

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EVELYNN MAE POLSTON,  
Petitioner,

vs.

THE SIXTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
HUMBOLDT; AND THE HONORABLE  
MICHAEL MONTERO, DISTRICT  
JUDGE,

Respondents,

and

THE STATE OF NEVADA,  
Real Party in Interest.

No. 79813-COA

**FILED**

JAN 14 2020

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

*ORDER DENYING PETITION*

This original petition for a writ of mandamus or prohibition challenges an order of the district court denying a stipulation of the parties to have petitioner Evelyn Mae Polston's matter remanded to the justice court for her to enter a guilty plea to a misdemeanor offense. Polston asserts that, by refusing to sign the stipulation, the Honorable Judge Montero is: (1) interfering with the justice court's jurisdiction, (2) potentially exceeding his authority by participating in the formulation of discussions of a potential plea agreement, or (3) exceeding his authority under NRS 174.035(1) by refusing a guilty plea based on his opinion of public interest.

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, 603-04, 637 P.2d 534, 536 (1981). A writ of


prohibition may issue to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the district court. NRS 34.320. Neither writ will issue if petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170; NRS 34.330. Petitions for extraordinary writs are addressed to the sound discretion of the court, *see State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983), and the “[p]etitioner[ ] 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).

We directed Judge Montero to file a response to Polston’s petition. For the following reasons, we conclude this court’s intervention by way of extraordinary writ is not warranted. First, the record does not demonstrate that Judge Montero is interfering with the justice court’s jurisdiction. As Judge Montero rightly points out, it is not necessary for him to sign the parties’ stipulation for them to proceed with the misdemeanor charge in the justice court. If the State wishes to proceed with a guilty plea in justice court in lieu of the charges in the district court, the State may, at any time, move to dismiss the case in the district court and proceed with the misdemeanor charge in the justice court pursuant to the global agreement of the parties. Second, the record before this court does not support Polston’s assertion that Judge Montero may have exceeded his authority by participating in the formulation of a potential plea agreement. *See Cripps v. State*, 122 Nev. 764, 770-71; 137 P.3d 1187, 1191 (2006) (holding that, with the limited exception of indicating whether the judge is inclined to follow a sentencing recommendation, a judge is prohibited from being involved in the plea negotiation process). Third, because there has

not been a plea offered to the district court based on the felony charge filed in the district court, there is nothing to support Polston's claim that Judge Montero has exceeded his authority by refusing a guilty plea based on his opinion of public interest. Accordingly, we

ORDER the petition DENIED.

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Michael Montero, District Judge  
Humboldt County Public Defender  
Attorney General/Carson City  
Humboldt County District Attorney  
Humboldt County Clerk