

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR CRAIG FOREST,
Petitioner,

vs.

NEVADA TRANSPORTATION AUTHORITY;
ANDREW J. MACKAY, CHAIRMAN; MICHAEL J.
KLOBERDANZ, COMMISSIONER; AND MARILYN
SKIBINSKI, DEPUTY COMMISSIONER,
Respondents.

No. 54151

FILED

SEP 03 2009

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS,
PROHIBITION, OR CERTIORARI

This original petition for a writ of mandamus, prohibition, or certiorari challenges an administrative order of the Nevada Transportation Authority that, among other things, imposed a \$3,500 fine on petitioner Arthur C. Forest.

On July 10, 2009, Forest filed a petition for a writ of mandamus, prohibition, or certiorari. An amended petition was received on July 22, 2009.¹ Collectively, these two filings challenge a May 21, 2009, order of respondent Nevada Transportation Authority that, among other things, imposed a \$3,500 fine on Forest for operating as a fully regulated carrier without authority and for holding out his services as a fully regulated carrier through the use of an unlawful advertisement. See, generally, NRS 706.386 and NRS 706.758. According to Forest, he was serving a sentence in prison for an unrelated offense when he received notice of the Authority's decision regarding these infractions,

¹We direct the clerk of this court to file the amended petition, provisionally received on July 22, 2009.

and was unable to attend any hearing held by the Authority. Forest argues that he had constitutional rights to counsel for these administrative proceedings, to be present when the administrative fine was imposed, to attend hearings in this matter, and to have any hearings recorded, which he asserts was not done.

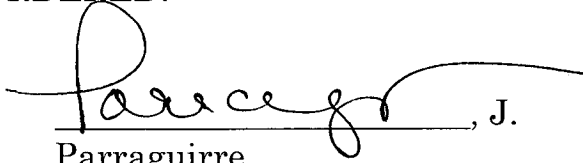
A writ of mandamus is available to compel performance of an act that the law requires, or to control a manifest abuse of discretion. See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). A writ of prohibition is available to arrest the proceedings of any tribunal or person exercising judicial functions when such proceedings are in excess of that tribunal or person's jurisdiction. NRS 34.320. A writ of certiorari is available to cure jurisdictional excesses. NRS 34.020(2). Generally, an extraordinary writ may issue only when petitioner has no plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170; NRS 34.330; NRS 34.020(2). Whether to consider a petition for such extraordinary relief is addressed to our sole discretion, Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991); Dangberg Holdings v. Douglas Co., 115 Nev. 129, 138, 978 P.2d 311, 316 (1999), and petitioner bears the burden of demonstrating that our intervention is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). We have held that the right to petition the district court for judicial review of an administrative decision constitutes a speedy and adequate legal remedy, which generally precludes writ relief. Howell v. State Engineer, 124 Nev. ___, ___, 197 P.3d 1044, 1049 (2008).

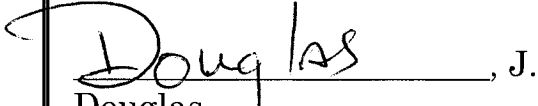
Here, Forest appears to have had a right to petition the district court for judicial review of the Authority's decision. See NRS 706.771(2) (noting that a fine imposed by the Authority may only be recovered after notice is given and a hearing is held pursuant to the requirements of NRS 233B); NRS 233B.135 (providing for judicial review of an agency's final decision). Thus, Forest has failed to meet his burden of demonstrating that this court's extraordinary intervention is warranted at this time because it appears that he has a speedy and adequate remedy available. NRS 34.170; NRS 34.330; NRS 34.020(2); Pan, 120 Nev. 222, 88 P.3d 840.

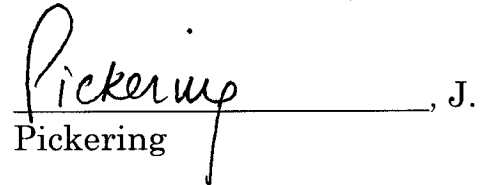
Moreover, even if Forest lacks a speedy and adequate remedy in the form of a district court petition for judicial review of the Authority's decision, this petition for extraordinary relief should be brought first in district court. Forest claims that although he was serving a sentence in the Nevada State Prison for an unrelated offense, the Authority's decision was addressed to a street address in Sparks, Nevada. Thus, there appears to be factual questions here regarding whether Forest was properly served with the Authority's decision. Because this court is not the appropriate forum for resolving factual disputes, to the extent that Forest lacks a speedy and adequate remedy by way of a petition for judicial review, his petition for extraordinary relief should be brought in district court. See Zugel v. Miller, 99 Nev. 100, 659 P.2d 296 (1983) (noting that this court is not a fact-finding tribunal). Accordingly, based on the reasoning set forth above, we deny

the petition. Smith, 107 Nev. 674, 818 P.2d 849; Dangberg Holdings, 115 Nev. at 138, 978 P.2d at 316; NRAP 21(b)(1); NRAP 21(c).

It is so ORDERED.²


Parraguirre, J.


Douglas, J.


Pickering, J.

cc: Arthur Craig Forest
Attorney General Catherine Cortez Masto/Carson City

²Forest has failed to pay the filing fee or request in forma pauperis status as set forth in NRAP 24. Therefore, Forest's failure to pay the filing fee or request leave to proceed in forma pauperis constitutes an independent basis for denying the petition.