

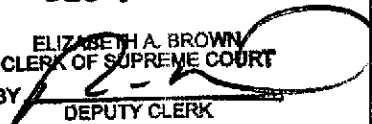
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MANUEL RODRIGUEZ-AGUILAR,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
KATHLEEN E. DELANEY, DISTRICT  
JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 75475-COA

**FILED**

DEC 04 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER DENYING PETITION*

This is an original petition for a writ of certiorari in which petitioner Manuel Rodriguez-Aguilar argues the district court lacked jurisdiction to consider the State's motion seeking leave to file an information by affidavit. Rodriguez-Aguilar contends the justice court denied the State's motion to amend the charges during the preliminary hearing and the State did not follow the proper procedures to appeal the justice court's decision before requesting leave from the district court to file an information by affidavit.

A writ of certiorari may be granted when a lower court has exceeded its jurisdiction and there is no appeal or any plain, speedy, and adequate remedy. NRS 34.020(2). "Pursuant to NRS 178.562(2), if a defendant is not bound over, the state may: (1) seek leave to file an information by affidavit in the district court, pursuant to NRS 173.035(2); or (2) seek an indictment by a grand jury." *State v. Sixth Judicial Dist.*

18-906992

*Court (Warren)*, 114 Nev. 739, 743, 964 P.2d 48, 50 (1998). The remedy of an appeal is separate from the remedy set forth in NRS 173.035(2), see *Warren, Jr. v. Eighth Judicial Dist. Court*, 134 Nev. \_\_\_, \_\_\_, 427 P.3d 1033, 1036 (2018), and there is no requirement the State pursue an appeal before seeking leave to file an information by affidavit. Because Rodriguez-Aguilar does not demonstrate the district court exceeded its jurisdiction by considering the motion for leave to file an information by affidavit, see *Moultrie v. State*, 131 Nev. 924, 928, 364 P.3d 606, 609 (Ct. App. 2015) (“It is within the discretion of the district court to grant a motion to file an information by affidavit.”), we

ORDER the petition DENIED.



Silver

C.J.



Tao

J.



Gibbons

J.

cc: Hon. Kathleen E. Delaney, District Judge  
Mueller Hinds & Associates  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk