

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHAWN FOLKSTEAD; AND LISA  
FOLKSTEAD,  
Petitioners,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
DOUGLAS SMITH, DISTRICT JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 72818

FILED

NOV 15 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER DENYING PETITION*


This original petition for a writ of mandamus seeks an order directing the district court to consider, on its merit, Shawn and Lisa Folksteads' motion to drop-down their felony convictions to gross misdemeanor convictions. We directed the real party in interest to file an answer on behalf of respondents. The real party filed the answer on September 1, 2017. Although given an opportunity to file a reply to the answer, the Folksteads did not do so.

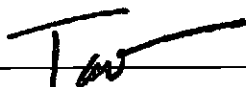
A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, NRS 34.160, or to control a manifest abuse or arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 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). "Petitioner[ ] carr[ies] the burden of demonstrating that extraordinary relief is warranted." *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

The real party affirmatively pleads laches. The record before this court demonstrates the district court orally denied the Folksteads' motion on April 20, 2016, concluding that it did not have any authority to grant the relief requested. A written order denying the motion was filed on May 5, 2016. The instant petition was not filed until April 14, 2017, nearly a year after the district court denied the motion, and the Folksteads did not file an appendix in support of their petition until May 17, 2017. The Folksteads do not explain the reason for the delay in filing their petition, and they have not opposed the real party's request to have the petition denied based on laches. We conclude that, under the facts of this case, imposition of the doctrine of laches is warranted. *See State v. Eighth Judicial Dist. Court*, 116 Nev. 127, 135, 994 P.2d 692, 697 (2000) (identifying test for when laches applies and concluding an 11 month delay was inexcusable). Accordingly, we

ORDER the petition DENIED.

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

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

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

cc: Hon. Douglas Smith, District Judge  
Mueller Hinds & Associates  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk