

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARREN RUTHERFORD,  
Petitioner,  
vs.  
HENDERSON MUNICIPAL COURT;  
AND THE HONORABLE DIANA  
HAMPTON,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 68104

**FILED**

JUL 14 2015

TRACIE W. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Williams*  
DEPUTY CLERK

*ORDER DENYING PETITION*

In this original petition for a writ of mandamus petitioner Darren Rutherford asserts that the municipal court judge violated her ministerial duty to permit him to withdraw his guilty plea and the district court erred by denying his petition for writ of mandamus that challenged the municipal court's denial of his request to withdraw his guilty plea.

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, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981). A writ of mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law. 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. Eighth Judicial Dist. 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).

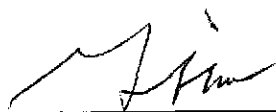
Rutherford informs this court that he filed a petition for a writ of mandamus in the district court. Based on the district court order denying the petition for a writ of mandamus, it appears that Rutherford sought the same relief in the district court that he now seeks in this court.<sup>1</sup> The district court order denying Rutherford's petition for a writ of mandamus is an appealable determination. NRAP 3A(b)(1). Because Rutherford could have raised the same issues he is raising in the instant petition in an appeal from the district court order denying his petition for a writ of mandamus, we conclude he had a plain, speedy, and adequate remedy at law, and therefore, this court's intervention by way of an extraordinary writ is not warranted, NRS 34.170. We note that Rutherford has not pointed to any circumstances revealing urgency or strong necessity for this court to intervene even though he had an alternative remedy available. *Cf. Salaiscooper v. Eighth Judicial Dist.*


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<sup>1</sup>Rutherford did not provide this court with a copy of the petition for a writ of mandamus that was filed in the district court.

*Court*, 117 Nev. 892, 901-02, 34 P.3d 509, 515-16 (2001) (concluding that review through writ petition was warranted even though there was an alternative remedy where there were 56 similar cases with the same issues pending in lower courts and petition presented issue of great statewide importance). Accordingly, we

ORDER the petition DENIED.

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Diana Hampton, Municipal Court Judge  
Hon. Kerry L. Earley, District Judge  
The Pariente Law Firm, P.C.  
Attorney General/Carson City  
Henderson City Attorney  
Eighth District Court Clerk