

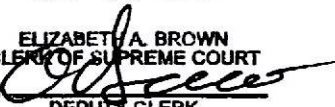
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY THOMAS CHERNETSKY;
TIMOTHY WAYNE CONNORS;
MICHAEL LOUIS KIZER; LLOYD LEE
ASKINS, III; AND MICHAEL ANDREW
BESSEY,
Petitioners,
vs.
KYLE OLSEN, WARDEN WSCC; AND
CHARLES DANIELS, DIRECTOR
NDOC,
Respondents.

No. 83012-COA

FILED

SEP 29 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER DENYING PETITION
FOR WRIT OF HABEAS CORPUS OR WRIT OF MANDAMUS*

This is an original petition for a writ of habeas corpus or a writ of mandamus.

In this case, petitioners seek a writ of habeas corpus or a writ of mandamus to compel the Nevada Department of Corrections to allow the resumption of religious services, which they assert have been suspended since October 2020 in light of the COVID-19 pandemic.

Initially, to the extent petitioners seek a writ of habeas corpus to challenge this restriction, such relief is unavailable here, because—as petitioners expressly recognize—they are not challenging the validity of their confinement. *See Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984) (noting that our supreme court has “repeatedly held that a petition for writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof”). And petitioners’ bald assertion that their petition “is NOT a conditions of confinement complaint” does not provide a basis for them to avoid the application of this rule. *See*

Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider issues that are not cogently argued).

Turning to petitioners' request for mandamus relief, 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. See NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). And whether a petition for extraordinary writ relief will be entertained rests within this court's sound discretion. *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007). Petitioner bears the burden of demonstrating that such relief is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

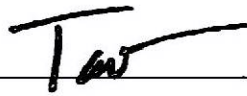
Having considered the mandamus petition and the arguments set forth therein, we conclude that any application for such relief should be made to the district court in the first instance so that the factual and legal issues can be fully developed, giving the appellate courts an adequate record to review. See *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) (recognizing that an appellate court is not the appropriate forum to resolve questions of fact and determining that when there are factual issues presented, the appellate courts will not exercise their discretion to entertain a petition for extraordinary relief even if "important public interests are involved"); *State v. Cty. of Douglas*, 90 Nev. 272, 276-77, 524 P.2d 1271, 1274 (1974) (noting that the supreme court "prefers that such an application [for writ relief] be addressed to the discretion of the appropriate district court" in the first instance), *abrogated*


on other grounds by Attorney Gen. v. Gypsum Res., 129 Nev. 23, 33-34, 294 P.3d 404, 410-11 (2013).

Accordingly, for the reasons set forth above, we deny the petition.

It is so ORDERED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Anthony Thomas Chernetsky
Lloyd Lee Askins, III
Michael Andrew Bessey
Michael Louis Kizer
Timothy Wayne Connors
Attorney General/Carson City

¹To the extent petitioners request any other relief in the context of their petition for habeas corpus and mandamus relief, that request is denied.