

IN THE SUPREME COURT OF THE STATE OF NEVADA

GUADALUPE R. OROZCO,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, CRAIG
FARWELL,
Respondent.

No. 43415

FILED

AUG 23 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a petition for a writ of habeas corpus. Sixth Judicial District Court, Pershing County; John M. Iroz, Judge.

We have reviewed the record on appeal and conclude that the district court did not err in denying appellant's petition for the reasons set forth in the attached order. Therefore, briefing and oral argument are not warranted in this case.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Rose
_____, J.
Rose

Maupin
_____, J.
Maupin

Douglas
_____, J.
Douglas

¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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

FILED

04 MAY 10 PM 2:39

CLERK DISTRICT COURT

S. Schen

1 CASE NO. PI 02-350

2 DEPT. NO. 2

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IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

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IN AND FOR THE COUNTY OF PERSHING

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GUADALUPE R. OROZCO,

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Petitioner,

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vs.

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CRAIG FARWELL, Warden,

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Respondent.

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ORDER GRANTING MOTION
TO DISMISS PETITION
FOR WRIT OF HABEAS CORPUS

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The court has received and reviewed the Motion to Dismiss filed by Respondents. Petitioner has not filed an opposition. The Court makes the following findings and decision.

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Orozco has filed a Petition for Writ of Habeas Corpus claiming that he had been "denied his Fourteenth Amendment right to the United States Constitution by the Nevada Parole Commission when they denied him a fair parole hearing." (Petition at 7.) For factual support, Orozco asserts that the "Parole Commission used information to deny him parole which Petitioner was not charged or convicted of." *Id.* Specifically, Orozco argues "the Parole Board scored the Petitioner under their guidelines as having used a weapon in the commission of the foregoing offences. However, in reviewing Petitioner's pre-sentence investigation report and the actions taken by the Parole Board prior to the December 17, 2001, hearing the Board did not score Petitioner as having used a weapon or brandishing a weapon." *Id.*

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The Board of Parole Commissioners hereinafter ("Parole Board") has denied Orozco's request for parole two (2) times dating back to January 27, 1999. (Motion to Dismiss, Ex. 1, January 27, 1999, Order Denying Parole Release; and Ex. 2, December 17, 2001, Order Denying Parole Release). Orozco is asking this Court to order the Parole Board to change the Parole Success Likelihood Factors in its

1 December 17, 2001, order so as to delete the reference to "Weapons:Threat/Display." The change in
2 calculation has increased the Guideline Recommended Months ("GRM") for Orozco to serve from a
3 range of 84-108 months to a GRM of 108-132 months.

4 Parole is a discretionary act. *Severance v. Armstrong*, 96 Nev. 836, 838, 620 P.2d 369, 370
5 (1980). Parole decisions are made on a case-by-case basis. Typically, when considering a prisoner for a
6 parole release the Parole Board must not only consider these guidelines, which are set forth in the
7 Nevada Administrative Code at NAC 213.510 through 213.560, it must consider :

- 8 (a) Whether there is a reasonable probability that the prisoner will live
9 and remain at liberty without violating the laws; (b) Whether the release is
10 incompatible with the welfare of society; (c) The seriousness of the
11 offense and the history of criminal conduct of the prisoner; ...(and) (e)
12 Any documents or testimony submitted by a victim....

11 NRS 213.1099(2) and *see also* NRS 213.10885.

12 The guidelines provide that nothing contained therein can restrict the Parole Board's discretion
13 to grant or deny parole. *See*, NAC 213.560(1). The Parole Board is required by statute to adopt by
14 regulation specific standards for each type of convicted person to assist the Board in determining
15 whether to grant or revoke parole. NRS. 213.10885. Those standards are the guidelines found in
16 Nevada Administrative Code 213.510-560 inclusive. The Parole Board must review those guidelines
17 every second year and adopt revised guidelines as it deems necessary. NRS 213.10885(5).

18 In Orozco's case, where he physically and sexually abused his four daughters over a number of
19 years, the Parole Board cited the nature and severity of the crime, as factors in denying parole. (Motion
20 to Dismiss, Exs. 3 and 4, Parole Progress Reports). In Nevada, parole is a matter of grace, a privilege
21 and not a right, and is committed entirely to the absolute discretion of the Parole Board. NRS
22 213.10705.

23 The Nevada Supreme Court has held that, because of the discretionary wording of NRS
24 213.1099, prisoners only have an unprotected expectancy of a parole release. *See Weakland v Board of*
25 *Parole Commissioners*, 100 Nev. 218, 678 P.2d 1158, 1160 (1984); *Severence v. Armstrong*, 96 Nev.
26 836, 838-39, 620 P.2d 369, 370 (1980) and *Severence v. Armstrong*, 97 Nev. 95, 624 P.2d 1004 (1981).
27 Nevada's law, that requires the Parole Board to consider the guidelines and other factors, "only give(s)
28 rise to a 'hope' of release on parole, and the Board's discretionary decision to deny parole is not subject

1 to the constraints of due process.” *Weakland v. Board of Parole Commissioners and the State of*
2 *Nevada*, 100 Nev. 218, 220, 678 P.2d 1158, 1160 (1984).

3 Furthermore, although Orozco claims that there is no mention of his use of a weapon when he
4 committed his crimes (Petition at 8-A), the Pre-Sentence Investigation Report clearly states that Orozco
5 did use a knife in the commission of at least some of his crimes. (Motion to Dismiss, Ex. 5, Pre-
6 Sentence Investigation Report at 3).

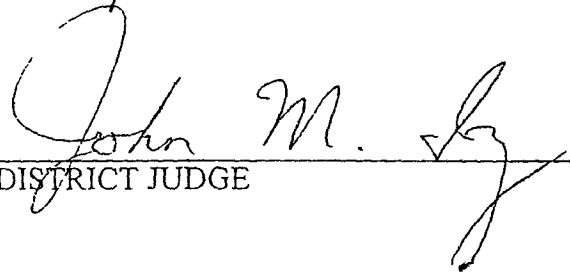
7 The Parole Board has absolute discretion in exercising its authority to grant or not grant parole
8 and Orozco cannot request that this Court micromanage the Parole Board. Orozco has failed to state a
9 claim for which relief can be granted. Pursuant to NRS 34.770(2), a judge reviewing a petition for a
10 writ of habeas corpus shall dismiss the petition if the judge determines that the petitioner is not entitled
11 to relief. Orozco has not shown that he is entitled to relief of any kind.

12 The petition for writ of habeas corpus is hereby dismissed.

13 IT IS SO ORDERED.

14 DATED this 30TH day of April, 200~~8~~⁴.

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DISTRICT JUDGE