

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAYFIELD ALLEN KIPER,
Appellant,
vs.
NEVADA BOARD OF PAROLE
COMMISSIONERS; COMMISSIONER J.
MORROW; COMMISSIONER C.
BISBEE; COMMISSIONER T.
GOODSON AND CHAIRMAN DORLA
M. SALLING,
Respondents.

No. 46777

FILED

JUL 13 2006

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing appellant's petition for a writ of habeas corpus. First Judicial District Court, Carson City; Michael R. Griffin, Judge.

On October 3, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court that challenged the Nevada Board of Parole Commissioners' (Board) rescission of his parole. Appellant also filed a supplemental memorandum to the petition. The State opposed the petition and supplemental memorandum. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On January 25, 2006, the district court dismissed appellant's petition finding that the petition was nearly identical to a prior petition filed by appellant and raised no new legal or factual issues. This appeal followed.

The petition at issue in this appeal challenged the rescission of a grant of parole. Contrary to the district court's finding, appellant's prior petition did not challenge the rescission of his parole. Rather, appellant's prior petition challenged a prison disciplinary hearing.¹ Because appellant's petitions challenged two different decisions, we conclude that the district court erroneously dismissed the instant petition as being duplicative. Nevertheless, we affirm the decision to dismiss the petition because the district court reached the correct result.²

On September 28, 2004, the Board entered an order granting appellant parole to his consecutive sentence, effective January 1, 2005. On December 2, 2004, appellant was charged with a violation of MJ-3 (battery), G-9 (abusive language) and G-1 (disobeying a direct order) of the Code of Penal Discipline for an incident that occurred on November 25, 2004. Appellant was found guilty of a violation of MJ-3 and G-1 on December 3, 2004. On December 17, 2004, the Board rescinded the grant of parole. Appellant administratively appealed the December 3, 2004,

¹In resolving this appeal, this court reviewed the record filed with this court in appellant's appeal from the denial of his prior petition. Kiper v. State, Docket No. 46402. We elect to take judicial notice of the record on appeal filed in Docket No. 46402. See NRS 47.130(2)(b); NRS 47.150(1).

²See Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963).

disciplinary conviction, was granted a rehearing, and, after rehearing, was again found guilty of the same violations.³

In the instant petition, appellant contended that the rescission of his parole was improper and illegal because it was based on the December 3, 2004, prison disciplinary conviction. In the supplemental memorandum, appellant contended that the Board's rescission of his parole was corrupt, arbitrary, capricious, and without foundation.

We conclude that appellant's claims lacked merit. Parole is an act of grace; a prisoner has no constitutional right to parole, and, therefore, has no liberty interest sufficient to invoke due process.⁴ Further, without actually receiving the benefit of parole, the notification of a grant of parole also does not confer a constitutionally protected liberty interest sufficient to invoke due process.⁵ Here, no protected liberty interest was encroached upon by the Board's rescission of the grant of parole because appellant never received the benefit promised; he was never actually released on parole. Consequently, "the parole board was not required to conform to the dictates of due process in reversing its original decision."⁶ Additionally, appellant's disciplinary conviction was

³This court affirmed the disciplinary conviction on appeal. Kiper v. State, Docket No. 46402 (Order of Affirmance, March 16, 2006).

⁴See NRS 213.10705; Severance v. Armstrong, 96 Nev. 836, 620 P.2d 369 (1980).


⁵See Jago v. Van Curen, 454 U.S. 14, 17 (1981); Kelch v. Director, 107 Nev. 827, 831, 822 P.2d 1094, 1096 (1991).

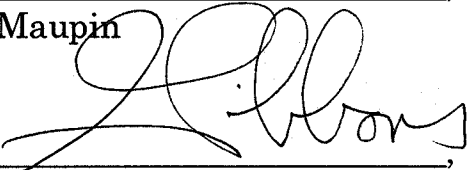
⁶Kelch, 107 Nev. at 830, 822 P.2d at 1095.

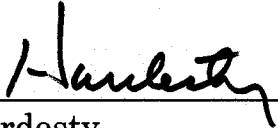
upheld, and the Board may consider the nature and circumstances of any disciplinary action taken against a prisoner while he is incarcerated when determining to grant parole.⁷ Therefore, we affirm the dismissal of appellant's petition.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Michael R. Griffin, District Judge
Mayfield Allen Kiper
Attorney General George Chanos/Carson City
Carson City Clerk

⁷See NAC 213.520(9).

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).