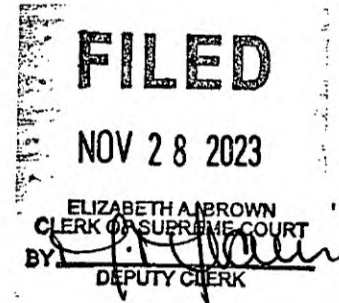


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUAN LIZARRAGA-SALAZAR,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK,
Respondent.

No. 86725-COA



ORDER GRANTING PETITION

In this original petition for a writ of mandamus, Juan Lizarraga-Salazar seeks an order directing the Eighth Judicial District Court clerk to file a pleading. 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, 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).

Lizarraga-Salazar contends the clerk violated its duty to file his “motion to withdraw plea petition for writ of habeas corpus (postconviction),” which the clerk received on April 27, 2023. In a response ordered by this court, respondent claims to take no position as to whether this court should grant or deny Lizarraga-Salazar’s petition. But at the same time, respondent also contends the clerk abided by its ministerial duties because Lizarraga-Salazar submitted the pleading while he was still represented by counsel in the underlying criminal case.

As respondent acknowledges, its “clerk has a ministerial duty to accept and file documents.” *Bowman v. Eighth Judicial Dist. Court*, 102 Nev. 474, 478, 728 P.2d 433, 435 (1986). And respondent concedes that the local court rule that prohibits a criminal defendant who is represented by counsel from filing pleadings pro se does not apply to postconviction petitions for a writ of habeas corpus. See EJD.C. 3.70. Respondent nevertheless contends the clerk was justified in its failure to file Lizarraga-Salazar’s pro se pleading.

First, respondent contends the clerk was justified in refusing to file the pleading because the initial word in the pleading’s title was “motion” and the clerk should not be required to ascertain a party’s intention. We agree that the clerk should not have to discern a filing party’s intent. See *Glauner v. State*, 107 Nev. 482, 485, 813 P.2d 1001, 1003 (1991) (“[T]he clerk has no discretion to check the substance of those documents . . . and decide which ones will be filed.”), *superseded by statute on other grounds as stated in Gonzales v. State*, 118 Nev. 590, 593 n.5, 53 P.3d 901, 902 n.5 (2002). However, the full title of the pleading at issue also included “petition for writ of habeas corpus (postconviction),” which plainly evidenced on its face Lizarraga-Salazar’s intent to file a postconviction petition for a writ of

habeas corpus. *See Harris v. State*, 130 Nev. 435, 448-49, 329 P.3d 619, 628 (2014) (requiring a district court to construe a postsentence motion to withdraw guilty plea as a postconviction petition for a writ of habeas corpus).

To the extent Lizarraga-Salazar's phrasing of the pleading's title created any ambiguity, that ambiguity should have been resolved in favor of filing the document. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) ("A document filed *pro se* is to be liberally construed." (internal quotation marks omitted)). Doing so would have avoided undue prejudice to either party. If, upon a review of the merits of the pleading, the district court determined that the pleading should not have been filed, the district court could have stricken the pleading and avoided any prejudice to the State. *See Bowman*, 102 Nev. at 478, 728 P.2d at 435 ("The power to make any decision concerning the propriety of any paper submitted, or the right of a person to file a paper, is vested in the court, not the clerk."). However, by refusing to file a pleading that should be filed, the clerk creates the potential for significant prejudice to the filing party because the clerk's refusal may preclude the district court from reaching the merits of the pleading and, in the case of a pleading subject to a statute of limitations, may forever bar any court from reaching those merits.

Second, respondent contends the clerk was justified in refusing to file the pleading because Lizarraga-Salazar wrote the underlying criminal case number in the caption. The postconviction habeas statutes require that a postconviction petition for a writ of habeas corpus be "[f]iled with the record of the original proceeding to which it relates." NRS

34.730(4)(a).¹ It was thus reasonable for a petitioner to include the case number of the original proceeding. And even if it were unreasonable, the inclusion of that number would not constitute a ground to refuse to file a postconviction petition for a writ of habeas corpus.² *Cf. Harris*, 130 Nev. at 448-49, 329 P.3d at 628 (reminding district courts that petitioners should be allowed to cure pleading defects).

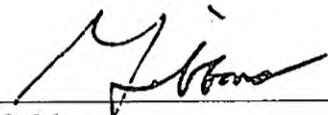
Finally, respondent concedes that the return as “undeliverable” of Lizarraga-Salazar’s pleading that the clerk mailed to counsel in the underlying criminal case “may have warranted another review.” Respondent explains, however, that “without specific instructions directing another review,” the clerk did not do so. Respondent does not explain from whom those instructions would have come or how, since the pleading was never filed, anyone would have known to give the clerk instructions.

For the foregoing reasons, we conclude that Lizarraga-Salazar has demonstrated that the clerk failed to perform its ministerial duty to file his postconviction petition for a writ of habeas corpus. We further conclude that Lizarraga-Salazar has no plain, speedy, and adequate remedy to have his pleading filed. Accordingly, we

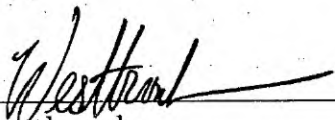
¹The subsections within NRS 34.730 were recently renumbered. We note the substance of the subsections cited herein was not substantively altered. *See* A.B. 49, 82d Leg. (Nev. 2023).

²We are aware that NRS 34.730(4) directs the clerk of the district court to “file a petition as a new action separate and distinct from any original proceeding in which a conviction has been had.” However, this provision has never been held to require a clerk to create a new case and case number for postconviction proceedings. And even if that were a requirement, the statute places the responsibility on the clerk of the district court and not the filing party.

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the Eighth Judicial District Court clerk to file the “motion to withdraw plea petition for writ of habeas corpus (postconviction),” which it received on April 27, 2023, nunc pro tunc to April 27, 2023.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Juan Lizarraga-Salazar
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³Lizarraga-Salazar also requests we order the appointment of postconviction counsel. Such requests must be made in the district court in the first instance. *See* NRS 34.750(1).

We direct the Eighth Judicial District Court clerk to file a copy of this order in the same case in which it files Lizarraga-Salazar’s pleading.