

IN THE SUPREME COURT OF THE STATE OF NEVADA

SALOME MARTINEZ,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
PATRICK FLANAGAN, DISTRICT
JUDGE,

Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 55986

FILED

JUL 15 2010

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

ORDER DENYING PETITION

This original petition for a writ of prohibition requests this court to preclude the district court from proceeding with a retrial of petitioner on a count of lewdness with a child under the age of 14 years on the ground that doing so would violate double jeopardy principles because the district court had previously vacated the jury's guilty verdict on the lewdness count as redundant to a sexual assault count. Because the district court vacated the lewdness conviction based on redundancy rather than sufficiency of the evidence, petitioner was not acquitted of lewdness such that double jeopardy principles preclude retrial. See Garcia v. State, 121 Nev. 327, 342, 113 P.3d 836, 845 (2005) (stating that Double Jeopardy Clause protects defendant from second prosecution after acquittal). Rather, the prohibition against redundant convictions "stems from the legislation itself and the conclusion that it was not the legislative intent to separately punish multiple acts that occur close in time and make up one

course of criminal conduct.” Wilson v. State, 121 Nev. 345, 355, 114 P.3d 285, 292 (2005). When the district court granted petitioner’s motion for a new trial based on an erroneous evidentiary ruling, the parties returned to their respective positions before trial and therefore retrial may proceed on the lewdness and sexual assault charges. Accordingly, we

ORDER the petition DENIED.¹

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Patrick Flanagan, District Judge
Arrascada & Arrascada, Ltd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹We note that the writ petition is not accompanied by an affidavit as required by NRS 34.330. Nevertheless, because the defect can be cured, see Miles v. State, 120 Nev. 383, 386-87, 91 P.3d 588, 590 (2004), we conclude that petitioner’s omission does not preclude our review of this matter.