

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUSSELL YEAGER,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, CRAIG
FARWELL,
Respondent.

No. 43091

FILED

AUG 27 2004

JENNIFER L. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant Russell Yeager's post-conviction petition for a writ of habeas corpus. Sixth Judicial District Court, Pershing County; John M. Iroz, Judge.

On September 11, 2003, Yeager filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition and Yeager filed a response. On February 26, 2004, the district court dismissed Yeager's petition. This appeal followed.

In his petition, Yeager raised various claims concerning a January 2002 grant of parole. Yeager contended that because he was unable to produce a suitable parole release plan, the parole board rescinded his parole and he was never released from prison. Yeager claimed that his due process rights were violated and he was subjected to cruel and unusual punishment when the parole board rescinded his grant

of parole. We conclude that these claims are meritless. Parole is an act of grace by the State.¹ As such, a prisoner has no right to parole.² Yeager's grant of parole was conditioned on the subsequent approval of a parole release plan, but no parole release plan was approved. No protected liberty interest was encroached upon by the parole board's rescission of the grant of parole because Yeager never received the benefit promised—he was never actually released on parole.³ Consequently, "the parole board was not required to conform to the dictates of due process in reversing its original decision."⁴ Moreover, NRS 213.10705 explicitly states that, "it is not intended that the establishment of standards relating [to parole] create any such right or interest in liberty or property or establish a basis for any cause of action against the State." Therefore, the district court did not err in denying Yeager relief on this claim.⁵

¹NRS 213.10705; see also Severance v. Armstrong, 96 Nev. 836, 620 P.2d 369 (1980).

²Id.

³See Jago v. Van Curen, 454 U.S. 14, 17 (1981); Kelch v. Director, 107 Nev. 827, 830, 822 P.2d 1094, 1095 (1991).

⁴Kelch, 107 Nev. at 830, 822 P.2d at 1095 (citing Jago, 454 U.S. at 17).

⁵To the extent that Yeager argued that the Parole Board rescinded his grant of parole in retaliation for Yeager's filing of a previous habeas petition, we conclude that Yeager failed to provide any support whatsoever for this claim.

Second, Yeager claimed that the Division of Parole and Probation (Division) failed to assist him in developing a parole release plan, in violation of NRS 213.140(2). In support of this argument, Yeager contended that he holds non-Christian religious beliefs, and all of the resources provided by the Division are Christian. Further, Yeager argued that the resources provided by the Division are primarily for sex offenders and substance abusers. We conclude that Yeager failed to demonstrate his inability to produce an appropriate parole release plan was due to lack of assistance from the Division. We note that Yeager did not provide any specific facts concerning his inability to secure an approved parole release plan based on his religious beliefs.⁶ As such, we affirm the order of the district court with respect to this claim.

Lastly, Yeager argued that the Parole Board's rescission of his grant of parole violated the Double Jeopardy Clause.⁷ Yeager failed to articulate how the parole board's rescission of his grant of parole implicated the Double Jeopardy Clause. Thus, we affirm the order of the district court with respect to this claim.

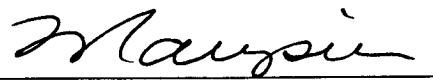
⁶See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).


⁷See U.S. Const. amend. V.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Yeager is not entitled to relief and that briefing and oral argument are unwarranted.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. John M. Iroz, District Judge
Russell Yeager
Attorney General Brian Sandoval/Carson City
Pershing County Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).