

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARVIN JEROME MARTIN, JR.,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
MARK B. BAILUS, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 75791-COA

FILED

NOV 19 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition challenges a district court order denying a pretrial petition for a writ of habeas corpus.

Marvin Jerome Martin, Jr., previously challenged the justice court's probable cause finding in a pretrial habeas petition. The district court found that the State presented slight or marginal evidence at the preliminary hearing from which the justice court could find probable cause to believe Martin committed the offenses of battery with the use of a deadly weapon resulting in substantial bodily harm, battery with the use of a deadly weapon, and discharging a weapon where a person might be endangered. And the district court denied the petition.

Martin now challenges the denial of his pretrial habeas petition. He argues evidence presented at the preliminary hearing was insufficient because the State failed to show that he aided and abetted his codefendant in committing the two battery-with-the-use-of-a-deadly-weapon offenses. And he further argues the State failed to show that he discharged a weapon where a person might be endangered.

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station, NRS 34.160, or to control an arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement 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, when such proceedings are in excess of the jurisdiction of the district court. NRS 34.320. Mandamus and prohibition are extraordinary remedies, and the decision to entertain a petition for these writs lies within our discretion. *Hickey v. Eighth Judicial Dist. Court*, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989).

“Martin contends that the evidence presented at the preliminary hearing was insufficient to establish even slight or marginal evidence for holding him to answer to the charges contained in the information.” Our review of a probable cause determination through original writ petitions is disfavored, see *Kussman v. Eighth Judicial Dist. Court*, 96 Nev. 544, 545-46, 612 P.2d 679, 680 (1980), and Martin has not demonstrated his challenge to the probable cause determination “involves

only a purely legal issue," *Rugamas v. Eighth Judicial Dist. Court*, 129 Nev. 424, 431, 305 P.3d 887, 892 (2013) (quoting *Ostman v. Eighth Judicial Dist. Court*, 107 Nev. 563, 565, 816 P.2d 458, 460 (1991)). Therefore, we decline to exercise our original jurisdiction, and we

ORDER the petition DENIED.



Silver

C.J.



Tao

J.



Gibbons

J.

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