

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRICK P. HOUSTON,
Petitioner,
vs.
NEVADA DEPARTMENT OF PUBLIC
SAFETY DIVISION OF PAROLE AND
PROBATION,
Respondent.

No. 62437

FILED

MAY 15 2013

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS


This is an original proper person petition for a writ of mandamus seeking to compel respondent to remove petitioner's conviction listed as "escape from jail" from his presentence investigation report.

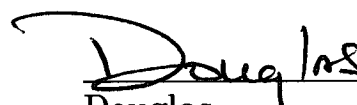
A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion. *See* NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). It is within our sole discretion to determine if a writ petition will be considered. *Smith v. Eighth Judicial Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Petitioner bears the burden of demonstrating that extraordinary relief is warranted. *Pan v. Eighth Judicial Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

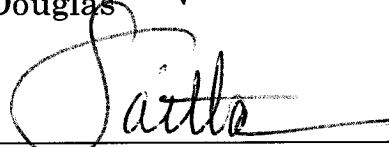
Having considered the petition, we conclude that petitioner has not demonstrated that our intervention by way of extraordinary relief is warranted. *See* NRS 34.160; *Pan*, 120 Nev. at 228, 88 P.3d at 844. Initially, as this petition raises factual issues, it should have been addressed by the district court in the first instance. *See Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) ("When disputed factual issues are critical in demonstrating the propriety

of a writ of mandamus, the writ should be sought in the district court, with appeal from an adverse judgment to this court.”). Regardless, extraordinary relief is not warranted here, *see Stockmeier v. State, Bd. of Parole Comm’rs*, 127 Nev. ___, ___, 255 P.3d 209, 214 (2011) (explaining that an inmate waives any objection to errors in his or her presentence investigation report by failing to challenge the alleged errors on direct appeal from a conviction and sentence), and we have previously denied the relief requested in this petition, and petitioner did not request rehearing of that decision. *See Houston v. State, Dep’t of Pub. Safety*, Docket No. 60881 (Order Denying Petition, March 19, 2013). Accordingly, we

ORDER the petition DENIED.¹


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Brick P. Houston
Attorney General/Carson City
Eighth District Court Clerk

¹We direct the clerk of this court to file the proper person motion regarding the failure to pay the filing fee, provisionally received in this court on January 25, 2013, and we conclude that no action is necessary as the filing fee has since been waived.