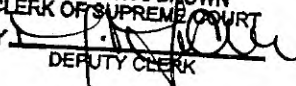


IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
DAVID A. HARDY, DISTRICT JUDGE,
Respondents,
and
THOMAS WRAY HERNDON,
Real Party in Interest.

No. 87634

FILED
SEP 12 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

*ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR
PROHIBITION*

This original petition for a writ of mandamus or prohibition challenges a district court order granting an NRCP 60(b) motion and vacating an order dismissing a 2018 postconviction habeas petition in light of newly discovered evidence.

The State seeks our review of the district court's order vacating its prior order dismissing Real Party in Interest Thomas Wray Herndon's post-conviction petition for a writ of habeas corpus. Because we determine that the State has a plain, speedy, and adequate remedy in the ordinary course of law to challenge the district court's actions, we exercise our discretion to deny the State's petition.


Writs of mandamus and prohibition are only available if the petitioner lacks "a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170 (mandamus); NRS 34.330 (prohibition). Petitioners bear the burden to demonstrate that the court's intervention is warranted. *Club Vista Fin. Servs., L.L.C. v. Eighth Jud. Dist. Ct.*, 128 Nev.

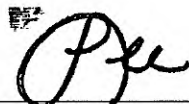
224, 228, 276 P.3d 246, 249 (2012). This court retains sole discretion to issue writs of mandamus and prohibition. *In Re William J. Raggio Fam. Tr.*, 136 Nev. 172, 175, 460 P.3d 969, 972 (2020).

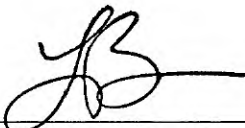
Here, we conclude that the State has not met its burden to show that it lacks a plain, speedy, and adequate remedy in the ordinary course of law. Should the district court grant Herndon's re-filed habeas petition, the State may appeal the district court's decision. NRS 34.575 ("If the district court grants the writ and orders the discharge or a change in custody of the petitioner, the district attorney of the county in which the application for the writ was made . . . may appeal . . ."). "[T]he right to appeal is generally an adequate legal remedy that precludes writ relief." *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

Because we conclude that the State possesses an adequate legal remedy in the ordinary course of law, we

ORDER the petition DENIED.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Bell

cc: Hon. David A. Hardy, District Judge
Attorney General/Carson City
Washoe County District Attorney
Federal Public Defender/Las Vegas
Washoe County District Court Clerk