IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

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,

and

MATTHEW HANEY MOLEN,

Real Party in Interest.

CASE NO: _____

(D.C. NO: C-20-348754-A)

MOTION FOR STAY OF DISTRICT COURT ORDER UNDER NRAP 8(a)

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Deputy, ALEXANDER CHEN, and submits this Motion for Stay of District Court Proceedings Under NRAP 8(a)

This motion is based on the following memorandum, declaration, and all papers and pleadings on file herein.

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Dated this 22nd day of December, 2020.

Respectfully submitted,

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

BY */s/ Alexander Chen*

ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
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M E M O R A N D U M

Pursuant to NRAP Rule 8(a)(2), (d), the State seeks a stay of the district court proceedings below pending this Court's decision on the filed petition for a writ of prohibition and/or mandamus. A petition for a writ of prohibition and/or mandamus is necessary because ordinarily there would be no mechanism to appeal a misdemeanor appeal. Petitioner, however, wishes to challenge a district court order granting Appellant Matthew Molen's appeal and vacating his conviction for a misdemeanor Driving while Under the Influence of an Intoxicating Liquor charge.

In a Minute Order issued on November 9, 2020, the District Court ordered that the conviction be vacated because it determined Deputy District Attorney Scheible could not prosecute cases and concurrently serve in the Nevada Legislature.

On November 17, 2020, the State sought to get clarification on two grounds that were unclear from the district court's minute order. The State also requested a stay of the proceedings so that it could seek a petition for a writ of prohibition and/or mandamus from the Nevada Supreme Court. On November 18, 2020, an Order was filed vacating the conviction and remanding the case for a new trial. On December 15, 2020, a new Minute Order was filed seeking to address the State's request for clarification. The district court also denied the issuance of a stay of the Order.

Given that the District Court has denied that this matter be stayed, the State is now making a request pursuant to NRAP 8(2) that this Court stays the effect of the

district court's Order so that the State may file a petition for writ of prohibition and/or mandamus seeking relief in this matter.

The district court's arbitrary exercise of power in vacating the conviction is an issue of widespread importance. NRAP 8 provides that a party may move to stay a district court proceeding pending resolution of a petition for extraordinary relief. NRAP 8(a)(1)(A). Stay relief is conditioned under this rule upon the moving party requesting relief from the district court in the first instance. The State has done so, and that request was denied. Having satisfied the procedural predicate for an application of relief, this Court then considers the following factors upon the State's motion for a stay of lower-court proceedings:

> (1) Whether the object of the writ petition will be defeated if the stay is denied;
>
> (2) Whether petitioner will suffer irreparable or serious injury if the stay is denied;
>
> (3) Whether real party in interest will suffer irreparable or serious injury if the stay is granted; and
>
> (4) Whether petitioner is likely to prevail on the merits in the writ petition. *State v. Robles-Nieves*, 129 Nev. 537 (2013).

In the instant case, consideration of these four factors weigh in favor of the imposition of a stay. While the district court's order only has a direct legal effect at this time to Petitioner's individual case, the district court's Order is already being cited and circulated to other cases being prosecuted by Deputy District Attorney

Scheible. The effect of the district court's Order is causing irreparable harm to Petitioner because all misdemeanor appeals are assigned to this district court, so the Order theoretically prevents Deputy District Attorney Scheible from fulfilling her duties. Moreover, the Petitioner in this case, as well as in other similarly situated cases, runs the risk of lawful convictions being vacated based upon the arbitrary logic of the district court. Accordingly, Petitioner requests that this motion staying the proceedings of the district court be granted so that a petition for writ of prohibition and/or mandamus may be considered.

Moreover, Appellant Molen would not suffer prejudice if this matter were stayed. Appellant continued his trial multiple times prior to being convicted. Appellant's final appeal was even denied before the district court then changed course and granted the appeal based upon a newly raised claim. There is no speedy trial right or prejudice that Appellant would suffer if this Court were to grant a stay.

Finally, Petitioner is confident that it would prevail if this Court were to entertain briefing on the merits. The membership, qualifications, and prohibitions of who may serve in the Nevada Legislature is a function that is squarely given to the Legislature itself. The district court's arbitrary granting of an appeal based upon a Separation of Powers issue lacks merit.

Therefore, Petitioner is requesting that the effect of the district court's Order be stayed so that the State's petition may be decided.

Dated this 22nd day of December, 2020.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney

BY */s/ Alexander Chen*
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
Office of the Clark County District Attorney

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on December 22, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

CRAIG MUELLER, ESQ.
Counsel for Real Party In Interest

ALEXANDER CHEN
Chief Deputy District Attorney

I further certify that I served a copy of this document by electronic emailing a true and correct copy thereof to:

JUDGE RICHARD SCOTTI

Email: HowardM@clarkcountycourts.us

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

AC//jg