

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESUS NAJERA,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
CRYSTAL ELLER, DISTRICT JUDGE,

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

No. 83923-COA

FILED

FEB 23 2022

CLERK OF APPEALS COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER DENYING PETITION*

In this original petition for a writ of mandamus, Jesus Najera seeks an order directing the district court to strike the State's untimely return to Najera's pretrial petition for a writ of habeas corpus.

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. 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

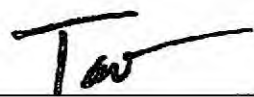
extraordinary relief is warranted." *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Najera has a plain, speedy, and adequate remedy in the ordinary course of law. If the district court grants his pretrial petition, the issue is moot. If the district court denies the petition and Najera is ultimately convicted, he may appeal the district court's denial of his motion to strike as an intermediate order. *See* NRS 177.045.

For these reasons, we conclude Najera has not met his burden of demonstrating that extraordinary relief is warranted, and we

ORDER the petition DENIED.

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

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

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

cc: Hon. Crystal Eller, District Judge  
The Pariente Law Firm, P.C.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk