

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN MARK FENTON,
Petitioner,
vs.

THE FOURTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF ELKO;
AND THE HONORABLE NANCY L.
PORTER, DISTRICT JUDGE,

Respondents,
and

THE STATE OF NEVADA; AND
RICHARD F. CORNELL,
Real Parties in Interest.

No. 74634-COA

FILED

FEB 13 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION IN PART AND DENYING IN PART

This original petition for a writ of prohibition and mandamus in part seeks declaratory and injunctive relief regarding the relationship between John Mark Fenton and his attorney and the claims raised in his postconviction petition for a writ of habeas corpus filed in the district court. We have considered these claims, and we are not satisfied this court's intervention by way of extraordinary writ is warranted at this time. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) ("Petitioner[] carr[ies] the burden of demonstrating that extraordinary relief is warranted."). Accordingly, without deciding upon the merits of these claims, we deny the petition as to these claims.

The petition also seeks an order directing the district court to resolve Fenton's postconviction petition for a writ of habeas corpus that was filed on June 9, 2014, in district court case number CV-HC-14-338. The

district court partially granted the writ of habeas corpus and set an evidentiary hearing in an order dated October 28, 2015. Fenton asks this court to order the district court to proceed with discovery and the evidentiary hearing.

On December 10, 2018, we ordered the district court to answer Fenton's petition in regard to why there has not been an expeditious examination of the petition. In the answer, the district court stated it was prepared to go forward with the evidentiary hearing once Fenton's attorney gives notice he is ready. Fenton's current counsel was appointed in January of 2016, and has not yet provided notice to the district court he is ready to proceed with the hearing.

A writ of mandamus may issue "to compel the performance of an act which the law especially enjoins as a duty resulting from an office." NRS 34.160. NRS 34.740 requires the district court to provide an expeditious examination of a postconviction petition for a writ of habeas corpus. The length of delay in the prosecution of this petition has prevented an expeditious examination. Therefore, we conclude mandamus relief is warranted on this claim,¹ and we

ORDER the petition DENIED IN PART AND GRANTED IN PART AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to place the June 9, 2014,

¹A writ of prohibition is not the proper vehicle for raising this claim. See NRS 34.320.

postconviction petition for a writ of habeas corpus on its calendar and resolve the petition after holding an evidentiary hearing.²

Tao, J.
Tao

Gibbons, J.
Gibbons

cc: Hon. Nancy L. Porter, District Judge
John Mark Fenton
Attorney General/Carson City
Richard F. Cornell
Elko County District Attorney
Elko County Clerk

²The Honorable Michael L. Douglas did not participate in the decision in this matter.