

IN THE SUPREME COURT OF THE STATE OF NEVADA

LYNN MICHAEL GEMMILL,

No. 34710

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, AND THE
HONORABLE JEFFREY D. SOBEL,
DISTRICT JUDGE,

FILED

NOV 19 1999

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

Respondents,

and

THE CITY OF HENDERSON,

Real Party
in Interest.

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges an order of the respondent district court denying petitioner's motion for trial transcripts of municipal court proceedings without cost to petitioner.

On March 31, 1999, petitioner was convicted in the municipal court in the City of Henderson of two counts of possession of drug paraphernalia. On March 31, 1999, petitioner filed his notice of appeal to the district court. On May 28, 1999, petitioner filed a motion in the district court to require the municipal court to provide a trial transcript for the appeal without cost to petitioner. The City of Henderson opposed the motion. On July 21, 1999, the district court entered an order denying petitioner's motion.

Petitioner filed the instant petition for a writ of mandamus challenging the district court's order. On September 14, 1999, this court ordered an answer which was filed on October 1, 1999. Petitioner filed a reply on October 11, 1999.

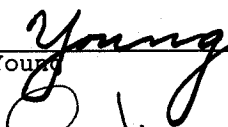

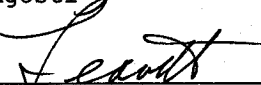
In the petition, petitioner contends that the municipal court was required by law to order preparation of and transmit a transcript of the proceedings to the district court

without cost to petitioner pursuant to NRS 189.030(1).¹ Petitioner argues that the municipal court may not legally require him to pay for the cost of preparing the transcript. Petitioner further argues that the municipal court may not condition preparation and transmission of the transcript upon prepayment of costs.

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, NRS 34.160, or to control an arbitrary or capricious exercise of discretion. See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). A writ of mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law. See NRS 34.170. Further, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered. 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).

Based on our review of the documents before this court and our consideration of the parties' arguments, we decline to intervene in this matter. Accordingly, we deny this petition.

It is so ORDERED.

	_____	J.
Young		
	_____	J.
Agosti		
	_____	J.
Leavitt		

¹NRS 189.030(1) provides: "The justice shall, within 10 days after the notice of appeal is filed, transmit to the clerk of the district court the transcript of the case, all other papers relating to the case and a certified copy of his docket." This provision applies to the municipal courts pursuant to NRS 5.073.

cc: Hon. Jeffrey D. Sobel, District Judge
Henderson City Attorney
Peter L. Flangas
Clark County Clerk