

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD LEAVELL,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
DOUGLAS W. HERNDON, DISTRICT
JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 79923

FILED

SEP 14 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION

This is an original petition for a writ of mandamus challenging the district court's denial of a pretrial petition for a writ of habeas corpus.

Petitioner Ronald Leavell argues that the district court manifestly abused its discretion by denying his pretrial habeas petition and allowing the State to charge him with second-degree murder with the use of a deadly weapon for a death allegedly resulting from driving under the influence of an intoxicating liquor and/or controlled substance. He seeks a writ of mandamus ordering the district court to grant his habeas petition. We elect to entertain his mandamus petition because "judicial economy and sound judicial administration militate in favor of writ review." *Scarbo v. Eighth Judicial Dist. Court*, 125 Nev. 118, 121, 206 P.3d 975, 977 (2009).

Whether to grant a habeas petition is within the district court's discretion. *See Rugamas v. Eighth Judicial Dist. Court*, 129 Nev. 424, 436, 305 P.3d 887, 896 (2013). We may issue a writ of mandamus to control a discretionary act if the district court manifestly abused its discretion.

Round Hill Gen. Improvement Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

Although malice may be inferred from the facts of this case, which would support a charge of second-degree murder, the Legislature has preempted such a charge for cases of non-intentional vehicular homicide. See NRS 484B.657. As we likewise held in *Sheriff v. LaMotte*, 100 Nev. 270, 272-73, 680 P.2d 333, 334 (1984), and confirmed in *Johnston v. State*, 101 Nev. 94, 95, 692 P.2d 1307, 1308 (1985), the State may not charge a defendant with second-degree murder for a death resulting from driving under the influence. The district court nonetheless allowed the State to do so here, so it erred in interpreting and applying those holdings, which was a manifest abuse of discretion. *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011). Accordingly, 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 order denying Leavell's habeas petition and enter a new order granting it.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

cc: Hon. Douglas W. Herndon, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk