

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA CHAVIRA,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
ELIZABETH GOFF GONZALEZ,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 75430

**FILED**

MAY 01 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 directing Chief Judge Elizabeth Goff Gonzalez to grant Joshua Chavira's motion to disqualify Judge Carolyn Ellsworth.

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,

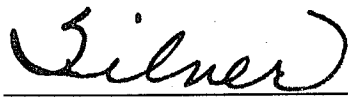
1339 (1983). “Petitioner[ ] carr[ies] the burden of demonstrating that extraordinary relief is warranted.” *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Chavira sought to have Judge Ellsworth disqualified because she unsealed and disclosed, without prior notice or a hearing, an affidavit that Chavira’s counsel had filed under seal “pursuant to issues of Attorney/Client privilege.” In her affidavit in answer to the motion to disqualify, Judge Ellsworth stated she unsealed and disclosed the affidavit to the State because the affidavit did not reveal any confidential communications protected by the attorney/client privilege, and sealing of the affidavit effectively resulted in the defense having ex parte communication with the court and deprived the State of the ability to meaningfully respond or object to the ex parte communication. Judge Ellsworth further asserted she does not have any personal bias or prejudice against Chavira or any particular desire to hear his case. Chief Judge Gonzalez denied the motion to disqualify Judge Ellsworth, finding Judge Ellsworth’s affidavit “reflects her ability to continue to be fair and impartial to [Chavira]” and “[t]he facts presented by [Chavira] do not support a finding that a reasonable person might reasonably question the judge’s impartiality under NCJC 2.11.”


We conclude relief by way of extraordinary writ of mandamus is not warranted. Initially, we note that the denial of a motion to disqualify a judge can be challenged on direct appeal in the event a defendant is convicted. *See* NRS 177.015(3); NRS 177.045. Therefore, our intervention would not be warranted because a plain, speedy, and adequate remedy at law exists for challenging a motion to disqualify a judge. Moreover, even assuming Chavira could demonstrate circumstances revealing urgency or a

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), we conclude Chief Judge Gonzalez did not manifestly abuse, or arbitrarily or capriciously exercise, her discretion by denying the motion to disqualify Judge Ellsworth. Although Chavira asserts a reasonable person would have doubts about Judge Ellsworth's impartiality based upon her disclosure of the affidavit without prior notice or a hearing, nothing in the record supports this conclusion. As Chief Judge Gonzalez found, "Judge Ellsworth's Affidavit reflects her ability to continue to be fair and impartial to [Chavira] in this matter." Further, even assuming, without deciding, Judge Ellsworth improperly disclosed the affidavit, this ruling alone would not have provided a sufficient basis to disqualify Judge Ellsworth. *See Liteky v. United States*, 510 U.S. 540, 555 (1994) ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion."). Accordingly, we

ORDER the petition DENIED.

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

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

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

cc: Hon. Elizabeth Goff Gonzalez, Chief Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk