

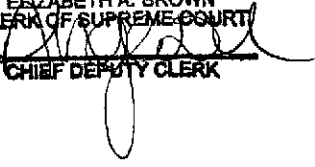
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BYRON ELROY CRUTCHER,
Appellant,
vs.
E.K. MCDANIEL, DIRECTOR NEVADA
DEPARTMENT OF CORRECTIONS,
Respondent.

No. 70785

FILED

NOV 17 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a petition for a writ of mandamus filed on January 27, 2016.¹ Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

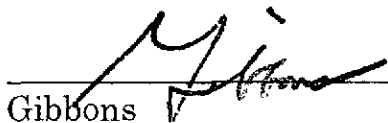
In his petition, appellant Byron Crutcher claimed the Nevada Department of Prisons (NDOC) erred by denying his request to be placed in transitional housing while awaiting parole. The district court denied the petition because Crutcher failed to demonstrate the NDOC had a duty to place Crutcher in transitional housing.

We conclude the district court correctly found the NDOC does not have a duty to place Crutcher in transitional housing because placement in transitional housing is discretionary. AR 543.01(1) ("The department may house inmates in facilities designated for transitional housing and services."); *see also* NRS 209.401; NRS 209.4886; NRS 209.887(2). Because the decision is discretionary, Crutcher failed to


¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

demonstrate the writ should issue. See NRS 34.160 (“[t]he writ may be issued . . . to compel the performance of an act which the law especially enjoins as a *duty* resulting from an office” (emphasis added)). He also failed to demonstrate the NDOC manifestly abused its discretion or acted arbitrarily or capriciously in denying his request because his instant offense, robbery, involved violence or the threat of violence. *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981) (“Mandamus will not lie to control discretionary action unless discretion is manifestly abused or is exercised arbitrarily or capriciously.” (internal citation omitted)); AR 543.01(2)(C) (the criteria for being eligible for transitional housing requires “[t]he inmate is otherwise eligible for community trustee per AR 521”); AR 521.05(2)(L) (Prisoners whose instant offense was violent or any felony involving violence or threats of violence are not eligible for the community trustee program). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²

 C.J.
Gibbons

 J.
Tao

 J.
Silver

²We have reviewed all documents Crutcher has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Crutcher has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.

cc: Hon. Jerome M. Polaha, District Judge
Byron Elroy Crutcher
Attorney General/Carson City
Washoe District Court Clerk