

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON A. AVEIRO,  
Appellant,  
vs.  
THE STATE OF NEVADA; AND JAMES  
RHODE, MANAGER OF NEVADA SEX  
OFFENDER REGISTRY,  
Respondents.

No. 47265

FILED

MAR 01 2007

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying appellant Aaron Aveiro's petition for a writ of mandamus. First Judicial District Court, Carson City; William A. Maddox, Judge.

In the district court, Aveiro filed a petition for mandamus relief, requesting that the court direct respondent James Rhode, as program manager for respondent State of Nevada's Sex Offender Registry (NSOR), to "turn over all documents used in his sex-offender tier assessment process." Aveiro asserted that the documents' disclosure was necessary so that he could challenge his tier-three sex offender status. Acknowledging that he was properly subject to the registry, Aveiro argued that his tier-three assessment was too high and implicated certain liberty interests, such as employability.

Rhode and NSOR responded that Aveiro had been provided with certain documents used in his assessment, but they maintained that they lacked authority to disclose any documents that were provided by outside agencies or to disclose confidential documents. Rhode and NSOR also agreed to provide Aveiro with a report explaining how his assessment was scored, which would enable him to obtain, directly from the reporting outside agencies, the documents that he had requested. The district court denied Aveiro's writ petition, and Aveiro now appeals.

On appeal, Aveiro argues that the district court erred by denying his request for the identity of the person who assessed his sex offender status, concluding that his due process rights had not been violated, failing to direct NSOR to follow its own guidelines, and relying on documents that were not authenticated. He also argues that his assessment is unfair. Respondents timely filed a response, as directed, and Aveiro has filed a reply.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control an arbitrary or capricious exercise of discretion.<sup>1</sup> This court reviews a district court's order denying a petition for a writ of mandamus under an abuse of discretion standard.<sup>2</sup>

Upon review of the record and consideration of the parties' appellate arguments, we perceive no abuse of discretion in the district court's order. In Aveiro's petition, he specifically requested the name of his assessor, but he cited no authority that would require disclosure of such information. Because his assessor's identity is not necessary for him to effectively challenge his tier-assessment level, the district court properly denied Aveiro's request for a writ of mandamus compelling NSOR to disclose that information.<sup>3</sup>

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<sup>1</sup>See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

<sup>2</sup>Burgess v. Storey County, 116 Nev. 121, 992 P.2d 856 (2000).

<sup>3</sup>Aveiro's argument on appeal, that this court's decision in Stockmeier v. State, Dep't of Corrections, 122 Nev. \_\_\_, 135 P.3d 220 (2006), requires NSOR to disclose his assessor's identity, is unavailing, as that opinion does not address that issue.

With regard to Aveiro's request for scoring information, NSOR had already provided him with his assessment scale sheet, which lists the factors upon which his assessment was derived, and Aveiro concedes that, in response to his mandamus petition, NSOR has since provided him with a detailed report describing how each score was reached, along with a description of the documents relied upon to reach each score. Although Aveiro argues that the document descriptions are insufficient because they consist of "fragments of sentences from a police report," we note that he is free to request any police reports from the reporting agencies.<sup>4</sup>

As for Aveiro's due process violation assertion, although he argues that his liberty interests have been abridged by his tier-three assessment, he has been provided with the information upon which his assessment was based and with the opportunity to present at a hearing his claim that he was ranked too high on the sex offender scale.<sup>5</sup> Moreover, the United States Supreme Court, noting that sex offender registry requirements "turn on an offender's conviction alone—a fact that a convicted offender has already had a procedurally safeguarded opportunity to contest," has reasoned that procedural due process principles do not bar states from drawing classifications based on a

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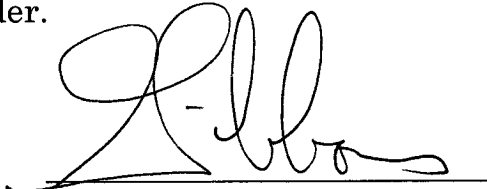
<sup>4</sup>See 5 U.S.C. § 552(a)(3)(A) (providing that an information request must be made in accordance with an agency's published rules); 28 C.F.R. § 16.3(a) (providing that a request for records maintained by a particular FBI field office must be submitted directly to that office); NRS 179A.100(7) (providing that a criminal justice agency, *e.g.*, a police department, must, upon request, disseminate criminal history records to the person who is the subject of the record).

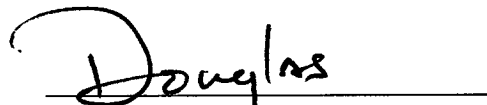
<sup>5</sup>See NRS 179D.740.

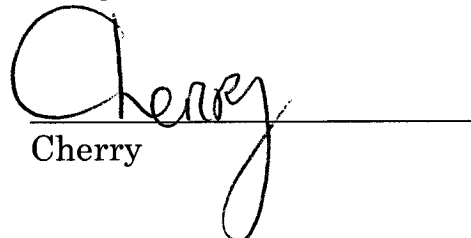
convicted sex offender's current assessed dangerousness.<sup>6</sup> Accordingly, we conclude that the district court properly rejected Aveiro's due process arguments in denying his petition for mandamus relief.

Because Aveiro failed to raise in the district court his argument that the documents attached to Rhode and NSOR's answer were unauthenticated or somehow unreliable, we decline to address it on appeal.<sup>7</sup> Finally, although Aveiro devotes much of his brief to arguing that his tier-three assessment is unfair, that issue is not properly before this court, as it is the subject of a reconsideration hearing that has been scheduled at Aveiro's request. He will have the opportunity to present his arguments at that hearing before the appropriate fact-finding board. Accordingly, because we conclude that the district court appropriately exercised its discretion in denying Aveiro's petition for mandamus relief, we affirm the district court's order.

It is so ORDERED.

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

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

  
\_\_\_\_\_, J.  
Cherry

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<sup>6</sup>See Connecticut Dept. of Public Safety v. Doe, 538 U.S. 1, 7-8 (2003).

<sup>7</sup>See Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

cc: Hon. William A. Maddox, District Judge  
Aaron A. Aveiro  
Attorney General Catherine Cortez Masto/Carson City  
Carson City Clerk