

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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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,  
Respondent's,  
and  
THE STATE OF NEVADA,  
Real Party In Interest.

Electronically Filed  
Jun 08 2018 04:17 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

CASE NO: 73963

**ANSWER TO PETITION FOR REVIEW**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, STEVEN S. OWENS, and files this Answer to Petition for Review pursuant to this Court's Order Directing Answer to Petition for Review, filed May 24, 2018.

This petition is based on the following memorandum of points and authorities and all papers and pleadings on file herein.

Dated this 8<sup>th</sup> day of June, 2018.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney

BY */s/ Steven S. Owens*

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STEVEN S. OWENS  
Chief Deputy District Attorney  
Nevada Bar # 004352  
Office of the Clark County District Attorney

**MEMORANDUM**  
**POINTS AND AUTHORITIES**

On March 21, 2018, the Court of Appeals denied Warren's request for certiorari, writ of prohibition or mandamus. Warren then filed the instant Petition for Supreme Court review on April 4, 2018. On May 24, 2018, this Court directed the State to answer the petition for review within 15 days.

Pursuant to NRAP 40B, a party aggrieved by a decision of the Court of Appeals may file a petition for review with the clerk of the Supreme Court within 18 days. The petition must state the question presented for review and the reason review is warranted. Supreme Court review is not a matter of right but of judicial discretion. The following, while neither controlling nor fully measuring the Supreme Court's discretion, are factors that will be considered in the exercise of that discretion: 1) Whether the question presented is one of first impression of general statewide significance; 2) Whether the decision of the Court of Appeals conflicts with a prior decision of the Court of Appeals, the Supreme Court, or the United States Supreme Court; or 3) Whether the case involves fundamental issues of statewide public importance. NRAP 40B(a). The petition shall succinctly state the precise basis on which the party seeks review by the Supreme Court and may include citation of authority in support of that contention.

In seeking this Court's review, Warren argues that the district court does not have discretion to hear a State's appeal from a justice court's order dismissing felony charges. Petition at 2-3. He further argues this is a case of first impression or of general statewide significance, and involves fundamental issues of statewide public importance. Petition at 3. The State responds as follows.

The district court has jurisdiction to hear an appeal from a justice court order dismissing a felony case. A majority of the Court of Appeals held that "Because the justice court order dismissed all charges against Warren, it was a final judgment from which the State could appeal." Warren v. State, Docket No. 73963, Order Denying Petition at 1. This reasoning is sound and does not warrant this Court's intervention by way of petition for review.

Warren erroneously asserts that the district court lacked jurisdiction to consider the State's Appeal and regurgitates the Court of Appeals dissent. This Court has consistently held that the right to appeal is statutory; where no statutory authority to appeal is granted, no right to appeal exists. Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). The plain language of NRS 177.015(1)(a) clearly vests the district court with final appellate jurisdiction over a final judgment of the justice court, regardless of whether the party appealing is the State or the defendant.

Sandstrom v. Second Judicial Dist. Court of State, 121 Nev. 657, 659, 119 P.3d 1250, 1252 (2005).

This Court has already concluded that NRS 177.015(1)(a) vests the district courts “with the same appellate jurisdiction as is granted to this court in subsection 1(b),” which includes an appeal from the granting of a motion to dismiss. Sandstrom, 121 Nev. at 660, 119 P.3d at 1253. Subsection 3 of the statute which provides that only a defendant may appeal from a final judgment in a criminal case, only applies to a final verdict or judgment of conviction and has no application to the present facts. But an erroneous legal ruling by district court dismissing a criminal case is appealable to this Court, even if only some of the counts are dismissed. State v. Koseck, 112 Nev. 244, 245, 911 P.2d 1196, 1197 (1996). So, too, an erroneous legal ruling by a justice of the peace dismissing a criminal case is appealable to the district court. The only remaining question is whether the justice court order dismissing the complaint constituted a final judgment.

This Court has defined a final order as one that disposes of all issues and leaves nothing for future consideration. Sandstrom, 121 Nev. at 659, 119 P.3d at 1252; Castillo, 106 Nev. at 351, 792 P.2d at 1134 (holding that “[a]n appeal in a criminal case lies from the final judgment of the district court, not from an order finally resolving an issue in a criminal case”); Elsman v. Elsman, 54 Nev. 20, 30, 3

P.2d 1071, 1072 (1931) (stating that a final judgment in a civil case disposes of all issues and leaves nothing for future consideration). The justice court order in the present case dismissed all criminal charges and the entirety of the criminal complaint leaving no issue unresolved. PA 119-28. Just like the order of dismissal of misdemeanor charges in Sandstrom, an order of dismissal of felony charges is a final judgment.

Petitioner reasons that the order of dismissal of felony charges in justice court is not a “final judgment” because the State has alternative means of prosecution available to it, specifically indictment and information by affidavit. Petition at 9. But the finality of a particular judgment does not turn on the availability of other remedies. In Sandstrom, the dismissal of misdemeanor charges in justice court was no less final even though alternative means of prosecution may exist by prosecuting the same charges in municipal court. When parties appeal to this Court from a final judgment, there is jurisdiction for the appeal notwithstanding the availability of other remedies in federal court or by collateral writ proceedings. It is not the lack of other remedies which triggers the right to appeal, but the finality of the judgment of the particular court being appealed. In NRS 177.015, a “final judgment” is modified by the words, “of the justice court.” Just because other entities such as a grand jury or district court may have something more to say in regards to the same criminal

charges, does not render the justice court order of dismissal any less final. The justice of the peace has spoken their final word as to the disposition of the criminal charges before them and the order of dismissal is final.

Warren argues that other than seeking an Indictment, there is no other method for challenging a justice court's probable cause determination. Petition at 9. The fact that there is more than one way that the State could have addressed the justice court order does not equate to a finding that the way the State proceeded was invalid. NRS 173.035(2); NRS 177.015(1)(a). In the adversarial system, the State has an almost exclusive right to decide how to charge a criminal defendant, which includes the authority to allege that a defendant committed an offense by one or more alternative means. NRS 173.075(2); Righetti v. Eighth Judicial Dist. Court, 133 Nev. \_\_, \_\_, 388 P.3d 643, 647 (2017). Moreover, so long as a prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file generally rests entirely in his or her discretion. Salaiscooper v. Eighth Judicial Dist. Court, 117 Nev. 892, 903, 34 P.3d 509, 516 (2001).

The power of the district courts to entertain appeals from justice court orders is firmly rooted in the Nevada Constitution, as well as in our statutory authority. Already, district courts have jurisdiction to review justice court findings and dismiss

felony charges through a defendant's Pre-Trial Petition for Writ of Habeas Corpus. State v. Fuchs, 78 Nev. 63, 65, 368 P.2d 869, 869 (1982); Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). District courts regularly review a justice court's determination of the facts, law, and evidence presented at preliminary hearings. The State's appeal to the district court in this case challenged the justice court's probable cause determination and legal interpretations on the hearsay statute pursuant to NRS 177.015 (1)(a). To hold that the State cannot challenge a probable cause hearing through NRS 177.015(a) but at the same time allow defendants to challenge justice court rulings on felony charges arising from a justice court preliminary hearing would prejudice the State. Therefore, it follows that district courts have the ability and power to review probable cause determinations by the justice court on felony preliminary hearings.

Despite the plain language of this statute, Warren argues that neither NRS 177.015 nor Sandstrom apply in this case. Petition at 10. This is without merit. The only argument made by Warren in opposition to the plain language of the statute is to point out that Sandstrom was a misdemeanor case whereas this case deals with felonies. This argument does not overcome the statutory language that the party aggrieved in a criminal action, whether the State or the defendant, may appeal to the district court from a final judgment of the justice court. Nothing in the statute makes

a distinction between misdemeanor and felony cases, and Sandstrom did not expressly exclude felony cases from its analysis. The State's Notice of Appeal was filed within the statutory time period. As such, the plain language of NRS 177.015 provides the State the right to appeal from a final judgment of the justice court and Warren's contention to the contrary is incorrect.<sup>1</sup>

Moreover, the State questions why Warren is disgruntled with the fact that the State did not proceed to the grand jury. Had Warren's case gone before the grand jury with the facts elicited at the preliminary hearing it is more likely that he would have been indicted based upon the DNA match found in the victim. PA 139. Warren would have had a far more difficult time challenging case with limited involvement and opportunity to respond. Arguably, both of the methods that the State chose to

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<sup>1</sup> Moreover, NRS 173.035(2) provides the State with the remedy of seeking leave to file an Information by Affidavit. NRS 173.035(2) does not limit the State by claiming that indictments and motions for leave to file an information by affidavit are the sole and exclusive remedy for the State after a justice court discharges a defendant. In the instant case, the State chose to pursue options permitted by both NRS 173.035(2) and NRS 177.015(1)(a), each of which has very different consequences. If the State's motion seeking leave to file an information by affidavit in front of Judge Cadish were granted, the case at issue would have been set for trial in district court and the justice court's order would not have been addressed. Similarly, at the time Judge Scotti considered the appeal from the justice court, the State noted if the court granted the appeal, the justice court's Order would be vacated and the case sent back to the justice court for further proceedings. Therefore, both NRS 177.015 and NRS 173.035(2) provided the court with authority to decide the State's issues through two separate procedural mechanisms.



proceed forward on in challenging the justice court's decision allowed Warren to be present and respond to the State's arguments before the district court.

This is not a case of the State getting two bites at the apple. Regardless of Warren's interpretation of NRS 177.015(1)(a) and Sandstrom, the State's case is not over simply because of a justice court's dismissal. The State like defendants have the opportunity to challenge the justice court in district court. Nevada statutory authority and case law supports the Court of Appeals finding and further that after a justice court's order dismissing charges after a preliminary hearing the State may appeal the justice court's decision regardless of any felony and misdemeanor distinction by one or more means: 1) indictment 2) motion for leave to file information by affidavit 3) appeal to the district court. NRS 177.015; NRS 173.035(2); Sandstrom, 121 Nev. at 657, 119 P.3d at 1250; State v. Sixth Judicial Dist. Court, 114 Nev. 739, 741, 964 P.2d 48, 49 (1998). Therefore, Warren's claim is not an issue of statewide importance and does not involve an unsettled recurring question of law. This Court's review under NRAP 40B is unwarranted as the legal standard has not been met here.

WHEREFORE, the State respectfully requests that the petition for review be denied.

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Dated this 8<sup>th</sup> day of June, 2018.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar # 001565

BY */s/ Steven S. Owens*

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## **CERTIFICATE OF COMPLIANCE**

1. **I hereby certify** that this petition for review or answer complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this petition complies with the type-volume limitations of NRAP 40, 40A and 40B because it is proportionately spaced, has a typeface of 14 points and contains 1,998 words.

Dated this 8<sup>th</sup> day of June, 2018.

Respectfully submitted,

STEVEN B. WOLFSON  
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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on June 8, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT  
Nevada Attorney General

JONELL THOMAS  
MELINDA SIMPKINS  
Special Public Defender's Office

STEVEN S. OWENS  
Chief Deputy District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

JUDGE RICHARD SCOTTI  
Eighth Judicial District Court, Dept. 2  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89101

BY /s/ E. Davis  
Employee, District Attorney's Office

SSO/Ashley Lacher/ed