

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLIE F. WORTHAM,
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. 73532

FILED

JUN 13 2018

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

ORDER DENYING PETITION

In this original petition for a writ of mandamus Willie F. Wortham seeks an order compelling the district court to grant his pretrial petition for a writ of habeas corpus. Wortham alternatively seeks a writ of prohibition preventing the district court from denying his pretrial petition for a writ of habeas corpus.

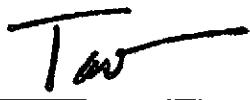
A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station, NRS 34.160, or to control a manifest abuse or arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). A writ of 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 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).

We conclude Wortham has failed to demonstrate our intervention by way of extraordinary relief is warranted. The district court found Wortham’s petition was not timely filed and denied the petition without reaching the merits of the claim raised. Even assuming the district court erred by denying the petition as untimely, we note Wortham unconditionally waived his right to a preliminary hearing without any evidence being presented. In so doing, Wortham acknowledged/conceded there was sufficient evidence of probable cause to proceed to trial. *See* NRS 171.196(1). Therefore, there is no basis for challenging a determination of probable cause to bind him over for trial. Accordingly, we

ORDER the petition DENIED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

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