

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILBER ERNESTO MARTINEZ
GUZMAN,

Petitioner,

v.

No. 82342

Electronically Filed
Mar 30 2021 05:23 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

THE SECOND JUDICIAL
DISTRICT COURT OF THE STATE
OF NEVADA, IN AND FOR THE
COUNTY OF WASHOE;
THE HONORABLE CONNIE J.
STEINHEIMER,
DISTRICT JUDGE,

Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

_____ /

OPPOSITION TO EMERGENCY MOTION FOR STAY

CHRISTOPHER J. HICKS
Washoe County District Attorney

JOHN L. ARRASCADA
Washoe County Public Defender

MARK JACKSON
Douglas County District Attorney

JOHN REESE PETTY
Chief Deputy Public Defender
350 South Center Street, 5th floor
Reno, Nevada 89501

MARILEE CATE
Appellate Deputy
One South Sierra Street
Reno, Nevada 89501

ATTORNEYS FOR PETITIONER

ATTORNEYS FOR REAL PARTY
IN INTEREST

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILBER ERNESTO MARTINEZ
GUZMAN,

No. 82342

Petitioner,

v.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; THE HONORABLE
CONNIE J. STEINHEIMER,
DISTRICT JUDGE,

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

_____ /

OPPOSITION TO EMERGENCY MOTION FOR STAY

I. INTRODUCTION

Petitioner Wilber Ernesto Martinez Guzman (hereinafter, “Guzman”) has not shown that a stay is necessary or that his Original Petition for Writ of Mandamus presents a true emergency. In Guzman’s third petition for extraordinary relief, he asks this Court to intervene into a discretionary case management decision. Specifically, Guzman asks this Court to issue a writ of mandamus directing the district court to vacate a portion of its

scheduling order setting April 12, 2021 as the deadline for Guzman to file his anticipated intellectual disability motion, which Guzman has claimed he would file since July of 2019.¹ While Guzman’s April 12, 2021 motion deadline is quickly approaching, he will not suffer irreparable harm if this Court denies his motion for a stay. Assuming Guzman files his anticipated NRS 174.098 motion, timely or not, his alleged intellectual disability will be litigated with the district court and, then again, with this Court on direct appeal if he is convicted and sentenced to death. As such, Guzman’s emergency motion for a stay should be denied.

II. PROCEDURAL BACKDROP

Guzman first informed the district court that he anticipated filing a motion pursuant to NRS 174.098 on July 29, 2019. *See* 1 Real Party in Interest’s Appendix (“RA”), 8. Thereafter, he repeatedly advocated for a NRS 174.098 motion deadline months in advance of the anticipated trial dates.² *See id.* at 45, 49, 50-51, 81, 93; 2 RA 303, 306-307, 349, 366, 403, 409-413.

¹ Throughout the record, the parties and the district court interchangeably refer to Guzman’s contemplated motion as an “*Atkins* motion,” “NRS 174.098 motion,” and/or “intellectual disability motion.” *See Atkins v. Virginia*, 536 U.S. 304 (2002).

² The original trial was scheduled to begin in April of 2020. A second trial setting was scheduled for August of 2020, but was vacated during the summer of 2020 due to a motion from Guzman and the ongoing pandemic.

In March of 2020, Guzman sought an indefinite continuance of his NRS 174.098 motion deadline and the trial in this case. 1 Petitioner’s Appendix (“PA”) 15-27. On December 5, 2020, after hearing oral argument and taking evidence concerning Guzman’s request to indefinitely delay this case, the district court issued an order denying his motion for an indefinite trial continuance. *See* 2 PA, part 2, pgs. 295-323. The district court ordered that the eight-week trial would begin on September 20, 2021 and amended its scheduling order to address other case deadlines. *Id.* at 322. The district court set an April 12, 2021 deadline for Guzman to file his NRS 174.098 motion. *Id.*

Guzman chose not to object or otherwise seek relief from the district court’s scheduling order via motion or during subsequent status hearings.³ Notably, during the status hearing in this matter on January 4, 2021, Guzman’s counsel suggested another status hearing in 30 days so he could “give the Court a better update as to where we are status wise regarding our intellectual disability investigation and preparation....” 2 RA 448. The district court agreed to continue with monthly status hearings, but cautioned Guzman’s counsel “not to wait for 30 days if you find yourself in

³ The district court has held four status hearings after the order was issued.

a significant issue that is going to impact any of our dates.” *Id.* at l. 9-12.

Guzman’s counsel responded, “[w]e’ll notify the Court immediately.” *Id.* at l. 13. Yet, Guzman did not notify the district court of his newfound objection to an early NRS 174.098 motion deadline or otherwise seek relief from the district court.

Just ten days later, on January 14, 2021, Guzman filed the Petition with this Court. Despite encouraging the district court to set a status hearing for him to update the court on his *Atkins* investigation, when the hearing occurred on February 1, 2021, Guzman’s counsel stated, “[w]e don’t have any news to report, and we don’t really have anything to have the Court help us with at this time.” *Id.* at 458: 5-8.

On February 18, 2021, this Court entered an order directing the State to file an answer against the issuance of Guzman’s Petition, and granted Guzman the opportunity to file a reply in support of his Petition within 14 days after service of the Answer.

On February 25, 2021, Guzman filed a motion for partial stay with the district court. Petitioner’s Motion Appendix (“PMA”), pgs. 1-10. The State opposed the motion for stay on March 8, 2021. *Id.* at 11-20. Guzman filed his reply and a request for submission the following day. *Id.* at 21-30.

On March 18, 2021, the State filed its Answer to Guzman’s Petition with this Court.

On the morning of March 29, 2021, the district court held a status hearing. *Id.* at 31, 33. Guzman again chose not to seek relief from the April 12, 2021 filing deadline during this hearing. *See generally id.* at 33-34. Guzman submitted his motion for stay without further argument (*id.* at 38) and the district court orally denied Guzman’s motion. *Id.* at 39-41. The district court directed the State to prepare a proposed order. *Id.* at 41.

On the afternoon of March 29, 2021, Guzman filed his Reply in support of his Petition and an Emergency Motion for Stay with this Court.

III. LEGAL STANDARD

NRAP 8 and NRAP 27(e) apply to Guzman’s Emergency Motion for Stay.⁴ In addition, this Court generally considers the following factors in deciding whether to issue a stay:

- (1) Whether the object of the appeal or writ petition will be defeated if the stay is denied;
- (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;

⁴ Guzman has not satisfied the procedural requirements of NRAP 27(e) to show that he is entitled to emergency relief—including that he did not notify the State before he filed his motion and has not presented facts to show that he will be irreparably harmed if the April 12, 2021 motion deadline is not stayed. *See* NRAP 27(e)(1), (3). However, the State will focus its Opposition on the merits of Guzman’s claimed emergency and his request for a stay.

- (3) Whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and
- (4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

Hansen v. Eighth Judicial Dist. Court, 116 Nev. 650, 657, 6 P.3d 982 986 (2000); NRAP 8(c); *see also State v. Robles-Nieves*, 129 Nev. 537, 541, 306 P.3d 399, 403 (2013) (applying the same factors to a criminal case).

No single factor carries more weight than the others, but this Court has “recognized that depending on the type of appeal, certain factors may be especially strong and counterbalance other weak factors.” *Robles-Nieves*, 129 Nev. at 542, 306 P.3d at 403 (citing *Mikorn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004)).

IV. LEGAL ANALYSIS

A. The object of the Petition will not be defeated if the stay is denied.

Guzman’s Petition seeks an order from this Court to vacate the April 12, 2021 *Atkins* motion deadline set by the district court so that he can file his motion when he chooses. Guzman asks this Court to assume that the object of his Petition will be defeated if the stay is denied due to the upcoming motion deadline. Guzman does not explain why he seeks to vacate the deadline and, therefore, fails to articulate the true purpose of his Petition. This is likely because he wants this Court to treat this like a stay request from an order granting a suppression motion or an order

compelling arbitration where it has placed more of a burden on the respondent/real party in interest to show why a stay should be denied. *See Mot.*, pgs. 7-8 (citing *Robles-Neives, supra*, and *Mikorn, supra*, for the proposition that the State must demonstrate that his Petition appears to be frivolous or brought for dilatory purposes). However, the impending motion deadline does not present the same type of irreparable harm as an order suppressing evidence or an order compelling binding arbitration. Unlike in those circumstances, Guzman has a right to appeal an adverse intellectual disability finding. *See Robles-Neives, supra*, and *Mikorn, supra*; *see also* NRS 177.055(2).

While Guzman does not set forth the true object of his Petition, one obvious purpose can be gleaned. Guzman is attempting to circumvent the district court's requirement that he show good cause to continue the trial or extend his motion deadline. Guzman has repeatedly sought, and been granted, relief from the district court's scheduling orders in the past. Thus, Guzman's decision not to pursue his available remedy with the district court suggests that his Petition is made for a dilatory purpose and to avoid showing the district court good cause to extend a pretrial motion deadline and the trial date. Put another way, if this Court grants Guzman's request for a stay and orders the relief he seeks in his Petition, it would almost

certainly guarantee the lengthy trial continuance Guzman has been unsuccessful in obtaining at the district court level.

To the extent that there is a legitimate purpose behind Guzman's Petition, it arguably is to ensure that he can litigate his anticipated intellectual disability motion to avoid the death penalty. Even if that is the object of Guzman's Petition, it does not necessitate a stay. The district court has noted that there is "very little" it can do if Guzman does not meet the deadline, except make a "finding that [he] did have a good reason not to do it timely." 2 RA 414: 15-22. During the status hearing on March 29, 2021, the district court reiterated that if Guzman cannot meet the deadline, he may move to file his motion past the deadline upon an adequate showing of cause. PMA, pg. 40.

As such, the district court has made it abundantly clear that it will not categorically deny Guzman's motion even if he misses the motion deadline. It is evident that the district court will consider any NRS 174.098 motion, if one is made, on the merits and make appropriate findings based on information presented to it. Put another way, there is no question that Guzman's alleged intellectual disability will be litigated if he files it. Thus, the potential legitimate purpose of Guzman's Petition—to have the opportunity to litigate his anticipated intellectual disability motion—will

not be defeated if this Court denies his motion for stay. Accordingly, the first *Robles-Nieves* factor for a stay does not weigh in Guzman's favor. *See* 129 Nev. at 541, 306 P.3d at 403.

B. Guzman will not suffer irreparable or serious injury if the stay is denied.

Guzman has failed to show that the April 12, 2021 motion deadline creates a true emergency because he does not elaborate with facts to show how he will be irreparably harmed if the deadline passes. *See* NRAP 27(e)(3)(B). As discussed above, the district court has not denied Guzman of the opportunity to litigate an intellectual disability motion, nor will it if he misses the deadline. Thus, Guzman presents a hypothetical controversy and has not articulated any actual harm that he has suffered or will likely suffer if his emergency motion and his Petition are denied. *See Cote H. v. Eighth Judicial Dist. Ct.*, 124 Nev. 36, 38, n.1, 175 P.3d 906, 907, n.1 (2008).

Guzman contends that the stay should be granted for equitable purposes, since this is a capital case and the death penalty is not available for intellectually disabled defendants. *See* Mot., pgs. 9-10. These facts do not necessitate a conclusion that Guzman will suffer irreparable or serious injury if the stay is denied. If this Court denies a stay it does not follow that

Guzman will be sentenced to death in violation of NRS 174.098 or *Atkins*, *supra*.

If Guzman ultimately chooses to pursue the motion he has been suggesting he will file since July of 2019, the question of whether he is intellectually disabled will be extensively litigated. Indeed, if Guzman files an intellectual disability motion (consistent with the April 12, 2021 deadline or not), the motion is denied, and he is sentenced to death, the district court's decision regarding his intellectual disability claim will be automatically reviewed on appeal. *See* NRS 177.055(2). As part of the direct appeal, Guzman will have the opportunity to challenge any ruling related to the timeliness of his anticipated NRS 174.098 motion. *See State v. Covington*, Dkt. 71914, 433 P.3d 1252, *1 (Nev. 2019) (unpublished)⁵ (citing *Hernandez v. State*, 124 Nev. 639, 646-647, 188 P.3d 1126, 1131-1132 (2008), for the proposition that good cause to file an untimely NRS 174.098 motion will be evaluated on appeal as a mixed question of law and fact and giving deference to the district court's factual findings). Thus, the standard direct appeal process will guarantee that Guzman is not irreparably harmed—because it will prevent him from being sentenced to

⁵ Pursuant to NRAP 36(c)(3), this case is only cited for its persuasive value.

death if this Court determines that the district court wrongly decided the intellectual disability issue. As such, the second *Robles-Nieves* factor weighs against granting a stay. See 129 Nev. at 541, 306 P.3d at 403.

C. The State may suffer irreparable or serious injury if the stay is granted.

Guzman mistakenly contends that the State will not be harmed by a stay because the trial is five months after the current motion deadline. Guzman's argument is misplaced. Even if this Court acts quickly on the underlying Petition, the case will be stayed again when Guzman files his anticipated NRS 174.098 motion. NRS 174.098(2)(a). The case will languish in a stayed capacity in the critical months leading up to the trial date. With each passing day, it is more likely that the other deadlines set by the district court and the trial date become an illusion. This trial is scheduled for eight weeks, it is "not your average case,"⁶ and Guzman's experts are difficult to schedule around,⁷ so if the September date is not met

⁶ Guzman made this argument to support his motion for a continuance of the trial in 2020. See 2 RA 398 (noting that this is not an average case because of the three separate crime scenes, Carson City crime scenes, multiple searches, thousands of photos, hours of interviews, etc.); see also *id.* at 378 (noting that the State has seventeen noticed experts); *id.* at 396 (noting that the State has five law enforcement agencies involved in the case).

⁷ See *e.g.*, 2 RA 303 (during one argument in support of early *Atkins* deadlines Guzman's counsel argued that the setting would accommodate

a future continuance will likely be substantial. All the while, the State's case, preserved in the recollection and presence of witnesses to the investigation of Guzman's conduct, will wane and fade. Therefore, the third *Robles-Nieves* factor weighs against granting a stay. See 129 Nev. at 541, 306 P.3d at 403.

D. Guzman is unlikely to prevail on the merits of his Petition.

The State and Guzman disagree regarding his potential success on his Petition. Guzman suggests a stay is appropriate because the district court had a misplaced understanding of the underlying issues. Guzman's Petition is exactly what the district court classified it as—one asking this Court to find that the district court does not have the authority to set a pretrial motion deadline and, in turn, manage its docket.⁸

As highlighted above and more completely addressed in the State's Answer, Guzman has not shown that a writ of mandamus should issue in

his experts and said, “[s]o these experts are not easy to come upon. They are hard to get scheduled.”).

⁸ Guzman mistakenly argues in his Petition that the statute expresses clear legislative intent for capital defendants to have discretion over when to file an *Atkins* motion and, further, that the legislature did not intend for the district courts to have the power to set an *Atkins* motion deadline earlier than 10 days before trial. Pet., pg. 26 (asserting that the district court “did not have the power to set” the April 12, 2021 deadline for his *Atkins* motion), pg. 28 (arguing that he has a “statutorily granted right to determine when to file his motion under NRS 174.098(1)).

this case. Initially, Guzman’s Petition is faulty because he cannot articulate actual or likely harm from the order he challenges. *See Cote H.*, 124 Nev. at 38, n.1, 175 P.3d at 907, n.1. Guzman’s Petition is also inconsistent with the final judgment rule because he has available remedies: both with the district court now, and with this Court in a future direct appeal. *See e.g., Walker v. Second Judicial Dist. Ct. (Michaels)*, 136 Nev. Adv. Op. 80, *5, 476 P.3d 1194, 1197 (2020) (noting that this Court has consistently held that the right to appeal is generally an adequate legal remedy that precludes mandamus relief.).

In addition, Guzman did not litigate the legal issue he raises now with the district court, so his Petition should be denied without reaching the merits. *Archon Corp. v. Eighth Jud. Dist. Ct.*, 133 Nev. 816, 822, 407 P.3d 702, 708 (2017) (“[i]n the context of extraordinary writ relief, consideration of legal arguments not properly presented to and resolved by the district court will almost never be appropriate.”).⁹ In the same vein, this Court

⁹ Guzman’s behavior below also suggests that this is not the type of emergency that this Court contemplated when it adopted NRAP 27(e). NRAP 27(e)(4) provides, “[i]f the relief sought in the motion was available in the district court, the motion shall state whether all grounds advanced in support of the motion in the court were submitted to the district court, and, if not, why the motion should not be denied.” While Guzman filed his motion to stay with the district court, he chose not to raise the issue he presents in his Petition with the district court in the first instance.

could find that Guzman is estopped from presenting the legal argument he raises now because he repeatedly advocated that the district court should set an early *Atkins* motion deadline and hearing date in this case—something he argues now that it does not have the power to do. *See* 2 RA 303; *see also id.* at 366, 403, 409-413; *see also Jones v. State*, 95 Nev. 613, 618, 600 P.2d 247, 250 (1979) (“Given his participation in the alleged error, [appellant] is estopped to raise any objection on appeal”); *Rhyne v. State*, 118 Nev. 1, 9, 38 P.3d 163, 168 (2002) (applying the *Jones, supra*, estoppel rule in a capital case).

Moreover, even if this Court reaches the merits of Guzman’s legal argument concerning NRS 174.098, he is unlikely to prevail. Guzman asks this Court to vacate a pretrial motion deadline. Guzman raises a discretionary issue in his Petition, so his burden is substantial, and he must show a clear legal right to have the district court’s filing deadline vacated. *See Michaels*, 136 Nev. Adv. Op. 80, *5, 476 P.3d at 1197 (“Where a district court is entrusted with discretion on an issue the petitioner’s burden to demonstrate a clear legal right to a particular course of action is substantial....”) (*emphasis in original*). He has not met that heavy burden.

Initially, this Court has consistently held that the judiciary has the inherent power to administer its affairs and that district courts have

discretion over the procedural management of litigation. *See e.g., Borger v. Eighth Judicial Dist. Court*, 120 Nev. 1021, 1029, 102 P.3d 600, 606 (2004). Guzman’s Petition should not be successful because he asks this Court to correct a motion calendaring decision and this Court has previously explained that “[it] will not interfere with the trial court’s calendaring of the pending motions” because “[t]he lower court has broad discretion in calendaring matters before it.” *Maheu v. Eighth Judicial Dist. Court*, 89 Nev. 214, 216-217, 510 P.2d 627, 629 (1973).

The district court’s ability to manage this litigation is consistent with the purposes and duties outlined by Supreme Court Rule 250. *See* SCR 250(1), (5). In addition, Guzman has not shown that the plain language of NRS 174.098 necessitates this Court’s intervention into the district court’s calendaring decision. The statute requires that the motion be filed “not less than 10 days before the date set for trial.” NRS 174.098(1). Trial in this case is presently set for September 20, 2021. The district court’s order is consistent with the statute because April 12, 2021 is not less than 10 days before the date set for trial. In contrast, Guzman’s interpretation would require this Court to read language into the statute that does not exist—essentially that a motion may only be filed 10 days before trial. Guzman’s interpretation of NRS 174.098(1) also ignores other subsections of the same

statute, which contemplate intellectual disability related disclosures and examinations occurring well before the 10-day timeframe. *See e.g.*, NRS 174.098(3)(a)-(b).

Finally, the legislative history on point precludes Guzman’s proposed interpretation of NRS 174.098(1). A proponent of the bill noted that he would not object to having a deadline placed in the language, “but it was anticipated that the normal rules of court would determine when the motion would be considered timely.” February 12, 2003 Minutes, Assembly Committee on the Judiciary, pgs. 7-8.¹⁰

Guzman has not shown that he will likely be successful on the merits of his Petition because he has not shown a clear legal right to the relief he requests—that this court issue a writ of mandamus compelling the district court to vacate the April 12, 2021 *Atkins* motion deadline. Thus, the fourth factor discussed in *Robles-Nieves* does not favor a stay here. *See* 129 Nev. at 541, 306 P.3d at 403.

///

///

///

¹⁰ These minutes are available at: <https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/2003/AB015,2003.pdf> (last visited March 14, 2021).

V. CONCLUSION

Based on the forgoing, the State respectfully requests that this Court deny Guzman's emergency motion for a stay.

DATED: March 30, 2021.

CHRISTOPHER J. HICKS
Washoe County District Attorney

MARK JACKSON
Douglas County District Attorney

By: MARILEE CATE
Appellate Deputy

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this opposition complies with the formatting requirements of NRAP 27(d)(1) and NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this answer has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Georgia 14.

2. I certify that this Opposition is timely made and complies with the contents requirements of NRAP 27(a)(2), (3)(A). The legal argument to support this Opposition does not exceed 10 pages. *See* NRAP 27(d)(2).

3. Finally, I hereby certify that I have read this Opposition, 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 Opposition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the answer regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in

///

///

///

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

DATED: March 30, 2021.

CHRISTOPHER J. HICKS
Washoe County District Attorney

BY: MARILEE CATE
Appellate Deputy
Nevada State Bar No. 12563
One South Sierra Street
Reno, Nevada 89501
(775) 328-3200

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on March 30, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

John Reese Petty
Chief Deputy Public Defender

/s/ Tatyana Kazantseva
TATYANA KAZANTSEVA