IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE MANUEL SANCHEZ,
Appellant,
vs.
NEVADA STATE BOARD OF PAROLE COMMISSIONERS AND WARDEN, ELY STATE PRISON, E.K. MCDANIEL,
Respondents.

No. 46793

FILED

JUL 13 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
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. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

On July 14, 2005, appellant filed a proper person petition for a writ of habeas corpus challenging actions of the Board of Parole Commissioners (Board). The State opposed the petition. On January 11, 2006, the district court dismissed the petition. This appeal followed.

In his petition, appellant claimed that he was classified in the wrong crime severity level. The district court dismissed this claim after determining that the Board had taken steps to correct the error. Because the record on appeal indicates that the error has been corrected, we conclude the district court did not err in dismissing this claim.

Appellant also claimed that the Board erroneously determined that he would need to wait five years for a parole hearing. When appellant was convicted, NRS 213.142 required a parole hearing to occur no more than three years after the denial of an application for parole. The



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legislature amended NRS 213.142 in 1995 to increase the maximum time for a parole rehearing from three years to five years for prisoners who had more than ten years remaining on the sentence.[1] NRS 213.142, as amended, did not apply to offenses committed prior to July 1, 1995.[2] Appellant claimed that application of NRS 213.142, as amended, violated his rights.

While his petition was pending, the Board rescheduled appellant's parole rehearing for the next available hearing. After determining that the error had been corrected the district court dismissed this claim. Because the record on appeal indicates that the error has been corrected, we conclude the district court did not err in dismissing this claim.

Next, appellant raised numerous claims in which he asserted that the parole board improperly calculated his parole success likelihood factors, and the parole board's reliance upon the improper calculations violated his due process rights. Appellant also attacked 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 dismissing these claims. Parole is an act of grace; a prisoner has no constitutional right to parole, and,

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[1]See 1995 Nev. Stat., ch. 444 § 32, at 1360-61.

[2]See 1995 Nev. Stat., ch. 444 § 52, at 1381.

therefore, has no liberty interest sufficient to invoke due process.[3] To the extent that appellant challenged the Board's decision to deny parole, the district court properly determined that the challenge was without merit. Further, the record indicates that the Board has taken steps to correct any minor errors in the calculation of appellant's parole success likelihood factors. Because appellant did not have a liberty interest in parole release and was not entitled to due process at the parole hearings, we affirm the dismissal of these claims.

Appellant also claimed that his due process rights were violated because he was not permitted to appear in person at his parole hearing. Appellant was not entitled to due process at the parole hearings.[4] Accordingly, we conclude the district court did not err in dismissing this claim.

Next, appellant claimed that NRS 209.446 was unconstitutional as applied to him because, having been sentenced to two consecutive terms of ninety-nine years with parole eligibility after a minimum of five years had been served on each term[5], he would receive no

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

[4]See Severance, 96 Nev. 836, 620 P.2d 369.

[5]Appellant was convicted of second-degree murder with the use of a deadly weapon and sentenced to two consecutive terms of ninety-nine years. At the time of his conviction, the statute required appellant to serve a minimum of five years for each term before being eligible for parole. See 1989 Nev. Stat., ch. 631, § 1, at 1451 (NRS 200.030); 1991 Nev. Stat., ch. 403, § 6, at 1059 (NRS 193.165).

substantial benefit from the accumulation of good time credits, whereas prisoners with shorter sentences receive a benefit from the accumulation of good time credit. Appellant also argued that credits earned under NRS 209.446 should be deducted from the next parole hearing date in order to provide him with some benefit for accruing those credits.

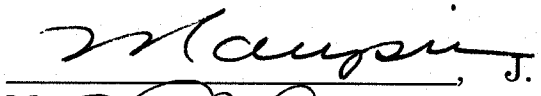
Appellant failed to demonstrate that NRS 209.446 is unconstitutional. Further, although NRS 209.446(6)(b) allows application of good time credits for determining parole eligibility in some instances, NRS 209.446 does not allow good time credits to be applied to the calculation of a parole rehearing date. To the extent that appellant contended his good time credits earned pursuant to NRS 209.446 should be applied toward the five-year minimum term requirement for parole eligibility, this claim lacked merit. NRS 209.446(6)(b) allows for the application of good time credit towards parole eligibility, "unless the offender was sentenced pursuant to a statute which specifies a minimum sentence which must be served before a person becomes eligible for parole." Because appellant was required to serve a minimum of five years on each term before becoming eligible for parole, good time credits could not be applied to decrease the time at which appellant initially became eligible for parole. Accordingly, we conclude the district court did not err in dismissing these claims.

Finally, appellant claimed that based on the Board's current treatment of him, he will be assessed with multiple and cumulative conviction/enhancement score points when he starts serving his enhancement sentence. These claims were prematurely raised because they challenged actions that the Board had not taken, and may not take.

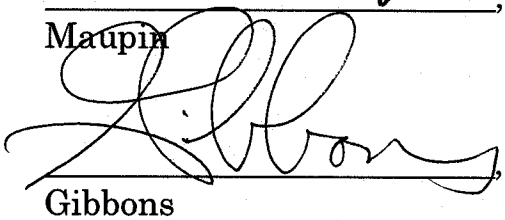
Accordingly, we conclude the district court did not err in dismissing these claims.

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.[6] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Maupin



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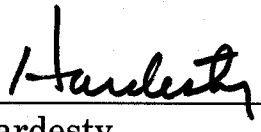
Gibbons



_____, J.
Hardesty

cc: Hon. Dan L. Papez, District Judge
Jose Manuel Sanchez
Attorney General George Chanos/Carson City
Attorney General George Chanos/Ely
White Pine County Clerk

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