


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CRAIG ALLEN RODGERS,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK,
Respondent,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 87610-COA

FILED

JAN 04 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION

In this petition for a writ of mandamus/prohibition, Craig Allen Rodgers seeks an order directing the district court to ensure he is physically present at his evidentiary hearing on his postconviction petition for a writ of habeas corpus, currently scheduled for January 9, 2024.

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). Petitions for extraordinary writs are addressed to the sound discretion of the court, see *State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983), and the “[p]etitioner[] 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).

The district court ordered that two of Rodgers’ claims of ineffective assistance of counsel and his request for the appointment of

postconviction counsel would be considered at the evidentiary hearing, and it ordered that Rodgers appear at the hearing via videoconference. Rodgers argues that he has no plain, speedy, and adequate remedy because he cannot appeal from the district court's order that he appear via videoconference. In its answer, the State argues that Rodgers has a plain, speedy, and adequate remedy because he can appeal if the district court denies his claims.

A writ of mandamus will generally not issue if the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law, NRS 34.170, and the right to "appeal . . . after a final judgment is ultimately entered[] will generally constitute an adequate and speedy legal remedy precluding writ relief," *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474, 168 P.3d 731, 736 (2007). This court may nevertheless consider a mandamus petition "in a matter where sound judicial economy and administration militate[s] in favor of" the petition. *Salaiscooper v. Eighth Judicial Dist. Court*, 117 Nev. 892, 902, 34 P.3d 509, 516 (2001) (internal quotation marks omitted).

Here, as the State points out, this court has already twice reversed, at least in part, the district courts' decisions to deny Rodgers relief. See *Rodgers v. Hutchings*, No. 84822-COA, 2023 WL 2861182 (Nev. Ct. App. Apr. 7, 2023) (Order Affirming in Part, Reversing in Part and Remanding); *Rodgers v. Hutchings*, No. 82645-COA, 2021 WL 5176740 (Nev. Ct. App. Nov. 5, 2021) (Order of Reversal and Remand). Should the district court conduct an evidentiary hearing where Rodgers appears only via videoconference and it is later determined that such an appearance is inappropriate, it would result in a third reversal of the district court's order and a new evidentiary hearing. Further, Rodgers' petition has been pending

for more than three years. In the interest of sound judicial economy and administration, we elect to exercise our discretion and consider Rodgers' claim on its merits. *Cf. D.R. Horton, Inc.*, 123 Nev. at 475, 168 P.3d at 736 (observing that an eventual appeal from a final judgment would not be a speedy or adequate remedy where the case had already been in a pre-litigation stage for more than two and a half years).

Rodgers argues that pursuant to *Gebbers v. State*, 118 Nev. 500, 50 P.3d 1092 (2002), his physical presence is required at the hearing. In *Gebbers*, the Nevada Supreme Court held that once it is determined that an evidentiary hearing is needed, the district court is required by statute "to order [petitioner] to be produced for the hearing." 118 Nev. at 504, 50 P.3d at 1094. The State acknowledges *Gebbers* but points to cases in which the participants are considered "present" through videoconferencing in other types of hearings. The State's authorities are not dispositive.

Trial witnesses may be permitted to appear via videoconferencing, but only after the district court has made case-specific findings. *Newson v. State*, 139 Nev., Adv. Op. 9, 526 P.3d 717, 721 (2023); SCR Part IX-A(B) Rule 4. And the Nevada Supreme Court approved the expansion of the ability to attend hearings via videoconference to contend with the exigencies of the COVID-19 pandemic. *See, e.g., Chaparro v. State*, 137 Nev. 665, 668-69, 497 P.3d 1187, 1191-92 (2021) (approving of a defendant appearing at their sentencing hearing via videoconference after the district court balanced the defendant's rights in light of the exigencies of the COVID-19 pandemic); *Matter of Discipline of Padgett*, No. 83347, 2022 WL 1594367, at *1 (Nev. May 19, 2022) (Order of Disbarment) ("[C]onsidering the circumstances of the COVID-19 pandemic, conducting the disciplinary hearing via videoconferencing did not deny Padgett a fair

hearing.”). Here, the district court made no findings to explain why it was ordering Rodgers to appear via videoconference, and the Declaration of Emergency for the COVID-19 pandemic was terminated in May 2022. See *Proclamation Terminating Declaration of Emergency Related to COVID-19*, (May 18, 2022), https://gov.nv.gov/layouts/full_page.aspx?id=358120#:~:text=The%20Declaration%20of%20Emergency%20for,a.m.%20on%20May%2020%2C%202022. Finally, the State does not contend, and the record does not support, that the district court complied with the supreme court rules governing appearance by audiovisual transmission equipment. See SCR Part IX-A(B). Accordingly, we conclude the district court’s order directing Rodgers to appear via videoconference constitutes a manifest abuse of the district court’s discretion, and we order the district court to ensure Rodgers’ physical presence at his evidentiary hearing. We therefore

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF mandamus instructing the district court to ensure Rodgers’ physical presence at his evidentiary hearing.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Susan Johnson, District Judge
Craig Allen Rodgers
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk