


IN THE SUPREME COURT OF THE STATE OF NEVADA

KATHY MOSER; AND THE STATE OF
NEVADA,
Petitioners,
vs.
THE FIFTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF NYE;
AND THE HONORABLE KIMBERLY A.
WANKER, DISTRICT JUDGE,
Respondents.

No. 89337

FILED

AUG 15 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus challenging the district court's refusal to accept a conditional plea. Petitioner Kathy Moser argues that the district court arbitrarily and capriciously exercised its discretion in rejecting the plea. Petitioner State of Nevada joined the petition.

Moser was initially charged with open murder. Pursuant to plea negotiations, Moser agreed to plead guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to coercion involving force, and the State agreed to stipulate to probation. Accordingly, Moser unconditionally waived the preliminary hearing and appeared in district court to enter the conditional plea. At the arraignment, the district court refused to accept the conditional plea because the district court did not want to be limited to imposing a particular sentence.

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office or to control a manifest abuse of discretion or an arbitrary or capricious exercise of discretion. NRS 34.160; *Walker v. Second Jud. Dist. Ct.*, 136 Nev. 678, 680,

476 P.3d 1194, 1196 (2020). A manifest abuse of discretion occurs when there is a clearly erroneous interpretation or application of the law, and 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.” *State v. Eighth Jud. Dist. Ct. (Armstrong)*, 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011) (internal citations and quotation marks omitted). It is within this court’s discretion to determine if a petition for extraordinary relief will be considered. *Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991) (recognizing that writ relief is an extraordinary remedy and that this court has sole discretion in determining whether to entertain a writ petition). A writ of mandamus will not issue when there is a plain, speedy, and adequate remedy at law. NRS 34.170. This court has recognized that a writ of mandamus is an appropriate way to challenge the district court’s refusal to accept a guilty plea. *Sandy v. Fifth Jud. Dist. Ct.*, 113 Nev. 435, 438, 935 P.2d 1148, 1150 (1997).

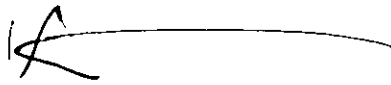
A district court has discretion to accept or reject guilty pleas, but it should reject a guilty plea only “when there has been an abuse of prosecutorial discretion.” *Id.* at 439, 440, 935 P.2d at 1150, 1151. Thus, the district court cannot reject a guilty plea because it disagrees with prosecutorial charging decisions. *Id.* at 442, 935 P.2d at 1152. And similarly, the court cannot reject “a plea bargain based upon infringement of judicial sentencing authority . . . absent a finding that the prosecutor had no valid prosecutorial interest or other compelling independent consideration for refusing to proceed to trial.” *Id.* at 441-42, 935 P.2d at 1151-52. When a district court rejects a guilty plea, it “must make findings


of fact explaining [its] reasons . . . with particularity.” *Id.* at 442, 935 P.2d at 1152.

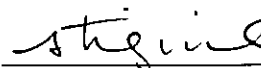
The district court did not make factual findings supporting its rejection of Moser’s guilty plea. And in response to the writ petition, the district court now agrees with Moser and the State that it erred and should have accepted Moser’s conditional *Alford* plea. Thus, we conclude that the district court arbitrarily and capriciously exercised its discretion. But we reject petitioners’ request to reassign this matter to a different district court judge. The appendices filed in this court do not indicate that either petitioner filed an appropriate motion, as required by NRS 1.235, to disqualify the district court judge. And we are not convinced that reassignment is required at this time.

For the reasons stated in this order, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to accept the conditional *Alford* plea.


_____, C.J.
Herndon


_____, J.
Bell


_____, J.
Stiglich

cc: Hon. Kimberly A. Wanker, District Judge
Nye County District Attorney
The Law Offices of Ivette Amelburu Maningo
Michael Lasher LLC
The Fifth Judicial District Court of the State of Nevada, in and for
the County of Nye
Nye County Clerk