

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KIM BLANDINO,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; DISTRICT COURT JUDGES
OF THE EIGHTH JUDICIAL DISTRICT
COURT; THE HONORABLE KRISTINA
PICKERING; THE HONORABLE
ELISSA CADISH; THE HONORABLE
MARK GIBBONS; THE HONORABLE
JAMES W. HARDESTY; THE
HONORABLE RON PARRAGUIRRE;
THE HONORABLE ABBI SILVER; THE
HONORABLE LIDIA STIGLICH; AND
JUDGES OF THE NEVADA COURT OF
APPEALS,

Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 82034-COA

FILED

JAN 07 2021

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

ORDER DENYING PETITION FOR EXTRAORDINARY RELIEF

Pro se petitioner Kim Blandino has filed an original petition for a writ of mandamus or prohibition or other extraordinary relief challenging the Eighth Judicial District Court's (EJDC) COVID-19-related administrative orders requiring him to wear a mask when inside the court building, as well as the Nevada Supreme Court justices' alleged failure to

comply with NCJC 2.15.¹ Having reviewed the petition, we conclude that our discretionary and extraordinary intervention is not warranted.

A writ of mandamus is available to compel the performance of an act the law requires as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion. NRS 34.160; *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).² It is within our sole discretion to determine whether to entertain a petition for extraordinary writ relief, *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991), and the petitioner bears the burden of showing that such relief is warranted, *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Blandino has failed to demonstrate that the district court acted arbitrarily or capriciously, or that it otherwise is required by law to allow

¹Blandino has named the Nevada Supreme Court justices and Court of Appeals judges as respondents to this petition; however, the petition contains no allegations against us, the undersigned court of appeals judges, and we have a duty to sit absent disqualification. *Millen v. Eighth Judicial Dist. Court*, 122 Nev. 1245, 1253, 148 P.3d 694, 700 (2006). Blandino asserts no ground for disqualification here. Moreover, courts of another state have no jurisdiction to resolve cases filed in the Nevada courts. Nev. Const. art. 6; see generally *In re Ross*, 99 Nev. 1, 10, 656 P.2d 832, 837 (1983) (recognizing the “rule of necessity” exception to judicial disqualification, in which disqualification is inappropriate when such disqualification “would leave the parties without a forum”).

²A writ of prohibition is not available because Blandino has not asserted that the district court lacks jurisdiction. See NRS 34.320; *Goicoechea v. Fourth Judicial Dist. Court*, 96 Nev. 287, 289, 607 P.2d 1140, 1141 (1980). Likewise, Blandino has not alleged circumstances warranting writs of certiorari or habeas corpus. NRS 34.020; NRS 34.360.

Blandino to enter the court building sans mask, such that our intervention is warranted here. Blandino, who is representing himself against criminal charges, asserts that he was recently threatened with arrest if he continues to refuse to appear at court hearings either in person wearing a mask or by audio-visual equipment, as set forth in the district court's administrative orders pertaining to the COVID-19 pandemic. He argues that (1) the EJDC's mask mandate and virtual appearance alternative violates his free exercise and due process rights and right to be physically present at trial and during important hearings; (2) the mandate is invalid because it does not contain a health-related exemption; (3) he needs to be able to see the district judge's facial expressions during hearings; and (4) he has difficulty hearing others who are wearing masks.³

Although Blandino filed this writ petition on an emergency basis due to upcoming hearings and trial, after the petition was filed, the district court entered Administrative Order 20-24 on November 24, 2020, responding to recent conditions created by the COVID-19 pandemic by suspending all jury trials and requiring appearances by alternative means at least through January 11, 2021. According to the district court's online docket entries, Blandino's trial has been rescheduled for late August 2021. Given the rapidly changing conditions surrounding the pandemic and responses thereto, to the extent that Blandino challenges the district court's

³Blandino also asserts that the supreme court justices must be reported to the judicial discipline commission for failing to report the alleged past misconduct of two district judges in matters wholly distinct from the underlying criminal matter and that apparently did not involve Blandino, which assertion we summarily decline to entertain. NRS 34.170.

mask-or-alternative-appearance mandate with respect to his jury trial, we conclude that such challenges are premature at this time and decline to consider them, without prejudice to Blandino's ability to reassert them in the future if warranted. Therefore, we address this petition only as to Blandino's challenges to the restrictions on non-jury-trial court appearances, in general, which are expected to resume after January 11.

We conclude that our extraordinary intervention is not warranted. First, Blandino has not demonstrated that he has asked the district court for accommodations other than suspending the mask mandate, such as his suggested use of clear masks. Moreover, Blandino has not met the stringent standard for reviewing COVID-19 pandemic measures impacting constitutional rights: review is available only when the measure purporting to protect the public health "has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law." *In re Abbott*, 954 F.3d 772, 784 (5th Cir. 2020) (quoting *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 31 (1905)).

Several courts across the nation have determined that claims like Blandino's fail to meet this standard. *See, e.g., Vincent v. Bysiewicz*, No. 3:20-CV-1196 (VAB), 2020 WL 6119459 (D. Conn. Oct. 16, 2020) (concluding that plaintiff failed to show a likelihood of success on the merits of her claims against a government-mandated mask requirement or that the requirement went so far beyond reasonable safety precautions so as to require court intervention under *Jacobson*); *Shelton v. City of Springfield*, No. 6:20-CV-03258-MDH, 2020 WL 6503407 (W.D. Mo. Sept. 2, 2020) (denying application for temporary restraining order after determining that

mask requirement had a substantial relation to a public health crisis and did not constitute a plain invasion of fundamental rights); *United States v. Crittenden*, No. 4:20-CR-7 (CDL), 2020 WL 4917733 (M.D. Ga. Aug. 21, 2020) (concluding courtroom mask requirement did not violate fundamental rights). Like those courts, we conclude that Blandino has not established a right to review under these circumstances.

Moreover, Blandino has not demonstrated that the EJDC restrictions violated his constitutional rights in the first instance. “The free exercise clause does not require the government to exempt religious practices from a valid and neutral law of general applicability,” *Antietam Battlefield KOA v. Hogan*, 461 F. Supp. 3d 214, 231 (D. Md. 2020), *appeal dismissed*, No. 20-1579, 2020 WL 6787532 (4th Cir. July 6, 2020) (internal quotation marks omitted), and Blandino has not shown that the court’s mask requirement is not neutral and of general applicability. Additionally, the constitutional due process right to be present applies only to critical stages of the proceedings, and the right is violated only where the defendant’s absence causes the proceedings to be unfair or results in the denial of an underlying substantial right. *People v. Lindsey*, 772 N.E.2d 1268, 1275-77 (Ill. 2002). Blandino has not identified any of the hearings complained of as critical or that his audio-visual appearance would result in unfairness or the denial of a substantial right. Nor has Blandino established that he is entitled to relief because the mask requirement lacks a health-related exemption or constitutes disability discrimination, especially given the option to appear through audio-visual equipment. *See, e.g., Pletcher v. Giant Eagle Inc.*, No. CV 2:20-754, 2020 WL 6263916, at *3 (W.D. Pa. Oct. 23, 2020) (determining that a plaintiff was unlikely to


succeed on claims brought under the ADA when the plaintiff failed to demonstrate any disability preventing him from complying with the subject mask requirement).

Finally, Blandino has pointed to no authority, and we have found none, entitling him to see the district judge's facial expressions during a hearing. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (recognizing a proponent's responsibility to present relevant authority and cogent argument). Finally, we are confident that the district court will make every effort to ensure that all parties participating in a hearing, whether in person with masks or through audio-visual equipment, are able to hear the proceedings and effectively communicate with the court.

Therefore, we

ORDER the petition DENIED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Kim Blandino
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk