

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DERRICK PALMER,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK,
Respondent,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 74451

FILED

MAR 14 2018

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 compelling the district court to grant Derrick Palmer's petition for a writ of habeas corpus and dismiss the criminal indictment with prejudice. Palmer states that, after he filed a motion to dismiss counsel, he filed a pretrial habeas petition alleging a violation under *Sheriff v. Marcum*, 105 Nev. 824, 783 P.2d 1389 (1989). Palmer asserts that, against his wishes, the district court appointed new counsel to represent him, the district court refused to hear his pro se petition because he is represented by counsel, and counsel refused to pursue his *Marcum* violation claim. Palmer informs this court the district court has subsequently permitted counsel to withdraw and again appointed new counsel to represent him, and his pro se petition still has not been set for a hearing.


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 the 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 of 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).

We conclude mandamus relief is not warranted. Even though Palmer had moved to dismiss his counsel, it appears he has actually been represented by counsel at all times. We conclude Palmer failed to demonstrate the district court manifestly, arbitrarily, or capriciously abused its discretion by not considering his pro se petition and requiring him to proceed through his counsel. *See* EDCR 3.70; EDCR 7.40(a). Further, to the extent Palmer alleges his counsel has been ineffective, he has a plain, speedy, and adequate remedy available to him because he can challenge the effectiveness of his counsel in a postconviction petition for a writ of habeas corpus filed in compliance with NRS chapter 34 in the event he is convicted. Therefore, we

ORDER the petition DENIED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kenneth Cory, District Judge
Derrick Palmer
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk