

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK LEAL,
Appellant,
vs.
NEVADA DIVISION OF PAROLE AND
PROBATION; THE STATE OF NEVADA
DEPARTMENT OF PUBLIC SAFETY;
AND THE STATE OF NEVADA,
Respondents.

No. 85488

FILED

MAY 11 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order dismissing appellant Jack Leal's petition for a writ of mandamus. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Senior Judge.¹ Leal argues the district court erred in dismissing his petition. We disagree and affirm.²

In his petition, Leal argued that respondents, the Nevada Division of Parole and Probation and the State of Nevada Department of Public Safety, did not provide him with his presentence investigation report (PSI) before his 2017 sentencing hearing, as required by NRS 176.153(1), and therefore he was unable to challenge purported errors within the PSI. He sought an order vacating his sentence, appointing counsel to review and discuss the PSI with him, and setting a new sentencing hearing. The district court dismissed Leal's petition after concluding that the

¹Senior Judge Ellsworth orally dismissed the petition and directed the State to prepare the findings of fact and conclusions of law. Senior Justice Mark Gibbons subsequently signed the written order.

²Having considered the pro se brief filed by appellant, we conclude that a response is not necessary, NRAP 46A(c), and that oral argument is not warranted, NRAP 34(f)(3). This appeal therefore has been decided based on the pro se brief and the record. *Id.*


respondents lacked authority to grant the requested relief, that the court had no authority to issue a writ directing a co-equal court—the district court that sentenced Leal—to grant Leal’s requested relief, and that mandamus relief was inappropriate because Leal had a plain, speedy, and adequate remedy in the ordinary course of law.

A writ of mandamus is available to compel the performance of an act that 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). “Mandamus relief is available only if a petitioner lacks a plain, speedy, and adequate legal remedy.” *Johnston v. Eighth Judicial Dist. Court*, 138 Nev., Adv. Op. 67, 518 P.3d 94, 100 (2022) (citing NRS 34.170). And this court “generally review[s] 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).

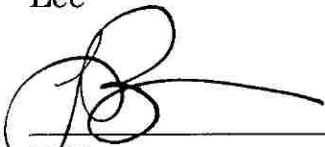
Leal alleges he did not receive a copy of his PSI until 2019. Even accepting his allegation as true, Leal had a plain, speedy, and adequate remedy in the ordinary course of law to challenge his sentence—a postconviction petition for a writ of habeas corpus. See NRS 34.724(1) (recognizing a convicted person who claims the sentence was imposed in violation of Nevada law may file a postconviction habeas petition to get relief from the sentence); *Harris v. State*, 130 Nev. 435, 437, 329 P.3d 619, 621 (2014) (“A post-conviction petition for a writ of habeas corpus is the *exclusive remedy* for challenging the validity of a conviction or sentence aside from direct review of a judgment of conviction on appeal and remedies which are incident to the proceedings in the trial court.” (internal quotation marks omitted)). Indeed, Leal filed a postconviction habeas petition

challenging trial and appellate counsel's effectiveness with regard to his sentencing, including that the PSI was not received by Leal and that it contained errors. Leal also did not show that the respondents had "a clear, present legal duty to act." *Round Hill Gen. Improvement Dist.*, 97 Nev. at 603, 637 P.2d at 536; *see also Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) ("Petitioners carry the burden of demonstrating that extraordinary relief is warranted."). In particular, this court has recognized that the Nevada Division of Parole and Probation "has no express statutory authority" or "any implied authority to amend a prisoner's PSI once he has been sentenced." *Stockmeier v. State, Bd. Of Parole Comm'rs*, 127 Nev. 243, 249, 255 P.3d 209, 213 (2011). Therefore, the district court did not abuse its discretion by dismissing Leal's petition for a writ of mandamus, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Stiglich


_____, J.
Lee


_____, J.
Bell

cc: Chief Judge, Eighth Judicial District Court
Department 17, Eighth Judicial District Court
Jack Leal
Attorney General/Carson City
Attorney General/Ely
Eighth District Court Clerk