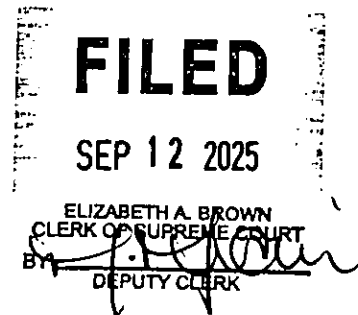


IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCUS DESEAN WILLIAMS,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK
AND THE HONORABLE SUSAN
JOHNSON, DISTRICT COURT JUDGE,
Respondents,
and
THE STATE OF NEVADA AND LAS
VEGAS METROPOLITAN POLICE
DEPARTMENT,
Real Parties in Interest.

No. 89973



ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying petitioner's motion for the return of property. Several years ago, petitioner Marcus Williams was found in a residence, in which he did not reside. Williams fled after being confronted by the residents and was arrested shortly thereafter. The police seized the backpack Williams was carrying, as well as the contents of that backpack. Neither the residents nor any other person has claimed ownership of the items found within the backpack, and no civil forfeiture proceedings have occurred. Williams pleaded guilty to conspiracy to commit trespass. Four months after the judgment of conviction was entered, Williams filed a motion for return of property pursuant to NRS 179.085(1)(e), which the district court denied without prejudice. The district court concluded Williams failed to meet the initial burden of showing retention of the

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property was facially unreasonable because Williams did not produce evidence that he owned the backpack or its contents. Williams filed this petition challenging the district court's order.

"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 or to control a manifest abuse of discretion." *Gonzalez v. Eighth Jud. Dist. Ct.*, 129 Nev. 215, 217, 298 P.3d 448, 449 (2013); NRS 34.160. "A manifest abuse of discretion is [a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule." *State v. Eighth Jud. Dist. Ct. (Armstrong)*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011) (internal quotation marks omitted). A petitioner bears the burden of demonstrating extraordinary relief is warranted, *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004), and whether to consider a writ petition is ultimately within this court's discretion, *Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). We exercise our discretion to consider this writ petition because Williams has no plain, speedy, and adequate remedy in law. *See* NRS 34.170.


Williams argues the district court manifestly abused its discretion because the court misapplied the burden of proof. We agree. NRS 179.085(1)(e) permits a person whose property has been seized to seek the return of that property on the ground that "[r]etention of the property by law enforcement is not reasonable under the totality of the circumstances." The statute further provides that "[t]he judge shall receive evidence on any issue of fact necessary to the decision of the motion." NRS 179.085(1). "During the consideration of such evidence, the moving party bears the initial burden to show that the government's retention of his or her property is facially unreasonable under the totality of all of the circumstances that


then exist.” *In re 12067 Oakland Hills, Las Vegas, Nevada 89141*, 134 Nev. 799, 805, 435 P.3d 672, 678 (Ct. App. 2018). The movant can meet this burden by demonstrating the investigation has likely concluded and the property is thus no longer needed for evidentiary purposes. *Id.* at 805-06, 453 P.3d at 678. This can be done, for example, by showing that the criminal case has been completely resolved through a guilty plea. *Id.* If the movant meets this initial burden, then “the burden shifts to the government to demonstrate that it has a legitimate reason to retain the property.” *Id.* at 806, 453 P.3d at 678. The government can meet this burden in multiple ways, such as by showing that the property was contraband or not actually owned by the movant. *Id.* In doing so the government must “prove its allegations through something more than a naked assertion of counsel.” *Id.*

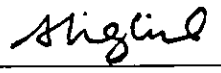
Here, the district court improperly concluded Williams did not meet the initial burden under NRS 179.085. In particular, the district court focused on Williams’ failure to produce evidence of ownership or legal possessory interest in the backpack or its contents. Williams, however, was not required to do so. Rather, Williams was only required to show that the criminal investigation had likely concluded, which was demonstrated by Williams’ guilty plea and judgment of conviction. Thus, Williams satisfied the initial burden. The burden should have then shifted to the government to demonstrate a legitimate reason to retain the property. Accordingly, we conclude the district court manifestly abused its discretion, and we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the

district court to vacate its order denying defendant's motion for return of property and to hold a new hearing on the motion.


_____, C.J.
Herndon


_____, J.
Bell


_____, J.
Stiglich

cc: Hon. Susan Johnson, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Liesl Freedman
Matthew J. Christian
Eighth District Court Clerk