

IN THE SUPREME COURT OF THE STATE OF NEVADA

SELVIN ZECENA-VALDEZ,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
LYNNE K. SIMONS, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 71023

FILED

AUG 12 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER GRANTING PETITION

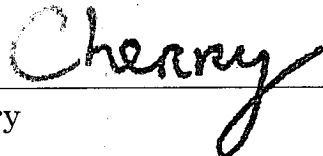
This is an original petition for a writ of prohibition or mandamus challenging the district court's denial of a motion to continue petitioner's trial.

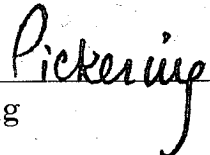
Petitioner's trial is scheduled to start on Monday, August 15, 2016; his attorney, Michael L. Becker, is also scheduled to represent a separate defendant in another criminal trial in Clark County on the same date. Becker filed motions to continue both trials, and both motions were denied.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion. NRS 34.160. This court has the discretion to determine whether a writ petition will be considered. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Although the right to retain counsel of one's own choosing is not absolute, *United States v. Gonzales-Lopez*, 548

U.S. 140, 144 (2006), “the denial of a continuance may infringe upon the defendant’s right to counsel of choice,” *United States v. Carrera*, 259 F.3d 818, 825 (7th Cir. 2001). And while such circumstances are limited, “an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay violates the right to the assistance of counsel.” *Id.* (quoting *Morris v. Slappy*, 461 U.S. 1, 11-12 (1983)). Here, counsel’s request was justifiable, and the district court’s outright denial does not appear to be based on concerns that would justify interference with petitioner’s right to counsel of his choosing. Accordingly, we

ORDER the petition GRANTED and DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to grant defendant’s motion to continue trial.¹


_____, J.
Cherry


_____, J.
Pickering

¹Petitioner also requests a stay of the district court proceedings pending this court’s consideration of the petition. As the petition has been resolved, and the trial will not be proceeding on Monday, August 15, 2016, the motion is moot and is therefore denied.

DOUGLAS, J., dissenting:

I would deny the petition and motion for stay.


_____, J.
Douglas

cc: The Honorable Lynne K. Simons, District Judge
Las Vegas Defense Group, LLC
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk