

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,  
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  
FRANCISCO AGUILERA-HERRERA,  
Real Party in Interest.

No. 71724

**FILED**

JAN 12 2017

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


*ORDER DENYING PETITION*

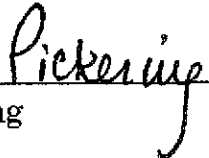
The State seeks a writ directing the district court to vacate its order severing the trial of Francisco Aguilera-Herrera, the real party in interest, from that of his codefendant. We conclude that extraordinary relief is unwarranted because petitioner has not demonstrated the district court arbitrarily or capriciously exercised its discretion. NRS 34.160; see *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931, 267 P.3d 777, 779 (2011) (“An arbitrary or capricious exercise of discretion is one founded on prejudice or preference rather than on reason or contrary to the evidence or established rules of law.” (citations and quotation marks omitted)). The district court considered relevant authority in its evaluation of the merits of the motion to sever. See *Tabish v. State*, 119 Nev. 293, 304, 72 P.3d 584, 591 (2003) (requiring court to consider whether “joinder is so manifestly prejudicial that it outweighs the dominant concern with judicial economy” (quotation marks omitted)). Even if another jurist could come to a different conclusion that would not be sufficient to warrant extraordinary relief. See *Collier v. Legakes*, 98

Nev. 307, 310, 646 P.2d 1219, 1221 (1982) (“[W]hile mandamus lies to enforce ministerial acts or duties and to require the exercise of discretion, it will not serve to control the proper exercise of that discretion or to substitute the judgment of this court for that of the lower tribunal.”), *overruled on other grounds by State v. Eighth Judicial Dist. Court (Zogheib)*, 130 Nev., Adv. Op. 18, 321 P.3d 882 (2014). Accordingly, we

ORDER the petition DENIED.

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

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

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

cc: Hon. Richard Scotti, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Clark County Public Defender  
Eighth District Court Clerk