

IN THE SUPREME COURT OF THE STATE OF NEVADA

HERNAN EDILBERTO ERAZO,  
Appellant,  
vs.  
MR. DON POAG, DIRECTOR OF  
NURSING; MS. KATHERINE HEGGE,  
RN, CN III; DR. ROBERT B.  
BANNISTER; NEVADA DEPARTMENT  
OF CORRECTIONS; AND THE STATE  
OF NEVADA,  
Respondents.

No. 59437

FILED

JAN 18 2013

TRAGIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Angelou*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a petition for a writ of mandamus. First Judicial District Court, Carson City; James E. Wilson, Judge.

Below, appellant filed a petition for a writ of mandamus seeking an order to compel respondents to cover the costs of repairing his prosthetic foot/leg. The district court denied appellant's petition, concluding that it was not warranted by law or by a reasonable argument for a change in the law. The court therefore requested that, pursuant to NRS 209.451(1)(d), the director of the Nevada Department of Corrections (NDOC) forfeit deductions of time that appellant had previously earned to reduce his prison sentence.

This court reviews the district court's decision to deny a writ petition for an abuse of discretion. See City of Reno v. Reno Gazette-Journal, 119 Nev. 55, 58, 63 P.3d 1147, 1148 (2003). A writ of mandamus is available to compel the performance of an act that 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; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).

On appeal, appellant argues that the NDOC's regulations require respondents to repair his prosthesis and that respondents abused their discretion by failing to do so. Specifically, appellant relies on NDOC AR 603.01, which states that respondents will provide prosthetic devices "for which there is medical evidence which supports the use of such device as being necessary to prevent or treat a serious medical condition, or which is proven necessary for the performance of the required activities in the correctional institutional environment." An inmate, however, may have to pay 100 percent in advance for the cost of a prosthetic device if it is not medically necessary. See NDOC AR 245.01(2).

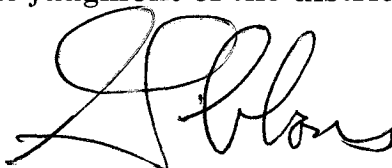
Evidence in the record on appeal supports the district court's conclusion that the prosthetic foot/leg was not medically necessary and was not necessary for appellant to perform required activities within the prison. In particular, there was evidence that appellant was provided with crutches to allow him to move around and that appellant was observed functioning in the prison environment without the prosthesis or the crutches. As such, the district court did not abuse its discretion by concluding that appellant failed to demonstrate that respondents were required by the prison regulations to provide him with a new or repaired prosthetic foot/leg. See City of Reno, 119 Nev. at 58, 63 P.3d at 1148.

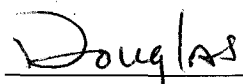
Also, to the extent that appellant argues that the failure to provide a prosthesis amounted to an Eighth Amendment violation for deliberate indifference to a serious medical need, he had a speedy and adequate remedy in the form of a 42 U.S.C. § 1983 action. And while the mere existence of other relief does not necessarily preclude a writ of

mandamus when such other relief is for some reason inadequate, see Dzack v. Marshall, 80 Nev. 345, 348, 393 P.2d 610, 611 (1964), an available legal remedy that is speedy and adequate, generally does preclude writ relief. See NRS 34.170; International Game Tech., 124 Nev. at 197, 179 P.3d at 558. Thus, the district court's denial of the petition because an adequate remedy at law was available also does not amount to an abuse of discretion.

Finally, in regard to appellant's argument that the district court improperly requested the forfeiture of his deductions of time, as discussed above, appellant's claim for extraordinary relief was not warranted by existing law, and thus, the district court did not abuse its discretion by requesting the sanction. See NRS 209.451(1)(d) (providing that an inmate forfeits deductions of time when he files a civil action containing a claim that is not warranted by law); Bahena v. Goodyear Tire & Rubber Co., 126 Nev. \_\_\_, \_\_\_, 235 P.3d 592, 598 (2010) (explaining that this court reviews a district court's decision to impose a sanction for an abuse of discretion). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

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

  
\_\_\_\_\_, J.  
Douglas

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

<sup>1</sup>In light of this order, we deny as moot appellant's December 20, 2012, request for submission.

cc: Hon. James E. Wilson, District Judge  
Hernan Edilberto Erazo  
Attorney General/Carson City  
Carson City Clerk