

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARTURO LOPEZ,
Petitioner,

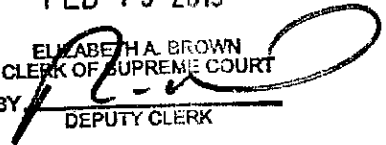
vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
SUSAN JOHNSON, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 76175-COA

FILED

FEB 13 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus and/or, in the alternative, writ of prohibition challenges a district court order dishonorably discharging Arturo Lopez from probation. Lopez contends the district court violated his due process rights and abused its discretion by ordering that he be dishonorably discharged from probation without giving him notice or opportunity to be heard. He asks this court to direct the district court to set aside the dishonorable discharge and enter an order of honorable discharge.


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

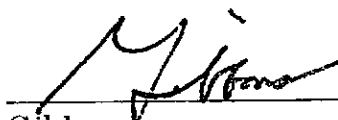
its judicial functions, when such proceedings are in excess of the jurisdiction of the district court. NRS 34.320. Petitions for extraordinary writs are addressed to the sound discretion of the court, *see State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983), and 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 Lopez has failed to demonstrate extraordinary relief is warranted. In support of his argument that his due process rights were violated, Lopez relies on case law that that requires due process procedures for probation revocation proceedings. However, unlike a revocation proceeding, a dishonorable discharge does not involve the possibility of incarceration. Accordingly, we conclude Lopez fails to demonstrate that his due process rights were violated by the lack of notice and a hearing. Further, whether to grant an honorable discharge from probation is discretionary. *See* NRS 176A.850(1). Here, the district court found, and Lopez acknowledges, that Lopez violated several conditions during his probationary period. We conclude Lopez has not demonstrated the district court abused its discretion or acted in excess of its jurisdiction by ordering him dishonorably discharged from probation. Accordingly, we

ORDER the petition DENIED.


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Susan Johnson, District Judge
Turco & Draskovich
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk