

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJAMIN CHILDS,
Appellant,

vs.

THE JUSTICE COURT OF LAS VEGAS
TOWNSHIP, IN AND FOR THE
COUNTY OF CLARK AND THE
HONORABLE A. E. ZIMMERMAN,
JUSTICE OF THE PEACE,
Respondents.

No. 44422

FILED

MAY 19 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Ribard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

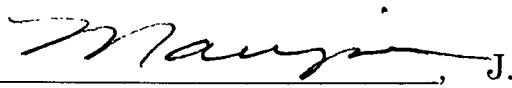
This is an appeal from an order of the district court denying appellant's petition for a writ of mandamus. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

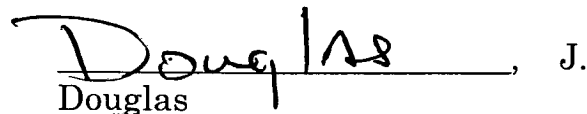
On July 27, 2004, appellant Benjamin Childs was charged with three counts of misdemeanor battery and one count of misdemeanor malicious destruction of property. Subsequently, Childs filed a petition for a writ of mandamus in the district court, alleging that the criminal charges against him should be dismissed because the police failed to preserve crucial evidence, namely, the snowboard allegedly used to commit the batteries. The district court denied the petition for a writ of mandamus, ruling that Childs had a clear remedy at law by way of a direct appeal.

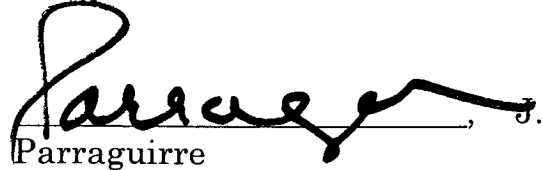
We conclude that the district court did not abuse its discretion in denying Childs' request for intervention by way of an extraordinary

writ.¹ Mandamus is an extraordinary remedy and will not lie where there exists "a plain, speedy and adequate remedy in the ordinary course of the law."² Here, the claim Childs raises is appropriate for review on direct appeal should he be convicted at trial.³ Childs has an adequate legal remedy and, therefore, the district court did not err in denying Childs' request for extraordinary relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Maupin


Douglas


Parraguirre

¹NRS 34.160, NRS 34.170; see also Ashokan v. State, Dep't of Ins., 109 Nev. 662, 665-66, 856 P.2d 244, 246 (1993) (holding that this court has appellate jurisdiction over a district court's order denying petition for extraordinary writ).

²NRS 34.170.

³See, e.g., Sanborn v. State, 107 Nev. 399, 812 P.2d 1279 (1991); Howard v. State, 95 Nev. 580, 600 P.2d 214 (1979) (addressing the issue of law enforcement's failure to gather evidence on direct appeal); cf. State v. Havas, 95 Nev. 706, 601 P.2d 1197 (1979) (upholding ruling granting pretrial motion to dismiss where failure to preserve evidence was prejudicial), overruled on other grounds by Deere v. State, 100 Nev. 565, 688 P.2d 322 (1984).

cc: Hon. Sally L. Loehrer, District Judge
Kenneth L. Hall
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk