

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMMIE CAMERON, JR.,
Petitioner,

vs,

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, AND
THE HONORABLE ERIC JOHNSON,
DISTRICT JUDGE

Respondent,

and

THE STATE OF NEVADA,

Real Party In Interest.

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Feb 05 2019 02:35 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 77669

ANSWER TO PETITION FOR WRIT OF MANDAMUS

COMES NOW, the State of Nevada, Real Party in Interest, by STEVEN B. WOLFSON, District Attorney, through his Chief Deputy, STEVEN S. OWENS, on behalf of the above-named respondents and submits this Answer to Petition for Writ of Mandamus in obedience to this Court's order filed January 17, 2019, in the above-captioned case. This Answer is based on the following memorandum and all papers and pleadings on file herein.

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Dated this 5th day of February, 2019.

Respectfully submitted,

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

BY */s/ Steven S. Owens*

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

**MEMORANDUM OF
POINTS AND AUTHORITIES**

QUESTION PRESENTED

Whether the district court properly increased Petitioner's bail.

STATEMENT OF THE CASE

On July 16, 2018, Justice of the Peace Letizia Harmony set bail for Timmie Cameron (Hereinafter "Petitioner") at \$100,000. Petitioner's Appendix ("PA"), at 5. The next day, Petitioner plead not guilty to the charges against him and counsel for Appellant requested a bail hearing. PA 9. On July 18, 2018, Judge Harmony heard argument from both Petitioner and the State, and reduced Petitioner's bail to \$25,000 with mid-level electronic monitoring. PA 21. On July 23, 2018, Petitioner was released on bail.

On August 3, 2018, Petitioner was charged in district court by way of indictment with two counts FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (Category A Felony – NRS 200.310, 200.320, 193.165 – NOC 50055); two counts ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.165 – NOC 50138); one count BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.481 – NOC 50223); one count GRAND LARCENY OF FIREARM (Category B Felony – NRS 205.226 – NOC 50526); one count BURGLARY (Category B Felony – NRS 205.060 – NOC 50424); one count COERCION (Category B Felony – NRS 207.190

– NOC 53159) and one count OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony – NRS 202.360 – NOC 51460) for acts that occurred on or about June 21, 2018. A warrant was also issued for Petitioner’s arrest and his bail was set at \$150,000. PA 42.

On August 9, 2018, at Petitioner’s initial arraignment the State asked the district court judge to remand Petitioner into custody on the warrant. PA 42. After hearing from the parties, the judge decided to reduce the bail amount to that set in justice court and asked the parties to file a written motion to argue bail at a later date. PA 45.

On August 15, 2018, the State filed a Motion to Increase Bail. PA 79-88. Petitioner responded on August 17, 2018. PA 89-93. On August 21, 2018, the court heard arguments from both parties and granted the State’s Motion to Increase Bail. PA 70. Bail was increased to \$100,000 with house arrest. Id.

On December 14, 2018, Petitioner filed the Instant Petition for Writ of Mandamus. The State responds herein.

SUMMARY OF THE ARGUMENT

A Writ of Mandamus is not appropriate in this matter. The Petitioner received a routine bail setting and was given notice and an opportunity to be heard in both the justice court and district court. Nothing about Petitioner’s bail setting was improper or unfair.

Furthermore, the district court was free to set a new bail amount because Petitioner's case was a new case and not bound over from justice court. The State brought a new case against Petitioner through a grand jury indictment, which initiated a new case against Petitioner. Since the case was new, the district court was free to set bail at any amount desired. At no point was the district court required to consider any determinations made in justice court. Therefore, this Court should find that any justice court consideration in regarding Petitioners bail are immaterial and deny Petitioners Writ of Mandamus.

Moreover, the district court had good cause to increase Petitioner's bail under NRS 178.499. The district court judge was not required to give deference to the justice court's decision in deciding whether to increase bail. The district court judge was only required to find good cause to increase Petitioner's bail based on the information before him. The Judge increased Petitioner's bail due to his criminal history and risk of flight, and therefore the district court judge had good cause to increase Petitioner's bail.

Accordingly, this Court should deny Petitioner's Writ of Mandamus.

ARGUMENT

THE DISTRICT COURT PROPERLY INCREASED PETITIONER'S BAIL

A. A writ of Mandamus is not appropriate in this matter.

This Court may issue a writ of mandamus to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station or to

control a manifest abuse of an arbitrary or capricious exercise of discretion. NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). Mandamus will not lie to control discretionary action, unless discretion is manifestly abused or is exercised arbitrarily or capriciously. Id. The writ will not issue where the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170. This Court has previously emphasized the “narrow circumstances” under which mandamus is available and has cautioned that extraordinary remedies are not a means for routine correction of error. State v. District Court (Riker), 121 Nev. 225, 112 P.3d 1070 (2005). The purpose of a writ of mandamus is not simply to correct errors. Id.

Although Petitioner will have no adequate remedy at law to review his pre-trial bail setting, the routine bail setting in this case does not warrant this Court’s extraordinary intervention. Petitioner was given more than enough due process regarding his bail. He had notice and opportunity to be heard in justice court, and again in district court upon the State’s motion to increase Petitioner’s bail. Furthermore, since this case was not bound over from justice court, the district court was free to set Petitioner’s bail at any amount deemed necessary. Additionally, the court was not required to give deference to any justice court determinations regarding Petitioner’s bail. Nonetheless, the district court chose to keep Petitioner’s bail at the amount determined in justice court and only increased the bail upon a

finding of good cause.

Therefore, Petitioner's bail setting was fair and this Court's extraordinary intervention is not warranted to determine Petitioner's bail. Accordingly, this Court should deny the Petition for Writ of Mandamus.

B. The district court is not bound by the justice court's determination regarding bail.

When a Defendant's case is bound over from justice court to district court, all documents in the proceeding and bail is transferred over with the case. NRS 171.206. If a Defendant's case is not bound over, the State may: (1) seek leave to file an information by affidavit in the district court, or (2) seek an indictment by a grand jury. State v. Sixth Judicial Dist. Court (Warren), 114 Nev. 739, 743, 964 P.2d 48, 50 (1998). These options start a new case. Warren v. Eighth Judicial District Court, 134 Nev. ___, 427 P.3d 1033, 1036 (2018). The court shall issue a warrant for each Defendant named in the indictment or information, and the amount of bail may be fixed by the court and endorsed on the warrant. NRS 173.145(1); NRS 173.155. When the indictment or information is for a felony and the Defendant before the filing thereof has given bail for the Defendant's appearance to answer the charge, the court in which the indictment or information is presented, or in which it is pending, may order the defendant to be committed to actual custody unless the Defendant gives bail in an increased amount, to be specified in the order. NRS 173.175.

Here, Petitioner's case was not bound over from the justice court. Instead, on August 3, 2018, the State secured a grand jury indictment against Petitioner. This created a new case against Petitioner. By virtue of the indictment, the district court judge had the authority to issue a warrant for Petitioner's arrest and set bail at any amount he deemed necessary. Furthermore, since Petitioner was charged with multiple felonies and had already made bail by the time the indictment was filed, the court also had the authority to have Petitioner committed to custody. At no point was the district court required to set bail at the amount determined in justice court, or give deference to any justice court determinations regarding bail. That the district court judge reduced Petitioner's bail down to that set in justice court and only increased it upon a formal motion and argument by the parties was a matter of choice and not a requirement.

Therefore, this Court should find that the district court was not bound by any justice court decision regarding bail, and any justice court determinations should be immaterial as to whether there was good cause to increase Petitioner's bail.

C. The district court had good cause to increase Petitioner's bail.

NRS 178.499 governs when an increase in bail is appropriate and states:

1. At any time after a district or Justice Court has ordered bail to be set at a specific amount, and before acquittal or conviction, the court may upon its own motion or upon motion of the district attorney and after notice to the defendant's attorney of record or, if none, to the defendant, increase the amount of bail for good cause shown.

2. If the defendant has been released on bail before the time when the motion to increase bail is granted, the defendant shall either return to custody or give the additional amount of bail.

Here, Petitioner asserts that the district court judge did not have good cause to increase bail because the court had no new information than that offered at justice court. Petition at 6. Specifically, Petitioner argues that he did not commit any new offenses during the eleven days of his release of custody from the time of his release to the date of his indictment and the State did not find new victims or additional crimes or add additional charges. Id.

As outlined in the State's prior argument, the district court was not bound by any of the justice court determinations in setting bail. Bail was reduced from \$100,000 to \$25,000 at Petitioner's initial arraignment by the district court judge, and upon the State's motion to increase bail, it was for that judge to find good cause to increase the bail amount. At no point was the district court judge required to give deference to any justice court findings.

During the hearing, the district court judge was provided with the State's motion, Petitioner's Opposition, Petitioner's last presentence investigation report, and the Nevada Pretrial Risk Assessment for Petitioner. PA 58. The State also argued that Petitioner was violent and had taken over \$6,000 in cash. PA 59. Additionally, the State argued that Petitioner was being charged with both a kidnapping with use and robbery with use, and he was facing a life sentence just for

the kidnapping charge. Id. He essentially extorted money from an ex-girlfriend with a firearm. Id. Last, the State emphasized that there was nothing preventing Petitioner from attempting to make contact with his victims and dissuading them. PA 66.

Upon his individual evaluation of the case and information before him, the district court judge found good cause as follows:

In terms of the bail in this case, it is my opinion that the State has proven by a preponderance of the evidence that the defendant presents a risk of flight. I say that based upon the allegations that are contained in this case; the potential sentences that are at issue here in this case and the defendant's prior criminal history, which does involve allegations relating to violence.

I also find that the defendant, by clear and convincing evidence, presents a risk of – to danger to the community. Again, that's based upon allegations contained here and his previous history, criminal history. In that regard, I do believe a bail of 100,000 is appropriate to deal both with the risk of flight and with the danger to the community and that, the addition of house arrest is a condition that provides for the protection of the community.

In my looking at the materials that I have relating to the Defendant Cameron, it is my sense that I think that he is able to make the \$100,000 bail. And in making bail, there will be sufficient reason for him to appear in court.

PA 71-72.

Therefore, the district court judge was free to make his own determination whether there was good cause to increase bail, the State provided good cause, and this Court should deny Petitioner's Writ of Mandamus.

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CONCLUSION

For the foregoing reasons, the State respectfully requests that the Petition for Writ of Mandamus be DENIED.

Dated this 5th day of February, 2019.

Respectfully submitted,

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

BY */s/ Steven S. Owens*

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

AFFIDAVIT

I certify that the information provided in this mandamus petition is true and complete to the best of my knowledge, information and belief.

Dated this 5th day of February, 2019.

BY */s/ Steven S. Owens*

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on February 5, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

MICHAEL D. PARIENTE, ESQ.
Counsel for Petitioner

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:

HONORABLE ERIC JOHNSON
Eighth Judicial District Court, Dept. XX
Regional Justice Center, 12th Fl.
200 Lewis Avenue
Las Vegas, Nevada 89101

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

SSO/Quanisha Holloway/jg