

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY THOMAS CHERNETSKY,
Appellant,
vs.
STATE OF NEVADA; NEVADA DEPT.
OF CORRECTIONS; NEVADA BOARD
OF PRISON COMMISSIONERS;
GOVERNOR JOSEPH LOMBARDO;
ATTORNEY GENERAL AARON FORD;
SECRETARY OF STATE AGUILAR;
AND JAMES DZURENDA, DIRECTOR
OF CORRECTIONS,
Respondents.

No. 90134-COA

FILED

DEC 29 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Anthony Thomas Chernetsky appeals from a district court order denying a petition for a writ of mandamus filed on August 21, 2024, challenging the Nevada Department of Corrections (NDOC) promulgation of administrative regulations. First Judicial District Court, Carson City; Jason Woodbury, Judge.

Chernetsky filed a petition for a writ of mandamus in the district court alleging he was currently under the custody of the NDOC and housed at Northern Nevada Correctional Center (NNCC). He alleged that the adoption of administrative regulation (AR) 810 and the Religious Practice Manual and Faith Group Overview impermissibly hindered his ability to practice his Wiccan faith in violation of the First Amendment. He asserted that, according to his research, the NDOC has not promulgated

any regulations through the public rulemaking process nor has it complied with NRS Chapter 233B. He insisted that because the NDOC was exempt from NRS Chapter 233B, it could not promulgate any regulations. Further, according to Chernetsky, the Nevada Board of Prison Commissioners could not delegate its rulemaking authority to NDOC. Chernetsky thus sought a writ of mandamus directing NDOC to refrain from infringing upon his religious liberty, cease using AR 810, and draft a regulation using the procedure set forth in NRS Chapter 233B.

Respondents opposed the petition, arguing that NDOC is exempt from the requirements of NRS Chapter 233B and AR 810 was properly promulgated pursuant to NRS 209.111. Further, respondents asserted that the NDOC had some discretion in formulating and promulgating regulations and thus could not be compelled to perform a discretionary act. Lastly, respondents asserted that Chernetsky had an adequate remedy at law by way of a civil rights lawsuit.

Chernetsky replied insisting that the NDOC could not adopt regulations. According to Chernetsky, NDOC could, at best, propose regulations to the Board of Prison Commissioners. He further asserted that the Attorney General's Office should not be representing NDOC and other members of the Board of Prison Commissioners. He also alleged that the regulation constituted an unconstitutional prior restraint of his free exercise of religion and therefore a first amendment petition pursuant to NRS 34.185 constituted the appropriate statutory remedy.

The district court subsequently entered a written order denying the petition. It recognized that NDOC was not bound by NRS Chapter 233B

and that AR 810 was properly formulated under NRS 209.131(6). Further, given the discretion inherent in the application of AR 810, Chernetsky was not entitled to relief as he could not compel the NDOC to perform a discretionary act. Lastly, the district court found that Chernetsky had an adequate remedy at law by way of a lawsuit challenging the constitutionality of AR 810. This appeal followed.

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). However, a writ of mandamus will not issue if the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170. A petitioner “carri[es] 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). “We generally review a district court’s grant or denial of writ relief for an abuse of discretion.” *Koller v. State*, 122 Nev. 223, 226, 130 P.3d 653, 655 (2006).

Chernetsky argues the NDOC improperly restricted his right to the free exercise of his faith. He asserts that the district court failed to decide the merits of his first amendment petition or decide those merits within 30 days as prescribed by NRS 34.185(2). Chernetsky also contends that the district court should not have permitted respondents to draft the proposed order. He contends that the decision constituted government

overreach because the NDOC does not have statutory authority to promulgate regulations.


As detailed above, the district court denied the petition, in part, because Chernetsky had a speedy and adequate remedy in the form of a civil rights action. We agree with this conclusion. It is well established that a challenge to the conditions of confinement, such as Chernetsky's challenge to the NDOC administrative regulations, can be brought in a civil action. *See Sandin v. Conner*, 515 U.S. 472, 475-76 (1995) (challenging conditions of confinement through a civil complaint); *Berry v. Feil*, 131 Nev. 339, 340-41, 357 P.3d 344, 344-45 (Ct. App. 2015) (determining that the Prison Litigation Reform Act's exhaustion requirement applied to a civil rights complaint filed by an inmate that challenged the conditions of his confinement); *see also* 42 U.S.C. § 1983. Given the foregoing, the district court properly concluded that Chernetsky had a speedy and adequate remedy at law, such that writ relief was not available to challenge the NDOC administrative regulations regarding religious practices.

Moreover, Chernetsky does not demonstrate the district court erred by directing respondents to draft a proposed order concerning the petition. *See* FJDCR 3.10(a)(2) (requiring a party opposing a petition to submit a proposed order for the district court's consideration). In addition, because the district court properly denied Chernetsky's petition, any failure of the district court to render its decision on the petition with 30 days was harmless. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) ("To establish that an error is prejudicial, the movant must show that the error affects the party's substantial rights so that, but for the alleged error,

a different result might reasonably have been reached.”); *cf.* NRCP 61 (“At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party’s substantial rights.”). Thus, Chernetsky fails to demonstrate he is entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

¹To the extent Chernetsky presents claims or facts in his informal brief that were not previously presented in the proceedings below, we decline to consider them in the first instance on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”). Insofar as Chernetsky raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Jason Woodbury, District Judge
Anthony Thomas Chernetsky
Attorney General/Carson City
Carson City Clerk