

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANNY LEE WILLIAMS,
Petitioner,
vs.
E.K. MCDANIEL,
Respondent.

No. 50654

FILED

DEC 28 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER DENYING PETITION
FOR EXTRAORDINARY WRIT RELIEF

This proper person original petition for emergency extraordinary writ relief seeks an order compelling officials at the Nevada Department of Corrections (NDOC) to provide petitioner with certain medical care.¹

¹Petitioner Danny Lee Williams, a prisoner at Ely State Prison, labeled his petition, "Habeas Corpus Petition. Petition for Emergency Relief." However, Williams does not challenge the validity of his judgment of conviction or sentence. See NRS 34.360 (every person unlawfully confined may file a writ of habeas corpus to inquire into the cause of such imprisonment). Because the relief sought is more properly sought in a petition for a writ of mandamus, we elect to construe Williams's petition as seeking a writ of mandamus.

Additionally, we grant Williams's motion to proceed in forma pauperis, and we waive the filing fee for this writ petition. See NRAP 24(a).

07-28183

Specifically, the petition indicates that petitioner Danny Lee Williams was diagnosed with an enlarged heart after he was seen by a physician's assistant, "Dr. Carter," at Ely State Prison (ESP). Williams maintains that he was given an electrocardiogram (EKG), which revealed that his heart was "beating abnormally fast." Williams claims that Dr. Carter informed him that an enlarged heart "was not good (especially at this altitude)." Williams asserts that when he submitted a medical request form in which he asked to be seen by a cardiologist, officials at the ESP responded that an enlarged heart did not require treatment by a cardiologist. In the instant writ petition, Williams requests an order compelling NDOC officials to transport him to a medical facility where he can be seen by a qualified cardiologist.


The extraordinary writ of mandamus may issue to compel the performance of a duty or to control an arbitrary or capricious exercise of discretion.² The NDOC director and the wardens of correctional institutions have duties to assure that prisoners receive necessary and competent medical care.³ Here, however, the question of whether Williams's condition requires treatment beyond that already provided by ESP staff raises factual issues more appropriately resolved in the district court. We have repeatedly stated that we will not exercise our discretion

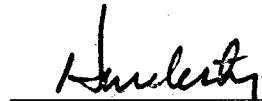
²NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

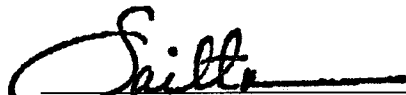
³NRS 209.131(4); NRS 209.161(3); see also Estelle v. Gamble, 429 U.S. 97, 103-04 (1976) (recognizing that, under the Eighth Amendment and common law, the government is obliged to provide adequate medical care to persons being punished by incarceration); accord Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th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

to consider writ petitions when factual, rather than legal, issues are presented.⁴ Instead, petitions raising factual issues should be brought in the district court in the first instance, with an appeal to this court from any adverse final judgment.⁵ Consequently, as our intervention at this point is inappropriate, this petition for extraordinary relief is denied.

It is so ORDERED.


_____, C.J.
Maupin


_____, J.
Hardesty


_____, J.
Saitta

cc: Danny Lee Williams
Attorney General Catherine Cortez Masto/Carson City

⁴Round Hill, 97 Nev. at 604, 637 P.2d at 536.

⁵Id.