

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM BERRY,
Appellant,
vs.
THE STATE OF NEVADA,
DEPARTMENT OF CORRECTIONS
AND GREG COX, ASSISTANT
DIRECTOR,
Respondents.

No. 47565

FILED

SEP 20 2006

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

ORDER OF AFFIRMANCE

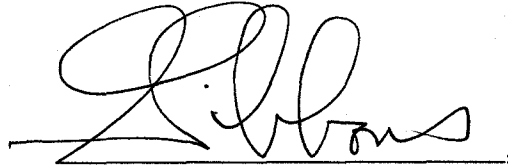
This is a proper person appeal from an order of the district court denying a petition for a writ of mandamus. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

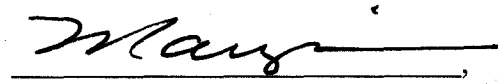
We have reviewed the record on appeal and we conclude that the district court did not err in denying appellant's petition for the reasons stated in the attached order.¹ Therefore, briefing and oral argument are

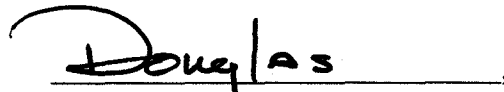
¹We note that appellant failed to demonstrate that the classification decision or process violated any protected due process right. See Sandin v. Conner, 515 U.S. 472, 486 (1995) (holding that liberty interests protected by the Due Process Clause will generally be limited to freedom from restraint which imposes an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life).

not warranted in this case.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Dan L. Papez, District Judge
William Berry
Attorney General George Chanos/Carson City
White Pine County Clerk

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

1 Case No. WM-0507006

2 Dept. No. 2

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DONNA M. BATH
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BY [Signature]
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7 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
8 NEVADA, IN AND FOR THE COUNTY OF WHITE PINE COUNTY

9 *****

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11 WILLIAM BERRY,

12 Petitioner,

13 vs:

14 STATE OF NEVADA Department of
15 Corrections and GREG COX, Assistant
16 Director,

17 Respondents.

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS

18 PROCEDURAL HISTORY

19 On July 27, 2005, the Court granted William Berry (Petitioner), an inmate at Ely State
20 Prison, leave to proceed in forma pauperis and Petitioner filed a Petition for a Writ of
21 Mandamus. On September 1, 2005, Petitioner filed an Affidavit of Service of Process signed
22 by an agent of the Carson City Sheriff's Department, which indicated that Respondent, Greg
23 Cox was served with a summons and petition on August 8, 2005. On September 30, 2005,
24 Petitioner filed an Affidavit for Entry of Default. On November 18, 2005, Petitioner filed an
25 Application for Judgment by Default. On December 9, 2005, the Court entered an Order
26

DISTRICT JUDGE
DEPARTMENT 2
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



1 Denying Request for Default Judgment and Order to Respond. On January 20, 2006,
2 Respondents filed an Answer to Petition for Writ of Mandamus. On February 9, 2006,
3 Petitioner filed a Reply in Opposition to Answer to Petition For Writ of Mandamus. The Court
4 has reviewed the file and finds that additional briefing or oral argument is not necessary.

5 DISCUSSION

6 A writ of mandamus may be issued by a district court "to compel the performance of
7 an act which the law especially enjoins as a duty resulting from an office, trust or station."¹
8 Petitioner prays that the Court will issue a writ of mandamus to compel Ely State Prison to
9 allow him to take a polygraph test in order to challenge false information in his prison
10 institution file, and to compel the Nevada Department of Corrections (NDOC) to expunge his
11 record of any false information and a "sex offender" classification.

12
13 Petitioner asserts that NDOC Administrative Regulation 503 requires that he be
14 afforded a hearing prior to re-classification within the prison. The Director of the NDOC shall
15 "establish, with the approval of the board, a system of initial classification and evaluation for
16 offenders who are sentenced to imprisonment in the state prison"² and "establish a system
17 of ongoing classification and evaluation to ensure the individualized custody, care and
18 training of offenders under the department's jurisdiction."³ AR 503 is a direct result of the
19 statutory mandate to create a system for classification within the prison.
20

21 One tool used by the NDOC for classification is the Objective Classification
22 Instrument. The Objective Classification Instrument is "an automated NCIS instrument that
23

24 ¹NRS. 34.160.

25 ²NRS 209.341(1).

26 ³NRS 209.351(1).



1 associates numerical values to objectively derived case factors that logically relate to inmate
2 classification decisions."⁴ When the classification committee reviews a prisoner's
3 classification, the committee "should use the institution files, NCIS information, information
4 obtained and formatted by the NCIS...and any other relevant information."⁵ "An inmate
5 should make a personal appearance before the committee and present their point of view
6 or submit documents bearing on the proposed committee action."⁶ Therefore, if a
7 classification hearing takes place, Petitioner is correct in asserting that he should be afforded
8 the opportunity to be heard.
9

10 However, the record in this case indicates that Petitioner is mistaken about his
11 classification. Petitioner has not been re-classified as a sex offender. Instead, Petitioner's
12 reclassification instrument contains a notation that has been convicted of a sex offense or
13 sexual misconduct.⁷ This notation is the result of three disciplinary hearings in which
14 Petitioner was found guilty. The first of these hearings was held July 27, 1987. In that
15 hearing, Petitioner was found guilty of grabbing the buttocks of a female dental assistant at
16 the prison against her will.⁸ The second hearing occurred on June 7, 1989, at which time
17 Petitioner was found guilty of reaching through his cell bars to run his finger down the cheek
18 of a female correctional officer's buttocks.⁹ The last hearing occurred on April 22, 1997, at
19
20

21 ⁴NDOC AR 503.

22 ⁵AR 503.01.1.1.

23 ⁶Id.

24 ⁷Answer, at Exhibit A6.

25 ⁸Answer, NDOC Statutory Time Referral Report, at Exhibit A1.

26 ⁹Id., NDOC Statutory Time Referral Report, at Exhibit A2.



1 which time Petitioner was found guilty of exposing his erection to a female correctional
2 officer.¹⁰

3 Petitioner now claims that he was denied due process at those hearings. However,
4 Petitioner alleges no specific factual allegations which would amount to a denial of due
5 process. A writ of mandamus will not issue where there is a speedy and adequate remedy
6 at law.¹¹ Here, Petitioner does not specifically allege how he was denied due process. The
7 most recent disciplinary conviction took place in 1997, therefore, if Petitioner believed he was
8 denied due process at his disciplinary hearings he has ample time to file a civil action or,
9 in the event that statutory good time was forfeited, a Petition for Habeas Corpus. Petitioner
10 merely asserts conclusory allegations that he was denied due process and therefore is
11 entitled to have those disciplinary proceedings expunged from his record. In order for
12 mandamus to issue, a Petitioner must "show a clear right to have the respondent do the
13 thing which he is sought to be compelled to do."¹² Petitioner has failed to allege any facts
14 which would indicate that he was denied due process at his disciplinary hearings.
15

16
17 A writ of mandamus "will not will not lie to compel an officer or board to perform a
18 discretionary act."¹³ The use of an objective classification instrument is part of a prison's
19 system for offender management. NRS 209.352 states, "the director *may* establish a system
20 for offender management" (emphasis added). Here, the prison's use of an objective
21 classification instrument is a discretionary act. The mere notation on the instrument that a
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23 ¹⁰Id., NDOC statutory Time Referral Report, at Exhibit A3.

24 ¹¹NRS 34.170.

25 ¹²*State ex rel. Cohn v. Mack*, 26 Nev. 85 (1901).

26 ¹³*Young v. Board of County Comm'rs*, 91 Nev. 52, 56 (1975).



1 prisoner has engaged in prior sexually deviant behavior does not mean that the offender has
2 been classified as a sex offender. Petitioner points to no authority which requires the
3 removal of the factor from his objective reclassification instrument.

4 Petitioner further alleges that the prison has a duty at law to allow him to take a
5 polygraph examination to dispute errors in his institution file. As authority for his position,
6 Petitioner cites NRS 209.131 and AR 152. NRS 209.131 governs the duties of the Director
7 of the Department of Corrections. Nowhere in the statute are polygraphs mentioned. AR
8 152 states, " On rare occasions, the Warden may choose to allow a polygraph to be
9 administered at inmate expense."¹⁴ There is no requirement that the Warden use a
10 polygraph examination in Petitioner's case. A writ of mandamus will not lie to compel a
11 discretionary act.
12

13 Finally, Petitioner asserts that he has been denied an opportunity to review his prison
14 records and contest them. AR 568 states "the department will allow an inmate to review their
15 respective institution file for the purpose of challenging the accuracy or completeness."
16 Petitioner's claim that he has not been allowed to review his file is belied by the record. His
17 institution file indicates that he reviewed the file on September 12, 2001, at which time he
18 disagreed with the sexual deviant characterization.¹⁵ The record indicates that Petitioner
19 asserted his claims through the prison grievance process.¹⁶
20

21 A writ of mandamus will not lie to compel the relief that Petitioner is requesting. While
22 AR 503 would allow Petitioner the opportunity to be heard at a prison classification hearing,
23

24 ¹⁴AR 152.5(k).

25 ¹⁵Inmate Chrono Entries, Answer at Exhibit A4.

26 ¹⁶Answer at Exhibit A5.

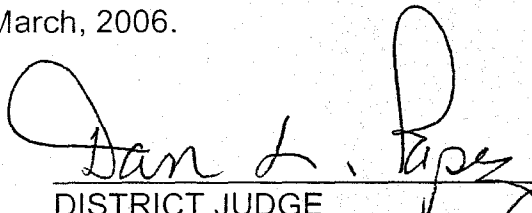


1 it does not require that he be present when a factor is designated on his objective
2 classification instrument. There is substantial evidence in the record that the
3 characterization of Petitioner as sexually deviant is based on his disciplinary convictions. It
4 is unclear whether Petitioner ever appealed those convictions and Petitioner provides no
5 factual basis for denying the validity of those convictions.

6 Good Cause Appearing;

7 IT IS HEREBY ORDERED that the Petition for Writ of Mandamus is DENIED.

8 DATED this 30th day of March, 2006.

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12 _____
13 DISTRICT JUDGE
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DISTRICT JUDGE
DEPARTMENT 2
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA

