

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES MATTHEW WIRTH,  
Petitioner,  
vs.  
THE ELEVENTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
PERSHING,  
Respondent.

No. 82432-COA

FILED

MAR 19 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER DENYING PETITION*

In this original petition for a writ of mandamus, Charles Matthew Wirth seeks an order directing the district court to comply with the order issued in *Wirth v. Warden*, Docket No. 79955-COA (Order of Reversal and Remand, July 24, 2020).<sup>1</sup> 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.*

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<sup>1</sup>Wirth's pleading is titled "petition for writ of mandamus/prohibition (NRS 34.150 through 34.320) first amendment petition emergency motion." We construe Wirth's petition as one seeking a writ of mandamus because "he has not asserted a claim that challenges the district court's jurisdiction" as required for a writ of prohibition. *Clay v. Eighth Judicial Dist. Court*, 129 Nev. 445, 449 n.1, 305 P.3d 898, 901 n.1 (2013) (construing a similar petition solely as one for a writ of mandamus); *see also* NRS 34.320 (providing that a writ of prohibition is available to stop proceedings that are without or in excess of the district court's jurisdiction). Wirth also fails to allege an unconstitutional prior restraint of his First Amendment rights, *see* NRS 34.185, or to meet the procedural requirements for an emergency motion, *see* NRAP 27(e).

*Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). 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).

Wirth had filed a postconviction petition for a writ of habeas corpus challenging the computation of time served, which the district court denied as procedurally barred. In its earlier order, this court concluded the district court erred by denying the petition as procedurally barred and directed the district court to consider Wirth’s claims. Wirth now asserts that, as of the time of the filing of the instant petition, the district court has not considered his claims. The State answers that the district court has since taken steps to consider Wirth’s claims and, in support, provides a copy of the district court order directing the State to respond to Wirth’s postconviction petition. Because the district court is taking steps to address Wirth’s claims, we conclude that our intervention by way of extraordinary relief is not warranted. Accordingly, we

ORDER the petition DENIED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Charles Matthew Wirth  
Attorney General/Carson City  
Clerk of the Court/Court Administrator