

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEITH ALLEN WARREN,
Appellant,
vs.
CARSON CITY SHERIFF'S
DEPARTMENT; AND THE STATE OF
NEVADA, DEPARTMENT OF
CORRECTIONS,
Respondents.

No. 82244-COA

FILED

DEC 09 2021

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

ORDER OF AFFIRMANCE

Keith Allen Warren appeals from an order of the district court denying a November 2, 2020, petition for a writ of mandamus. First Judicial District Court, Carson City; James Todd Russell, Judge.

First, Warren argues that the district court erred by denying his petition for a writ of mandamus and supplemental documents. In his petition, Warren asserted that employees of the Nevada Department of Corrections refused to protect him from fellow inmates and, as a result, he was attacked by those inmates and suffered bodily harm. Warren claimed his right to protection was violated and requested an order from the district court instructing the Carson City Sheriff's Department to investigate and criminally prosecute the persons responsible for the attack and his injuries.

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 the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170. "Petitioners carry 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). We review the denial of a writ petition for an abuse of discretion. *Reno Newspapers, Inc. v. Sheriff*, 126 Nev. 211, 214, 234 P.3d 922, 924 (2010).

NRS 228.170(2) provides that "[t]he Attorney General may investigate and prosecute any crime committed by a person: (a) Confined in or committed to an institution or facility of the Department of Corrections." In addition, "the discretion and power to charge a defendant belong solely to the attorney general or the district attorney." *Parsons v. Fifth Judicial Dist. Court*, 110 Nev. 1239, 1244, 885 P.2d 1316, 1320 (1994), *overruled on other grounds by Parsons v. State*, 116 Nev. 928, 934, 10 P.3d 836, 839 (2000). Moreover, "[t]he judiciary may not invade the legitimate function of the prosecutor. Charging decisions are primarily a matter of discretion for the prosecution, which represents the executive branch of government." *Schoels v. State*, 114 Nev. 981, 991, 966 P.2d 735, 741-42 (1998) (Shearing, J., concurring).

The Attorney General and the District Attorney are not required to investigate or prosecute any crimes committed by a prison inmate, and both officers have discretion concerning whether to seek criminal charges against any person. Because neither officer was required to investigate or bring charges concerning any attack on Warren, Warren did not demonstrate that the respondents failed to perform an act which the law requires as a duty resulting from an office, trust, or station. Moreover, Warren did not demonstrate that mandamus relief was necessary to control

a manifest abuse or arbitrary or capricious exercise of discretion regarding any decision made concerning whether to investigate or prosecute individuals involved in any attacks against Warren.

In addition, to the extent Warren contended the respondents violated his civil rights by failing to protect him, Warren may raise such a claim through a civil rights action filed pursuant to 42 U.S.C. § 1983. Therefore, Warren had a plain, speedy, and adequate remedy in the ordinary course of law through which he could allege he suffered from a violation of his civil rights. Accordingly, Warren did not demonstrate he was entitled to mandamus relief, and we conclude the district court did not abuse its discretion by denying Warren's petition.

Second, Warren argues the district court erred by not allowing him to reply to the respondents' opposition to his petition and by failing to permit him to conduct discovery. Warren also contends the respondents improperly submitted a proposed order denying his petition before he had a chance to respond to their opposition and before the district court ruled on all of his motions. We have considered these claims, and because the district court properly denied Warren's petition for a writ of mandamus, we conclude Warren is not entitled to relief based upon these issues. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. James Todd Russell, District Judge
Keith Allen Warren
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk