

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD LEE BROWN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46334

**FILED**

**FEB 17 2006**

ORDER OF AFFIRMANCE

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

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; Jennifer Togliatti, Judge.

On July 20, 2005, appellant filed a proper person petition for a writ of habeas corpus challenging actions of the Board of Parole Commissioners. The State opposed the petition, and appellant filed a response. On November 2, 2005, the district court denied the petition. This appeal followed.

First, appellant claimed that the Board of Parole Commissioners erroneously determined that he would have to wait five years for a parole hearing after the Board had denied parole in 2004. When appellant was convicted of sexual assault on a minor in 1982, NRS 213.142 required a parole rehearing to occur no more than three years after the denial of an application for parole. The legislature amended NRS 213.142 in 1995 to increase the maximum time for a parole rehearing from three to five years for prisoners who had more than ten years remaining

on the sentence.<sup>1</sup> Appellant claimed that various constitutional rights were violated by application of NRS 213.142 as amended.<sup>2</sup>

The district court denied this claim as moot as the Board rescheduled the parole rehearing for no more than three years after the denial of parole. We agree, and thus, we conclude that the district court did not err in denying this claim.<sup>3</sup>

Next, appellant claimed that his rights were violated because he was denied an "in person" parole hearing. Appellant further appeared to attack the decision of the Board to deny parole.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying this claim. Parole is an act of grace; a prisoner has no constitutional right to parole.<sup>4</sup> Thus, to the extent that appellant challenged the Board's decision to deny parole, the district court properly determined that the challenge was without merit. Even assuming, without deciding, that appellant had a right to an "in person" parole hearing, appellant failed to demonstrate that he was entitled to any

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<sup>1</sup>See 1995 Nev. Stat., ch. 444, § 32, at 1360-61.

<sup>2</sup>Appellant also claimed that application of NRS 213.142 as amended was a vindictive response by the Board. This claim was patently without merit, and thus, the district court did not err in rejecting it.


<sup>3</sup>See generally Huntley v. Sheriff, 90 Nev. 187, 522 P.2d 147 (1974) (recognizing that a habeas corpus petition may be rendered moot by subsequent actions of the State). Appellant's argument that his claim is not moot because the alleged error regarding the rehearing date was not corrected for eleven months is patently without merit as appellant suffered no injury by the alleged error because he did not miss the parole rehearing date under the three-year cycle.

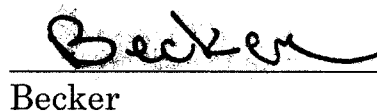
<sup>4</sup>See NRS 213.10705; Niergarth v. Warden, 105 Nev. 26, 768 P.2d 882 (1989).

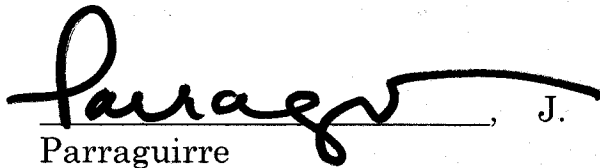
relief in the instant case. Appellant failed to receive a positive certification from the "Psych Panel" pursuant to NRS 213.1214, and thus, appellant was not eligible to be released on parole.<sup>5</sup> Any alleged error committed by the Board in not having appellant appear before personally before the Board was harmless under these circumstances.<sup>6</sup> Therefore, we conclude that the district court properly denied this claim.

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.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, J.  
Douglas

 \_\_\_\_\_, J.  
Becker

 \_\_\_\_\_, J.  
Parraguirre

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<sup>5</sup>See NRS 213.1214(1) ("The Board shall not release on parole a prisoner convicted of [certain offenses] unless a panel . . . certifies that the prisoner was under observation while confined in an institution of the Department of Corrections and does not represent a high risk to reoffend based upon a currently accepted standard of assessment.").

<sup>6</sup>To the extent that appellant claimed that he suffered an injury because he was not able to argue for a shorter period of time for rehearing or ensure that the Board had the correct paperwork in front of it, appellant failed to demonstrate the violation of any protected right.

<sup>7</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Jennifer Togliatti, District Judge  
Donald Lee Brown  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk