

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL J. ZELLIS,

No. 34878

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

MAY 10 2000

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

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying appellant's proper person petition for a writ of mandamus.

On December 2, 1997, the district court convicted appellant, pursuant to a guilty plea, of one count of possession of a controlled substance. The district court sentenced appellant to serve a minimum term of twelve months to a maximum term of thirty-six months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for an indeterminate period not to exceed four years. On June 18, 1998, the district court entered an order revoking appellant's probation and executing the sentence imposed December 2, 1997.

On July 17, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On July 28, 1998, the district court ordered a response from the State within forty-five days. On September 21, 1998, the State filed an opposition to the petition. On September 29, 1998, the district court orally denied the petition and requested the State prepare the written order denying the petition. On November 5, 1998, the district court entered a written order denying the petition. Appellant did not appeal.

On August 5, 1999, appellant filed a proper person petition for a writ of mandamus in the district court. The State opposed the petition. On September 1, 1999, the district court denied appellant's petition. This appeal followed.

In his petition for a writ of mandamus, appellant argued that his due process rights had been violated.

Specifically, appellant argued that the State's delay in filing a response to his habeas corpus petition and the State's delay in preparing a written order denying his habeas corpus petition deprived him of due process. Appellant argued, "[s]uch failure deprived appellant to file crucial motions and documents to court."

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 upon our review of the record on appeal, we conclude that the district court did not abuse its discretion in denying appellant's petition.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976). Accordingly, we

ORDER this appeal dismissed.

Young, J.
Young
Agosti, J.
Agosti
Leavitt, J.
Leavitt

cc: Hon. Jack Lehman, District Judge
Attorney General
Clark County District Attorney
Michael J. Zellis
Clark County Clerk