

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,

vs.

THE FIFTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF NYE,
AND THE HONORABLE JOHN P.
DAVIS, DISTRICT JUDGE,
Respondents,
and
GARY LEE THOMPSON,
Real Party in Interest.

No. 39709

FILED

MAR 04 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
By *J. Richards*
DEPUTY CLERK

ORDER GRANTING PETITION

This original petition for a writ of mandamus challenges a district court's order declaring NRS 207.193 unconstitutional, and thereby denying the State's request, pursuant to the statute, for a hearing to determine whether the real party in interest Gary Lee Thompson's coercive acts were sexually motivated. Having considered the writ petition, the answer, and the documents appended to each, we conclude that our intervention by way of extraordinary relief is warranted in this case.¹


The core issue is whether a determination that Thompson's coercive acts were sexually motivated increases the penalty beyond the proscribed statutory maximum for coercion. Based on our decision in


¹See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) (noting that extraordinary relief is in the sound discretion of this court).


Nollette v. State,² we conclude that a finding that Thompson's coercive acts were sexually motivated does not increase the penalty beyond the statutory maximum. Therefore, we conclude that the district court manifestly abused its discretion when it ruled that NRS 207.193 is unconstitutional.³

Having concluded that petitioner lacks a plain, speedy and adequate remedy at law, and that the district court manifestly abused its discretion, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order declaring NRS 207.193 unconstitutional, and to grant the State's request to hold a hearing pursuant to NRS 207.193.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

²118 Nev. ___, ___, 46 P.3d 87 (2002).

³See Round Hill Gen. Imp. Dist., 97 Nev. at 604, 637 P.2d at 636 (stating that writ relief is not proper to control the discretion of the district court, "unless discretion is manifestly abused or is exercised arbitrarily or capriciously").

cc: Hon. John P. Davis, District Judge
Attorney General Brian Sandoval/Carson City
Nye County District Attorney/Tonopah
Dickerson, Dickerson, Consul & Pocker
Nye County Clerk