

IN THE SUPREME COURT OF THE STATE OF NEVADA

LORNE DOUGLAS RICHARDSON,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, CRAIG
FARWELL,
Respondent.

No. 44009

FILED

APR 22 2005

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

ORDER OF REVERSAL AND REMAND

This is a proper person 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.

On March 29, 2000, the district court convicted appellant, pursuant to a guilty plea, of one count of voluntary manslaughter with the use of a deadly weapon and one count of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of twenty-four to one hundred and twenty months and two consecutive terms of forty-eight to two hundred and forty months in the Nevada State Prison. The latter terms were imposed to run consecutively to the former.

On May 4, 2004, appellant filed a proper person petition for a writ of habeas corpus in the district court. On July 23, 2004, the district court denied the petition. This appeal followed.

In his petition, appellant claimed that the Nevada Department of Corrections (NDOC) deprived him of the ability to apply for parole, which denied him the ability to be timely considered for parole. Appellant claimed that NDOC failed to provide him with a rehearing on parole within three years from the original denial of parole contrary to the requirements of NRS 213.142(1). Appellant claimed that this violated due process and equal protection. He requested that he be immediately discharged to his next sentence effective May 1, 2004, and that any period of parole on the first sentence be discharged effective May 1, 2004.

NRS 213.142(1) provides:

Upon denying the parole of a prisoner, the Board shall schedule a rehearing. The date on which the rehearing is to be held is within the discretion of the Board, but, except as otherwise provided in subsection 2, the elapsed time between hearings must not exceed 3 years.¹

This court has recognized that the right to apply for parole, "once granted by the legislature, is a constitutionally protected interest which may not be unfairly denied."²

The record before this court indicates that the Parole Board denied appellant parole from his sentence for the primary offense of

¹NRS 213.142(2), on the other hand, provides that the elapsed time between hearings must not exceed five years if the prisoner has more than ten years remaining on the term of his sentence.

²Severance v. Armstrong, 97 Nev. 95, 96, 624 P.2d 1004, 1005 (1981).

voluntary manslaughter on April 19, 2001. The record further indicates that the Parole Board established that further parole consideration was denied until May 1, 2004. In April of 2004, when appellant inquired as to why he was not on the parole agenda, appellant was informed that it was due to an error. It does not appear from this court's review of the documents before it that appellant's parole hearing was conducted until June of 2004, when it appears he was granted parole. Thus, it appears that appellant's hearing was conducted after the three-year period set forth in NRS 213.142(1).


The district court denied appellant's petition on the ground that no constitutional rights had been infringed upon because a decision relating to parole was a discretionary act. Although this court agrees with the district court that the decision to grant parole is within the discretion of the Parole Board, the district court's order does not address whether appellant's right to apply for and appear before the Parole Board in a timely fashion was infringed upon in the instant case.³ Thus, it appeared that the district court may have erroneously denied appellant's petition.

This court directed the State to show cause why the matter should not be remanded for further proceedings. The State filed a response to this court's order and contends that it does not oppose an order of remand. Therefore, this court reverses the order of the district court denying the petition, and remands this matter to the district court. The district court shall enter a written order directing the Department of

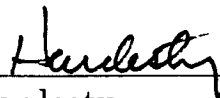
³See NRS 213.10705.

Corrections to correct appellant's records to reflect that he should have had a parole hearing on May 1, 2004. The next parole date shall be calculated from the May 1, 2004 date. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁴


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

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

⁴This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.