

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHERYL RITTER BATES,
Petitioner,
vs.
THE FIFTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF NYE,
Respondent,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 64708

FILED

JAN 16 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Malone
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition alleges a due process violation based on the destruction of allegedly exculpatory evidence related to a prosecution for driving under the influence. Although the petition is not entirely clear, it appears that the underlying prosecution was in the justice court and that petitioner unsuccessfully appealed to the district court. Petitioner seems to assert that both courts erred with respect to purported *Brady* violations by the State and that, as a result, “the Justice of the Peace was strip[ped] of its authority” and “rendered the District Court without authority to hear the appeal in this matter.”

Petitioner has not provided an appendix that includes any order that is the subject of the petition, relevant parts of the record, and any other original document “that may be essential to understand the matters set forth in the petition” as required by NRAP 21(a)(4). As a result, we cannot evaluate what happened in the lower tribunals to determine whether the justice court or district court refused to perform an

act which the law requires as a duty resulting from an office, trust or station, NRS 34.160, or exercised their discretion in an arbitrary or capricious manner, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981). Moreover, petitioner had an adequate remedy for an error in the justice court proceedings through an appeal to the district court. Nev. Const. art. 6, § 6(1). The availability of an adequate remedy militates against a writ of mandamus or prohibition. NRS 34.170; NRS 34.330. And the petition, on its face, does not establish that either the justice court or the district court lacked jurisdiction: the justice court has subject matter jurisdiction to try all misdemeanor offenses, see NRS 4.370(3), and the district court has final appellate jurisdiction in criminal cases arising in the justice courts, Nev. Const. art. 6, § 6(1); *Tripp v. City of Sparks*, 92 Nev. 362, 363, 550 P.2d 419, 419 (1976). Any error in the conduct of either of those proceedings does not strip the court of its jurisdiction, making a writ of prohibition inappropriate. NRS 34.320. For these reasons, we decline to exercise our discretion to consider the petition. See *Poulos v. Eighth Judicial Dist. Court*, 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). Accordingly, we

ORDER the petition DENIED.

Jan Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Fifth Judicial District Court
Robert P. Bettinger
Nye County District Attorney
Nye County Clerk