



IN THE SUPREME COURT OF THE STATE OF NEVADA

LUCAS SCHWEIZER,
Petitioner,

vs.

THE SIXTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
HUMBOLDT; AND THE HONORABLE
MICHAEL MONTERO, DISTRICT
JUDGE,

Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 90935

ORDER GRANTING PETITION

This original petition for a writ of mandamus challenges a district court order denying petitioner Lucas Schweizer's motion to set aside the judgment of conviction, withdraw the guilty plea, dismiss the case, and seal the record after Schweizer successfully completed drug court.

A writ of mandamus is available to compel the performance of an act which the law requires "as a duty resulting from an office, trust or station," NRS 34.160, or to control an arbitrary or capricious exercise of discretion, *Walker v. Second Jud. Dist. Ct.*, 136 Nev. 678, 680, 476 P.3d 1194, 1196 (2020). A writ of mandamus will not issue, however, if the petitioner has "a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170. Further, 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 Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983).

No statute or court rule permits an appeal from the order Schweizer challenges. *See Schweizer v. State*, No. 87522, 2024 WL 5086039 (Nev. Dec. 11, 2024) (Order Dismissing Appeal); *see also Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990) (“[W]here no statutory authority to appeal is granted, no right to appeal exists.”). Because Schweizer has no adequate remedy at law, we elect to entertain the petition. *See Kabew v. Eighth Jud. Dist. Ct.*, 140 Nev., Adv. Op. 20, 545 P.3d 1137, 1139-40 (2024) (entertaining an extraordinary petition where petitioner “ha[d] no adequate remedy at law because the district court’s order [was] not appealable”).

In 2019, Schweizer was arrested in possession of 7.4 grams of methamphetamine. Schweizer pleaded guilty, pursuant to a plea agreement, to transporting a controlled substance. The district court imposed a suspended sentence of 12-48 months in prison and placed Schweizer on probation for 36 months. As a condition of probation, Schweizer was required to enter and successfully complete the Humboldt County Drug Court program. Schweizer fulfilled all drug court requirements and was granted an early honorable discharge from probation in May 2021. Thereafter, Schweizer moved to set aside the judgment of conviction, which the district court denied. Schweizer appealed to this court, and we dismissed for lack of jurisdiction. *See Schweizer*, 2024 WL 5086039, at *1. After remittitur issued, Schweizer filed a second motion to set aside the judgment of conviction, which the district court similarly denied. This petition followed. Schweizer argues that the judgment of conviction must be set aside given his successful completion of drug court. We agree.

As a threshold issue, we must determine which version of the drug court statute applies. The State argues that the statutory framework in effect when Schweizer committed the offense in 2019 should guide our analysis. Furthermore, the State asserts that there was no statutory provision in 2019 for avoidance of a conviction via post-sentencing drug court participation. Schweizer urges us to consider the version of the drug court statute in effect in 2023 and 2025, when the motions to set aside the judgment of conviction were filed. Nevertheless, Schweizer maintains that he is entitled to relief under either version of the statute.

Statutory interpretation is a question of law we review de novo. *Williams v. State, Dep't of Corr.*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017). When a statute addresses punishment of a criminal defendant, “the proper penalty is the penalty in effect at the time of the commission of the offense and not . . . at the time of sentencing.” *State v. Second Jud. Dist. Ct. (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). But not all actions arising from a criminal proceeding implicate punishment. *See Bd. of Parole Comm'rs v. Second Jud. Dist. Ct. (Thompson)*, 135 Nev. 398, 403 & n.3, 451 P.3d 73, 78 & n.3 (2019) (concluding Parole Board's petition to modify sentence after parolee served a set amount of time on parole did not involve original sentencing determination and thus *Pullin* did not apply). To determine what version of a statute applies, we look to the statute's plain language to identify the conduct or event that triggers the statute's application. *See Picetti v. State*, 124 Nev. 782, 793-94, 192 P.3d 704, 712 (2008). “The determination of whether a statute's application in a particular situation is prospective or retroactive depends on whether the conduct that allegedly triggers the statute's application occurs before or after the law's effective date.” *McAndrews v. Fleet Bank of Mass., N.A.*, 989

F.2d 13, 16 (1st Cir. 1993). In Nevada, statutes are “presumed to [apply] prospectively absent clear legislative intent to apply a statute retroactively.” *Castillo v. State*, 110 Nev. 535, 540, 874 P.2d 1252, 1256 (1994). Therefore, a statute generally applies to a particular set of facts only when the triggering event occurs on or after its effective date.

Under the 2019 version of the drug court statute, if a person subject to drug court diversion “*satisfactorily completes treatment and satisfies the conditions* upon the election of treatment, as determined by the court, the conviction will be set aside.” NRS 458.310(2)(d) (2019) (emphases added). Under the later version, “upon *fulfillment of the terms and conditions* [of the treatment program], the court [s]hall discharge the defendant and dismiss the proceedings or set aside the judgment of conviction, as applicable.” NRS 176A.240(6)(a) (emphasis added); *see also* 2019 Nev. Stat., ch. 633, § 22, at 4391 (superseding NRS 458.310). Under both iterations, the portion of the statute governing set aside of the conviction is applied only after the defendant has fulfilled all requirements of the treatment program. Therefore, the triggering event is successful drug court completion. Schweizer completed drug court in May 2021. Because NRS 176A.230-.245 went into effect before this date, the more recent statute applies.

Under NRS 176A.240(1), a defendant who suffers from a substance use disorder and who pleads guilty to any offense for which probation is not prohibited by statute may be considered for drug court. Among the options available to the district court is to “[e]nter a judgment of conviction and place the defendant on probation” conditioned upon drug court completion. NRS 176A.240(1)(b). If a defendant fulfills the terms and conditions of probation, including drug court requirements, the district

court “[s]hall discharge the defendant and . . . set aside the judgment of conviction,” unless the defendant was previously convicted of a felony or failed a specialty court program. NRS 176A.240(6)(a). In *Kabew*, we held that the district court lacked the discretion to deny a motion to set aside a conviction when a defendant successfully completed drug court as a condition of probation and otherwise met the criminal history requirements under NRS 176A.240(6)(a), regardless of whether the plea agreement contemplated such action. 140 Nev., Adv. Op. 20, 545 P.3d at 1141. Similarly, we conclude that the district court failed to perform a duty required by law by denying Schweizer’s motion to set aside the judgment of conviction. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to set aside Schweizer’s judgment of conviction.



Herndon, C.J.



Bell, J.



Stiglich, J.

cc: Hon. Michael Montero, District Judge
Nevada State Public Defender’s Office
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk