

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID HOWELL,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 81825-COA

FILED

APR 16 2021

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

ORDER OF AFFIRMANCE

David Howell appeals from an order of the district court denying a petition for a writ of mandamus. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Howell argues the district court erred by denying his October 10, 2019, petition. In his petition, Howell contended that the warden was required by the prison administrative regulations to consider his request for the restoration of his previously removed credits and the failure to properly consider his request violated his constitutional rights. Howell sought an order directing the warden to review his request for the restoration of credits in compliance with the administrative regulations.

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. Petitioners carry 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). "We generally review a district court's grant or denial of writ relief for an abuse of discretion." *Koller v. State*, 122 Nev. 223, 226, 130 P.3d 653, 655 (2006).

The district court found that Howell could raise his claims alleging a violation of his right to due process and equal protection through a civil rights action filed pursuant to 42 U.S.C. § 1983. The district court therefore concluded Howell had a plain, speedy, and adequate remedy in the ordinary course of law through which he could challenge the process through which the prison officials considered his request for restoration of his statutory credits.

The district court also found Howell failed to demonstrate that the warden violated the prison administrative regulations and, therefore, he did not demonstrate the warden failed to perform an act which the law requires as a duty resulting from an office, trust, or station, or that mandamus relief was necessary to control a manifest abuse or arbitrary or capricious exercise of discretion. For those reasons, the district court concluded Howell was not entitled to relief and denied the petition. The record supports the district court's decisions. Accordingly, we conclude the district court did not abuse its discretion by denying Howell's petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
David Howell
Attorney General/Carson City
Clerk of the Court/Court Administrator