

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM C. FRANKELL,
Petitioner,

vs.

MARTHA SIMS, CCW III; NDOC-HOSP;
JAMES M. SCHOMIG; PH.D WARDEN;
HOSP. TRANSPORTATION; AND
JACKIE CRAWFORD, DIRECTOR,
NEVADA DEPARTMENT OF
CORRECTIONS,
Respondents.

No. 40661

FILED

FEB 05 2003

CLERK OF THE SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This is an original proper person petition for a writ of mandamus requesting this court to compel respondents to transport petitioner in a wheelchair-accessible vehicle to a December 16, 2002 hearing; to issue an order declaring prior actions of the respondents as violating the Americans with Disabilities Act (ADA), and the Eighth Amendment of the United States Constitution; and to issue a restraining order and/or permanent injunction prohibiting the respondents from all future acts of transporting a wheelchair-confined individual in a non-wheelchair-accessible vehicle.

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 an arbitrary or capricious exercise of discretion.¹ A writ of mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law.² Further, because

¹NRS 34.160; See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).


²NRS 34.170.

mandamus is an extraordinary remedy, whether a petition will be considered is entirely within the discretion of this court.³

The petition is moot to the extent that petitioner requests this court to compel respondents to transport petitioner in a wheelchair-accessible vehicle to a December 16, 2002 hearing. Petitioner filed the petition on December 17, 2002, one day after the hearing.

As to petitioner's other requests for relief, he has a plain, speedy, and adequate remedy in the ordinary course of law. Petitioner may bring his claims for violations of the ADA, the Eighth Amendment, and his request for injunctive relief to the proper federal or state district court. Accordingly, we

ORDER the petition DENIED.⁴

 J.

Shearing

 J.

Leavitt

 J.

Becker

³Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

⁴We conclude that the documents submitted by the petitioner demonstrate good cause to waive the filing fee. See NRAP 21(e). Although the petitioner was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from him.

cc: Attorney General Brian Sandoval/Carson City
William C. Frankell