

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN LUCKETT,
Petitioner,
vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; THE HONORABLE
JACQUELINE M. BLUTH, DISTRICT
JUDGE; AND THE HONORABLE
JERRY A. WIESE, DISTRICT JUDGE,
Respondents.

No. 87034

FILED

SEP 26 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *E. A. Brown*
GENY CLERK

*ORDER DENYING PETITION FOR
WRIT OF MANDAMUS*

This original pro se petition for a writ of mandamus seeks a writ directing the district court to permit petitioner John Lockett, an indigent litigant, to file a peremptory challenge of a judge without being required to pay the filing fee.

Having reviewed the petition and documents attached thereto, we conclude that Lockett has not demonstrated that our extraordinary intervention is warranted. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (observing that the party seeking writ relief bears the burden of showing such relief is warranted); *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (recognizing that writ relief is an extraordinary remedy and that this court has sole discretion in determining whether to entertain a writ petition).

Due process under the United States and Nevada constitutions fundamentally requires notice and opportunity to be heard. *Mullane v.*

Central Hanover Tr. Co., 339 U.S. 306, 314 (1950); *Barrett v. Baird*, 111 Nev. 1496, 1512, 908 P.2d 689, 700 (1995), *overruled on other grounds by Lioce v. Cohen*, 124 Nev. 1, 174 P.3d 970 (2008). The United States Supreme Court has rejected arguments that a defendant has a due process right under the federal constitution to exercise peremptory challenges. *Rivera v. Illinois*, 556 U.S. 148, 153 (2009) (holding that a state criminal defendant's federal constitutional rights were not violated by the denial of his peremptory challenge of a juror and stating that "[s]tates may withhold peremptory challenges altogether without impairing the constitutional guarantee of an impartial jury and a fair trial" (internal citations and quotation marks omitted)).

The situation here is analogous, and we conclude that Luckett has not demonstrated that requiring the payment of a filing fee for the peremptory challenge of a judge in a civil matter implicates any state or federal constitutional rights. In so concluding, we note that to the extent Luckett asserts that the district judge is biased, NRS 1.235 provides an alternative path to challenging a judge based on bias that does not require the payment of a fee. Thus, Luckett has alternative means available to contest the district court's alleged bias without payment of a fee, and he has not shown that his due process rights under the United States and Nevada constitutions were violated by the requirement to pay a filing fee to make a peremptory challenge. *See generally Ortwein v. Schwab*, 410 U.S. 656, 660 (1973) (holding that the Oregon appellate filing fee, as applied to indigents seeking to appeal adverse welfare decisions, did not violate the U.S. Constitution); *United States v. Kras*, 409 U.S. 434, 446 (1973) (holding that the payment of bankruptcy filing fees has a rational basis and recognizing

