IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN WITHEROW A/K/A JOHN PHILLIP WITHEROW,
Appellant,
vs.
DORLA M. SALLING,
Respondent.

No. 46731

FILED

APR 11 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
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. Sixth Judicial District Court, Pershing County; John P. Davis, Judge.

On October 4, 2005, appellant filed a proper person petition for a writ of habeas corpus in the district court. The State opposed the petition, and appellant filed a response. On January 26, 2006, the district court denied the petition. This appeal followed.

In his petition, appellant claimed that the Parole Board arbitrarily and capriciously conducted rehearings on parole and extended the length of time he was to serve for a parole violation. Specifically, he claimed that when his parole was revoked on November 13, 1997, the Parole Board revoked his parole for only two years. He claimed that the Parole Board's actions in conducting parole hearings in 1999, 2001, 2002, 2005, and denying release on parole in those hearings, caused him to be illegally restrained. He argued that the revocation of his parole was merely a suspension of parole for a period of two years, and thus, he was not required to appear for rehearings in front of the Parole Board.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. NRS

213.1519(1)(b) provides that a parolee whose parole is revoked "[m]ust serve such part of the unexpired maximum term of his original sentence as may be determined by the Board." The documents before this court indicate that appellant's parole was revoked on November 13, 1997, and appellant was not to be reviewed for parole release until November 1999. In revoking appellant's parole, the Parole Board did not order that appellant was to serve less than his unexpired maximum term—life in the Nevada State Prison, and the revocation document cannot be read to mean that appellant's parole was merely suspended for a period of two years with immediate release after two years.[1] Appellant's April 10, 1997 grant of parole ended on November 13, 1997. The reference to two years referred to when he would be next considered for parole by the Parole Board. Because appellant's parole ended, appellant was required to appear before the Parole Board for a release decision, and it was within the Parole Board's discretion to grant or deny parole.[2] To the extent that appellant challenged the Parole Board's decision to deny parole, that challenge was without merit as a prisoner has no constitutional right to parole.[3] The Parole Board did not violate any protected rights in scheduling parole rehearing dates after its decisions to deny parole in

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[1]Nothing in NRS chapter 213 suggests that "revocation" means "suspension" in the manner suggested by appellant. Appellant's reliance on the United Supreme Court's interpretation of the meaning of "revocation" as set forth in the statute governing federal supervised released is misplaced. See generally Johnson v. United States, 529 U.S. 694 (2000).

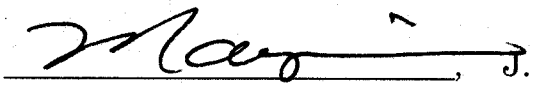
[2]See NRS 213.1099.

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

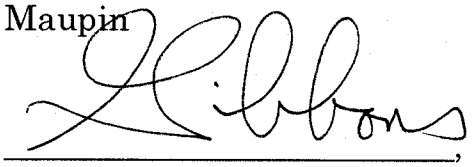
1999, 2001, 2002 and 2005.[4] Finally, appellant did not demonstrate that the Parole Board acted arbitrarily or capriciously in this matter.

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.[5] Accordingly, we

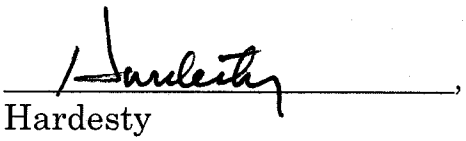
ORDER the judgment of the district court AFFIRMED.



_____, J.
Maupin



_____, J.
Gibbons



_____, J.
Hardesty

cc: Hon. John P. Davis, District Judge
John Witherow
Attorney General George Chanos/Carson City
Pershing County Clerk

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[4]See 1973 Nev. Stat., ch. 129, §1, at 190 (NRS 213.142). Notably, nothing in NRS 213.142, contrary to appellant's suggestions, limits parole rehearings to original parole applications or prevents rehearings for prisoners whose parole has been previously violated.

[5]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).