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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2006**

State of Minnesota,
Respondent,

vs.

Charles Todd Bragg,
Appellant.

**Filed December 23, 2013
Affirmed
Larkin, Judge**

Mille Lacs County District Court
File No. 48-CR-08-1964

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Janice Jude, Mille Lacs County Attorney, Melissa M. Saterbak, Assistant County
Attorney, Milaca, Minnesota (for respondent)

Charles T. Bragg, Bayport, Minnesota (pro se appellant)

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and
Chutich, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's denial of his request for a writ of
mandamus. We affirm.

FACTS

In February 2009, a jury found appellant Charles Todd Bragg guilty of eight counts of first- and second-degree criminal sexual conduct involving his then 15- and 16-year-old daughters. The district court sentenced Bragg to 360 months in prison. On December 21, 2010, this court affirmed Bragg's convictions. *State v. Bragg*, No. A09-2319 (Minn. App. Dec. 21, 2010), *review denied* (Minn. Mar. 15, 2011).

On August 20, 2012, Bragg moved the district court for a writ of mandamus ordering the state to produce evidence used at trial and documents from his case. The district court denied Bragg's motion, and this appeal follows.

DECISION

[A] writ of mandamus may be issued to any inferior tribunal, . . . or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station. It may require an inferior tribunal to exercise its judgment or proceed to the discharge of any of its functions, but it cannot control judicial discretion.

Minn. Stat. § 586.01 (2012). “The writ shall issue on the information of the party beneficially interested, but it shall not issue in any case where there is a plain, speedy, and adequate remedy in the ordinary course of law.” Minn. Stat. § 586.02 (2012).

“Mandamus is an extraordinary legal remedy that courts issue only when the petitioner shows that there is a clear and present official duty to perform a certain act.” *Kramer v. Otter Tail Cnty. Bd. of Comm'rs*, 647 N.W.2d 23, 26 (Minn. App. 2002) (quotation omitted). “To be entitled to mandamus relief the petitioner must show three elements: (1) the failure of an official to perform a duty clearly imposed by law; (2) a

public wrong specifically injurious to petitioner; and (3) no other adequate [legal] remedy.” *Id.* “When a decision on a writ of mandamus is based solely on a legal determination, [appellate courts] review that decision de novo.” *Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006).

In denying Bragg’s request for a writ of mandamus, the district court partly reasoned that the third part of the mandamus test was not satisfied because Bragg could seek postconviction relief. *See* Minn. Stat. § 590.01 (2012) (setting forth postconviction remedy and procedure). The district court explained that Bragg

failed to demonstrate that he lacks an alternative adequate remedy. . . . Mandamus is an extraordinary legal remedy. . . . Generally, a defendant obtains review of lower court rulings and judgments only by appeal. . . . While Mr. Bragg has completed direct appeals of his case, he did not raise [the issues in his motion for a writ of mandamus] during appeal and has not filed a postconviction relief petition to address them. If Mr. Bragg has a valid claim that his conviction or sentence has violated his constitutional rights then the remedy available to him at this time is a petition for postconviction relief under Minnesota Statutes chapter 590; he has not proven the necessary elements for a writ of mandamus on the issues raised.

In his briefing to this court, Bragg extensively argues the substantive claims underlying his request for relief, including that the state failed to disclose exculpatory evidence and to provide him with “discovery that he’s entitled to,” and that the prosecutor engaged in misconduct. He relies on those arguments to contend that the first two parts of the mandamus test are satisfied. Although he acknowledges the third part of the test and that the district court denied relief based on that portion of the test, he does not argue that the district court erred by doing so.

“An assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection.” *State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) (quotation omitted), *aff’d*, 728 N.W.2d 243 (Minn. 2007). Because there is no obvious prejudicial error stemming from the district court’s conclusion that Bragg had an alternative legal remedy in the form of postconviction relief, Bragg’s implicit challenge to the district court’s conclusion is waived.¹

In conclusion, we do not presume error on appeal. See *White v. Minnesota Dep’t of Natural Res.*, 567 N.W.2d 724, 734 (Minn. App. 1997) (stating that error is never presumed on appeal), *review denied* (Minn. Oct. 31, 1997). The burden is on Bragg to show that the district court erred in denying his request for a writ of mandamus. See *Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that to prevail on appeal, an appellant must show both error and prejudice resulting from the error). He has failed to do so, and we therefore affirm.

Affirmed.

¹ We observe that after the district court denied his request for a writ of mandamus, Bragg filed a petition for postconviction relief, which was denied by the district court. That decision is before this court for review in case number A13-0413. To the extent that Bragg’s substantive legal arguments are properly before this court, they are addressed in that appeal.