

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AUGUST PAUL GILMORE, JR.,  
Petitioner,  
vs.  
THE SECOND JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
WASHOE; AND THE HONORABLE  
TAMMY RIGGS,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 89729-COA

**FILED**

MAR 11 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER DENYING PETITION*

This original petition for a writ of mandamus challenges a district court order granting the State's motion to dismiss the criminal charges against petitioner August Paul Gilmore, Jr., without prejudice. Gilmore argues the district court manifestly abused or arbitrarily or capriciously exercised its discretion by granting the motion because the charges should have been dismissed with prejudice.

"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). 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).

The State filed a motion to dismiss the charges against Gilmore without prejudice. In the motion, the State alleged it was unable to secure testing of important evidence prior to the close of discovery and prior to trial. The State argued that it sent the evidence for testing months before its motion and that the analyst who would perform the testing was out on medical leave. In his opposition, Gilmore argued the dismissal should be with prejudice because the State failed to demonstrate good cause for the dismissal where the State knew it needed the testing to be done and did not diligently seek that testing out. The district court determined the State demonstrated good cause based on the unavailability of the crime lab analyst and granted the State's motion to dismiss without prejudice. See NRS 174.085(7) ("After the arrest or incarceration of the defendant, the prosecuting attorney may voluntarily dismiss an indictment or information without prejudice to the right to bring another indictment or information only upon good cause shown to the court and upon written findings and a court order to that effect.").


Given the information the district court was presented with in the motion to dismiss without prejudice, the opposition, and the reply, we conclude the district court's granting of the motion was not a manifest abuse or arbitrary or capricious exercise of discretion.<sup>1</sup> See *Armstrong*, 127 Nev.

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<sup>1</sup>We note that Gilmore filed a motion for reconsideration of the district court's order and provided additional information in that motion. However, the district court did not consider that motion because Gilmore failed to follow the local district court rules when filing a motion for reconsideration. Gilmore does not challenge the district court's decision to deny the motion for reconsideration on procedural grounds. As the district court did not

at 931-32, 267 P.3d at 780 (defining an arbitrary or capricious exercise of discretion and a manifest abuse of discretion). Accordingly, we

ORDER the petition DENIED.

  
\_\_\_\_\_, C.J.  
Bulla

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Tammy Riggs, District Judge  
Washoe County Alternate Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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consider that motion or the information contained therein when issuing the challenged order, we do not consider it when determining whether the district court manifestly abused or arbitrarily or capriciously exercised its discretion by granting the dismissal without prejudice.