


IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,
vs.
EIGHTH JUDICIAL DISTRICT COURT;
AND THE HONORABLE JOSEPH
HARDY, JR., DISTRICT JUDGE,
Respondents,
and
CHARLES ADRIAN FORD,
Real Party in Interest.

No. 87293

FILED

SEP 22 2023

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

ORDER DENYING PETITION

This is an emergency petition for a writ of prohibition and/or mandamus seeking a writ compelling the district court to strike a witness in a postconviction petition for a writ of habeas corpus proceeding. Petitioner requests relief no later than October 2, 2023.¹

A writ of prohibition is available “to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the district court’s jurisdiction.” NRS 34.320; *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). 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 or to control an

¹The emergency petition does not comply with this court’s rules regarding emergency petitions, as it fails to articulate why relief by October 2 is necessary to avoid irreparable harm. See NRAP 27(e).

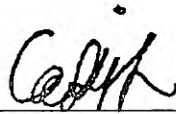
arbitrary or capricious exercise of discretion. See NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Whether a petition for extraordinary writ relief will be entertained rests within this court's sound discretion. *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007). Petitioners bear the burden to show that extraordinary relief is warranted, and such relief is proper only when there is no plain, speedy, and adequate remedy at law. See *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 228, 88 P.3d 840, 841, 844 (2004).

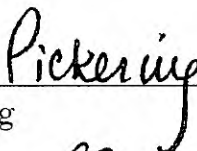
"The admission or exclusion of evidence rests within the district court's sound discretion." *State v. Dist. Ct. (Armstrong)*, 127 Nev. 927, 931, 267 P.3d 777, 780 (2011). In the context of mandamus proceedings, we consider whether a district court's evidentiary ruling was a manifest abuse or arbitrary and capricious exercise of its discretion. *Id.* A manifest abuse of discretion is "[a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule." *Id.* at 932. 267 P.3d at 780. An arbitrary or capricious exercise of discretion is one based on prejudice or preference, rather than on reason, or contrary to the evidence or established rules of law. *Id.* at 931-32, 267 P.3d at 780.

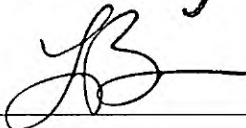
Having reviewed the petition and supporting documents, we are not persuaded that our extraordinary intervention is warranted here. Petitioner fails to raise any argument that the district court exercised its judicial functions in excess of its jurisdiction. See *Smith*, 107 Nev. at 677, 818 P.2d at 851. And petitioner has not met its burden to show that the district court clearly erroneously interpreted or applied the law, *Armstrong*, 127 Nev. at 932. 267 P.3d at 780, or exercised its discretion based is on

prejudice or preference, rather than on reason, or contrary to the evidence or established rules of law. *Id.* at 931-32, 267 P.3d at 780. Accordingly, we

ORDER the petition DENIED.


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Bell

cc: Attorney General/Carson City
Clark County District Attorney
Federal Public Defender/Las Vegas
Eighth District Court Clerk