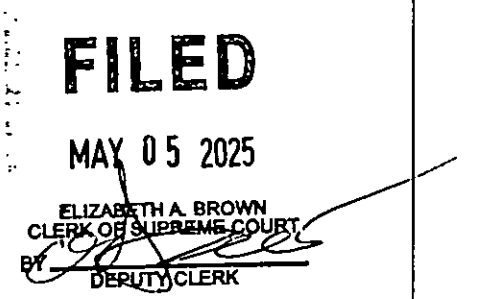
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MONROE CHARLES, SR.,
Appellant,
vs.
WARDEN OLIVER; AND THE STATE OF NEVADA,
Respondents.

No. 88834-COA




*ORDER OF AFFIRMANCE*

Monroe Charles, Sr., appeals from a district court order denying a petition for a writ of mandamus filed on February 8, 2024. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.

While incarcerated, Charles was found guilty of MJ53 (possession/sale of intoxicants) as the result of a prison disciplinary hearing that took place on June 21, 2023. Thereafter, he submitted an informal grievance alleging he was unjustly found guilty because there had been no expert testimony regarding the identity of the intoxicants at issue. Charles also argued that he never possessed, nor had he even seen, the contraband. The informal grievance further recounted Charles' sanction: 60 days disciplinary segregation, "stat loss," and the loss of canteen privileges for 90 days. The informal grievance also requested Charles be allowed to remain in his current housing unit until his disciplinary appeal was resolved. The informal grievance was assigned a grievance log number (20063154371) and was received by prison officials on June 23, 2023. Charles also wrote a letter to the warden titled "appeal from guilty verdict of MJ53", in which he challenged the results of the disciplinary hearing. The letter contained no grievance number and was received by prison officials on June 27, 2023.

On June 30, 2023, prison officials entered an "improper grievance memo" (form DOC-3098) regarding grievance number 20063154371. The memo rejected Charles' informal grievance as improper because it did not comply with the filing requirements for an appeal from a disciplinary hearing. The memo stated that this was the "1st rejection, Informal." On July 1, 2023, prison officials entered a second improper grievance memo regarding grievance number 20063154371. The memo stated that this was "2nd rejection, Informal" and provided that Charles failed to include the "[w]hite and yellow copy of informal grievance [form]," his previously submitted grievance, and the "DOC-3098 dated 06/26/2023." The memo also provided that Charles made an improper submission. Like the first improper grievance memo, the second memo stated that Charles had 5 days from receipt of the memo to "correct and resubmit."

Thereafter, Charles submitted an informal grievance form, a first level grievance form, and a grievant's statement continuation form. These submissions challenged the results of Charles' disciplinary hearing, did not include a request from Charles to remain in his pre-discipline housing unit for the pendency of the appeal, and were received by prison officials on July 13, 2023. The first level grievance form and a grievant's statement continuation form both listed the relevant grievance as grievance number 20063154371. For reasons not explained by Charles in his petition, the informal grievance form contained a slightly different number. On July 22, 2023, prison officials entered a third improper grievance memo regarding grievance number 20063154371. The memo stated that this was the "3rd rejection, 1st Level" and provided that Charles' grievance was rejected because Charles failed to provide a remedy. The memo also stated Charles' grievance had been reviewed and rejected multiple times and thus

could not be resubmitted. Thereafter, Charles filed a petition for writ of mandamus with the district court seeking relief.

In his petition, Charles alleged that prison officials neglected their duty to follow Administrative Regulation (AR) 740 regarding grievance procedures and requested the court direct the officials to consider his grievance. Charles raised two claims in his petition. First, Charles argued prison officials acted improperly by conflating his allegedly separate grievance seeking to remain in his housing unit with his disciplinary hearing appeal and by rejecting them as if they were one grievance.[1] While the informal grievance received on June 23, 2023, did request that Charles remain in his unit, it also challenged the outcome of his disciplinary hearing. Further, this initial grievance was assigned a grievance number that Charles later included on the forms he submitted to explicitly appeal his disciplinary hearing. Charles alleged no impropriety in his petition regarding the use of the same grievance number on what he contended were separate grievances. And these later-submitted forms did not request that Charles remain in his pre-discipline housing unit for the pendency of the appeal.

Second, Charles argued prison officials improperly rejected his disciplinary appeal for failing to propose a remedy. Charles contended he suggested a proposed remedy by writing, "please correct this injustice." AR 740.08(6) provides that all submitted grievances "should also include the remedy sought" to resolve the claim and that failure to submit a proposed remedy "will be considered an improper grievance and shall not be

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[1]An inmate must use the grievance procedures laid out in AR 740 for both claims "relating to the conditions of institutional life" and disciplinary appeals. AR 740.03(1).

accepted." Charles' disciplinary hearing resulted in specific sanctions, including the loss of 60 days' worth of statutory good time credits, 60 days of disciplinary segregation, and the loss of canteen privileges for 90 days, but he requested no specific remedy to address the sanctions imposed.

The district court denied Charles' writ of mandamus and this appeal followed. 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). However, a writ of mandamus will not issue if the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170. A petitioner "carri[es] the burden of demonstrating that extraordinary relief is warranted." *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). "We generally review a district court's grant or denial of writ relief for an abuse of discretion." *Koller v. State,* 122 Nev. 223, 226, 130 P.3d 653, 655 (2006).

In this case, we cannot conclude that the district court abused its discretion in denying Charles' writ of mandamus. On his first claim, Charles failed to demonstrate mandamus relief was necessary to control a manifest abuse or arbitrary or capricious exercise of discretion on the part of prison officials or to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station based on the applicable grievance procedures. On his second claim, Charles only vaguely sought as a remedy that prison officials correct the injustice and failed to otherwise state a remedy regarding the specific sanctions imposed as required. Further, it appears Charles has a plain, speedy, and adequate

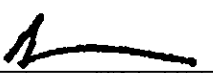
remedy at law since he has exhausted his administrative remedies.[2] A challenge to the loss of credits may be addressed in a postconviction petition for a writ of habeas corpus. *See Wolff v. McDonnell*, 418 U.S. 539, 563-69 (1974) (providing that when a prison disciplinary hearing results in the loss of good time credits, the inmate is entitled to certain minimal due process rights); *Smith v. State*, 140 Nev., Adv. Op. 81, 561 P.3d 1079, 1081 (Ct. App. 2024) (providing that a postconviction petition for a writ of habeas corpus is the only remedy available to an incarcerated person to challenge the computation of statutory good time credits after administrative remedies have been exhausted). A challenge to the conditions of confinement can be brought in a civil action. *See Sandin v. Conner*, 515 U.S. 472, 475-76 (1995) (challenging via a civil rights action the imposition of segregated confinement following a disciplinary hearing); *Berry v. Feil*, 131 Nev. 339, 340-41, 357 P.3d 344, 344-45 (Ct. App. 2015) (determining the Prison Litigation Reform Act's exhaustion requirement applied to a civil rights

[2]In his petition, Charles argued he did not have a plain, speedy, and adequate remedy because prison officials indicated he was prohibited from resubmitting his grievance because it "ha[d] been rejected multiple times" for failing to comply with the administrative process. While we recognize some alternative legal remedies require the exhaustion of administrative remedies first; we also recognize that the Nevada Supreme Court "has declined to require exhaustion when a resort to administrative remedies would be futile." *Abarra v. State*, 131 Nev. 20, 23, 342 P.3d 994, 996 (2015) (internal quotation marks and citation omitted) (excusing as futile plaintiff's requirement to exhaust administrative remedies in a civil action challenging a disciplinary hearing). Nothing in this order precludes prison officials from reconsidering their position regarding the denial of Charles' grievance and from allowing him to resubmit it.

complaint filed by an inmate that challenged the conditions of his confinement).[3]

Under these circumstances, Charles has failed to demonstrate that mandamus relief was necessary to control a manifest abuse or arbitrary or capricious exercise of discretion on the part of prison officials or that he did not have a plain, speedy, and adequate remedy in the ordinary course of law. Therefore, we conclude Charles has not met his burden of demonstrating that extraordinary relief was warranted to address the claims in his petition. Therefore, we conclude the district court did not abuse its discretion in denying Charles' petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



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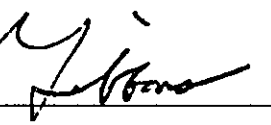
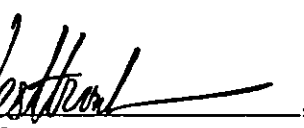


_____, J.
Gibbons



_____, J.
Westbrook

[3]We express no opinion as to whether Charles can satisfy the procedural requirements for any available remedy or as to the merits of any requested relief.

cc: Hon. Danielle K. Pieper, District Judge
Monroe Charles, Sr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk