

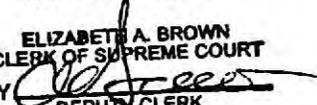
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
KATHLEEN A. SIGURDSON,
DISTRICT JUDGE,
Respondents.

No. 82726-COA

FILED

JUN 07 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

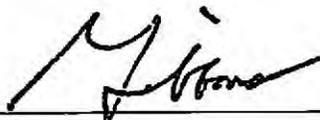
ORDER DENYING PETITION

In this original petition for a writ of mandamus, Ferrill Joseph Volpicelli seeks an order from this court directing the district court to resolve an allegedly overlooked ground raised in Volpicelli's first, timely postconviction habeas petition filed in 2005. 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. Further, mandamus is an extraordinary remedy, and it is within the discretion of this court 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); see also *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).

Volpicelli claims the district court failed to resolve ground 12 of his petition. The district court construed ground 12 as a claim that the State withheld exculpatory evidence and that trial counsel did not put forth sufficient effort to retrieve that evidence. After an evidentiary hearing, the district court found that Volpicelli had failed to adduce any evidence that had been withheld and issued a final order denying the petition. To the extent Volpicelli feels the district court misunderstood his argument, he had a plain, speedy, and adequate remedy: an appeal from the district court’s order. Accordingly, we conclude this court’s intervention by way of extraordinary writ is not warranted, and we

ORDER the petition DENIED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kathleen A. Sigurdson, District Judge
Ferrill Joseph Volpicelli
Attorney General/Carson City
Washoe District Court Clerk