

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
SALLY L. LOEHRER, DISTRICT
JUDGE,

Respondents,

and

ALICIA V. DYKAS,
Real Party in Interest.

No. 42610

FILED

JUL 02 2004

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

ORDER DENYING PETITION

This is an original petition for a writ of mandamus challenging the district court's denial of an appeal from an acquittal in municipal court.

Real party in interest Alicia V. Dykas was charged with misdemeanor domestic battery. Specifically, the complaint alleged that Dykas slapped her former boyfriend in the face. At the conclusion of the city's case in chief, the municipal court dismissed the case with prejudice.

The municipal court judge stated:

This is not a case that our supreme – our legislature did not intend that when a woman slaps a man – maybe vice versa – that they should serve two days in jail and do 48 hours to 120 hours community service, pay \$280 fine, \$35 assessment, do a 26-week course, and pay \$650 for a slap. Absolutely absurd.

We disagree entirely with the municipal judge's conclusion. NRS 200.481(1)(a) defines battery as "any willful and unlawful use of force

or violence upon the person of another." Further, battery constitutes domestic violence when the victim, inter alia, is "a person with whom [the perpetrator] has had or is having a dating relationship."¹

The city presented evidence that Dykas and the victim had dated for over a year. The city further alleged that on August 7, 2002, Dykas created a disturbance outside the house where the victim was visiting a friend. After a conversation in which the victim asked Dykas to leave, the city alleged that Dykas slapped the victim across the face, leaving red welts.

Despite the municipal judge's opinion to the contrary, we conclude that the acts committed by Dykas constitute domestic battery. The statutes make no provision for the gender of the perpetrator or the victim, and specifically prohibit "any willful and unlawful use of force or violence." The municipal court therefore erred by dismissing the case against Dykas.

Nonetheless, as the district court correctly noted, jeopardy had attached, and the municipal court's order amounted to an acquittal. This court has previously held: "It is a violation of the Double Jeopardy Clause '[t]o permit a second trial after an acquittal, however mistaken the acquittal may have been.'"²


Regardless of the municipal court's error, the district court did not err by dismissing the appeal. Generally, this court "decline[s] to entertain writs that request review of a decision of the district court acting


¹NRS 33.018(1).

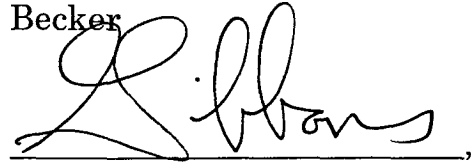
²State v. Combs, 116 Nev. 1178, 1181, 14 P.3d 520, 521 (2000) (quoting United States v. Scott, 437 U.S. 82, 91 (1978)).

in its appellate capacity unless the district court has improperly refused to exercise its jurisdiction, has exceeded its jurisdiction, or has exercised its discretion in an arbitrary or capricious manner."³ Based on the foregoing, we conclude that this court's intervention by way of extraordinary relief is not warranted.⁴ Accordingly, we

ORDER the petition DENIED.

 C.J.
Shearing

 J.
Becker

 J.
Gibbons

cc: Hon. Sally L. Loehrer, District Judge
Las Vegas City Attorney
Gregory L. Denué
Clark County Clerk

³State of Nevada v. Dist. Ct., 116 Nev. 127, 134, 994 P.2d 692, 696 (2000).

⁴See NRS 34.160.