

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK SMITH, JR.,
Petitioner,

vs.

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

No. 78819

FILED

JUL 29 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING PETITION

This petition for a writ of mandamus challenges a district court order denying a motion to set reasonable bail or house arrest due to a medical condition. We are not satisfied that this court's intervention by way of an extraordinary writ is warranted because petitioner has not demonstrated that the district court acted arbitrarily and capriciously in denying the motion. *See* NRS 34.160; *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011) (recognizing that a writ of mandamus may issue to control an arbitrary or capricious exercise of discretion and defining an arbitrary and capricious exercise of discretion as "one founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law") (internal citations and quotations omitted)); *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (recognizing that a petitioner bears the burden of demonstrating that extraordinary relief is warranted); *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (recognizing that the issuance of a writ of mandamus is discretionary). We

note that the record before this court is devoid of documentation or testimony regarding the current diagnosis and prognosis of petitioner's medical condition.¹ However, nothing in our decision precludes petitioner from filing a new motion in the district court that provides an evidentiary basis supporting petitioner's health concerns and alternatives to out-of-state release.² Accordingly, we

ORDER the petition DENIED.

J. Hardesty, J.
Hardesty

Stiglich, J.
Stiglich

Silver, J.
Silver

cc: Hon. Stefany Miley, District Judge
Special Public Defender
Clark County District Attorney
Attorney General/Carson City
Eighth District Court Clerk

¹Although we deny the petition, we further note that there is some confusion regarding the amount of bail set in this case as the State and district court appear to indicate that bail has been set in the amount of \$50,000 while petitioner asserts the amount was set in the amount of \$150,000.

²In any subsequent motion filed in the district court, we are confident the district court will thoroughly evaluate the factors set forth in NRS 178.4853 (factors to be considered before release without bail) in determining changes to petitioner's detention status.