

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY S. SHEPHERD,
Petitioner,

vs.

THE FIFTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF NYE,
AND THE HONORABLE ROBERT W.
LANE, DISTRICT JUDGE,

Respondents,

and

DIRECTOR, NEVADA DEPARTMENT
OF CORRECTIONS, HOWARD
SKOLNIK,
Real Party in Interest.

No. 54507

FILED

SEP 25 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus, prohibition, and habeas corpus challenges the district court's order directing petitioner to enter a regimental discipline program. Petitioner has also requested a stay of the district court order and moved for expedited resolution of this petition. Having reviewed this petition, we conclude that this court's intervention by way of extraordinary writ of mandamus or prohibition is not warranted at this time because the record before this court does not indicate that the district court has refused to perform an act it is obligated to perform or acted in excess of its jurisdiction. See NRS 34.160; NRS 34.320. Additionally, we conclude that a writ of habeas corpus is not warranted because petitioner has not demonstrated that he is being held without lawful authority and a petition for a writ of habeas corpus may not be used to challenge the conditions of confinement. See NRAP 22; NRS 34.360; NRS 176A.780(1) (allowing a district court to order a

defendant to complete a regimental discipline program in lieu of causing original sentence to be executed upon a violation of a condition of probation or suspension of sentence); Director, Dep't Prisons v. Arndt, 98 Nev. 84, 86, 640 P.2d 1318, 1319 (1982) (habeas corpus warranted only to challenge legality of custody and restraint); Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984) (a challenge to the imposition of a qualitatively more restrictive type of confinement within the prison speaks only to the conditions of confinement and may not be raised in a habeas corpus petition). Accordingly, we deny the petition and the motion for a stay.

It is so ORDERED.

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Robert W. Lane, District Judge
Nancy Theresa Lord
Attorney General Catherine Cortez Masto/Carson City
Nye County District Attorney/Pahrump
Nye County Clerk