

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
RONALD ROSS,
Respondent.

No. 49091

FILED

MAY 08 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from an order of the district court granting respondent Ronald Ross's pretrial motion to dismiss an indictment. Eighth Judicial District Court, Clark County; Elizabeth Halverson, Judge.

On April 12, 2006, Ross was arraigned in the district court. On December 15, 2006, Ross filed a motion to dismiss the indictment based upon statutory and constitutional deficiencies in the grand jury proceeding, which he alleged resulted from violations of the best evidence rule and the impermissible use of character evidence. The State opposed the motion, the district court heard argument, and the district court granted Ross's motion to dismiss.

On appeal, the State contends for the first time that the district court exceeded its statutory authority by granting Ross's motion to dismiss. The State specifically claims that the district court lacked authority to consider Ross's challenge to the legal sufficiency of the evidence supporting the grand jury indictment because Ross did not

present his challenge in a timely-filed pretrial petition for a writ of habeas corpus.

“Failure to raise a claim below generally bars its consideration on appeal, but this rule is relaxed in cases involving plain error or constitutional issues.”¹ “An error is plain if the error is so unmistakable that it reveals itself by a casual inspection of the record.”² At a minimum, the error must be “clear under current law.”³

Here, the error is plain. Ross was required to challenge the legal sufficiency of the evidence supporting the indictment in a petition for a writ of habeas corpus and file the petition within 21 days of his first appearance in the district court.⁴ The filing requirements of NRS 34.700 are mandatory and failure to comply with these requirements renders the petition incognizable below and unreviewable here.⁵ Because Ross failed to challenge the legal sufficiency of the evidence supporting the indictment in a timely petition, we conclude that the district court erred in granting his motion, and we

¹Miller v. State, 113 Nev. 722, 724, 941 P.2d 456, 457 (1997).

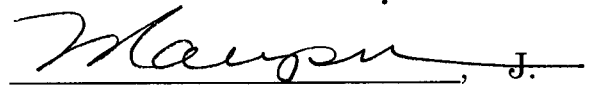
²Patterson v. State, 111 Nev. 1525, 1530, 907 P.2d 984, 987 (1995) (internal quotation marks and citations omitted).

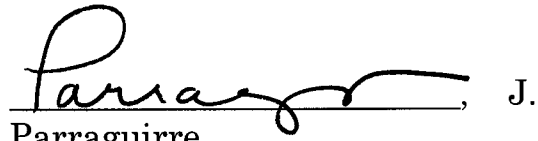
³Gaxiola v. State, 121 Nev. 638, 648, 119 P.3d 1225, 1232 (2005) (internal quotation marks and citations omitted).

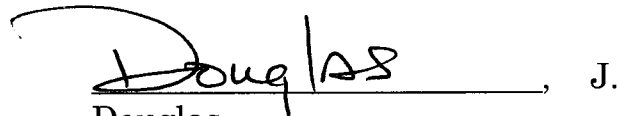
⁴NRS 34.700(1)(a); NRS 172.155(2).

⁵Sheriff v. Jensen, 95 Nev. 595, 596, 600 P.2d 222, 223 (1979).

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


Maupin, J.


Parraguirre, J.


Douglas, J.

cc: Eighth Judicial District Court Dept. 23, District Judge
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Clark County Public Defender Philip J. Kohn
Eighth District Court Clerk