

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL GONZALES,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
RICHARD SCOTTI, DISTRICT JUDGE,
Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 72170

FILED

MAY 16 2017

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

ORDER DENYING PETITION

This is an original petition for a writ of habeas corpus. Petitioner Daniel Gonzales alleges he is being unlawfully restrained “because the integrity of the grand jury proceedings was compromised when the prosecution intentionally (or with conscious indifference) misinformed the grand jurors on the elements of the offense, frequently used leading questions to present substantive evidence and ignored that there was no competent evidence when the vehicle stop occurred.”

“An application for an original writ of habeas corpus should be made to the appropriate district court.” NRAP 22. The record before this court indicates Gonzales sought a writ of habeas corpus in the district court and the district court denied the petition after finding the use of leading questions by the State was permitted where those questions were foundational in nature, and the State had met its burden and presented ample evidence to support the probable cause determination. The


appropriate vehicle for challenging the denial of a pretrial petition for a writ of habeas corpus is a writ of mandamus. See *Clay v. Eighth Jud. Dist. Ct.*, 129 Nev. 445, 450, 305 P.3d 898, 901 (2013) (resolving petition for writ of mandamus that challenged district court's denial of a pretrial petition for a writ of habeas corpus). Gonzales has not sought relief through the proper vehicle. Moreover, he has failed to demonstrate our intervention by way of original writ of habeas corpus is warranted.

“Dismissal of an indictment on the basis of governmental misconduct is an extreme sanction that should be utilized infrequently.” *Lay v. State*, 110 Nev. 1189, 1198, 886 P.2d 448, 454 (1994). “In order to warrant dismissal of an indictment the defendant must show substantial prejudice.” *Id.* “[A] defendant shows prejudice only when there is a reasonable probability that the outcome would have been different absent the misconduct.” *Id.*

The grand jury heard overwhelming evidence to return an indictment charging Gonzales with driving and/or being in actual physical control of a motor vehicle while under the influence of an intoxicating liquor or alcohol. And we conclude none of the errors alleged by Gonzales likely caused the grand jury to return an indictment on less than probable cause. Accordingly, we

ORDER the petition DENIED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Richard Scotti, District Judge
Law Offices of John G. Watkins
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk