

IN THE SUPREME COURT OF THE STATE OF NEVADA

RODNEY FALK AND MAC'S
DELIVERY SERVICE, INC., A NEVADA
CORPORATION,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
SUSAN JOHNSON, DISTRICT JUDGE,

Respondents,

and

MONTE KONRATH, AN ADULT BY
AND THROUGH MARY ELLEN
HURST, HIS GUARDIAN,

Real Parties in Interest.

No. 52559

FILED

OCT 28 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges the district court's denial of petitioner's motion in limine to exclude evidence of petitioner Rodney Falk's prior felony conviction.

A writ of mandamus is an extraordinary remedy, and the determination of whether to consider a petition is solely within our discretion.¹ A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse of discretion.² The petition will only be granted when the petitioner has a clear right to

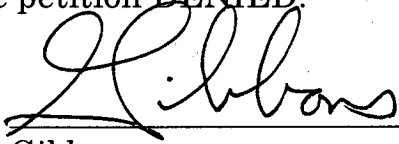
¹See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).


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

the relief requested and no plain, speedy, and adequate remedy in the ordinary course of law.³ Furthermore, the burden is on the petitioner to establish that mandamus relief is appropriate.⁴

This petition challenges the admissibility of evidence, a decision that is within the broad discretion of the district court.⁵ We have previously held that the determination regarding the admissibility of evidence “is not . . . a question properly addressed in a petition for a writ of mandate.”⁶ The district court’s decisions concerning admissibility of evidence are properly challenged on appeal from a final judgment.⁷ Accordingly, we

ORDER the petition DENIED.⁸


Gibbons, C.J.


Hardesty, J.


Parraguirre, J.

³Gumm v. State, Dep’t of Education, 121 Nev. 371, 375, 113 P.3d 853, 856 (2005).

⁴Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004); NRAP 21(a).

⁵Sheehan & Sheehan v. Nelson Malley & Co., 121 Nev. 481, 492, 117 P.3d 219, 226 (2005).

⁶Walton v. District Court, 94 Nev. 690, 693, 586 P.2d 309, 311 (1978).

⁷Id. at 693, 586 P.2d at 310.

⁸In light of this order, we deny as moot petitioner’s motion for a stay of the trial.

cc: Hon. Susan Johnson, District Judge
Mills & Associates
Patti, Sgro & Lewis
Rogers, Mastrangelo, Carvalho & Mitchell, Ltd.
Eighth District Court Clerk