

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,
vs.
THE FOURTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF ELKO;
AND THE HONORABLE ALVIN R.
KACIN, DISTRICT JUDGE,
Respondents,
and
ANDREW JAMES HOCKENBERRY,
Real Party in Interest.

No. 88715-COA

FILED

OCT 04 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus challenges the district court's denial of petitioner's motion for leave to amend the information.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." *State v. Eighth Jud. Dist. Ct. (Armstrong)*, 127 Nev. 927, 931, 267 P.3d 777, 779 (2011). Mandamus relief may also be warranted "when an important issue of law needs clarification and considerations of sound judicial economy and administration militate in

¹Although the petition is titled a petition for a writ of mandamus or prohibition, it includes no cogent argument suggesting the district court was without jurisdiction to hear and determine petitioner's motion for leave to amend the information. *See* NRS 34.320; *Goicoechea v. Fourth Jud. Dist. Ct.*, 96 Nev. 287, 289, 607 P.2d 1140, 1141 (1980) (holding that a writ of prohibition "will not issue if the court sought to be restrained had jurisdiction to hear and determine the matter under consideration").

favor of granting the petition.” *Lyft, Inc. v. Eighth Jud. Dist. Ct.*, 137 Nev. 832, 834, 501 P.3d 994, 998 (2021) (quotation marks omitted). A writ of mandamus is an extraordinary remedy, and whether a petition for extraordinary relief will be considered is solely within the court’s discretion. *See Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). It is petitioner’s burden to demonstrate that extraordinary intervention is warranted. *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).


Petitioner the State of Nevada contends the district court erred when it denied the State’s motion for leave to amend the information because the amendment only sought to expand the time within which the alleged offenses occurred and time is not an essential element for the offenses. The State further argues that the substantial rights of real party in interest Andrew James Hockenberry would not be prejudiced by the amendment.

Based on our review of the documents before us, we conclude the State has not demonstrated that the district court failed to perform an act that the law required or that the court arbitrarily or capriciously exercised or manifestly abused its discretion in denying the State’s motion. *See* NRS 173.095(1) (providing the district court with discretion to allow an “information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced”); *Viray v. State*, 121 Nev. 159, 162, 111 P.3d 1079, 1081 (2005) (stating the decision to allow an information to be amended “is within the district court’s discretion”); *see also Armstrong*, 127 Nev. at 931-32, 267 P.3d at 780 (defining an arbitrary or capricious exercise of discretion and a manifest abuse of discretion). Notably, the district court

found that the motion, made approximately two and a half weeks before trial and premised on information given to the State at least a year previously, would leave Hockenberry with no time to prepare another defense and would thus prejudice his substantial rights. The State has further not demonstrated that mandamus relief is warranted to clarify a substantial issue of public policy or precedential value or to promote judicial economy. Accordingly, we

ORDER the petition DENIED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Alvin R. Kacin, District Judge
Elko County District Attorney
Hillewaert Law Firm
Elko County Clerk