

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT L. CARTER, JR.,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ERIKA D. BALLOU, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 85262

FILED

MAR 01 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition challenges a district court order denying a motion to dismiss a criminal information.

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. NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). A writ of prohibition may issue if a lower court acts in excess of its jurisdiction. NRS 34.320; *Goicoechea v. Fourth Judicial Dist. Court*, 96 Nev. 287, 289-90, 607 P.2d 1140, 1141 (1980). Petitioner bears the burden of establishing that relief is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). Neither writ will issue if the petitioner has a plain, speedy, and adequate legal remedy. NRS 34.170; NRS 34.330. Having considered petitioner's argument and the supporting documents, we conclude that our

extraordinary and discretionary intervention is not warranted. *See Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991) (recognizing that writ relief is an extraordinary remedy and that this court has sole discretion in determining whether to entertain a writ petition).


In particular, petitioner Robert L. Carter Jr. has an adequate legal remedy. Carter argues that the district court was obligated to dismiss the case because the State did not support its request for a trial continuance with a showing of good cause supported by an affidavit or sworn testimony as required by N.R.Cr.P. 15(1). The State, however, moved to dismiss the underlying case and instead proceed with the prosecution of an alternative indictment it obtained against Carter. In these circumstances, Carter may seek relief from the indictment by filing a pretrial habeas petition based on his claim about the State's handling of the trial continuance in this case.¹ *See, e.g., Sheriff v. Roylance*, 110 Nev. 334, 337, 871 P.2d 359, 361 (1994). Although Carter argues that this claim will be available only if this court compels the district court to dismiss the underlying case for procedural violations, he is mistaken, as a previous dismissal on this basis is not required as a predicate in order to assert a claim that the State has acted with conscious indifference to important procedural rules. *See generally McNair v. Sheriff*, 89 Nev. 434, 437-39, 514 P.2d 1175, 1176-78 (1973) (indicating that district court may entertain pretrial habeas petition challenging second prosecution based on claim that prior prosecution was dismissed after the prosecutor failed to make a proper motion for a continuance of a preliminary hearing and that in doing so the district court

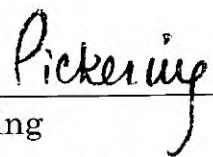
¹We express no view on the potential merits of such a challenge.


may determine whether the prosecutor disregarded important procedural rules in the prior prosecution).

Accordingly, we

ORDER the petition DENIED.²


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Bell

cc: Hon. Erika D. Ballou, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We deny Carter's February 27, 2023, emergency motion for a stay.