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Elizabeth A. Brown
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IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH WARREN, JR.,

Petitioner,

vs.

**EIGHTH JUDICIAL DISTRICT
COURT JUDGE, THE
HONORABLE RICHARD SCOTTI,**

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

Supreme Court No. 73963

District Court No. C-17-323608-1

Dept. No. II

**PETITION FOR SUPREME
COURT REVIEW OF ORDER
DENYING PETITION FOR WRIT
OF CERTIORARI, OR IN THE
ALTERNATIVE, WRIT OF
PROHIBITION, OR IN THE
ALTERNATIVE WRIT OF
MANDAMUS**

Petitioner Joseph Warren, by and through his counsel JoNell Thomas and Melinda Simpkins, and pursuant to NRAP 40B, petitions this Court for Review of the Nevada Court of Appeals Order Denying Mr. Warren's Petition for a Writ of Certiorari, or in the alternative a Writ of Prohibition, or in the alternative, a Writ of

Mandamus. The Court of Appeals decision was issued by Judges Tao and Gibbons over the dissenting opinion of Judge Silver. It was filed on March 21, 2018.

Question Presented: Whether a district court has jurisdiction to hear an appeal from a justice court order finding a lack of probable cause to support felony charges.

Reasons Review Is Warranted: This proceeding presents an important legal issue concerning the appellate jurisdiction of the district courts. Specifically, Petitioner Warren asks this Court to find that the district court exceeded its jurisdiction by entertaining an appeal by the State from a justice court order finding that the State had failed to present sufficient evidence to bind him over on felony charges. He contends that there is no statute providing for an appeal from such an order and that the State's only viable remedies were to either seek permission to file an Information by affidavit (which the State did seek, in another department, which was denied) or to seek an Indictment from a grand jury (which the State did not do). Two judges on the Court of Appeals found that the district court had jurisdiction to hear the State's appeal, while one judge found that there was no grant of statutory authority for the appeal. Given the importance of this issue to all justice courts and district courts sitting in an appellate capacity, and the split decision of the Court of

Appeals, this Court's review of this matter is warranted.¹ This is an issue of first impression of general statewide significance and involves a fundamental issue of statewide public importance, warranting review under NRAP 40B(a)(1), (3).

Introduction

Petitioner Warren contends that the district court lacked jurisdiction to hear an appeal from a justice court order finding a lack of probable cause at a preliminary hearing to support felony charges asserted to exist by the State. There is no statute or rule providing for an appeal in these circumstances. A writ of certiorari should issue which vacates the order entered by the district court in excess of its jurisdiction.

Parties and Procedural History

Petitioner Warren is the defendant/respondent in the case of State of Nevada v. Joseph Warren, Eighth Judicial District Court, Case No. C-17-323608-A. The State has attempted to charge him with two counts of sexual assault. The justice court found insufficient evidence to bind him over on those charges. The State appealed that ruling to the district court.

¹Petitioner Warren also presented arguments concerning mootness and the merits of the Justice Court's ruling. This Petition for Review addresses only the jurisdictional issue.

Respondent Judge Scotti was assigned to preside over the State's appeal. Real Party in Interest is the State of Nevada. The State of Nevada, through the Clark County District Attorney's Office, is the entity prosecuting Petitioner Warren.

The preliminary hearing in this case was held in justice court on April 20, 2017. App. 61, 130. After taking the matter under submission, the Justice of the Peace dismissed the charges based upon the State's failure to present sufficient evidence to establish probable cause that Mr. Warren committed the offenses. App. 61-70. The Justice of the Peace authored a thorough 10 page order in support of its decision. App. 61-70.

The State filed a Motion for Leave to File an Information by Affidavit. The motion was docketed in case number C-17-323426-1 and was assigned to the Honorable Judge Cadish, Department VI. App. 188. Mr. Warren filed an opposition to the State's motion. App. 188. Following argument from counsel, Judge Cadish denied the State's motion.² App. 188-189.

The State also filed an appeal from the justice court's order, which was docketed in the district court as case number C-17-323608-A, and assigned to the

²Several grounds were raised in opposition to the State's motion for leave to file Information by affidavit. Judge Cadish found that the State's failure to file a sufficient affidavit was dispositive and denied the motion on that ground. App. 188-189.

Honorable Judge Scotti, Department 2, on May 16, 2017. App. 1-3. Mr. Warren filed a motion to dismiss the appeal, in which he argued that there is no statutory right to appeal from a justice court order refusing to bind over charges following a preliminary hearing and that the district court therefore lacked jurisdiction to hear the appeal. App. 104, 166. The State opposed the motion to dismiss. App. 213. Following argument from counsel, the district court concluded that it had jurisdiction to hear the appeal and ultimately ruled in the State's favor on the merits. App. 227, 236.

Mr. Warren challenged the district court's decision by filing a petition for a writ of certiorari or, in the alternative, a writ of prohibition or mandamus. The State was ordered to file an answer to the petition. The appeal was routed to the Court of Appeals. On March 21, 2018, the Court of Appeals entered an Order Denying Petition, which was joined by Judges Tao and Gibbons. They concluded as follows:

Warren has failed to demonstrate the district court exceeded its jurisdiction. Because the justice court order dismissed all charges against Warren, it was a final judgment from which the State could appeal. See NRS 177.015(1)(a). Therefore, we deny the petition for a writ of certiorari. See NRS 34.020(2).

Order, Attached as Exhibit A, at pg. 1. Judge Silver entered a five page dissenting opinion in which she explained why the district court lacked jurisdiction to hear the

...

State's appeal. Order at pp. 2-7. She began by noting the importance of this issue:

I feel compelled to write a dissent because the issue regarding jurisdiction is of statewide importance and our court will continue to see this type of procedural irregularity in the future if not addressed. See Badger v. Eighth Judicial Dist. Court, 132 Nev. ___, ___, 373 P.3d 89, 93 (2016) (granting a writ petition challenging the denial of a motion to dismiss where the issue involved [an] unsettled and recurring question of law); Lund v. Eighth Judicial Dist. Court, 127 Nev. 358, 364, 255 P.3d 280, 284 (2011) (noting writ relief may be appropriate to clarify an issue of statewide importance).

Order pg. 4. Judge Silver then explained the remedies available to the State if a justice court finds a lack of probable cause to support felony charges:

This court has previously affirmed a State's challenge to a justice court's finding of a lack of probable cause at a preliminary hearing where the challenge is made by way of a motion for leave to file an information by affidavit *or by seeking an indictment before a grand jury*. See Moultrie v. State, 131 Nev. ___, 364 P.3d 606, 613-14 (Ct. App. 2015) (affirming the district court's decision granting a motion for leave to file an information by affidavit after the justice court erroneously found that the State did not meet its burden of proof for *felony* charges where the justice of the peace dismissed the justice court case). In contrast, here a different district court denied the State's motion to amend by information under the facts of this case and the State chose not to proceed alternatively to the grand jury for a probable cause determination. Instead the State *appealed* the justice of the peace's determination to dismiss *felony and gross misdemeanor* charges because the State's evidence was insufficient to meet the probable cause standard.

Order at pp. 4-5.

Judge Silver next explained why Judges Tao and Gibbons were wrong in finding that the appeal was authorized by NRS 177.015:

NRS 177.015 provides that the State may appeal a *final judgment* of the justice court. Further, in Sandstrom v. Second Judicial Dist. Court, 121 Nev. 657, 660, 119 P.3d 1250, 1254 (2005) our supreme court clarified stating, “[w]e conclude, however that NRS 177.015(1)(a) does indeed authorize the State to appeal from an order granting a motion to dismiss a *misdemeanor criminal complaint*.” (Emphasis added). But Sandstrom specifically addressed criminal misdemeanor appeals and, in my view, Sandstrom simply does not extend to appeals regarding a justice court’s dismissal of felony or gross misdemeanor charges after a justice of the peace finds insufficient evidence for a determination of probable cause.

Order at pg. 5. Rather, as Judge Silver explained, the State still had remedies available to continue its prosecution by (1) seeking leave to file an information by affidavit in the district court, pursuant to NRS 173.035(2); or seeking an indictment by a grand jury Id. (citing State v. Sixth Judicial District Court In & For The County of Humboldt, 114 Nev. 739, 743, 964 P.2d 48-50 (1998); NRS 178.562(2)). Id. “NRS 177.015, Humboldt, and Sandstrom do not provide for an appeal of a justice court’s determination finding insufficient evidence presented by the State because the justice court’s dismissal of a felony or gross misdemeanor charges at a preliminary hearing is not a *final judgment*.” Order at pp. 5-6 (Silver, J., dissenting). Judge Silver also noted the glaring absence from Nevada’s jurisprudence “is what the State did here:

appeal a dismissal of a criminal complaint charging both felonies and gross misdemeanors for lack of probable cause.” Order at pg. 6 (Silver, J., dissenting).

Petitioner Warren respectfully submits that Judge Silver’s opinion is correct and that the majority opinion of the Court of Appeals erroneously finds district court jurisdiction where none exists. There is no right of appeal, by either statute or rule, from a justice court order finding a lack of probable cause to support felony charges following a preliminary hearing.

Nevada has defined available remedies for the State following dismissal of a criminal complaint at a preliminary hearing based upon a lack of probable cause. After a magistrate dismisses a criminal complaint at a preliminary hearing for lack of probable cause, the State is prohibited from refileing the same charge that was dismissed because of insufficient evidence. Nevada criminal procedure dictates that “the discharge of a person accused upon preliminary examination is a bar to another complaint against the person for the same offense, but does not bar the finding of an indictment or the filing of an information.” NRS 178.562(2). If a defendant is not bound over for a charge, the State may either: (1) seek an indictment by a grand jury; or (2) seek leave to file an “information by affidavit” in the district court, pursuant to

NRS 173.035(2).³ State v. Sixth Judicial District Court, 114 Nev. 739, 743, 964 P.2d 48, 50 (1998). Other cases which suggest a different scheme were overruled. Id.

The State's challenge to a justice court's decision finding a lack of probable cause at a preliminary hearing is through a motion for leave to file an information by affidavit or by seeking an indictment before a grand jury. See e.g. Moultrie v. State, 364 P.3d 606 (Nev. App. 2015) (addressing the district court's decision on a motion for leave to file an information by affidavit after the justice court found that the State did not meet its burden of proof for a felony and discharged the defendant); Parsons v. State, 115 Nev. 91, 978 P.2d 963 (1999) (addressing a district court's decision on a motion for leave to file an information by affidavit after the justice court dismissed charges at a preliminary hearing). Other than seeking an Indictment, there is no other method for challenging a justice court's probable cause determination.

³NRS 173.035(2) provides:

If, however, upon the preliminary examination the accused has been discharged, or the affidavit or complaint upon which the examination has been held has not been delivered to the clerk of the proper court, the Attorney General when acting pursuant to a specific statute or the district attorney may, upon affidavit of any person who has knowledge of the commission of an offense, and who is a competent witness to testify in the case, setting forth the offense and the name of the person or persons charged with the commission thereof, upon being furnished with the names of the witnesses for the prosecution, by leave of the court first had, file an information, and process must forthwith be issued thereon. The affidavit need not be filed in cases where the defendant has waived a preliminary examination, or upon a preliminary examination has been bound over to appear at the court having jurisdiction.

The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists. Castillo v. State, 106 Nev. 349, 352, 729 P.2d 1133, 1135 (1990). No statute or court rule provides for an appeal from a justice court order finding that the State failed to present probable cause to support a charge at a preliminary hearing. In its Notice of Appeal, the State cited to NRS 177.015 and Sandstrom v. Second Judicial Dist. Court, 121 Nev. 657, 119 P.3d 1250 (2005) as authority for the assertion that it may appeal from the justice court’s finding of a lack of probable cause. App. 2-3. Neither supports the State’s assertion. In Sandstrom, this Court considered an original petition for a writ of certiorari, filed by a defendant, who argued that a district court lacked jurisdiction to entertain an appeal by the State from a justice court order granting a motion to dismiss a misdemeanor criminal complaint. Id. at 658, 119 P.3d at 1251. Sandstrom did not address felony charges for which no probable cause was found, but instead concerned only misdemeanor complaints over which the justice court has final decision making authority. Specifically, this Court noted that under the Nevada Constitution, the legislature has the authority to ““prescribe by law the manner, and determine the cases in which appeals may be taken from Justices and other courts.”” Id. at 659, 119 P.3d at 1252 (quoting Nev. Const. art. 6, § 8). The legislature defined “the parameters of the district courts’ appellate jurisdiction respecting criminal misdemeanor cases originating in justice

court [by enacting NRS 177.015, which] provides in pertinent part: “The party aggrieved in a criminal action may appeal only as follows: 1. Whether that party is the State or the defendant: (a) To the district court of the county from a final judgment of the justice court.”” Id. The Court found that dismissal of a misdemeanor complaint was a final judgment because it “dispose[d] of all issues and [left] nothing for future consideration.” Id.

Sandstrom does not apply, by either its plain language or by its rationale, to a justice court’s finding of a lack of probable cause to support felony charges. Such an order does not dispose of all issues and it does not leave nothing for future consideration. Rather, as set forth above, following an order like that at issue here, the State may seek an indictment by a grand jury; or (2) seek leave to file an “information by affidavit” in the district court, pursuant to NRS 173.035(2). State v. Sixth Judicial District Court, 114 Nev. at 743, 964 P.2d at 50. These statutory remedies were provided by the Legislature, rendering NRS 177.015 inapplicable to this type of order.

There is no rule providing for an appeal to the district court from an order of the justice court finding a lack of probable cause to support felony charges. Likewise, there is no case authority finding that such an appeal is possible. The district court lacked jurisdiction over the appeal. This Court should grant this petition for review

and should then issue a writ of certiorari based upon the district court's actions which were taken in excess of its jurisdiction.

CONCLUSION

Petitioner Warren respectfully urges this Court to grant this petition for review; reverse the decision of the Court of Appeals by finding that the district court exceeded its jurisdiction by hearing the State's appeal in the absence of statutory authority granting the court jurisdiction to hear the appeal; and vacate the district court's order.

Dated this 3rd day of April, 2018.

/s/ JONELL THOMAS

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CERTIFICATE OF COMPLIANCE

1. I hereby certify this Petition does comply with the formatting requirements of NRAP 32(a)(4).
2. I hereby certify that this Petition does comply with the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word Perfect Office X8 in 14 point font of the Times New Roman style.
3. I hereby certify that this Petition does comply with the word limitation requirement of NRAP 32(a)(7)(A)(ii). The relevant portions of the brief are 3232 words.
4. Finally, I hereby certify that I have read this Petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular, NRAP 28(e)(1), which requires every assertion in the Petition regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanction

in the event that the accompanying Petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 3rd day of April, 2018.

/s/ JONELL THOMAS

JoNell Thomas
Nevada Bar No. 4771
Special Public Defender
330 S. Third Street Ste. 800
Las Vegas NV 89155

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2018, a true and accurate copy of this PETITION FOR SUPREME COURT REVIEW OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION, OR IN THE ALTERNATIVE WRIT OF MANDAMUS was served on the following,

BY ELECTRONIC FILING TO

Jacob Villani, Chief Deputy District Attorney
Genevieve Craggs
District Attorney's Office
200 Lewis Ave 3rd Floor
Las Vegas, NV 89101

BY HAND DELIVERY TO

The Honorable Judge Richard Scotti
330 South 3rd Street, 11th Floor
Las Vegas NV 89101

Dated: 4/3/18

/s/ JONELL THOMAS

JONELL THOMAS
Special Public Defender
Public Defender

EXHIBIT A

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH WARREN, JR.,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
RICHARD SCOTTI, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 73963

FILED

MAR 21 2018

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

ORDER DENYING PETITION

This is an original petition for a writ of certiorari or, in the alternative, a writ of prohibition or mandamus. We ordered the State to file an answer to the petition. We subsequently ordered Joseph Warren, Jr., to file a status report.


In his request for certiorari, Warren seeks an order vacating a district court order of remand. Warren asserts the district court lacked jurisdiction to hear an appeal from a justice court order finding a lack of probable cause to support felony charges. Warren has failed to demonstrate the district court exceeded its jurisdiction. Because the justice court order dismissed all charges against Warren, it was a final judgment from which the State could appeal. See NRS 177.015(1)(a). Therefore, we deny the petition for a writ of certiorari. See NRS 34.020(2).


In the alternative, Warren also seeks a writ of prohibition that vacates the order of remand and prohibits the district court from taking further action in the case, or a writ of mandamus that directs the district

court to vacate the order of remand and deny the State's appeal on its merits.

We have considered the petition and all documents filed in this matter, and we are not satisfied this court's intervention by way of extraordinary writ is warranted at this time. *See* NRS 34.160; NRS 34.170; NRS 34.320; NRS 34.330; NRAP 21(b)(1); *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) ("Petitioner[] carr[ies] the burden of demonstrating that extraordinary relief is warranted."). Notably, Warren informs this court that as of December 19, 2017, the State has not filed any documents or placed the case on calendar in justice court. Warren notes this is consistent with the fact the State agreed the charges in the underlying case would be dismissed as part of the negotiations in another district court case. Accordingly, we also deny Warren's alternative requests for a writ of prohibition or writ of mandamus, and we

ORDER the petition DENIED.


_____, J.
Tao


_____, J.
Gibbons

SILVER, C.J., dissenting:

Despite the disturbing underlying facts of this criminal case, I believe this court is constrained to grant the petitioner's writ with instructions to the district court to reverse its decision granting the State's appeal on the merits, and I would mandate dismissal of the State's appeal.

Although the supreme court has not previously ruled on this issue, I believe under these facts the district court lacks jurisdiction to entertain the State's underlying appeal. Therefore, I respectfully dissent.

On March 6, 2017, the State filed a criminal complaint against the petitioner in justice court in case 17F03940X and held a preliminary hearing on April 20, 2017. After the preliminary hearing, the justice of the peace took the matter under submission and filed findings of facts and conclusions of law dismissing the justice court case on May 4, 2017. The State did not proceed to the grand jury; instead, it simultaneously elected to file a motion for leave to file an information by affidavit in the district court in case number C323426 and *appeal* the justice of the peace's dismissal of its complaint in the case before the court.

Then, on June 5, 2017, in case C323426, a different district court judge denied the State's motion for leave to file an information by affidavit in the district court, finding the State failed to meet the requirements of NRS 173.035. Thereafter, on June 28, 2017, the appellant filed his motion to dismiss the appeal in district court in this case, arguing that the district court lacked jurisdiction to entertain the State's appeal. The State countered that it did have jurisdiction, while arguing that the justice of the peace's dismissal of the case was arbitrary and capricious mandating reversal.

On July 27, 2017, the district court denied petitioner's motion to dismiss, explaining that the justice court's dismissal was a final judgement for purposes of NRS 177.015, and that it had jurisdiction to consider the State's appeal from justice court. On August 17, 2017, the district court reversed the justice court and *remanded the case back to justice court with no instructions, but presumably for the justice of the peace*

to consider its legal rulings and find probable cause existed based on the district court's evidentiary rulings.

On September 13, 2017, petitioner filed this Writ of Certiorari, or in the Alternative, Writ of Prohibition or in the Alternative Writ of Mandamus. Although the State filed an answer in this matter, ultimately petitioner and the State entered into negotiations in another criminal case by which petitioner pleaded guilty to those felony charges and stipulated to prison time. In exchange for petitioner's plea of guilty in the other case, the State agreed not to proceed on this underlying case in justice court.

While I acknowledge that based on the status checks it appears that the State is not moving forward in justice court and is honoring its negotiations with petitioner, I believe that our intervention is still warranted. I feel compelled to write a dissent because the issue regarding jurisdiction is of statewide importance and our court will continue to see this type of procedural irregularity in the future if not addressed. See *Badger v. Eighth Judicial Dist. Court*, 132 Nev. ___, ___, 373 P.3d 89, 93 (2016) (granting a writ petition challenging the denial of a motion to dismiss where the issue involved a unsettled and recurring question of law); *Lund v. Eighth Judicial Dist. Court*, 127 Nev. 358, 364, 255 P.3d 280, 284 (2011) (noting writ relief may be appropriate to clarify an issue of statewide importance).

This court has previously affirmed a State's challenge to a justice court's finding of a lack of probable cause at a preliminary hearing, where the challenge is made by way of a motion for leave to file an information by affidavit *or by seeking an indictment before a grand jury*. See *Moultrie v. State*, 131 Nev. ___, 364 P.3d 606, 613-14 (Ct. App. 2015) (affirming the district court's decision granting a motion for leave to file an

information by affidavit after the justice court erroneously found that the State did not meet its burden of proof for *felony* charges where the justice of the peace dismissed the justice court case). In contrast, here a different district court denied the State's motion to amend by information under the facts of this case and the State chose not to proceed alternatively to the grand jury for a probable cause determination. Instead, the State *appealed* the justice of the peace's determination to dismiss *felony and gross misdemeanor* charges because the State's evidence was insufficient to meet the probable cause standard.

NRS 177.015 provides that the State may appeal a *final judgment* of the justice court. Further, in *Sandstrom v. Second Judicial Dist. Court*, 121 Nev. 657, 660, 119 P.3d 1250, 1253 (2005) our supreme court clarified stating, "[w]e conclude, however, that NRS 177.015(1)(a) does indeed authorize the State to appeal from an order granting a motion to dismiss a *misdemeanor criminal complaint*." (Emphasis added). But, *Sandstrom* specifically addressed criminal misdemeanor appeals and, in my view, *Sandstrom* simply does not extend to appeals regarding a justice court's dismissal of felony or gross misdemeanor charges after a justice of the peace finds insufficient evidence for a determination of probable cause.

Game over? No! The State can still proceed against a criminal defendant by utilizing two different routes to continue its prosecution of a defendant on the same charges. The Nevada Supreme Court has held, "Pursuant to NRS 178.562(2), if a defendant is not bound over, the state may: (1) seek leave to file an information by affidavit in the district court, pursuant to NRS 173.035(2); or (2) seek an indictment by a grand jury." *State v. Sixth Judicial District Court In & For County of Humboldt*, 114 Nev. 739, 743, 964 P.2d 48, 50 (1998). But, NRS 177.015, *Humboldt*, and

Sandstrom do not provide for an appeal of a justice court's determination finding insufficient evidence presented by the State because the justice court's dismissal of felony or gross misdemeanor charges at a preliminary hearing is not a *final judgment*.

Here, the State did alternatively proceed, albeit unsuccessfully, in district court on its motion to file an information by affidavit. The State did not alternatively proceed to the grand jury but clearly had the option to do so. Glaringly absent from Nevada jurisprudence is what the State did here: appeal a dismissal of a criminal complaint charging both felonies and gross misdemeanors for lack of probable cause.

I believe that the State's option following alleged egregious magistrate error is provided for by NRS 173.035, which allows the State to proceed against a defendant by filing an information by affidavit. In fact, the Nevada Supreme Court in *Humboldt* stated, "this court has held that NRS 173.035(2) is 'a safeguard against *egregious error* by a magistrate in determining probable cause, not a device to be used by a prosecutor to satisfy deficiencies in evidence at a preliminary examination, through affidavit.'" 114 Nev. at 741-42, 964 P.2d at 49, *quoting Cranford v. Smart*, 92 Nev. 89, 91, 545 P.2d 1162, 1163 (1976); *see also Moultrie*, 131 Nev. at ___, 364 P.3d at 610-11 (discussing egregious error). Furthermore, nothing prevented the State from presenting this case to the grand jury and, ultimately, filing an indictment against the defendant on these charges.

Therefore, for the foregoing reasons, I do agree with petitioner that under the facts of this case, the district court lacked jurisdiction to consider the State's appeal of the justice court's dismissal for lack of probable cause because of the procedural vehicle the State utilized here. Perhaps the Nevada Supreme Court or this court will clarify or extend

Sandstrom to allow for not only misdemeanor appeals filed by the State, but also felony or gross misdemeanor appeals filed by the State after dismissal by a justice of the peace. But, until *Sandstrom* is clarified or extended, I do not believe that existing law allows for this procedural type of appeal.

Because I believe existing law grants the State two "bites at the apple" already, and not three, I respectfully dissent. Accordingly, I would grant petitioner's writ with instructions to the district court to dismiss the State's appeal in this case with additional instructions ordering the State to dismiss the erroneously remanded case of 17F03940X currently pending in justice court as the district court had no jurisdiction to consider the appeal on the merits, nor did it have the authority to reverse and remand the case after the justice of the peace dismissed it.¹


Silver C. J.

cc: Hon. Richard Scotti, District Judge
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹Dismissing the pending case in justice court should be a mere ministerial act for the State since I note petitioner pled guilty and has been sentenced to prison per negotiations in his other criminal case. Thus, by dismissing the underlying case in justice court, the State would be fulfilling its promise based on the agreement between the parties. I note that as of the date of filing this order, the underlying case remains pending in justice court.