

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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HYUKEEM TYRESE WELDON,

Petitioner,

vs,

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF CLARK, AND  
THE HONORABLE ERIKA BALLOU,  
DISTRICT JUDGE,

Respondents,

and

THE STATE OF NEVADA,

Real Party In Interest.

Electronically Filed  
Oct 04 2021 01:03 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

CASE NO: 83378

D.C. NO: A-20-821331-C

**ANSWER TO PETITION  
FOR WRIT OF MANDAMUS/PROHIBITION**

COMES NOW, the State of Nevada, Real Party in Interest, by STEVEN B. WOLFSON, District Attorney, through his Deputy, KAREN MISHLER, on behalf of the above-named Respondents and submits this Answer to Petition for Writ of Mandamus/Prohibition in obedience to this Court's order filed September 10, 2021, in the above-captioned case. This Answer is based on the following memorandum and all papers and pleadings on file herein.

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Dated this 4th day of October 2021.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar # 001565

BY */s/ Karen Mishler*

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KAREN MISHLER  
Chief Deputy District Attorney  
Nevada Bar #013730  
Office of the Clark County District Attorney

**MEMORANDUM OF  
POINTS AND AUTHORITIES**

**ARGUMENT**

**PETITIONER IS NOT ENTITLED TO EXTRAORDINARY RELIEF**

In this original pro se petition for a writ of mandamus or alternatively prohibition, Petitioner seeks an order directing the district court to rule on his post-conviction petition for a writ of habeas corpus. Extraordinary relief is unwarranted because Petitioner has failed to identify an act or decision by the district court that exceeds its jurisdiction or amounts to a manifest abuse of discretion.

**Standard for Prohibition**

Nevada Revised Statute 34.320 states:

The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board or person from exercising judicial functions, when such proceedings are without

or in excess of the jurisdiction of such tribunal, corporation, board or person.

A writ of prohibition does not serve to correct errors; its purpose is to prevent courts from transcending the limits of their jurisdiction in the exercise of judicial but not ministerial power. Olsen Family Trust v. District Court, 110 Nev. 548, 551, 874 P.2d 778, 780 (1994); Low v. Crown Point Mining Co., 2 Nev. 75 (1866). However, “a writ of prohibition must issue when there is an act to be ‘arrested’ which is ‘without or in excess of the jurisdiction’ of the trial judge.” Houston Gen. Ins. Co. v. District Court, 94 Nev. 247, 248, 78 P.2d 750, 751 (1978); Ham v. Eighth Judicial District Court, 93 Nev. 409, 412, 566 P.2d 420, 422 (1977); See also, Goicoechea v. District Court, 96 Nev. 287, 607 P.2d 1140 (1980); Cunningham v. District Court, 102 Nev. 551, 729 P.2d 1328 (1986).

The object of a writ of prohibition is to restrain inferior courts from acting without authority of law in cases where wrong, damage, and injustice are likely to follow from such action. Olsen Family Trust, 110 Nev. at 552, 874 P.2d at 781; Silver Peaks Mines v. Second Judicial District Court, 33 Nev. 97, 110 P. 503 (1910). Petitions for extraordinary writs are addressed to the sound discretion of the Court, and may only issue where there is no plain, speedy, and adequate remedy at law. NRS 34.330; Jeep Corp. v. Second Judicial Dist. Court, 98 Nev. 440, 442-443, 652 P.2d 1183, 1185 (1982).

Here, Petitioner has not identified any aspect of the proceedings in district

court that exceed the district court's jurisdiction. Petitioner does not request that the district court be restrained from exceeding its authority; to the contrary, Petitioner requests the district court consider the merits of his habeas petition. As Petitioner does not seek to have the district court restrained from exceeding its authority, he clearly is not entitled to relief via a writ of prohibition.

### **Standard for Mandamus**

This Court may issue a writ of mandamus to enforce “the performance of an act which the law enjoins as a duty especially resulting from an office . . . or to compel the admission of a party to the use and enjoyment of a right . . . to which he is entitled and from which he is unlawfully precluded by such inferior tribunal.” NRS 34.160.

Mandamus will not lie to control discretionary action unless it is manifestly abused or is exercised arbitrarily or capriciously. Office of the Washoe County DA v. Second Judicial Dist. Court, 116 Nev. 629, 635, 5 P.3d 562, 566 (2000). Thus a writ of mandamus will only issue to control a court's arbitrary or capricious exercise of its discretion.” Id. citing Marshall v. District Court, 108 Nev. 459, 466, 836 P.2d 47, 52 (1992); City of Sparks v. Second Judicial Dist. Court, 112 Nev. 952, 954, 920 P.2d 1014, 1015-1016 (1996); Round Hill Gen. Imp. Dist. V. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

However, mere recitation of the standard does not do justice to the meaning of the rule:

*An arbitrary or capricious exercise of discretion is one “founded on prejudice or preference rather than one reason,”* Black’s Law Dictionary, 119 (9th ed. 2009) (defining “arbitrary”), or “contrary to the evidence or established rules of law,” *id.* at 239 (defining “capricious”). See generally, City Council v. Irvine, 102 Nev. 277, 279, 721 P.2d 371, 372 (1986) (concluding that “[a] city board acts arbitrarily and capriciously when it denies a license without any reason for doing so”). *A manifest abuse of discretion is “[a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule.”* Steward v. McDonald, 330 Ark. 837, 953 S.W.2d 297, 300 (1997); see Jones Rigging and Heavy Hauling v. Parker, 347 Ark. 628, 66 S.W.3d 599, 602 (2002) (stating that a manifest abuse of discretion “is one exercised improvidently or thoughtlessly and without due consideration”); Blair v. Zoning Hearing Bd. of Tp. Pike, 676 A.2d 760, 761 (Pa.Comm.w.Ct. 1996) (“[M]anifest abuse of discretion does not result from a mere error in judgment, but occurs when the law is overridden or misapplied, or when the judgment exercised is manifestly unreasonable or the result of partiality, prejudice, bias or ill will.”).

State v. Eighth Judicial District Court (Armstrong), 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011) (emphasis added).

This Court recently emphasized that “mandamus relief is not available to correct a mere abuse of [the district court’s] discretion.” Walker v. Second Jud. Dist. Ct., 136 Nev. \_\_\_, \_\_\_, 476 P.3d 1194, 1198 (2020). To warrant mandamus relief, a petitioner must demonstrate a *manifest* abuse of discretion. See *id.*; Martinez Guzman v. Second Jud. Dist. Ct., 136 Nev. 103, 105, 460 P.3d 443, 446 (2020).

“[M]andamus and prohibition are extraordinary remedies, and the decision of whether a petition will be entertained lies within the discretion of this court.” Hickey

v. Eighth Jud. Dist. Court, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989). A petitioner carries the burden of demonstrating that extraordinary relief is warranted. Pan v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Here, Petitioner has not identified a manifest abuse of discretion by the district court. The district court has not yet ruled on the pending habeas petition, and thus no decision has been issued that could possibly be founded on prejudice or preference or amounts to an erroneous legal interpretation or application of the law. Nor has the district court indicated it will not consider the pending habeas petition. The State is confident that the district court will resolve all pending matters as expeditiously as its calendar permits. NRS 34.740.

Finally, Petitioner has failed to provide this Court with documentation that would support his claim for relief. Nevada Rule of Appellate Procedure (“NRAP”) 21(a)(4) requires a petitioner to submit an appendix that complies with Rule 30. This rule applies to both pro se writ petitions and those submitted through counsel. Id. Due to this defect, this Court should decline to exercise its original jurisdiction in this matter.

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Dated this 4<sup>th</sup> day of October, 2021,

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY */s/ Karen Mishler*

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Post Office Box 552212  
Las Vegas, Nevada 89155  
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## **AFFIDAVIT**

I certify that the information provided in this mandamus petition is true and complete to the best of my knowledge, information and belief.

Dated this 4<sup>th</sup> day of October, 2021.

BY */s/ Karen Mishler*

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**KAREN MISHLER**

Chief Deputy District Attorney

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## **CERTIFICATE OF COMPLIANCE**

1. **I hereby certify** that this Answer to Mandamus Writ complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page and type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 1,147 words, 104 lines of text and does not exceed 15 pages.
3. **Finally, I hereby certify** that I have read this Answer to Mandamus Writ, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 4<sup>th</sup> day of October, 2021.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY */s/ Karen Mishler*

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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on October 4, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD  
Nevada Attorney General

KAREN MISHLER  
Chief Deputy District Attorney

I, certify that on October 4, 2021, a copy was sent via email to District Court, Department 24's JEA for Judge Ballou to:

CHAPRI WRIGHT - JEA  
[wrightch@clarkcountycourts.us](mailto:wrightch@clarkcountycourts.us)

I further certify that on October 4, 2021, I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

HYUKEEM TYRESE WELDON, #1104578  
Southern Desert Correctional Center  
20825 Cold Creek Road  
P. O. Box 208  
Indian Springs, Nevada 89070

BY /s/ E. Davis  
Employee, District Attorney's Office

KM//ed