

IN THE SUPREME COURT OF THE STATE OF NEVADA

RODERICK D. TURNER,
Appellant,
vs.
WARDEN, SOUTHERN DESERT
CORRECTIONAL CENTER, JAMES
SCHOMIG,
Respondent.

No. 45167

FILED

SEP 23 2005

JANEITE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Roberts*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

On January 5, 1994, the district court convicted appellant, pursuant to a guilty plea, of one count of second degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. On January 23, 2004, the Pardons Board commuted appellant's consecutive sentence for the deadly weapon enhancement to a concurrent sentence and stated that appellant would be immediately eligible for parole.

On January 6, 2005, appellant filed a petition for a writ of habeas corpus in the district court. The State opposed the petition. On April 8, 2005, the district court denied the petition. This appeal followed.

In his petition, appellant argued that his continued incarceration was illegal because he had been granted an institutional parole on the primary offense in April 2001. Appellant argued that this grant of parole prior to the Pardon's Board commutation of his consecutive

sentence should cause him to be released to the streets. Appellant further argued that the Parole Board violated due process in denying him parole at the parole hearing following the commutation of his sentence by the Pardons Board.

We have reviewed the record on appeal, and we conclude that appellant failed to demonstrate that his continued incarceration was illegal or that the Parole Board had violated his due process rights. "A commutation is the change of one punishment known to the law for another and different punishment also known to the law."¹ In the instant case, the Pardons Board commuted appellant's consecutive sentence for the deadly weapon enhancement to a concurrent sentence with the provision that appellant be immediately eligible for parole consideration—not that appellant be immediately released on parole. The Parole Board granted parole in April 2001 to the consecutive sentence only. Thus, the April 2001 grant of parole cannot be read to provide a grant of parole to the streets. The Pardons Board in commuting the sentence was permitted to set as a condition of clemency that appellant appear before a parole board before he be released to the streets.² Therefore, appellant's continued confinement is not illegal. Appellant further failed to demonstrate that any protected due process right was violated when the Parole Board denied parole in February 2004. Parole is an act of grace; a


¹Ex Parte Janes, 1 Nev. 319 (1865); see also Colwell v. State, 112 Nev. 807, 812, 919 P.2d 403, 406 (1996).

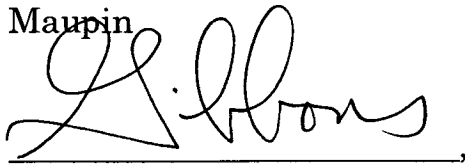
²See Anderson v. State, 90 Nev. 385, 387 n.1, 528 P.2d 1023, 1024 n.1 (1974) (recognizing that an individual receiving a commuted sentence need not consent to or accept the commutation of the sentence and its conditions).

prisoner has no constitutional right to parole.³ Therefore, we affirm the order of the district court denying the petition.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

³See NRS 213.10705; Niergarth v. Warden, 105 Nev. 26, 768 P.2d 882 (1989).

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁵We have reviewed all documents that appellant 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 appellant 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. Valorie Vega, District Judge
Roderick D. Turner
Attorney General Brian Sandoval/Carson City
Attorney General Brian Sandoval/Las Vegas
Clark County Clerk