IN THE SUPREME COURT OF THE STATE OF NEVADA

EUGENE NUNNERY,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; THE HONORABLE MARY KAY HOLTHUS, DISTRICT JUDGE; AND THE HONORABLE JERRY A. WIESE, DISTRICT JUDGE,
Respondents,
AND
THE STATE OF NEVADA,
Real Party in Interest.

No. 89226

FILED
MAR 06 2025
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 petitioner Eugene Nunnery's motion to transfer his postconviction petition for a writ of habeas corpus from Department 18 to Department 15 of the Eighth Judicial District Court.

Nunnery asserts that only Department 15—the department in which his conviction occurred—can hear the postconviction habeas petition pursuant to NRS 34.730. We disagree and therefore deny the petition.

"Writ relief is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered." *Chasing Horse v. Eighth Jud. Dist. Ct.*, 140 Nev., Adv. Op. 63, 555 P.3d 1205, 1210-11 (2024) (internal quotation marks omitted). Mandamus "is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, or to control a manifest abuse or an arbitrary or capricious exercise of discretion." *Cote H. v. Eighth Jud.*

*Dist. Ct.*, 124 Nev. 36, 39, 175 P.3d 906, 907-08 (2008) (internal quotation marks, citations, and alterations omitted); *see also* NRS 34.160 (providing when a writ of mandamus may issue). Generally, we will not entertain extraordinary relief where there is "a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170. Nunnery may challenge Department 18's authority to resolve this postconviction habeas petition in an appeal from any adverse decision on that petition. NRS 34.575(1); *see also Walker v. Second Jud. Dist. Ct.*, 136 Nev. 678, 683, 476 P.3d 1194, 1198 (2020) (explaining that such an appeal "does not fail to be speedy and adequate, because, by pursuing it through the ordinary course of law, more time probably would be consumed than in a[n extraordinary writ] proceeding" (internal quotation marks omitted)).

Although Nunnery may have an adequate remedy, the petition challenges the district judge presiding over the postconviction habeas proceedings, which is a threshold issue similar in nature to others we have elected to address at this early stage in the interest of judicial economy. For example, this court has considered petitions that challenge the sitting district judge or the method of judicial assignment. *See, e.g.*, *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 106, 506 P.3d 334, 337 (2022) (entertaining an original petition to clarify "the judicial disqualification standard" to serve "judicial economy by providing guidance for future disqualification matters"); *Margold v. Eighth Jud. Dist. Ct.*, 109 Nev. 804, 805-06, 858 P.2d 33, 34-35 (1993) (entertaining an original petition to consider "the random case assignment rule"). And we entertained a similar writ petition in *Floyd v. Eighth Judicial District Court*, No. 83167, 2022 WL 578450 (Nev. Feb. 24, 2022) (Order Denying Petition), to interpret NRS

34.730(4)(b).[1] Thus, in the interest of judicial economy, we elect to exercise our discretion and entertain Nunnery's petition for a writ of mandamus to clarify that our reasoning in *Floyd* has not changed as applied to Nunnery's claims.[2] *See Canarelli*, 138 Nev. at 106, 506 P.3d at 337 ("[W]hen a writ petition presents an opportunity to clarify an important issue of law and doing so serves judicial economy, we may elect to consider the petition.").

The statute on which Nunnery relies, NRS 34.730(4)(b), requires a postconviction petition challenging the validity of a judgment of conviction or sentence to be "[w]henever possible, assigned to the original judge or court." In *Floyd*, we determined that by using the phrase "whenever possible," NRS 34.730(4)(b) "plainly contemplates that there may be circumstances when a postconviction habeas petition will not be 'assigned to the original judge or court.'" 2022 WL 578450, at *2 (quoting NRS 34.730(4)(b)). "And in the Eighth Judicial District Court, the chief

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[1]NRS 34.730(3)(b) was recently recodified at NRS 34.730(4)(b). *See* 2023 Nev. Stat., ch. 249, § 10, at 1620-21.

[2]Regarding Nunnery's alternative argument for a writ of prohibition, Department 18 has as much jurisdiction over Nunnery's postconviction habeas petition as any other department in the district. *See* Nev. Const. art. 6, § 6(1) (providing that district courts have jurisdiction over, among other things, cases excluded from the original jurisdiction of the justice courts and the power to issue writs of habeas corpus); NRS 3.020 (providing that judges within a district "have concurrent and coextensive jurisdiction within the district"); NRS 34.738 (delineating where certain postconviction habeas petitions must be filed). Because Nunnery has not shown that Department 18 acted without or in excess of its jurisdiction, we deny the petition for a writ of prohibition. *See* NRS 34.320 (providing that a writ of prohibition "arrests the proceedings of any tribunal, corporation, board or person exercising judicial functions, *when such proceedings are without or in excess of the jurisdiction* of such tribunal, corporation, board or person" (emphasis added)).

judge can 'assign or reassign all cases pending in the district.'" *Id.* (quoting EDCR 1.60(a)). Although Nunnery contends that his case differs from *Floyd* in that it is possible for his case to be reassigned to Department 15 because that department still handles criminal cases unlike the transferee department in *Floyd*, that distinction does not affect our interpretation of NRS 34.730(4)(b), which does not mandate that a case be transferred to a court merely because that court's docket may allow it. Thus, NRS 34.730(4)(b) does not require Nunnery's postconviction habeas petition to be heard in Department 15.

And we conclude that in this case, the district court interpreted NRS 34.730(4)(b) consistent with the district court's inherent authority and rules. In anticipating that circumstances may dictate a postconviction habeas petition not being "assigned to the original judge or court," NRS 34.730(4)(b), the Legislature accounted for the court's "inherent authority to . . . make rules and carry out other incidental powers when reasonable and necessary for the administration of justice." *Halverson v. Hardcastle*, 123 Nev. 245, 261, 163 P.3d 428, 440 (2007) (internal quotation marks omitted). Moreover, NRS 34.730(4)(b) is consistent with the Eighth Judicial District Court's local rules authorizing the chief judge to "mak[e] regular and special assignments of all judges[,] . . . apportioning the court's business among the court's departments as equally as possible, reassigning cases between departments as convenience or necessity requires, and assuring that court duties are timely and orderly performed." *Id.* at 269, 163 P.3d at 445 (internal footnotes omitted). Accordingly, Nunnery has not shown a manifest abuse of discretion by the district court.

Lastly, Nunnery argues that the chief judge incorrectly relied on NRS 3.026 to deny Nunnery's objection, filed pursuant to EDCR 1.60(h),

to the order denying the motion to transfer. We disagree. NRS 3.026 allows the chief judge in the larger judicial districts to consider "grievances" submitted by a party "[d]irectly related to the administration of the case," NRS 3.026(1)(b)(2), but the statute does not permit a "grievance" challenging "the merits of any decision or ruling in the case" made by the district court, NRS 3.026(2)(b)(1); *see also* EDCR 7.10(b) ("When any district judge has begun a trial or hearing of any cause, proceeding or motion, or made any ruling, order or decision therein, no other judge may do any act or thing about such cause, proceeding or motion, unless upon the request of the judge who has begun the trial or hearing of such cause, proceeding or motion."); *State v. Beaudion*, 131 Nev. 473, 477, 352 P.3d 39, 42 (2015) ("[O]ne district judge may not directly overrule the decision of another district judge on the same matter in the same case."). Thus, the statute does not permit the motion that Nunnery filed asking the chief judge to consider his objections to the district court's decision to deny the transfer motion.

For these reasons, we conclude that Nunnery has not demonstrated that writ relief is warranted. Accordingly, we

ORDER the petition DENIED.

_____, C.J.
Herndon

_____, J.
Pickering

_____, J.
Parraguirre

_____, J.
Bell

_____, J.
Stiglich

_____, J.
Cadish

_____, J.
Lee

cc: Hon. Jerry A. Wiese, Chief Judge
Hon. Mary Kay Holthus, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk