



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL MICHAEL WATERS,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE AND THE HONORABLE
EGAN K. WALKER, CHIEF DISTRICT
JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 92241-COA

ORDER GRANTING PETITION

This is an original petition for a writ of mandamus challenging a district court order dismissing petitioner Daniel Michael Waters' appeal from a judgment of conviction entered by the justice court.

Waters argues the district court erred in dismissing his appeal on procedural grounds because it misapplied NRS 189.065. 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); *see also State v. Eighth Jud. Dist. Ct. (Armstrong)*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011) (stating that "[a]n arbitrary or capricious exercise of discretion is one . . . contrary to the evidence or established rules of law" (internal quotation marks omitted)). 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 of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983). A 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).

After review, we conclude Waters’ challenge is properly raised in a petition for a writ of mandamus. *See Thompson v. First Jud. Dist. Ct.*, 100 Nev. 352, 353, 683 P.2d 17, 18 (1984) (“[W]e have previously used mandamus to review a district court’s action in dismissing an appeal from a justice’s court.”); *see also Waugh v. Casazza*, 85 Nev. 520, 521, 458 P.2d 359, 360 (1969) (“The district court has final appellate jurisdiction in cases arising in the justice’s court.”). Therefore, we exercise our discretion to consider Waters’ petition.

Waters contends that he filed an application for a hearing within 60 days after filing the notice of appeal and, thus, the district court acted contrary to law in dismissing his appeal pursuant to NRS 189.065. We agree. NRS 189.065(1) states that “[a]n appeal must be dismissed by the district court unless perfected by application of the defendant, within 60 days after the appeal is filed in the justice court, by having it set for a hearing.” The supreme court has rejected the proposition that a defendant must “actually *obtain*[] a [hearing] setting within the 60-day limit,” holding instead that a defendant need only “apply for a [hearing] date in the district court” within 60 days after

filing their appeal in the justice's court.¹ *Thompson*, 100 Nev. at 354-55, 683 P.2d at 19-20.

Here, Waters was convicted in justice court of breaking, injuring, or tampering with a vehicle, damage in excess of \$25. Waters filed a timely notice of appeal on May 23, 2025, and an “application for hearing pursuant to NRS 189.065” with the district court on July 2, 2025, 40 days after the notice of appeal was filed. In that application, Waters stated that he was intending “to protect [his] appeal from a procedural dismissal” and that he understood “the Court has discretion to decide the appeal without a hearing.” The parties filed their opening and opposing briefs, and on November 14, 2025, the district court determined that a hearing was necessary to resolve the appeal and ordered the parties to contact the court clerk to set a hearing. On November 24, 2025, Waters filed an “application for setting” which reflected a hearing date of January 29, 2026. Thereafter, the district court dismissed the appeal because the November 24, 2025, application was not filed within 60 days after the notice of appeal was filed. In dismissing the appeal, the district court did not discuss or otherwise address Waters’ July 2, 2025, application.

We conclude the district court erred in determining that Waters failed to comply with NRS 189.065, and such determination was contrary to the evidence or established rules of law. As discussed above, Waters filed an “application for hearing” 40 days after the notice of appeal was filed. Thus, he applied for a hearing within 60 days after filing his notice of appeal as required by NRS 189.065. *Id.* at 355, 683 P.2d at 19-20. The fact that Waters indicated the district court had discretion to decide the appeal without a hearing, and that the district court did not determine a hearing was necessary or set the

¹NRS 189.065 was amended after *Thompson* to substitute the word “hearing” in place of “trial.” See 1985 Nev. Stat., ch. 45, § 1, at 57.

matter for a hearing until after the 60-day period had expired, does not rebut the conclusion that Waters timely applied for a hearing as required by NRS 189.065. Moreover, NRS 189.065 draws no distinction between a “request [for] a hearing” and a “request [for] a setting,” nor does the State explain how the former differs from the latter. Thus, we reject the State’s argument that NRS 189.065 can only be satisfied by the latter. Even were we to conclude that the State presents a reasonable interpretation of NRS 189.065, this would at best render the statute ambiguous, and any doubt would be resolved in Waters’ favor. *See id.* at 355, 683 P.2d at 19 (“Any doubt about the construction of statutes regulating the right of appeal should be resolved in favor of allowing an appeal.”).

In light of the foregoing, 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 dismissing Waters’ appeal and to proceed in a manner consistent with this order.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Egan K. Walker, Chief Judge
Washoe County District Attorney
Washoe County Public Defender
Second District Court Clerk