

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TODD BREWSTER,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF

CLARK; AND THE HONORABLE

MICHELLE LEAVITT, DISTRICT

JUDGE,

Respondents,

and

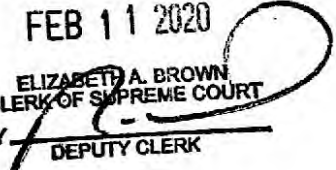
THE STATE OF NEVADA,

Real Party in Interest.

No. 80081-COA

FILED

FEB 11 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING PETITION

In this original petition for a writ of mandamus and/or prohibition, Todd Brewster challenges a district court order that denied a motion to dismiss the superseding indictment on the basis that the grand jury was not properly formed. Brewster seeks an order directing the district court to vacate its prior order and enter an order dismissing the superseding indictment.

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).¹ 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).

Brewster alleges that the grand jury was not properly formed because numerous grand jurors were added, replaced, and absent throughout the proceedings to such an extent that no two days of testimony were heard by the same grand jury. Brewster asserts that because of the addition, replacement, and absenteeism of the grand jurors, the only evidence before the final grand jury was transcripts of prior grand jury hearings that were not witnessed by numerous jurors who ultimately returned the indictment.

The district court found that while several of the grand jurors were absent for one or more sessions, those grand jurors had read the transcripts of the sessions they had missed before they concurred in the indictment. The district court concluded that those grand jurors were sufficiently informed and Brewster’s challenge to the grand jury lacked merit. See *Gordon v. Eighth Judicial Dist. Ct.*, 112 Nev. 216, 222-23, 913 P.2d 240, 244-45 (1996). Therefore, the district court denied Brewster’s motion to dismiss the superseding indictment.

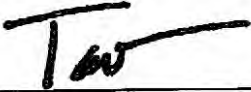
The record supports the district court’s findings. To the extent Brewster alleges the district court’s reliance on *Gordon* is improper because *Gordon* does not allow a grand juror to completely rely on transcripts in lieu

¹A writ of prohibition is not the proper vehicle for obtaining the relief Brewster is seeking. See NRS 34.320.

of live testimony, the record before this court does not demonstrate that any grand juror relied completely on transcripts in lieu of live testimony for the proceedings as a whole or even just those proceedings that implicate Brewster. We conclude Brewster has failed to demonstrate that the district court manifestly abused or arbitrarily or capriciously exercised its discretion by denying his motion to dismiss. Accordingly, we

ORDER the petition DENIED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Mayfield, Gruber & Sheets
Nevada Appeal Group, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk