

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO A. CRUZ,
Appellant,
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. 88443

FILED
APR 16 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original pro se petition for a writ of mandamus seeks an order directing the district court to reverse and vacate its order denying petitioner's petition to establish factual innocence or to enter a written order and send petitioner notice of that written order.

This court has original jurisdiction to issue writs of mandamus, and the decision to entertain a petition for such relief is solely within this court's discretion. See Nev. Const. art. 6, § 4; *D.R. Horton, Inc. v. Eighth Jud. Dist. Ct.*, 123 Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007). Petitioner bears 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 Jud. Dist. Ct.*, 120 Nev. 222, 224, 228, 88 P.3d 840, 841, 844 (2004).

At the outset, we note that the petition before us is deficient because petitioner Francisco A. Cruz failed to provide proof of service indicating the petition was served on respondent and real party in interest. NRAP 21(a)(1). Cruz also failed to provide a verification, as required under NRAP 21(a)(5). Although Cruz is proceeding in pro se, he is nonetheless required to comply with all applicable court rules and procedures. See *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 659, 428 P.3d 255, 258-59 (2018) (noting that procedural rules cannot be applied differently to pro se litigants). We further note that, insofar as Cruz challenges the merits of the court's decision, Cruz has an adequate remedy at law by way of his direct appeal from the district court's order denying petition for a hearing to establish actual innocence, motion to appoint counsel, and request for an evidentiary hearing in Docket No. 88162. As a result, we decline to entertain Cruz's petition for extraordinary relief. *Pan*, 120 Nev. at 228, 88 P.3d at 844.

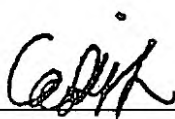
Nevertheless, it appears from our review of the record that the district court failed to provide Cruz with notice of its January 29, 2024, written order denying petitioner's petition for a hearing to establish actual innocence, motion to appoint counsel, and request for an evidentiary hearing, as required pursuant to NRS 34.960(4).¹ Cruz alleges he "waited for approximately 3 weeks to receive the court minutes and/or the court's written explanation, order and notice of its basis for denying petitioner's petition and motion on January 29, 2024, as required by NRS 34.960(4)(a) and NRS 34.960(6)." Cruz contends that he never received a copy of the order, but he filed a notice of appeal, which was docketed in the

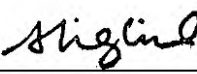
¹NRS 47.150.

aforementioned Docket No. 88162, out of an abundance of caution. Cruz alleges that he then filed a request for records/court case documents on March 18, 2024, and received all available court minutes and the case summary from the district court on March 27, 2024, but the order was not included. Cruz further contends that this is hindering his ability to file his informal brief in his appeal in Docket 88162.

It appears from a review of the Eighth Judicial District Court docket that a certificate of mailing, verifying that the district court mailed a copy of the January 29, 2024, order to Cruz, was never filed. Nor was notice of entry of order filed and served as required by NRS 34.960(4). We anticipate that the district court will carry out its duties with regard to service of notice of entry of its January 29, 2024, order without further delay, if it has not done so already. And, if the district court fails to act as we anticipate, Cruz may file a new petition, correcting the deficiencies discussed above and challenging the district court's failure to provide him with notice and a copy of the order. Accordingly, we deny the petition without prejudice.

It is so ORDERED


_____, C.J.
Cadish


_____, J.
Stiglich


_____, J.
Herndon

cc: Hon. Carli Lynn Kierny, District Judge
Francisco A. Cruz
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk