

IN THE SUPREME COURT OF THE STATE OF NEVADA

PEDRO RAFAEL DUARTE,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
RONALD J. ISRAEL, DISTRICT
JUDGE,
Respondents,
and
STEVEN B. WOLFSON,
Real Party in Interest.

No. 86449

FILED

DEC 27 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus challenges a district court's order denying a postconviction motion to strike two counts from the State's second amended criminal information. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

In 2003, petitioner Pedro Duarte was convicted of seven felony crimes, including two counts of attempted murder without the use of a deadly weapon. In 2021, the Ninth Circuit Court of Appeals reversed the convictions for attempted murder on the grounds that Duarte received ineffective assistance of trial counsel and remanded the case for a resentencing or retrial.¹ *Duarte v. Williams*, No. 19-17207, 2021 WL 4130075, at *3 (9th Cir. Sept. 10, 2021). The State did not retry Duarte, and he was resentenced on the remaining five felony convictions. Following

¹Notably, the Ninth Circuit Court of Appeals did not reach Duarte's actual innocence claim or otherwise make any declarations about Duarte's guilt or innocence.

resentencing, Duarte moved the district court to strike the attempted murder counts from the State's second amended information, or alternatively order the State to issue a third amended information omitting the attempted murder counts, so that he could file suit under NRS 41.900 for compensation for a wrongful conviction. The district court denied Duarte's motion, and he filed the instant petition.

A writ of mandamus is an extraordinary remedy 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 an arbitrary or capricious exercise of discretion." *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 39, 175 P.3d 906, 908 (2008). A writ of mandamus is generally inappropriate if the petitioner has "a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170. This court has the discretion to determine whether a writ petition will be considered, *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991), and the petitioner bears the burden of demonstrating that extraordinary intervention is warranted, *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). Although Duarte has shown that he does not have a plain, speedy, and adequate remedy to challenge the district court's order, we conclude that our discretionary intervention is not warranted because Duarte has not shown that the district court manifestly abused its discretion in denying the motion to strike.² *Nev. Yellow Cab Corp. v. Eighth Judicial Dist. Court*, 123 Nev. 44, 47, 152 P.3d 737, 739 (2007) (explaining that writ relief will not be granted

²We further conclude that Duarte has not shown that advisory mandamus is warranted because he fails to articulate a broad issue of legal importance that goes beyond the specific facts in his petition. *See Walker v. Second Judicial Dist. Court*, 136 Nev. 678, 684, 476 P.3d 1194, 1199 (2020).

when a petitioner fails to demonstrate that the district court manifested an abuse of discretion).

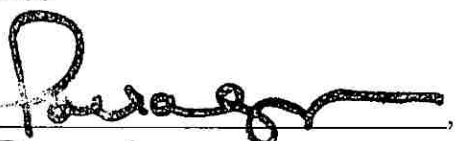
Duarte asserts the district court abused its discretion by denying his motion to strike the attempted murder counts because such an action is a prerequisite for a wrongful conviction suit under NRS 41.900. However, nothing in the statute confers the district court with the discretion to strike the counts or order the State to issue an amended information omitting the counts. The only authority Duarte provided to the district court for such action was a discretionary statute. See NRS 173.085 (stating the district court “*may* strike surplusage from the indictment or information.” (emphasis added)). Furthermore, Duarte has not shown that the attempted murder counts lack probable cause or that the language is surplusage; therefore, he has not shown that the district court manifestly abused its discretion in denying his motion to strike. See *Carson v. Sheriff, Clark County*, 87 Nev. 357, 359, 487 P.2d 334, 335 (1971) (holding that a defendant may make a pretrial motion to strike a count lacking probable cause if the defendant considers the count prejudicial surplusage); see also *State v. Johnson*, 9 Nev. 175, 176 (1874) (“Surplusage . . . is redundancy--it is a matter which adds nothing to the force of the pleading.”).

Accordingly, we

ORDER the petition DENIED.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre

cc: Hon. Ronald J. Israel, District Judge
Gallian Welker & Associates, LC/Las Vegas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk