

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
JOSE MUNOZ,
Respondent.

No. 87508

FILED

APR 19 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a pretrial petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jennifer L. Schwartz, Judge.

The State charged respondent Jose Munoz with two counts of lewdness with a child under the age of 14. Munoz first appeared in justice court on September 6, 2023, and the justice court scheduled a preliminary hearing for October 5, 2023. On the day of the hearing, the State filed a motion to continue, supported by a sworn declaration from the prosecutor assigned to the case. Over Munoz's objection, the justice court granted the State a two-week continuance. Munoz filed an emergency pretrial petition for a writ of habeas corpus in the district court, alleging that "the State did not have good cause to continue the preliminary hearing and, . . . the justice court improperly granted the State's request." The district court agreed, granted the petition, and ordered the justice court to dismiss the case.


The State argues that the district court erred in granting the pretrial habeas petition. We agree because a pretrial habeas petition is an improper vehicle to challenge a discretionary ruling such as a grant of a continuance. See *Nelson v. State*, 118 Nev. 399, 403, 46 P.3d 1232, 1234-35 (2002); *Sheriff v. Anderson*, 100 Nev. 401, 402, 683 P.2d 503, 503 (1984).

“[T]he district court may review the legality of the detention on habeas corpus in circumstances where the continuance is alleged to have been granted in violation of the jurisdictional procedural requirements of *Hill and Bustos*.” *Nelson*, 118 Nev. at 403-04, 46 P.3d at 1235 (referring to *Hill v. Sheriff*, 85 Nev. 234, 452 P.2d 918 (1969), and *Bustos v. Sheriff*, 87 Nev. 622, 491 P.2d 1279 (1971)). Those jurisdictional procedural requirements are that the State must provide a written affidavit or sworn testimony as to the reason for a requested continuance of a preliminary hearing. *Id.* at 404, 46 P.3d at 1235 (discussing *Hill* and *Bustos*). But when those requirements have been met, “the district court lacks jurisdiction to review a magistrate’s discretionary granting of a continuance at the preliminary hearing stage of a prosecution.” *Anderson*, 100 Nev. at 402, 683 P.2d at 503.


Here, the State included a written, sworn declaration with its motion for a continuance. The substance of the declaration provided a sufficient basis for the requested continuance. The State thus satisfied the jurisdictional procedural requirements from *Hill* and *Bustos*. Munoz’s pretrial habeas petition challenged the reasons for the continuance, arguing those reasons did not justify a continuance. But that decision is left to the justice court’s discretion. The district court lacked authority to substitute its judgment for the justice court’s as to whether to grant a continuance. The court thus improperly granted Munoz’s pretrial habeas petition.¹ Accordingly, we

¹Given this conclusion, we need not address the State’s remaining arguments.

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Bell

cc: Hon. Jennifer L. Schwartz, District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Eighth District Court Clerk