

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERIFF, WASHOE COUNTY,
Appellant,
vs.
SEAN RODNEY ORTH,
Respondent.

No. 46176

FILED

FEB 17 2006

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a sheriff's appeal from an order of the district court granting respondent Sean Rodney Orth's pretrial petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

Orth was arrested on May 11, 2005, and charged by way of a criminal complaint with two counts of trafficking in a controlled substance, and one count each of robbery with the use of a deadly weapon, battery with a deadly weapon, conspiracy to commit robbery with the use of a deadly weapon, eluding a police officer, and being an ex-felon in possession of a firearm. Following a preliminary hearing in the justice court, Orth was bound over for trial in the district court on all but one of the trafficking counts. A criminal information was filed in the district court on July 7, 2005.

On July 25, 2005, Orth filed a proper person pretrial petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent Orth, and counsel filed additional points and authorities in support of the petition. The State opposed Orth's

petition, and Orth filed a reply to the opposition. The district court conducted a hearing, and on October 19, 2005, entered an order granting Orth's petition. In its order, the district court found that due to the State's "wilful disregard of, and . . . conscious indifference to" procedural rules, Orth was unlawfully detained, and as a result, his preliminary hearing was not held until 48 days after his arrest.¹ The State filed this timely appeal.


"This court . . . will not disturb a decision of the district court that the prosecution exhibited conscious indifference to a defendant's important procedural rights if there is substantial evidence in the record to support the district court's determination."² In Orth's case, however, the record does not support the district court's finding that the State acted in conscious indifference to and in willful disregard of Orth's procedural rights when it sought and received a continuance prior to Orth's preliminary hearing. Orth has not provided this court with any relevant authority supporting the proposition that L.C.R. 10 applies in the justice courts. Therefore, we conclude that the district court erred in granting Orth's pretrial petition for a writ of habeas corpus.³ Accordingly, we

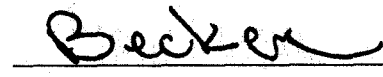
¹See NRS 171.196; D.C.R. 14; L.C.R. 10; see also Sheriff, Nye County v. Davis, 106 Nev. 145, 148-49, 787 P.2d 1241, 1243 (1990).

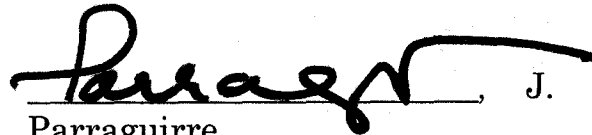
²See Sheriff v. Roylance, 110 Nev. 334, 337, 871 P.2d 359, 361 (1994).

³See State v. Nelson, 118 Nev. 399, 404, 46 P.3d 1232, 1235 (2002).

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.

 J.
Douglas

 J.
Becker

 J.
Parraguirre

cc: Hon. Robert H. Perry, District Judge
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Thomas L. Qualls
Washoe District Court Clerk