

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES CHRISTIAN,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
KERRY LOUISE EARLEY, DISTRICT
JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 74433

FILED

NOV 17 2017

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

ORDER DENYING PETITION

This original petition for a writ of mandamus seeks an order directing the district court to dismiss all charges against Charles Christian. Christian asserts the State failed to file an affidavit, as required by NRS 174.515(1), or make a sworn statement as to why a continuance of the trial should have been granted, and the State failed to demonstrate good cause for granting a continuance. Christian asserts granting the continuance under these circumstances violated his due process rights.

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 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).

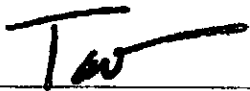
Christian does not allege granting the continuance has resulted in a speedy trial violation and he does not provide any cogent argument regarding how granting the continuance constituted a violation of his due process rights. Further, Christian can challenge the granting of the continuance on direct appeal in the event he is convicted and, therefore, he has a plain, speedy, and adequate remedy. *See* NRS 177.015(3); NRS 177.045. Accordingly, we conclude Christian has failed to meet his burden of demonstrating this court's intervention by extraordinary writ is warranted, and we

ORDER the petition DENIED.



C.J.

Silver



J.

Tao



J.

Gibbons

cc: Hon. Kerry Louise Earley, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk