

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ETHAN RAY WALD,  
Petitioner,  
vs.  
THE FIFTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF NYE;  
AND THE HONORABLE ROBERT W.  
LANE, DISTRICT JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 75952-COA

FILED

NOV 19 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER DENYING PETITION*

This original petition for a writ of mandamus or prohibition challenges a district court order denying a pretrial petition for a writ of habeas corpus.

Ethan Ray Wald previously challenged the justice court's probable cause finding in a pretrial habeas petition. The district court found the State presented slight or marginal evidence at the preliminary hearing from which the justice court could find probable cause to believe Wald committed the offense of perjury. And the district court denied the petition.

Wald now challenges the denial of his pretrial habeas petition. He specifically argues the evidence presented at the preliminary hearing was insufficient because the State failed to show he knew he was testifying untruthfully and his untruthful testimony was material to the jury's decision in the previous case.

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

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station, NRS 34.160, or to control an 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. Mandamus and prohibition are extraordinary remedies, and the decision to entertain a petition for these writs lies within our discretion. *Hickey v. Eighth Judicial Dist. Court*, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989).

Wald claims the district court erred by denying his petition because “[t]he State failed to present any evidence at the preliminary hearing establishing probable cause that [he] committed the offense of perjury.” Our review of a probable cause determination through original writ petitions is disfavored, see *Kussman v. Eighth Judicial Dist. Court*, 96 Nev. 544, 545-46, 612 P.2d 679, 680 (1980), and Wald has not demonstrated his challenge to the probable cause determination “involves only a purely legal issue,” *Rugamas v. Eighth Judicial Dist. Court*, 129 Nev. 424, 431, 305 P.3d 887, 892 (2013) (quoting *Ostman v. Eighth Judicial Dist. Court*, 107 Nev. 563, 565, 816 P.2d 458, 460 (1991)). Therefore, we decline to exercise our original jurisdiction, and we

ORDER the petition DENIED.



C.J.

Silver



J.

Tao



J.

Gibbons

cc: Hon. Robert W. Lane, District Judge  
Daniel E. Martinez  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk

