

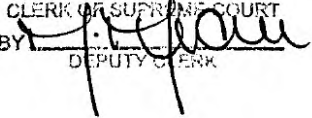
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JENNIFER L. SCHWARTZ, DISTRICT
JUDGE,
Respondents,
and
AARON NEWMON,
Real Party in Interest.

No. 87132-COA

FILED

APR 05 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING PETITION

In this original petition for a writ of mandamus, the State seeks an order directing the district court to issue an amended judgment of conviction that corrects the amount of credit for time served awarded to real party in interest Aaron Newmon.¹ 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

¹The State's petition is entitled "petition for writ of certiorari, or in the alternative, for a writ of mandamus," but it neither cites any authority in support of certiorari relief nor makes any argument that such relief is warranted.

plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170.

Because the State cannot appeal from a judgment of conviction, NRS 177.015(3), we conclude that the State lacks a plain, speedy, and adequate remedy for any error in the award of credits for time served. That does not necessarily mean, however, that this court's intervention by way of extraordinary relief is warranted. Rather, petitions for extraordinary relief are addressed to the sound discretion of the court, *see Zamarripa v. First Jud. Dist. Ct.*, 103 Nev. 638, 640, 747 P.2d 1386, 1387 (1987), and the “[p]etitioner[] carr[ies] the burden of demonstrating that extraordinary relief is warranted,” *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Newmon contends the issue is moot because he expired the sentence that is the subject of the State's petition. The State counters that this court should nevertheless address its claim because the issue is capable of repetition but evades review. The State does not contend that “the duration of the challenged action is relatively short,” a necessary element to invoke the mootness exception. *Johnston v. Eighth Jud. Dist. Ct.*, 138 Nev., Adv. Op. 67, 518 P.3d 94, 99 (2022) (quotation marks omitted). Newmon was sentenced on June 12, 2023, and the State does not dispute his contention that he expired his sentence on July 24, 2023. The State does not offer any explanation as to the delay in filing the petition, nor does it argue that this time period is too short for it to have sought relief.

Because Newmon has expired his sentence, we conclude that the State's challenge to the validity of that sentence is moot. *See Martinez-Hernandez v. State*, 132 Nev. 623, 627 & n.1, 380 P.3d 861, 864 & n.1 (2016) (holding that a challenge to the validity of a judgment of conviction does not

necessarily become moot when a sentence is expired but noting “that completion of a defendant’s sentence may still render a challenge to the sentence itself moot”). And in light of its delay in filing for extraordinary relief and failure to adequately argue the exception, we conclude the State has not demonstrated that the issue falls within the exception to the mootness doctrine for cases that are capable of repetition yet evading review. *See Binegar v. Eighth Jud. Dist. Ct.*, 112 Nev. 544, 548-49, 915 P.2d 889, 892 (1996). Accordingly, we conclude the State has failed to meet its burden to demonstrate that extraordinary relief is warranted, and we

ORDER the petition DENIED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Jennifer L. Schwartz, District Judge
Attorney General/Carson City
Clark County District Attorney
Scotti Law Firm PLLC
Eighth District Court Clerk