

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY LYNN DAVIS,
Petitioner,

vs.

THE THIRD JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF LYON,
AND THE HONORABLE ROBERT E.
ESTES, DISTRICT JUDGE,
Respondents.

No. 52794

FILED

FEB 11 2009

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

ORDER DENYING PETITION

This is a proper person petition for a writ of mandamus. Petitioner asserts that he filed a post-conviction petition for a writ of habeas corpus in the district court on October 9, 2007, but that to date the district court has not ordered a response or otherwise considered his petition. Petitioner seeks an order compelling the district court to consider his petition.

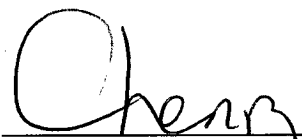
A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station or to control an arbitrary or capricious exercise of discretion. NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). A writ of mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law. NRS 34.170.


Because it was unclear from the documents before this court whether a petition had been filed on October 9, 2007, and whether and for

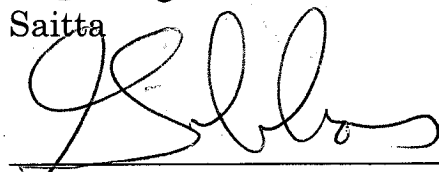
what reason the petition remained pending, this court directed the State to file a response. The State has filed a timely response indicating that a petition was filed on October 9, 2007, in district court case number CR-6404, and that petition remains pending while petitioner's appeal from the denial of a prior petition remains pending in this court. See Davis v. State, Docket No. 52112.

We have reviewed the documents submitted in this matter, and without deciding upon the merits of any claims, we decline to exercise our original jurisdiction in this matter. The district court has properly delayed consideration of the October 9, 2007 petition pending resolution of the appeal in Docket No. 52112 as it is inefficient to resolve a successive petition prior to the final resolution of the first petition. We are confident that the district court will resolve the October 9, 2007 petition upon resolution and issuance of the remittitur in Davis v. State, Docket No. 52112. Accordingly, we

ORDER the petition DENIED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Third Judicial District Court Dept. 3, District Judge
Jerry Lynn Davis
Lyon County District Attorney
Lyon County Clerk