

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,  
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
WASHOE, AND THE HONORABLE  
JANET J. BERRY, DISTRICT JUDGE,  
Respondents,  
and  
EDGAR GUSTAVO RUIZ,  
Real Party in Interest.

No. 52896

**FILED**

FEB 04 2009

TRAOE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition challenges a district court order denying petitioner's motion to dismiss a post-conviction petition for a writ of habeas corpus. In particular, petitioner questions the district court's application of procedural default rules. Having considered the petition, we conclude that extraordinary relief is not warranted because petitioner has a plain, speedy, and adequate remedy in the ordinary course of the law.


This court considered the use of extraordinary relief to address the application of post-conviction procedural bars in State v. District Court (Riker), 121 Nev. 225, 233, 112 P.3d 1070, 1075-76 (2005), explaining that extraordinary relief "is likely warranted" when "it is clear that the district court has disregarded the applicable law and failed to decide the issue of procedural default or decided the issue by applying clearly incorrect legal standards." But this court limited its decision to exclude situations in


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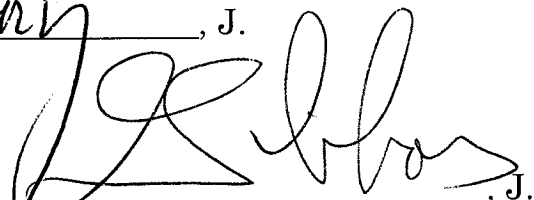
which the district court merely errs in its application of procedural default rules: “[E]xtraordinary relief is not warranted for routine correction of errors that a district court may make.” Id. at 233, 112 P.3d at 1075. For example, extraordinary relief is not warranted when “a district court has considered the applicable procedural default rules, applied them to a post-conviction habeas petition, and concluded that claims are not procedurally barred.” Id. In those circumstances, extraordinary relief is not warranted simply because the State or this court may disagree with the district court’s conclusion. Rather, the only question is whether “the district court has made a reasonable effort to follow the applicable law regarding procedural default.” Id.

In this case, we are not convinced that the district court disregarded applicable procedural bars or applied a clearly incorrect legal standard. As explained above, whether the district court erred in its analysis of the procedural bars is a matter for our review on appeal from the district court’s final resolution of the petition, and we therefore express no opinion on that matter at this time. Because the State has not demonstrated that this case presents the kind of narrow circumstances under which extraordinary relief may be appropriate regarding post-conviction procedural bars, see Riker, 121 Nev. at 227, 233, 112 P.3d at 1072, 1075-76, we decline to exercise our original jurisdiction or otherwise intervene at this time. Accordingly, we

ORDER the petition DENIED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Janet J. Berry, District Judge  
Washoe County District Attorney Richard A. Gammick  
Edward T. Reed  
Washoe District Court Clerk