

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAJON HARDY,  
Petitioner,

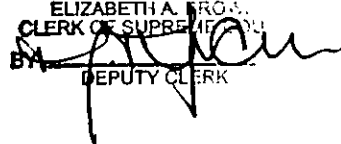
vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF CLARK  
AND THE HONORABLE MICHELLE  
LEAVITT, DISTRICT COURT JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 90391-COA

FILED

JUL 30 2025

ELIZABETH A. FROST  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus challenges a district court order denying a motion to dismiss an indictment with prejudice based on alleged violations of NRS 172.145(2).

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). Mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered. *See Poulos v. Eighth Jud. Dist. Ct.*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); *see also State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983).

“Petitioner[ ] 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).

Petitioner Dajon Hardy argues the district court manifestly abused its discretion by denying his motion to dismiss the indictment with prejudice because the State failed to present exculpatory evidence to the grand jury, as required by NRS 172.145(2). In his motion, Hardy claimed that dismissal with prejudice was warranted because the State’s failures amounted to more than mere negligence and because the only evidence against him (the victim’s allegations) had been irrevocably tainted and was unreliable given that it was counsel’s understanding the victim now resides with her mother’s family, who have “no doubt” questioned her about the allegations against Hardy.

The Nevada Supreme Court has described dismissal with prejudice as an “extreme remedy” because “[i]t essentially amounts to a reward of permanent immunity for alleged criminal conduct.” *State v. Desavio*, 141 Nev., Adv. Op. 25, 568 P.3d 897, 901 (2025) (citations and internal quotation marks omitted); *see also State v. Babayan*, 106 Nev. 155, 171, 787 P.2d 805, 818 (1990) (recognizing “a dismissal *with prejudice* at the state level is most appropriate upon a finding of aggravated circumstances and only after a balancing of its deterrent objectives with the interest of society in prosecuting those who violate its laws”). Thus, “dismissal with prejudice is warranted when the evidence against a defendant is irrevocably tainted or the defendant’s case on the merits is prejudiced to the extent that notions of due process and fundamental fairness would preclude


reindictment.” *Id.* (internal quotation marks omitted). Conversely, “dismissal without prejudice will remedy [errors] in the absence of an irreparable evidentiary taint or prejudice to the defendant’s case on the merits.” *Id.* at 172, 787 P.2d at 818.

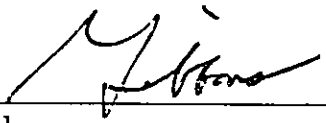
Hardy’s argument for dismissal with prejudice is similar to the arguments made in *Babayan*. In *Babayan*, the supreme court considered the evidence contained in the record and determined it did not support the conclusion that State was “guilty of misconduct that went beyond mere negligence” or that the evidence was tainted due to clinicians “irreparably alter[ing] the accurate recollections of the [child victims] by their coercive techniques and leading questions.” *Id.* at 171-72, 787 P.2d at 818. Likewise in this matter, the record does not support a conclusion that the State’s conduct “went beyond mere negligence,” that the evidence against Hardy was irrevocably tainted, or that his case has been prejudiced to the extent that reindictment would not be allowed based on concerns regarding due process and fundamental fairness. Based on this record, we cannot conclude the district court manifestly abused its discretion by denying Hardy’s motion to dismiss the indictment with prejudice.<sup>1</sup> Accordingly, Hardy fails to demonstrate extraordinary relief is warranted, and we

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<sup>1</sup>We note that Hardy explicitly sought in his motion before the district court, and now explicitly seeks in the instant writ petition, dismissal of the indictment with prejudice. He has not requested dismissal without prejudice. *Cf. Chasing Horse v. Eighth Jud. Dist. Ct.*, 140 Nev., Adv. Op. 63, 555 P.3d 1205, 1213-15 (2024) (granting a writ of mandamus addressing a similar issue and directing the district court to dismiss the indictment without prejudice).

ORDER the petition DENIED.<sup>2</sup>

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

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

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

cc: Hon. Michelle Leavitt, District Judge  
Waldo Law, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>Hardy alternatively seeks a writ of prohibition but does not demonstrate the district court acted without or in excess of its jurisdiction. Therefore, a writ of prohibition is inappropriate. *See Goicoechea v. Fourth Jud. Dist. Ct.*, 96 Nev. 287, 289, 607 P.2d 1140, 1141 (1980) (explaining that a writ of prohibition will not lie if the court “had jurisdiction to hear and determine the matter under consideration”).