IN THE SUPREME COURT OF THE STATE OF NEVADA

HAROLD EDWARD HARTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47584

FILED

APR 26 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

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 October 25, 2005, appellant filed a petition for a writ of habeas corpus in which he challenged the outcome of a Parole Board hearing, a psych panel assessment and the validity of his guilty plea. The State opposed the petition. On June 8, 2006, after conducting an evidentiary hearing, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first claimed that the requirement that he be certified pursuant to NRS 213.1214 before he was eligible for release on parole was an ex post facto violation as his offense, use of a minor in the production of pornography, was not subject to the certification requirement when he committed the offense in 1994.[1]

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[1]The offenses required to be presented to a psych panel were expanded in 1997. Compare 1991 Nev. Stat., ch. 16, § 1, at 18 (providing that a person convicted of sexual assault may not be paroled unless a board certifies that the person is not a menace to the health, safety or

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NRS 213.1214(1) specifically provides that the Parole Board shall not release a prisoner convicted of certain enumerated offenses on parole unless the prisoner is certified by a psych panel that he does not represent a high risk to re-offend. Appellant is subject to the certification requirement.[2] The Ex Post Facto Clause "is aimed at laws that 'retroactively alter the definition of crimes or increase the punishment for criminal acts.'"[3] There is no ex post facto violation when the law merely alters the method of imposing a penalty and does not change the quantum of punishment.[4] In the instant case, requiring appellant to be certified before release on parole does not constitute an additional punishment.[5] To the extent that appellant challenged the Parole Board's decision to deny parole, that challenge was without merit as a prisoner has no

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. . . continued

morals of others) (NRS 200.375 repealed and replaced by NRS 213.1214) to 1997 Nev. Stat., ch. 524, § 10, at 2506-07 (NRS 213.1214).

[2]See NRS 213.1214(5)(e).

[3]California Dept. of Corrections v. Morales, 514 U.S. 499, 504 (1995) (quoting Collins v. Youngblood, 497 U.S. 37, 43 (1990)); see also Stevens v. Warden, 114 Nev. 1217, 969 P.2d 945 (1998).

[4]See Land v. Lawrence, 815 F. Supp. 1351 (D. Nev. 1993) (rejecting a prisoner's ex post facto challenge to the certification requirement of NRS 200.375).

[5]See id.; see also Morales, 514 U.S. 499 (holding that the application of an amendment authorizing the deferral of subsequent parole suitability hearings did not increase the punishment attached to respondent's crime).

constitutional right to parole.[6] Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant argued that the phrase "currently accepted standard of assessment" as used in NRS 213.1214(1) is unconstitutionally vague and ambiguous. This claim lacks merit. NRS 213.1214 is not penal in nature.[7] Rather, the statute "provides an evaluation standard for the pre-parole hearing panel to follow."[8] Therefore, the statute is not impermissibly vague. In the petition, appellant stated that he was informed that the currently accepted tests approved by the psych panel for the purposes of assessing risk under NRS 213.1214(1) include: (1) Static 99; (2) Rapid Risk Assessment for Sexual Recidivism; and (3) Vermont Assessment for Sex-Offender Risk. Because appellant was informed of the currently accepted tests as approved by the psych panel, appellant failed to demonstrate that the statute is impermissibly ambiguous. Therefore, we conclude that the district court did not err in denying this claim.

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

[7]See Sheriff v. Burdg, 118 Nev. 853, 857, 59 P.3d 484, 486-87 (2002) (holding that "[a] statute is void for vagueness if it fails to define the criminal offense with sufficient definiteness that a person of ordinary intelligence cannot understand what conduct is prohibited and if it lacks specific standards, encouraging arbitrary and discriminatory enforcement") (emphasis added) citing Kolender v. Lawson, 461 U.S. 352, 357 (1983).

[8]See Glauner v. Miller, 184 F.3d 1053, 1055 (9th Cir. 1999) (addressing a different standard in NRS 213.1214 and holding that NRS 213.1214 is not void for vagueness).

Third, appellant claimed that the psych panel does not rely upon their approved standards for assessing risk when determining whether a petitioner is a high risk to re-offend. Appellant specifically asserted that although the psychologist assigned to evaluate him informed him that the results of the tests showed that he does not represent a high risk to re-offend, the psych panel determined that he was a "high risk" candidate. This claim challenged the psych panel's failure to certify him. There is no cause of action to challenge the psych panel's failure to certify.[9] Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his guilty plea was invalid because he was never informed at the time he entered the plea that he would have to appear before a psych panel prior to be being released on parole. A district court has a duty to ensure that a defendant "has a full understanding of both the nature of the charges and the direct consequences arising from a plea."[10] The failure to inform a defendant regarding the collateral consequences of a plea will not render the plea invalid.[11] The requirement that a petitioner for parole appear before a psych panel for evaluation for parole is a collateral consequence of a plea. Because the district court was under no duty to inform appellant about the

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[9]NRS 213.1214(4).

[10]Little v. Warden, 117 Nev. 845, 849, 34 P.3d 540, 543 (2001).

[11]See Palmer v. State, 118 Nev. 823, 826, 59 P.3d 1192, 1194 (2002).

sex offender psych panel requirement for parole before accepting his plea,[12] appellant failed to demonstrate that his plea was invalid.

Fifth, appellant claimed that the Parole Board erroneously determined that he would have to wait five years for a parole rehearing after denying him parole in 2005. Our preliminary review of this appeal revealed that the district court may have erroneously denied this claim. Specifically, when appellant committed his offense, NRS 213.142 required a parole rehearing to occur no more than three years after the denial of an application for parole.[13] The legislature amended NRS 213.142 in 1995 to increase the maximum time for a parole rehearing from three to five years for prisoners who had more than ten years remaining on their sentence.[14] The 1995 amendment, however, did not apply to those convicted of offenses committed before July 1, 1995.[15] Because appellant was convicted of his offense prior to July 1, 1995, it appeared that the Parole Board erroneously applied the 1995 amendment of NRS 213.142 to appellant and determined that he would have to wait five years for a parole hearing. Because it appeared that this claim had merit, this court directed the State to show cause why this court should not reverse the denial of this claim.

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[12]See Bargas v. Burns, 179 F.3d 1207, 1216 (9th Cir. 1999); Anushevitz v. Warden, 86 Nev. 191, 194, 467 P.2d 115, 117-18 (1970).

[13]See 1973 Nev. Stat., ch. 129, § 2, at 190.

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

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

In its response, the State argues that appellant only raised his claim as an ex post facto claim and not as a statutory claim and, therefore, the district court did not err in denying the claim. We disagree. When examining an ex post facto challenge to a statute, it is necessary to inquire into whether date limitations were placed by the legislature. Although NRS 213.142 does not explicitly state that the 1995 amendment only applied prospectively, the legislature clearly provided for such in the session laws.[16] Although the amendment of the period between parole hearings did not violate ex post facto principles,[17] application of the amendment to appellant violated the statute. We therefore conclude that the district court erred by denying appellant's claim that the Parole Board erroneously determined that he would have to wait five years for a parole rehearing. Accordingly, we reverse the district court's denial of this claim. The district court shall grant appellant's claim and direct the Parole Board to correct the error.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is entitled only to the relief granted and that briefing and oral argument are unwarranted.[18] Accordingly, we

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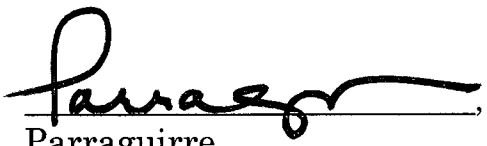
[16]See id.

[17]See Morales, 514 U.S. 499.

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

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[19]



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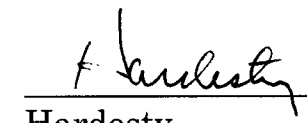

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Hardesty

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Saitta

cc: Hon. Lee A. Gates, District Judge
Harold Edward Harter
Attorney General Catherine Cortez Masto/Carson City
Eighth District Court Clerk

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[19]This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.