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Shearing J.

  
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Agosti J.

  
\_\_\_\_\_  
Leavitt J.

cc: Hon. Robert E. Gaston, District Judge,  
Family Court Division  
Attorney General  
Clark County District Attorney  
VanBoskerck, Deputy D. A.  
Clark County Public Defender  
Clark County Clerk

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<sup>2</sup>We vacate our order imposing a temporary stay entered on  
September 8, 2000.