

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM TIDMARSH,  
Petitioner,

vs.

THE FIFTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF NYE;  
AND THE HONORABLE KIMBERLY A.  
WANKER, DISTRICT JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 61944

**FILED**

DEC 12 2012

FRAGIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Angood*  
DEPUTY CLERK


ORDER DENYING PETITION

This original petition for a writ of mandamus challenges the respondent district court's pretrial evidentiary decision in a criminal case.

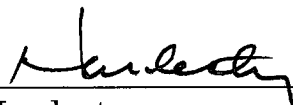
A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, NRS 34.160, or to control an arbitrary or capricious exercise of discretion. See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). But the writ will not issue if the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. See NRS 34.170. Here, petitioner has not demonstrated that there is no plain, speedy, and adequate remedy in the ordinary course of law as he can raise the evidentiary issue on appeal if he is convicted. See NRS 177.015(3) (providing that defendant may appeal from final judgment in a criminal case); NRS 177.045 ("Upon the appeal, any decision of the court in an intermediate order or proceeding, forming a part of the record, may be reviewed."). Nor has petitioner demonstrated that the district court

lacked authority to reconsider the prior evidentiary decision under the circumstances presented or that the district court exercised its discretion based on prejudice or preference rather than reason or on a clearly erroneous interpretation or application of the law given that court's carefully explained decision that takes into consideration the applicable rules of law, see State v. Dist. Ct. (Armstrong), 127 Nev. \_\_\_, \_\_\_, 267 P.3d 777, 780 (2011) (defining arbitrary or capricious exercise of discretion and manifest abuse of discretion for purposes of mandamus relief). Accordingly, we decline to intervene and

ORDER the petition DENIED.<sup>1</sup>

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

  
Pickering \_\_\_\_\_, J.

  
Hardesty \_\_\_\_\_, J.

cc: Hon. Kimberly A. Wanker, District Judge  
Law Offices of C. Conrad Claus  
Nye County District Attorney  
Nye County Clerk

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<sup>1</sup>We lift the stay previously imposed by this court.