

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LANCE DREUX AUSTIN,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
DAVID M. JONES, DISTRICT JUDGE,
Respondents,

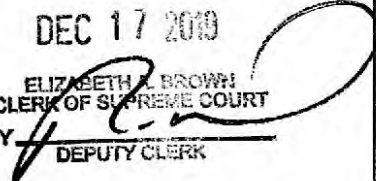
and

THE STATE OF NEVADA,
Real Party in Interest.

No. 79573-COA

FILED

DEC 17 2019

ELIZABETH L. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING PETITION

In this original petition for a writ of mandamus or prohibition, Lance Dreux Austin seeks an order directing the district court to rescind its order granting the State's second motion in limine. Austin asserts the district court acted in excess of its jurisdiction and/or acted in an arbitrary or capricious exercise of discretion by granting the State's motion in limine.

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).

The record before this court indicates that on May 4, 2018, the State filed a motion in limine to exclude evidence of the alleged victim’s prior arrest. The Honorable Mark B. Bailus heard argument on the motion on May 22, 2018, and denied the motion without prejudice.¹ Thereafter, the case was reassigned to the Honorable David Jones. On September 14, 2018, the State filed a second motion in limine in which it again sought to exclude evidence of the alleged victim’s prior arrest, as well as evidence related to one of the State’s lay witnesses. After hearing argument, Judge Jones granted the motion in limine.

Austin argues Judge Jones acted in excess of his jurisdiction in violation of Nevada District Court Rules (DCR) 18(1) and Eighth Judicial District Court Rules (EDCR) 7.10(b) by granting the State’s second motion

¹Although Austin asserts Judge Bailus also considered his motion to compel discovery at the May 22 hearing and it was only this motion that Judge Bailus denied without prejudice, the record does not support this assertion. Rather, the record demonstrates that the motion to compel was not on calendar for May 22 and, on that day, Judge Bailus set the motion to compel on calendar for May 31.

in limine because Judge Bailus had previously denied the motion. “[O]ne district judge may not directly overrule the decision of another district judge on the same matter in the same case.” *State v. Beaudion*, 131 Nev. 473, 477, 352 P.3d 39, 42 (2015); *see also* DCR 18(1); EDCR 7.10(b). Nevertheless, we conclude Judge Jones did not act in excess of his jurisdiction by granting the State’s second motion in limine because Judge Bailus’ denial of the State’s first motion without prejudice did not constitute a final resolution of the issue raised and the record clearly demonstrates that Judge Bailus contemplated further action would be taken regarding this issue. *See generally Sicor, Inc. v. Sacks*, 127 Nev. 896, 903, 266 P.3d 618, 623 (2011) (holding a without prejudice denial of a motion for change of venue did not constitute a final appealable order because it did not finally resolve the issue presented and contemplated further action); *Lighthouse v. Great W. Land & Cattle Corp.*, 88 Nev. 55, 57, 493 P.2d 296, 297 (1972) (holding that a dismissal of a counterclaim without prejudice did not bar a subsequent action asserting an identical claim). Accordingly, we conclude Austin has failed to demonstrate this court’s intervention by way of a writ of prohibition is warranted.

Austin also argues that by granting the motion in limine the district court violated his right to cross-examine the alleged victim’s credibility and motive to fabricate. An appeal is generally an adequate legal remedy precluding writ relief. *See Pan*, 120 Nev. at 224, 88 P.3d at 841. Because Austin can challenge the district court’s decision on appeal in the event he is convicted, NRS 177.015(3); NRS 177.045, he has a plain, speedy, and adequate remedy at law for challenging the grant of the motion in limine. Therefore, we conclude this court’s intervention by way of

extraordinary writ is not warranted and we decline to exercise our original jurisdiction to address this claim.

Having concluded this court's intervention by way of extraordinary writ is not warranted, we

ORDER the petition DENIED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. David M. Jones, District Judge
James J. Ruggeroli
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk