

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENNETH MCGEE,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
KERRY LOUISE EARLEY, DISTRICT
JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 72887

FILED

JUN 14 2017

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

ORDER DENYING PETITION


In this original petition Kenneth McGee seeks a writ of mandamus directing the district court to grant his pretrial petition for a writ of habeas corpus and dismiss the charges against him. McGee asserts the district court manifestly abused its discretion by denying his pretrial petition because there was no evidence presented to support conspiracy or any charges based on a theory of conspiracy. He alternatively argues the State failed to present sufficient evidence to support the deadly weapon enhancement and, therefore, the district court manifestly abused its discretion by denying his pretrial petition with respect to striking the deadly weapon enhancement.


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 a manifest abuse or arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981). 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. Eighth Judicial Dist. Court*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); *see also State ex rel. Dep't Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983). "Petitioner[] carr[ies] the burden of demonstrating that extraordinary relief is warranted." *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). "The finding of probable cause may be based on slight, even 'marginal' evidence." *Sheriff, Washoe Cty. v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (citation omitted).

We conclude McGee has failed to demonstrate the district court manifestly abused its discretion by denying his pretrial petition for a writ of habeas corpus because the record demonstrates at least slight or marginal evidence was presented to the grand jury to support the charges. Accordingly, we conclude our intervention by way of extraordinary writ is not warranted, and we

ORDER the petition DENIED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kerry Louise Earley, District Judge
Law Office of Kristina Wildeveld
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk