

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Court File No. 27-CV-08-10883

Ed Felien,

Petitioner,

ORDER DENYING

**PETITION FOR WRIT
OF MANDAMUS AND
REQUEST TO**

ALLOW VIDEO CAMERAS IN THE COURTROOM

Michael Freeman,
Hennepin County Attorney,

Respondent.

The above-entitled matter came before the Honorable Gary Larson, Judge of Hennepin County District Court, on April 30, 2008, on Petitioner's request for the Court to issue a writ of mandamus and allow video cameras into the courtroom for proceedings related to the underlying Petition.

Ed Felien, Petitioner, appeared *pro se*.

Patrick C. Diamond, Deputy County Attorney, appeared for and on behalf of Respondent, Michael Freeman, Hennepin County Attorney.

Based upon all files, records, and proceedings herein, the Court makes the following:

ORDER

1. Petitioner's request for a Writ of Mandamus is DENIED.
2. Petitioner's request to allow video cameras in the courtroom is DENIED.

BY THE COURT:

Dated: _____
Gary Larson

Judge of District Court
C-1655 Government Center
Minneapolis, MN 55487
(612) 348-6102

MEMORANDUM

I. Procedural History

On April 30, 2008, Petitioner filed for a Writ of Mandamus directing the Hennepin County Attorney to file a criminal complaint against the President of the United States, George W. Bush, for various crimes and a request for use of video cameras in the courtroom for proceedings related to the underlying Petition for Writ of Mandamus.

II. Factual Background

Petitioner, Ed Felien, is a former Minneapolis Council member and is the publisher of a local paper, "The Pulse of the Twin Cities." He is seeking to have President George W. Bush arrested at the end of August 2008, when he arrives at the Minneapolis/St. Paul International Airport to attend the National Republican Convention. Petitioner has written to the Hennepin County Attorney, Michael Freeman, on six occasions to request that he file charges against President Bush. The Hennepin County Attorney has denied these requests.

Petitioner argues there is probable cause to charge President Bush with Murder in the Third Degree, pursuant Minn. Stat. § 609.195, due to his involvement in the Iraq War. Minn. Stat. § 609.195 provides, "that whoever, without intent to effect the death of any person, cause the death of another by perpetuating an act eminently dangerous to others and evincing a depraved mind, without regard for human life, is guilty of murder in the third degree..."

Petitioner asserts that President Bush instigated the war in Iraq for his own personal gain, and the war has resulted in the deaths of three Hennepin County residents: David Day, Robert Dixon, and Scott Modeen. All three were killed in action while serving in the U.S. Military in Iraq.

Petitioner also claims there is probable cause to charge President Bush for conspiracy with the Saudi Arabian Royal Family to raise oil prices for personal financial gain. Petitioner

claims that President Bush and the Saudi Royal Family have acted in conspiracy to fix the supply and price of oil to distributors in Hennepin County in violation of Minn. Stat. § 325.53.

Petitioner's final claim is that there is probable cause to charge President Bush under Minn. Stat. § 609.228 for collusion with the opium warlords of Afghanistan and elements within the CIA to distribute heroin in Europe, the United States, and Hennepin County.

III. Discussion

1. A Writ of Mandamus is an extraordinary remedy that should only be awarded in the exercise of judicial discretion and upon equitable principles.

The Minnesota judiciary has a long-held precedent of issuing a writ of mandamus only under extraordinary circumstances, awarded not as a right, but in the exercise of sound judicial discretion and upon equitable principles. [*Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162](#), 171 (Minn. 2006); *see also* [*N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485](#) (Minn. 2004); [*State v. Pero*, 590 N.W.2d 319](#) (Minn. 1999); [*Nationwide Corp. v. Nw. Nat. Life Ins. Co.*, 87 N.W.2d 671](#) (Minn. 1958); [*State ex rel. Brenner v. Hodapp*, 48 N.W.2d 519](#) (Minn. 1951); [*State v. Tauer*, 227 N.W. 499](#) (Minn. 1929); [*State v. U.S. Exp. Co.*, 104 N.W. 556](#) (Minn. 1905). Ordinarily, a petitioner seeking the extraordinary legal remedy of mandamus must allege and prove all the necessary facts to show that he is entitled to a clear and complete legal remedy, and that the writ lies only to compel the performance of a duty which the law clearly and positively requires. *Gunther v. Bullis et al.*, 217 N.W. 119, 119 (Minn. 1927).

A writ of mandamus will only be granted in a manner in which the courts will not attempt to control the exercise of discretion vested by law in a public officer. *State v. Village Council of Osakis*, 128 N.W. 295, 296 (Minn. 1910). To be entitled to mandamus relief, Petitioner must show three elements: (1) the failure of an official to perform a duty clearly imposed by law; (2) a public wrong specifically injurious to petitioner; and (3) that there is no other adequate remedy. [*Breza v. City of Minnetrista*, 706 N.W.2d 512](#), 518 (Minn. Ct. App. 2005). Here, the Court

concludes that the application of these factors does not support the issuance of a writ of mandamus.

1. There is no failure of the Hennepin County Attorney to perform his duties imposed by law.

The duties of the County Attorney are purely statutory and are delineated in Minn. Stat. § 388.051. Under Minnesota law, there is a presumption, notwithstanding extenuating circumstances, that the executive branch, and therefore the prosecutor, will act according to his mandated duties. State v. Andrews, 165 N.W.2d 528, 533 (Minn. 1969) (holding that a prosecutor, like other state officials, is entitled to the presumption that he has acted fairly in the discharge of his official functions). “The decision whether to initiate a particular prosecution is discretionary, and therefore, normally beyond the scope of mandamus.” State ex rel. Wild v. Otis, 257 N.W. 2d 361, 365 (Minn. 1977). The Hennepin County Attorney, having been presented with Petitioner’s request to file charges against President Bush on numerous occasions, acted in its discretion and under its color of duty to not pursue charges it deemed unwarranted. It is therefore not within the authority, nor the prudent discretion, of this Court to force the filing of criminal charges that the County Attorney does not deem warranted.

2. There is no public wrong specifically injurious to Petitioner.

Petitioner alleges that he has been specifically injured because he is a citizen of Hennepin County and President Bush committed crimes against citizens of Hennepin County. It is on these alleged crimes against the citizens of Hennepin County as a whole that Petitioner grounds his request for a Writ of Mandamus. The alleged illegal activities by the President against the people of Hennepin County are not specifically injurious to the Petitioner. In State ex rel. Coduti v. Hauser, 17 N.W.2d 504, 507 (Minn. 1945), the Minnesota Supreme Court established that,

Before the petitioner for a writ of mandamus is entitled thereto, he must show more than that there is a public wrong specially injurious to him. He must show that such wrong consists of some failure of official duty clearly imposed by law, and that there is no other adequate specific legal remedy. The duty must be positive, not discretionary, and the right must be so clear as not to admit of any reasonable controversy. These principles are so elementary as not to call for

discussion or support by a citation of authorities.

(internal citation omitted).

In this case Petitioner has not shown a wrong specially injurious to him. Further, he has not shown that the wrong consists of some failure of an official duty of the Hennepin County Attorney.

3. There are other potential adequate remedies.

In order for a court to grant a writ of mandamus, the petitioner must show that there is no other adequate remedy. [Breza, 706 N.W.2d at 518](#). In *State ex rel. Wild v. Otis*, 257 N.W.2d 361, 365 (Minn. 1977), a private citizen filed a complaint against the defendants alleging violation of criminal laws. In holding that a private citizen could not commence and maintain private prosecution for alleged violations of criminal law, the court acknowledged other remedies available to an aggrieved citizen when a prosecutor refuses to commence a prosecution. *Id.* at 364-5. Those remedies include petitioning the district court to appoint a special prosecutor, appealing to the governor who then might order Attorney General to commence prosecution, or seeking mandamus. *Id.*; see Minn. R. Crim. P. 2.02, 18.01, 18.03, 18.04; Minn. Stat. §§ 8.01, 388.12. In reference to the third potential remedy of mandamus, the court stated, “[T]he problem with mandamus from the standpoint of an aggrieved citizen is that the decision whether to initiate a particular prosecution is discretionary and therefore normally beyond the scope of mandamus.” *Id.* at 365. In mentioning these alternatives, the Court does not mean to recommend them to Petitioner; rather, they are cited merely to demonstrate that when there are other remedies available, the granting of a writ of mandamus is not appropriate.¹—

2. Under established Separation of Powers rules it is not the function of the judiciary to interfere with the charging authority of the executive branch.

Article 3, §1 of the Minnesota Constitution provides, “[t]he powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers

properly belonging to either of the others except in the instances expressly provided in this constitution.” The district court is part of the judicial branch, and the Hennepin County Prosecutor is an executive official. *State v. Carriere*, 290 N.W.2d 618, 620 (Minn. 1980). “Under our separation of powers doctrine, the power to decide whom to prosecute and what charge to file resides with the executive branch.” *Johnson v. State*, 641 N.W.2d 912, 917 (Minn. 2002).

Under established separation of powers rules, absent evidence of selective or discriminatory prosecutorial intent or an abuse of prosecutorial discretion, the judiciary is powerless to interfere with the prosecutor's charging authority. *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) (citing *Oyler v. Boles*, 368 U.S. 448, 456 (1962)); *State v. Krotzer*, 548 N.W.2d 252, 254 (Minn. 1996); *State v. Streiff*, 673 N.W.2d 831, 836 (Minn. 2004) (“With regard to bringing charges, the discretion rests almost entirely with the prosecutor.”). In order for the criminal system to function within the bounds of budget and personnel constraints, the prosecutor is generally afforded great discretion in determining the manner in which to fulfill his duty to prosecute. *See In re Welfare of F.C.R.*, 276 N.W.2d 636, 638 (Minn. 1979); *Andrews*, 165 N.W.2d at 533; *Bordenkircher*, 434 U.S. at 364; ABA Standards on the Prosecution Function § 3.9 (1971). As a general rule, the prosecutor's decision whom to prosecute and what charge to file is a discretionary matter which is not subject to judicial review absent proof by the defendant of deliberate discrimination based on some unjustifiable standard such as race, sex, or religion. *Bordenkircher*, 434 U.S. at 364-65; *City of Minneapolis v. Buschette*, 240 N.W.2d 500, 503 (Minn. 1976); *Andrews*, 165 N.W.2d at 532.

In the absence of limiting statutory language, a court gives deference to the prosecutor's discretion to evaluate the facts of a case, which may lead to various combinations of charges, and to select the particular charges best suited to achieve justice. *State v. Richardson*, 633 N.W.2d 879, 884 (Minn. Ct. App. 2001). A court generally should not interfere with the state's charging decision. *State v. Foss*, 556 N.W.2d 540, 540 (Minn. 1996). Judicial interference should be rare and occur only when an injustice results because the prosecutor has clearly abused her discretion in exercising the charging function. *Id.* at 541. Here, Petitioner does not support any claim of

discriminatory enforcement by the Hennepin County Attorney. Additionally, Petitioner has not demonstrated any abuse of discretion on behalf of the Hennepin County Attorney. Therefore, Petitioner is not entitled to mandamus relief.

CONCLUSION

Petitioner's request for the Court to issue a writ of mandamus fails the requirements necessary to issue such a writ, and issuing such a writ would be a violation of the separation of powers doctrine established by the Minnesota Constitution. Therefore, the writ of mandamus is denied. Additionally, Petitioner's request to allow video cameras into the courtroom for proceedings relating to that writ of mandamus is denied.²

¹ The Court notes that at the hearing on this matter, Petitioner requested that he be assigned to assist the County Attorney in presenting evidence against President Bush to a Grand jury. Additionally, he requested that the Court appoint a special prosecutor for this matter. As the Court is denying Petitioner's request to direct the County Attorney to file charges against President Bush, these requests are denied as moot.

² Minnesota Code of Judicial Conduct, Canon 3A(11)(ii) provides that a judge may authorize "the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions: (i) the means of recording will not distract participants or impair the dignity of the proceedings; (ii) the parties have consented, and the consent to be depicted or recorded has been obtained from each witness appearing in the recording and reproduction; (iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted, and (iv) the reproduction will be exhibited only for instructional purposes in educational institutions." Essentially, for court video and audio coverage to be permitted, there must be consent of the judge and all parties. As stated at the hearing on this matter, the Court will not allow the use of video or audio coverage in any hearing relating to the underlying case.