

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA LEE ROBERTS,  
Appellant,  
vs.  
THE STATE OF NEVADA; AND LAS  
VEGAS METROPOLITAN POLICE  
DEPARTMENT,  
Respondents.

No. 77984-COA

**FILED**

NOV 05 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

**ORDER OF AFFIRMANCE**

Joshua Lee Roberts appeals from an order of the district court denying a petition for a writ of mandamus. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

First, Roberts argues the district court erred by denying his September 24, 2018, petition. In his petition, Roberts sought an order directing the Las Vegas Metropolitan Police Department to return seized property.

We review the district court's denial of a petition for a writ of mandamus for an abuse of discretion. *Douglas v. State*, 124 Nev. 379, 383, 184 P.3d 1037, 1039 (2008). 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 the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170.

Based upon our review of the record on appeal, Roberts failed to demonstrate the district court abused its discretion by denying the petition. The district court denied Roberts' petition because the property was related to Roberts' criminal activity and Roberts did not demonstrate he was the actual owner of the property. The district court further informed Roberts that he could file a motion pursuant to NRS 179.085 and attempt to establish he was entitled to the return of the seized property. Because Roberts did not establish he was entitled to have the property returned to him and he had a plain, speedy, and adequate remedy pursuant to NRS 179.085 to seek the return of any improperly seized property, the district court did not abuse its discretion by denying the petition.

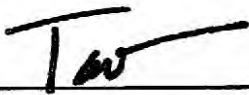
Second, Roberts argues the district court erred by denying the petition without providing him sufficient time to file a reply following the State's filing of its opposition. In addition, Roberts argues he was improperly not given the opportunity to review and respond to the State's proposed order. As stated previously, the district court did not abuse its discretion by denying Roberts' petition, and, therefore, any failure to permit Roberts to file a reply or ensure that Roberts had an opportunity to review and respond to the proposed order was harmless. *See* NRS 178.598 (stating "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded"); *see Byford v. State*, 123 Nev. 67, 69, 156 P.3d 691, 692 (2007) (stating that when a district court requests a party to prepare a proposed order, the court must ensure that the other parties are aware of the request and given the opportunity to respond to the proposed order). Roberts does not demonstrate that any error adversely affected the outcome of the proceedings or his ability to seek full appellate

review. Therefore, Roberts is not entitled to relief based on these arguments.

Finally, Roberts argues the district court erred by conducting a hearing outside of his presence. A criminal defendant does not have an unlimited right to be present at every proceeding. *See Gallego v. State*, 117 Nev. 348, 367-68, 23 P.3d 227, 240 (2001), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 776 n.12, 263 P.3d 235, 253 n.12 (2011). A “defendant must show that he was prejudiced by the absence.” *Kirksey v. State*, 112 Nev. 980, 1000, 923 P.2d 1102, 1115 (1996). The record indicates the hearing at issue was not an evidentiary hearing, no testimony was presented, and the district court directed the State to prepare an order denying the petition. *Cf. Gebers v. State*, 118 Nev. 500, 504, 50 P.3d 1092, 1094-95 (2002) (concluding a petitioner’s statutory rights were violated when she was not present at hearing where testimony and evidence were presented). Roberts does not demonstrate he was prejudiced by his absence from the relevant hearing. Accordingly, we conclude the district court did not err in this regard and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Jerry A. Wiese, District Judge  
Joshua Lee Roberts  
Attorney General/Carson City  
Clark County District Attorney  
Liesl K. Freedman  
Matthew J. Christian  
Eighth District Court Clerk