IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEANDRE GATHRITE,

Petitioner,

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, COUNTY OF CLARK, THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE,

Respondent,

THE STATE OF NEVADA,

Real Party in Interest.

CASE NO: 77081

OPPOSITION TO EMERGENCY MOTION FOR STAY OF PROCEEDINGS PENDING RESOLUTION OF CONTEMPORANEOUS PETITIONS FOR WRIT OF PROHIBITION

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, KRISTA D. BARRIE, and files this Opposition to Emergency Motion For Stay of Proceedings Pending Resolution of Contemporaneous Petitions for Writ of Prohibition. This Opposition is filed pursuant to NRAP Rule 27 and is based on the following memorandum and all papers and pleadings on file herein.

///

///

///

18-902313

Dated this 3RD day of October, 2018.

Respectfully submitted,

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

BY */s/ Krista D. Barrie*
KRISTA D. BARRIE
Chief Deputy District Attorney
Nevada Bar #010310
Office of the Clark County District Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner is asking this Court for a stay while he challenges the district court's order for an evidentiary hearing on his own Motion to Dismiss for Prosecutorial Misconduct and Pre-Trial Petition for Writ of Habeas Corpus. This Court should decline to stay the proceedings below because Petitioner will not be harmed if a stay is denied, the State could suffer injury if a stay is granted, and Petitioner is unlikely to prevail on the merits.

STATEMENT OF THE CASE

On August 15, 2018, Deandre Gathrite ("Petitioner") was charged via Indictment with one count of Ownership or Possession of Firearm by Prohibited Person. Petitioner pleaded not guilty and invoked his right to trial within 60 days. The trial is currently set for November 13, 2018, with Calendar Call on November 8, 2018,

On September 7, 2018, Petitioner filed a Motion to Dismiss for Prosecutorial Misconduct. The State filed its Opposition on September 20, 2018.

Also on September 7, 2018, Petitioner filed a Pre-Trial Petition for Writ of Habeas Corpus challenging the Indictment. The State filed its Return on September 21, 2018.

On September 25, 2018, the parties appeared in district court on Petitioner's motion and pre-trial petition. The district court set an evidentiary hearing on

Petitioner's filings – the evidentiary hearing is currently scheduled for October 8, 2018. Petitioner objected to the setting of an evidentiary hearing and requested a stay to challenge it. The district court denied the request for a stay.

ARGUMENT

In determining whether to grant a stay of a criminal matter, this Court considers "(1) whether the object of the appeal will be defeated if the stay is denied, (2) whether the appellant will suffer irreparable or serious injury if the stay is denied, (3) whether the respondent will suffer irreparable or serious injury if the stay is granted, and (4) whether the appellant is likely to prevail on the merits in the appeal." State v. Nobles-Nieves, 129 Nev. __, __, 306 P.3d 399, 402-03 (2013) (citing, NRAP Rule 8(c)).[1]

Here, Petitioner claims that the district court erred in setting an evidentiary hearing on his challenges to the Indictment in his Motion to Dismiss for Prosecutorial Misconduct and his Pre-Trial Petition for Writ of Habeas Corpus because the justice court had already ruled on the issues raised. Petitioner now asks for a stay of the proceedings while he challenges the district court's setting of an evidentiary hearing. None of the Nobles-Nieves factors support a stay under these circumstances and the request should be denied.

---

[1] "[A] party must ordinarily move first in the district court for...a stay[.]" Nevada Rules of Appellate Procedure (NRAP) Rule 8(a)(1)(a). This requirement is not at issue in this case.

First, Petitioner will not suffer irreparable or serious injury if the stay is denied. Rather, if the stay is denied, his own challenges to the Indictment will be fully considered and decided in the district court after an evidentiary hearing. The full consideration of his motion and pre-trial petition is to Petitioner's benefit.

Moreover, the State will suffer irreparable harm if a stay is granted. Any delay makes it that much harder to carry the State's heavy burden of proof at trial. Witnesses' recollections fade with time. Witnesses can become unavailable. Evidence can be lost or inadvertently destroyed. Trial is currently scheduled for November 13, 2018, and any delay will prejudice the State. The State would also be harmed if the motion and pre-trial Petition were not fully considered and heard in district court and an adequate record made for any possible appellate review.

Finally, writs of prohibition are extraordinary writs. Challenges to the admissibility or suppression of evidence on constitutional grounds "should be made in a motion to suppress evidence, and review of the district court's ruling may be sought following trial and conviction." Hardin v. Griffin, 98 Nev. 302, 304, 646 P.2d 1216, 1217 (1982).

For all these reasons, Petitioner's request for a stay should be denied.

CONCLUSION

Based on the foregoing arguments as set forth above, the State respectfully requests that Petitioner's Emergency Motion For Stay of Proceedings Pending

Resolution of Contemporaneous Petitions for Writ of Prohibition be DENIED.

Dated this 3rd day of October, 2018.

Respectfully submitted,

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

BY */s/ Krista D. Barrie*
KRISTA D. BARRIE
Chief Deputy District Attorney
Nevada Bar #10310
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 89155-2212

CERTIFICATE OF SERVICE

I hereby certify and affirm that service of this document was made this 3rd day of October, 2018, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

THE COURT OF APPEALS OF THE STATE OF NEVADA
201 South Carson Street, Suite 250
Carson City, Nevada 89701

ADRIAN M. LOBO, ESQ.
Lobo Law PLLC
400 S. 4th Street, Ste. 500
Las Vegas, Nevada 89101

BY */s/ J. Garcia*
Employee,
Clark County District Attorney's Office

KDB//jg