

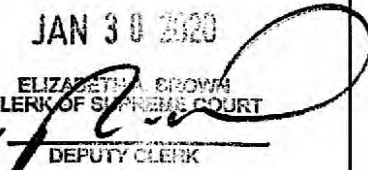
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD DOUGLAS EBY,
Petitioner,
vs.
DOUGLAS COUNTY NEVADA
DISTRICT ATTORNEY'S OFFICE;
MARK B. JACKSON; AND ERIK A.
LEVIN,
Respondents,
and
JESSE B. KALTER,
Real Party in Interest.

No. 80320-COA

FILED

JAN 30 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING PETITION

In this original petition for a writ of mandamus, Donald Douglas Eby asks this court to direct respondents and the real party in interest to provide him with his victim's complete criminal history and one of his victim's old medical records. He asserts this material should have been provided to him pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and without this material he will be unable to perfect his claim that the State intentionally withheld this material during his trial.


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 mandamus will not issue, however, if petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170. Further, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered. *See Poulos v. Eighth*

Judicial Dist. Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also *State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983). "Petitioner[] 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 documents provided by Eby demonstrate that he has previously sought a motion to compel the State to provide him this material and the district court has denied the motion to compel. Eby currently has an appeal pending in Docket No. 80207, in which he appeals from the district court's denial of his motion to compel and the district court's denial of his postconviction petition for a writ of habeas corpus. Because the order denying the motion to compel was an intermediate order to the district court's decision to deny his petition, that order forms a part of the record in his postconviction proceeding and can be reviewed on appeal from the denial of his postconviction petition. See NRS 177.045. Therefore, Eby has a plain, speedy, and adequate remedy for raising his claim, and this court's intervention by way of extraordinary writ is not warranted. Accordingly, without reaching the merit of any claims raised, we

ORDER the petition DENIED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Donald Douglas Eby
Douglas County District Attorney/Minden
Jesse Kalter Law, P.C.
Douglas County Clerk