IN THE SUPREME COURT OF THE STATE OF NEVADA

ROSS ERIC BARTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47558

FILED

OCT 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. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On March 9, 2006, appellant filed a proper person petition for a writ of habeas corpus in the district court. The State opposed the petition. On June 8, 2006, the district court denied the petition. This appeal followed.

In his petition, appellant challenged the Parole Board's decision to deny parole. Specifically, appellant attacked the calculation of parole likelihood success factors: (1) three points were not subtracted for a successful parole completion; (2) eight points added for "death" and six points for use of a weapon were duplicative because the baseline offense was murder and these were already taken into account in assessing the severity of the baseline offense; and (3) two points were added for alcohol and six points for use of a weapon when those facts were not determined by a jury. Appellant claimed that his equal protection rights were violated because the Parole Board has acted unfairly and inconsistently.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition. Parole is an act of grace; a prisoner has no constitutional right to parole.[1] NRS 213.10705 explicitly states that "it is not intended that the establishment of standards relating [to parole] create any such right or interest in liberty or property or establish a basis for any cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees." The decision of whether or not to grant parole lies within the discretion of the parole board and the creation of standards does not restrict the Parole Board's discretion to grant or deny parole.[2] Appellant cannot demonstrate any prejudice by any alleged mistakes in the score as the Parole Board is not restricted by the standards in its decision to grant or deny parole. Moreover, appellant's complaint that he was not given credit for a prior successful parole was rendered moot by subsequent actions taken to correct the mistake. Even assuming that appellant may challenge the mechanical scoring of the parole likelihood success factors, appellant did not demonstrate that his score improperly included points for the death of the victim, the use of a weapon, and the alcohol factor.

---

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

[2]See NRS 213.1099(2) (providing that the parole board shall consider the standards established by the board and other factors in determining whether to deny or grant parole); NAC 213.560(1) (stating that the standards do not restrict the parole board's discretion to grant or deny parole).

Appellant failed to demonstrate an equal protection violation.[3] Therefore, we affirm the order of the district court.

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.[4] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Lee A. Gates, District Judge
Ross Eric Barton
Attorney General George Chanos/Carson City
Clark County Clerk

---

[3]Appellant failed to demonstrate any purposeful discrimination or discriminatory effect in the scoring of his parole likelihood success factors. See generally Lane v. State, 110 Nev. 1156, 881 P.2d 1358 (1994) (holding that a defendant who alleges an equal protection violation has the burden of demonstrating purposeful discrimination or discriminatory effect), vacated on other grounds on rehearing 114 Nev. 299, 956 P.2d 88 (1998); see also McCleskey v. Kemp, 481 U.S. 279, 292 (1987).

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