

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM URAL NEEL,
Petitioner,

vs.

TED D'AMICO, MEDICAL DIRECTOR
OF NEVADA DEPARTMENT OF
CORRECTIONS; GLEN WHORTON,
DIRECTOR, NEVADA DEPARTMENT
OF CORRECTIONS; NEVADA
DEPARTMENT OF CORRECTIONS;
BOARD OF PRISON
COMMISSIONERS; NEVADA
DEPARTMENT OF HUMAN
RESOURCES; AND STATE HEALTH
OFFICER,
Respondents.

No. 46498

FILED

JAN 24 2006

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This proper person original petition for a writ of mandamus challenges respondents' compliance with an unwritten Nevada Department of Corrections medical policy and/or respondents' failure to properly supervise correctional center medical care providers or administrators and to enforce laws regarding medical care. The above acts and omissions, petitioner asserts, have resulted, and continue to result, in the denial of adequate medical care in violation of his and other inmates' constitutional rights.

Petitioner William Ural Neel is incarcerated at the Lovelock Correctional Center. Neel claims that he is diabetic and has other medical disabilities, and that he is not receiving adequate medical treatment for

his various medical conditions.¹ He further alleges that other inmates are similarly being denied adequate medical care, and that various procedures designed to ensure that patients, including inmates, get adequate medical care, are not being followed or enforced.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station,² or to control an arbitrary or capricious exercise of discretion.³ Mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy at law.⁴ Further, mandamus is an extraordinary remedy, and whether a petition will be entertained is entirely within the discretion of this court.⁵

We have considered this petition, and we are not satisfied that our intervention by way of extraordinary relief is warranted at this time. This petition presents numerous issues that cannot be resolved without an extensive inquiry into, and several determinations regarding, Neel's factual allegations of inadequate treatment and general unsafe health

¹See NRS 209.131(4); NRS 209.161(3); NRS 209.381; see also Estelle v. Gamble, 429 U.S. 97, 103-04 (1976) (recognizing that, under the Eighth Amendment and common law, the government is obliged to provide adequate medical care to persons being punished by incarceration); accord Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982).

²See NRS 34.160.

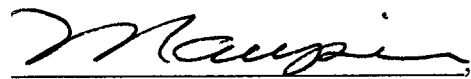
³See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

⁴NRS 34.170.

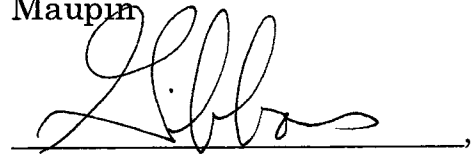
⁵Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

conditions within the correction center. The petition thus raises significant interwoven factual issues, which this court is ill-suited to resolve.⁶ As we previously pointed out in Round Hill General Improvement District v. Newman,⁷ when “factual issues are critical in demonstrating the propriety of a writ of mandamus, the writ should be sought in the district court, with appeal from an adverse judgment to this court.” Consequently, our intervention at this stage is inappropriate, and we deny the petition.⁸

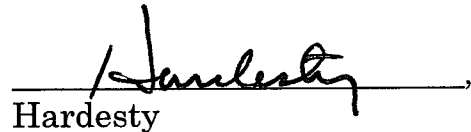
It is so ORDERED.⁹

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

⁶Round Hill, 97 Nev. at 604, 637 P.2d at 536.

⁷97 Nev. 601, 604, 637 P.2d 534, 536 (1981).

⁸NRAP 21(b); Smith, 107 Nev. at 677, 818 P.2d at 851.

⁹In light of this order, we deny as moot all other relief requested in the petition and the motions attached to the petition, including Neel’s request for orders directing a return, allowing for joinder, granting leave to proceed in proper person, directing discovery, and prohibiting retaliation. With regard to Neel’s request to proceed with in forma pauperis status, however, we conclude that he has demonstrated good cause to waive the filing fee required by NRAP 21(e). Accordingly, we waive the filing fee for this petition.

cc: William Ural Neel
Attorney General George Chanos/Carson City