

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRY D. BRIGGS, SR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46699

FILED

JUL 28 2006

SHARON H. BLOOM  
CLERK OF SUPREME COURT  
*S. Cantrell*  
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; Jackie Glass, Judge.

On July 13, 2005, appellant filed in the district court a proper person petition for a writ of habeas corpus, which challenged a parole revocation hearing. The State opposed the petition. On January 3, 2006, the district court denied the petition. This appeal followed.

First, appellant claimed that his due process rights were violated because he did not receive proper notice of the revocation hearing, he was not informed of the evidence that would be used against him, he was not provided an opportunity to present his case, he was not provided with an opportunity to confront or cross-examine the witnesses against him, the parole board commissioners were biased against him, and he was only provided with notice of the final action.

In Morrissey v. Brewer, the United States Supreme Court held that in order to meet minimum due process requirements, a parolee facing revocation is entitled to:

- (a) written notice of the claimed violations of parole;
- (b) disclosure to the parolee of evidence against him;
- (c) opportunity to be heard in person

and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses . . .; (e) a 'neutral and detached' hearing body . . .; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.<sup>1</sup>

Appellant's claim that his due process rights were violated is belied by the record.<sup>2</sup> In June of 2004, the parole board initiated parole revocation proceedings for appellant. The record indicates that appellant was given prior notice of the parole revocation hearing, he received a detailed summary of the alleged parole violations and a copy of the violation report, and he was represented by appointed counsel at the revocation hearings. Appellant was served with a "Certification of Action Parole Violation Hearings," which indicates that appellant entered guilty pleas to violating the conditions of his parole as to "release," "residence," "out-of-state travel," "reports," "cooperation," and "laws and conduct." The certification also indicates that the parole board specifically determined that appellant had absconded from his parole supervision and all of appellant's earned statutory good time credit was forfeited. Finally, appellant failed to demonstrate that the parole board commissioners were biased against him. Because the record indicates that the parole revocation hearing met the minimum due process requirements, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his right to counsel was violated because the parole board did not permit his retained counsel to

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<sup>1</sup>408 U.S. 471, 488-89 (1972).

<sup>2</sup>See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

represent him at the parole revocation hearing. Appellant stated that he retained counsel to represent him in a separate matter pending before the district court. Appellant alleged that during the parole revocation hearing he requested that his retained counsel be permitted to appear before the parole board to make a statement on his behalf, but the parole board denied his request.

Appellant failed to demonstrate that his right to counsel was violated. The record on appeal indicates that upon receiving notification of the parole revocation proceedings, appellant requested and was appointed counsel to represent him at the revocation hearing. The district court granted appellant's motion, and appointed counsel represented appellant at the revocation hearing. There is no indication in the record that the parole board was given prior notice that appellant had retained counsel for a separate matter and wanted retained counsel to represent him at the revocation hearing. Further, it is not clear from the record whether retained counsel was present at the revocation hearing. Appellant's request to have retained counsel represent him at the revocation hearing was untimely and the parole board did not err in denying the request.<sup>3</sup> Because appellant was not denied the right to counsel, we conclude the district court did not err in denying this claim.

Third, appellant claimed that the parole board illegally forfeited his statutory good time credit under NRS 213.1518 and NRS 209.447. Appellant argued that he should earn statutory good time credit

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<sup>3</sup>See generally *Arajakis v. State*, 108 Nev. 976, 982, 843 P.2d 800, 804 (1992) (holding that the district court acted within its discretion when it denied a request for counsel that was presented on the day of the sentencing hearing).

under NRS 209.443, and credit earned under that statute may not be forfeited.

This claim lacked merit. Appellant failed to demonstrate that his good time credit was forfeited pursuant to NRS 213.1518. Rather, it appears that appellant forfeited his statutory good time credit pursuant to NRS 213.15185. NRS 213.15185(2) requires the forfeiture of all credit earned under NRS chapter 209 for a prisoner whose parole is lawfully revoked and who is determined to have absconded from parole supervision. Appellant's parole was lawfully revoked and the parole board specifically determined that he had absconded from his parole, therefore, all of appellant's statutory good time credit earned under either NRS 209.443 or NRS 209.447 was required to be forfeited. Because appellant failed to demonstrate that the parole board illegally forfeited his statutory good time credit, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that NRS 213.1518 and NRS 209.447 were improperly applied to him ex post facto. This claim also lacked merit. Contrary to appellant's assertion, the parole board did not apply NRS 213.1518 when it forfeited appellant's good time credit earned under NRS chapter 209. Rather, appellant's good time credit was forfeited pursuant to NRS 213.15185. Because NRS 213.15185 was in effect at the time appellant committed his crimes, there is no ex post facto violation.<sup>4</sup> Further, because appellant failed to demonstrate that the Nevada Department of Corrections is calculating his good time credit earned

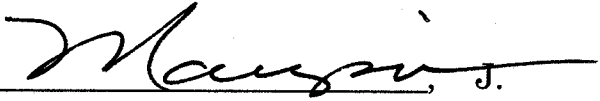
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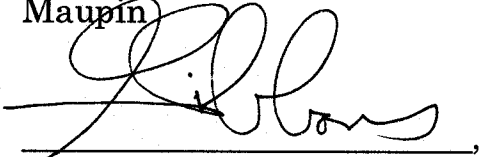
<sup>4</sup>1979 Nev. Stat., ch. 111, § 1, at 170. The record indicates that appellant was convicted in 1981.

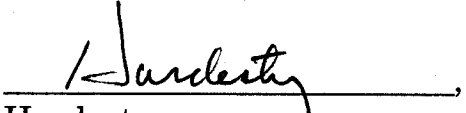
under NRS 209.447, appellant necessarily failed to demonstrate that NRS 209.447 is being improperly applied to him ex post facto. Accordingly, we conclude the district court did not err in denying this claim.

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>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Honorable Jackie Glass, District Judge  
Terry D. Briggs Sr.  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>5</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).