

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL D. ISHAM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42908

FILED

SEP 15 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant Michael D. Isham's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On December 13, 1990, the district court convicted Isham pursuant to a jury verdict, of two counts of assault with a deadly weapon, two counts of discharging a firearm out of a motor vehicle and one count of attempted murder with the use of a deadly weapon. The district court sentenced Isham to two five-year consecutive terms in the Nevada State Prison for the assault with a deadly weapon convictions. The district court also sentenced Isham to one four-year term and one five-year term for the discharging of a firearm out of a vehicle convictions, to run concurrently with the first assault with a deadly weapon conviction. Finally, the district court sentenced Isham to 14 years for the attempted murder conviction, enhanced by a consecutive 14-year term for the use of a deadly weapon, to run concurrently with the second assault with a deadly weapon

conviction. This court dismissed Isham's direct appeal.¹ The remittitur issued on May 14, 1996.

On November 25, 2003, Isham filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Isham or to conduct an evidentiary hearing. On March 31, 2004, the district court denied Isham's petition. This appeal followed.

In his petition, Isham contended that he was compelled to serve more time than prescribed by law before being considered for parole. Specifically, Isham argued that he began serving his first 14-year term for attempted murder on February 19, 1997, and that he was eligible for parole after serving one-third of that sentence.² According to Isham, after applying good time credits, he was eligible for parole on December 19, 1999. He further claimed that because a prisoner appears before the Parole Board four months in advance of his release date, he was entitled to a hearing before the Parole Board on August 19, 1999. However, Isham asserted he was not considered for parole until July 18, 2000, and was denied parole until July 8, 2002. Although Isham conceded that he is not entitled to parole, he argued that he was deprived of his "protected liberty interest in appearing before the [parole] board" on August 19, 1999.

We conclude Isham's claim is without merit. Isham has failed to provide sufficient facts demonstrating that the Parole Board improperly

¹Isham v. State, Docket No. 21932 (Order Dismissing Appeal, April 23, 1996).

²See NRS 213.120(1).

calculated his credits and hearing date.³ Moreover, Isham has not shown that he would have been granted parole any sooner than July 8, 2002. Finally, even assuming, without deciding, that the Parole Board erred in its calculations, Isham has no right to retroactive parole.⁴

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Isham is not entitled to relief and that briefing and oral argument are unwarranted.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶



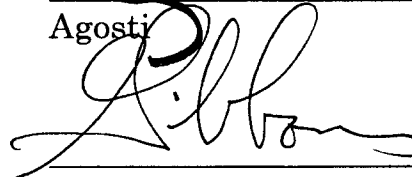
Becker

J.



Agosti

J.



Gibbons

J.

³See NRS 213.130(3) (providing that "[m]eetings to consider prisoners for parole may be held semiannually or more often, on such dates as may be fixed by the [Parole] Board).

⁴Niergarth v. Warden, 105 Nev. 26, 29, 768 P.2d 882, 884 (1989) (providing that there is no "statutory or case-law authority for the proposition that the Parole Board has the authority to grant a retroactive parole").

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We have reviewed all documents that Isham has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that Isham has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Jackie Glass, District Judge
Michael D. Isham
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk