

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GEORGE A. TOLIVER,
Appellant,
vs.
THE STATE OF NEVADA
DEPARTMENT OF CORRECTIONS;
AND WARDEN WILLIAMS,
Respondents.

No. 70564

FILED

OCT 18 2016

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for a writ of mandamus.¹ Eighth Judicial District Court, Clark County; James Crockett, Judge.

Appellant George A. Toliver argues the district court erred in denying his petition for a writ of mandamus. In his petition, Toliver claimed the Nevada Department of Corrections (NDOC) violated his due process rights during a prison disciplinary hearing. Toliver argues the district court erred in denying the petition due to his failure to complete service of process upon the Director of the NDOC and asserts the district court should have considered his claims on their merits.

“A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion.”

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).


Williams v. Eighth Judicial Dist. Court, 127 Nev. 518, 524, 262 P.3d 360, 364 (2011) (internal quotation marks omitted); *see also* NRS 34.160. “A district court’s decision to grant or deny a writ petition is reviewed by this court under an abuse of discretion standard.” *DR Partners v. Bd. of County Comm’rs*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000). A petition for a writ of mandamus is generally available only where there is no “plain, speedy and adequate remedy in the ordinary course of law.” NRS 34.170; *see also Halverson v. Sec’y of State*, 124 Nev. 484, 487, 186 P.3d 893, 896 (2008).


No provision contained in NRS chapter 34 requires personal service of the petition for a writ of mandamus upon the adverse party. NRS 34.200 expressly recognizes that a petition for a writ of mandamus can be filed without providing any notice to the adverse parties so long as any writ granted based on such an application is issued as an alternative writ commanding the adverse parties to either perform the required act or show cause before the court why they have not done so. Moreover, the provisions regarding service of process upon the Attorney General and the head of the agency named in the suit discuss service of a complaint in a civil action, not a petition for a writ of mandamus. *See* NRS 41.031(2); *see also* NRS 34.300 (stating that the NRS and Nevada Rules of Civil Procedure governing civil actions are applicable to petitions for a writ of mandamus “[e]xcept as otherwise provided in NRS 34.150 to 34.290, inclusive.”). Accordingly, the district court erred in denying mandamus relief based upon failure to complete service upon the Director of the NDOC.


However, a review of the record before this court reveals that the district court properly denied the petition without considering the

merits of Toliver's claims. Toliver's challenge to the prison disciplinary hearing may appropriately be raised in a civil rights action pursuant to 42 U.S.C. § 1983, and therefore, the district court properly concluded Toliver has a plain, speedy, and adequate remedy in the ordinary course of law with which to pursue his claims. Therefore, we conclude Toliver is not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. James Crockett, District Judge
George A. Toliver
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk