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 DAVID B. BARKER, DISTRICT JUDGE,
Respondents,
and
PHILIP M. DREYFUSS,
Real Party in Interest.

No. 59518

ORDER GRANTING PETITION

This original petition for a writ of mandamus or prohibition challenges an order of the district court granting an evidentiary hearing on an untimely motion for a new trial based on newly discovered evidence. Real party in interest Philip Dreyfuss was convicted of two counts of lewdness with a child under the age of 14. Dreyfuss' convictions were supported, in part, by the testimony of a forensic specialist that Dreyfuss' DNA was recovered from the victim's chest. More than 31 months after his conviction, Dreyfuss moved for a new trial on the grounds that the forensic expert may have fabricated her testimony.[1] The district court

[1]Dreyfuss informed the district court that the expert had recently been fired for falsifying data in another case. He therefore asserted that

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assumed it had jurisdiction to hear the new-trial motion and granted Dreyfuss an evidentiary hearing. The State's instant petition challenging those rulings followed.

A writ of mandamus may issue to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion. See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). A writ of prohibition may issue to arrest the proceedings of a district court exercising its judicial functions in excess of its jurisdiction. See NRS 34.320; Hickey v. District Court, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989). Generally, neither writ will issue if a petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. See NRS 34.170; NRS 34.330; Hickey, 105 Nev. at 731, 782 P.2d at 1338. However, even when a remedy at law arguably exists, this court may exercise its discretion to entertain petitions for extraordinary relief when judicial economy militates for issuance of the writ. See State v. Babayan, 106 Nev. 155, 175-76, 787 P.2d 805, 819 (1990). We conclude that this is such a case.

A motion for a new trial based on newly discovered evidence "may be made only within 2 years after the verdict or finding of guilt."

. . . *continued*

the possibility that the expert had done likewise in his case provided grounds for an evidentiary hearing and a new trial.

NRS 176.515(3).[2] This rule is jurisdictional and cannot be excused by a showing of good cause. See NRS 178.476 (providing that court cannot extend time provided under NRS 176.515 "except to the extent and under the conditions stated in those sections"); see also Snow v. State, 105 Nev. 521, 523, 779 P.2d 96, 97 (1989) (noting that continuing availability of petition for writ of habeas corpus as remedy for attacking conviction supported constitutionality of strict time limitation in NRS 176.515(3)). Because any district court order granting Dreyfuss' motion for a new trial would be a nullity, its order granting an evidentiary hearing is also therefore in excess of its jurisdiction.

To evade this clear statement of jurisdiction, Dreyfuss advances several theories, all of which we reject. First, we have reviewed the record and find no basis for applying the doctrine of laches to the State's petition. Second, while Dreyfuss is correct that the State has another remedy at law if the district court ultimately grants the motion for a new trial, NRS 177.015(1)(b), that remedy appears to be inadequate, cf. State v. Dist. Ct. (Riker), 121 Nev. 225, 234-35, 112 P.3d 1070, 1076

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[2]In his motion below, Dreyfuss cited to Ybarra v. State, 97 Nev. 247, 249, 628 P.2d 297, 298 (1981), in support of his contention that the two-year limitation in NRS 176.515(3) begins to run from the date on which the appellate process is terminated. We note that this holding was abrogated by legislative amendments to the statute and therefore cannot support the district court's conclusion that it had jurisdiction to entertain Dreyfuss' motion.

(2005), and the petitioner will have no remedy if the district court denies the motion as it will not be an aggrieved party.

Accordingly, we conclude that the district court acted in excess of its jurisdiction, and we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF PROHIBITION instructing the district court to vacate its order granting an evidentiary hearing and deny the motion for a new trial.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. David B. Barker, District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Eighth District Court Clerk