

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY MARION COSTA-AYRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 76809-COA

GARY MARION COSTA-AYRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

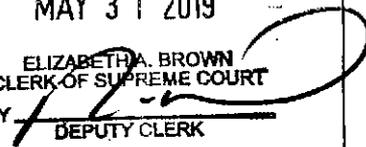
No. 76810-COA

GARY MARION COSTA-AYRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 76811-COA ✓

**FILED**

MAY 31 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Gary Marion Costa-Ayres appeals from a district court order denying three identical petitions for a writ of mandamus filed in district court case numbers CR7876, CR7877, and CR7878 on July 18, 2018.<sup>1</sup> Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

<sup>1</sup>These appeals have been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

In his petitions, Costa-Ayres sought a writ of mandamus directed at the governor to enforce constitutional provisions against the actions of the 1951 Legislature. Costa-Ayres contended the Legislature's decision to appoint Nevada Supreme Court justices to sit on the committee creating the Nevada Revised Statutes violated the constitution.

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station, NRS 34.160, or to control a manifest abuse or arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). A writ of mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law. NRS 34.170. Further, mandamus is an extraordinary remedy, and it is within the court's discretion to determine if a petition will be considered. See *Poulos v. Eighth Judicial Dist. Court*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); *State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983). "Petitioner[ ] carr[ies] the burden of demonstrating that extraordinary relief is warranted." *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Costa-Ayres failed to demonstrate the governor has a duty resulting from an office, trust, or station to enforce the constitution against the actions of the Legislature that occurred in 1951. Specifically, Costa-Ayres failed to specify what action he wants from the governor's office or how that action can be enforced against the Legislature nearly 70 years later.

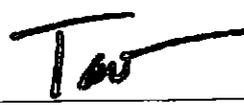
Further, Costa-Ayres failed to demonstrate it was error to appoint the Nevada Supreme Court justices to the commission. Costa-

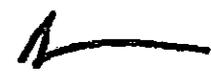
Ayres failed to demonstrate a position on the commission creating the Nevada Revised Statutes was a public office that a Supreme Court justice was not allowed to hold. See Nev. Const. art. 6, § 11; NRS 281.005. Therefore, Costa-Ayres failed to demonstrate it was unconstitutional for the justices to be a part of the commission, or that they violated the separation of powers doctrine, see *Comm'n on Ethics v. Hardy*, 125 Nev. 285, 291-92, 212 P.3d 1098, 1103 (2009) ("The purpose of the separation of powers doctrine is to prevent one branch of government from encroaching on the powers of another branch.").

Finally, to the extent Costa-Ayres attempted to challenge his conviction through this petition for a writ of mandamus, we conclude Costa-Ayres has a plain, speedy, and adequate remedy to challenge his conviction. Accordingly, we conclude the district court did not abuse its discretion by denying the petitions, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Robert W. Lane, District Judge  
Gary Marion Costa-Ayres  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk