

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SALVADOR VIVEROS,  
Appellant,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
TIERRA DANIELLE JONES, DISTRICT  
JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 74313

FILED

NOV 14 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER DENYING PETITION*

This original petition for a writ of mandamus and/or prohibition seeks an order directing the district court to grant petitioner Salvador Viveros' motion to dismiss. Viveros asserts the State failed to comply with the procedural and substantive requirements set forth in *Hill v. Sheriff*, 85 Nev. 234, 452 P.2d 918 (1969); *Bustos v. Sheriff*, 87 Nev. 622, 491 P.2d 1279 (1971), and EDCR 7.30 when seeking to continue the trial. Viveros argues that "[g]iven this clear violation, the District Court exceeded its jurisdiction by siding with the State and should have granted his Motion to Dismiss."<sup>1</sup>

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

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<sup>1</sup>Although Viveros has provided this court with a copy of the State's opposition to his motion and his reply, he has not provided this court with a copy of his motion to dismiss.


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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 prohibition may issue to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the district court. NRS 34.320. Neither writ will issue if the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170; NRS 34.330. Petitions for extraordinary writs are addressed to the sound discretion of the court, *see State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983), and the "[p]etitioner[ ] 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).

Viveros' argument centers on the State's failure to comply with the requirements in *Hill*, *Bustos*, and EDCR 7.30. Unlike the situation in *Hill* and *Bustos* where the State sought to continue a preliminary hearing, here the State sought to continue the trial. Viveros does not allege granting the continuance has resulted in a speedy trial violation. Viveros can challenge the district court's denial of his motion to dismiss and the grant of the State's motion to continue the trial on appeal in the event he is convicted. *See* NRS 177.015(3); NRS 177.045. Therefore, he has a plain, speedy, and adequate remedy at law. Viveros has not pointed to any circumstances revealing urgency or strong necessity for this court to intervene even though there is an alternative remedy available. *Cf. Salaiscooper v. Eighth Judicial Dist. 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 available).

Accordingly, we conclude this court's intervention by way of an extraordinary writ is not warranted, and we

ORDER the petition DENIED.<sup>2</sup>

, C.J.  
Silver

, J.  
Tao

, J.  
Gibbons

cc: Hon. Tierra Danielle Jones, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>In light of this order, we deny Viveros' emergency motion to stay the November 20, 2017, proceedings.