

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN LYNN FERNANDEZ,  
Appellant,  
vs.  
NEVADA DEPARTMENT OF  
CORRECTIONS; THE STATE OF  
NEVADA; JAMES GREG COX; ERIK  
MCDANIELS, ASSOCIATE DIRECTOR;  
ELIZABETH WALSH, ASSOCIATE  
WARDEN; AND RENEE BAKER,  
WARDEN,  
Respondents.

No. 67900

**FILED**

SEP 15 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order granting in part and denying in part a petition for a writ of mandamus, an order denying a motion for follicle toxicology examination and DNA testing, an amended order vacating hearing and disposing of related motions, and an order regarding the first amended petition for a writ of mandamus. First Judicial District Court, Carson City; James E. Wilson, Judge.

Appellant Kevin Lynn Fernandez first argues the district court erred in denying the majority of the claims raised in his petition for a writ of mandamus.<sup>1</sup> “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

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<sup>1</sup>The district court granted Fernandez relief with respect to his request for a lie detector test pursuant to NRS 289.070(2) because Fernandez made allegations of misconduct against peace officers.

discretion.” *Williams v. Eighth Judicial Dist. Court*, 127 Nev. \_\_\_, \_\_\_, 262 P.3d 360, 364 (2011) (internal quotation marks); *see also* NRS 34.160. “A district court’s decision to grant or deny a writ petition is reviewed by this court under an abuse of discretion standard.” *DR Partners v. Bd. of County Comm’rs*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000). A petition for a writ of mandamus is generally available only where there is no “plain, speedy and adequate remedy in the ordinary course of law.” NRS 34.170; *see also Halverson v. Sec’y of State*, 124 Nev. 484, 487, 186 P.3d 893, 896 (2008).


Fernandez asserted employees of the Nevada Department of Corrections (NDOC) improperly placed controlled substances into his food and sought an order directing the NDOC defendants to cease that activity. The district court denied Fernandez relief in this regard, concluding the NDOC’s alleged placement of controlled substances in Fernandez’s food was the subject of a settlement agreement from a previous civil action. The district court therefore concluded Fernandez could proceed in a breach-of-contract action concerning this alleged activity, and accordingly, Fernandez had an adequate remedy at law to challenge this alleged activity. Our review of the record reveals the district court did not abuse its discretion in denying relief for this claim. *See id.* Therefore, Fernandez is not entitled to relief.


Second, Fernandez argues the district court committed the following errors: improperly considering factual issues because the NDOC’s initial opposition did not oppose Fernandez’s factual assertions, denying his motion seeking testing to ascertain whether the sample used by the NDOC to conduct drug testing actually belonged to Fernandez, improperly concluding he had no evidence to prove the drug testing was

faulty, improperly considering evidence relating to a drug test, improperly declining to conduct an evidentiary hearing, improperly concluding the NDOC conducted drug testing pursuant to a settlement agreement, failing to consider Fernandez's supplemental evidence challenging the reliability of the drug test, concluding certain issues raised in the petition became moot upon completion of the drug test, and improperly denying his petition without permitting discovery. We have considered these claims, and because we conclude the district court properly concluded mandamus relief was not available for the majority of Fernandez's claims as he had another adequate remedy at law, we conclude Fernandez is not entitled to relief for these claims. Accordingly, we

ORDER the judgments of the district court AFFIRMED.<sup>2</sup>

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

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

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

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<sup>2</sup>In addition, we conclude Sanchez did not demonstrate the district court erred in denying his motion for follicle toxicology examination and DNA testing, ordering the hearing vacated and disposing of related motions, and in issuing an order on the first amended petition for a writ of mandamus.

cc: Hon. James E. Wilson, District Judge  
Kevin Lynn Fernandez  
Attorney General/Carson City  
Carson City Clerk