

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
JESSIE ELIZABETH WALSH,
DISTRICT JUDGE,
Respondents,
and
PRENTICE MARSHALL,
Real Party in Interest.

No. 60107

FILED

FEB 14 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Malone*
DEPUTY CLERK

ORDER GRANTING PETITION

This petition for a writ of mandamus or prohibition challenges the district court's decision to strike an amended notice of intent to seek the death penalty. The real party in interest Prentice Marshall is facing first-degree murder and other related charges and the death penalty in connection with the murder of off-duty police officer Trevor Nettleton and robbery of Evon Eby. In a separate case, Marshall is charged with robbing Joshua Raber about two days before Nettleton's murder. The State filed a timely notice of intent to seek the death penalty. Within 15 days of Marshall's arraignment on a complaint in the Raber robbery case, the State filed a motion seeking permission to amend the notice of intent to seek the death penalty, adding a prior-violent-felony-conviction aggravating circumstance in anticipation that Marshall would be convicted of robbery in the Raber case before the penalty hearing in the Nettleton murder case. The district court (Judge David Wall) granted the motion after Marshall stated that he had no objection. The State filed the

amended notice of intent shortly thereafter. Several months later, Marshall sought to strike the amended notice of intent on the ground that it was untimely filed. The district court (Judge Jessie Walsh) granted the motion to strike without explanation. This writ petition followed.

SCR 250(4)(d), which provides for late or amended notices of intent to seek the death penalty, states in relevant part:

Upon a showing of good cause, the district court may grant a motion to file a late notice of intent to seek the death penalty or of an amended notice alleging additional aggravating circumstances. The state must file the motion within 15 days after learning of the grounds for the notice or amended notice.


Among other things, the State argues that seeking to amend the notice of intent within 15 days after Marshall's arraignment on the Raber complaint—when it “could reasonably determine that there was a chance that the Raber robbery would be tried before the murder case”—satisfied SCR 250(4)(d) and therefore the district court manifestly abused its discretion by striking the amended notice of intent. We agree.

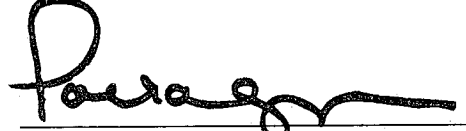
The purpose of a notice of intent to seek the death penalty is to provide a capital defendant prompt notice that he is facing a death sentence and of what he must defend against in a death penalty hearing. See Hidalgo v. Dist. Ct., 124 Nev. 330, 339, 184 P.3d 369, 376 (2008); Bennett v. Dist. Ct., 121 Nev. 802, 810, 121 P.3d 605, 610 (2005) (“The purpose of SCR 250(4)(d) is to protect a capital defendant's due process rights to fair and adequate notice of aggravating circumstances, safeguard against any abuse of the system, and insert some predictability and timeliness into the process.”). Here, the additional aggravating circumstance the State seeks to pursue is not legally available until after Marshall is convicted of the Raber robbery; the State sought to amend the

notice of intent at Marshall's arraignment on the Raber complaint, when it could reasonably determine that the aggravating circumstance would be available to support a death sentence in the murder case. And the motion to amend was filed well before the murder trial was scheduled to commence. We reject Marshall's contention that the State was required to file a motion to amend the notice of intent at some earlier date to meet the notice requirements under SCR 250(4)(d). We conclude that the district court manifestly abused its discretion by striking the amended notice of intent to seek the death penalty, see NRS 34.160; State v. Dist. Ct. (Armstrong), 127 Nev. ___, ___, ___ P.3d ___, ___ (Adv. Op. No. 84, December 29, 2011) at *5-6 (defining manifest abuse of discretion), and we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its decision to strike the amended notice of intent to seek the death penalty.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Jessie Elizabeth Walsh, District Judge
Attorney General/Carson City
Clark County District Attorney
Patti, Sgro & Lewis
Christopher R. Oram
Eighth District Court Clerk