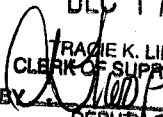IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE T. SMITH,
Appellant,
  vs.
THE STATE OF NEVADA,
Respondent.

No. 51627

FILED

DEC 17 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

## ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a proper person petition for a writ of mandamus. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

On March 11, 2008, appellant, an inmate at High Desert State Prison, filed a proper person petition for a writ of mandamus. The State opposed the petition. On July 2, 2008, the district court denied the petition.

In his petition, appellant claimed that he was in serious pain and on the brink of a heart attack and needed to be transported to the emergency room for testing. He asserted that the medical personnel at the prison did not respond to his repeated requests to address his chest pain. He acknowledged that he had been tested with an electrocardiogram (ECG), but had only been given pain pills. He also claimed that he had waited almost two years to see an eye doctor.

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A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station,[1] or to control an arbitrary or capricious exercise of discretion.[2] A writ of mandamus will not issue, however, if petitioner has "a plain, speedy and adequate remedy in the ordinary course of law."[3] Further, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered.[4]

Our review of the record reveals that the district court did not abuse its discretion in denying appellant's petition. The State presented appellant's medical records that indicated that appellant had received treatment for his complaints of chest pain, including several ECG tests. Further, appellant's most recent ECG test, conducted ten days prior to the filing of the instant petition, indicated a normal result. Moreover, appellant has an adequate legal remedy at law. Appellant may challenge

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[1]NRS 34.160.

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

[3]See NRS 34.170.

[4]See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983), modified on other grounds by State v. Dist. Ct. (Anzalone), 118 Nev. 140, 147, 42 P.3d 233, 237 (2002).

the conditions of his confinement, including the adequacy of medical care, through a civil action.[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[6]

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

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[5]See Preiser v. Rodriguez, 411 U.S. 475, 499 (1973) (noting that an inmate can file a civil rights action under 42 U.S.C. § 1983 to challenge the conditions of his confinement); Cummings v. Charter Hospital, 111 Nev. 639, 647-52, 896 P.2d 1137, 1142-45 (1995) (involving class action civil rights claim under 42 U.S.C. § 1983 against private mental hospital and physicians that acted under the authority of the law and detained patients pursuant to civil commitment statutes); Miller v. Evans, 108 Nev. 372, 373-74, 832 P.2d 786, 787 (1992) (recognizing civil rights claim under 42 U.S.C. § 1983 filed by inmate against prison officials for meaningful access to prison law library).

[6]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc:    Hon. Kenneth C. Cory, District Judge
        Willie T. Smith
        Attorney General Catherine Cortez Masto/Carson City
        Eighth District Court Clerk