IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK MOOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47889

FILED

JAN 10 2007

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. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

On June 3, 2005, appellant filed a proper person petition for a writ of habeas corpus in the district court. The State opposed the petition. On August 7, 2006, the district court denied the petition. This appeal followed.

In his petition, appellant first claimed that the Parole Board arbitrarily and capriciously required him to appear before the Parole Board in 2005 and extended the length of time he was to serve for a parole violation. Specifically, he claimed that when his parole was revoked on June 5, 2002, the Parole Board revoked his parole for only three years. He claimed that he should have been immediately released in 2005 and that the Parole Board should not have conducted a parole hearing in 2005.

The record on appeal and a review of applicable statutory provisions do not support appellant's claim that his parole was revoked for a term of only three years and that he was required to be immediately

released after three years. NRS 213.1519(1)(b) provides that a parolee whose parole is revoked "[m]ust serve such part of the unexpired maximum term of his original sentence as may be determined by the Board." The documents before this court indicate that appellant's parole was revoked on June 5, 2002, and appellant was not to be reviewed for parole release for three years. In revoking appellant's parole, the Parole Board did not expressly order that appellant was to serve less than his unexpired maximum term—life in the Nevada State Prison, and the revocation document cannot be read to mean that appellant's parole was merely suspended for a period of three years with immediate release after three years.[1] Appellant's grant of parole ended on June 5, 2002. The reference to three years referred to when he would be next considered for parole by the Parole Board. Because appellant's parole ended, appellant was required to appear before the Parole Board for a release decision, and it was within the Parole Board's discretion to grant or deny parole.[2] The fact that the Parole Board did not immediately release appellant on parole after three years indicates that it was not its intention to require appellant to serve only a part of his unexpired maximum term.[3] Further,

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[1]If the Parole Board intended for appellant to serve only a three year term, the Parole Board would have expressly stated on the parole violation form that appellant was being allowed to serve only a part of the unexpired maximum term.

[2]See NRS 213.1099.

[3]Even assuming that the Parole Board originally intended a grant of parole release after three years, the fact that parole hearing was

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the Parole Board would not have had the statutory authority at the parole violation hearing to order appellant to only serve three years in the instant case as appellant was required to be recertified before he was eligible to be released on parole in the future.[4] To the extent that appellant challenged the Parole Board's decision to deny parole, that challenge was without merit as a prisoner has no constitutional right to parole.[5] Finally, appellant did not demonstrate that the Parole Board acted arbitrarily or capriciously in this matter. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that the Parole Board was not permitted to apply the standards relating to "initial" parole decisions to a prisoner who had been paroled, but whose parole had been revoked.

. . . continued

conducted instead indicates that the grant of parole was rescinded. No protected liberty interest would have been impinged upon by the parole board's subsequent rescission of the grant of parole because appellant had never received the benefit promised; appellant was never actually released on parole after his revocation. See Jago v. Van Curen, 454 U.S. 14, 17 (1981); see also Kelch v. Director, 107 Nev. 827, 830, 822 P.2d 1094, 1095 (1991). Accordingly, "the parole board was not required to conform to the dictates of due process in reversing its original decision." See Kelch, 107 Nev. at 830, 822 P.2d at 1095.

[4]See NRS 213.1214(2).

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

Appellant claimed that the Parole Board failed to enact standards to cover prisoners in his position—a parolee who has had parole revoked.

NRS chapter 213 does not distinguish between prisoners who have not ever been granted the privilege of parole and prisoners who have been granted, but subsequently lost the privilege of parole in setting forth the factors considered by the Parole Board in determining whether to release a prisoner on parole. Appellant's first grant of parole ended June 5, 2002, and thus, the Parole Board correctly applied the standards set forth in and adopted pursuant to NRS 213.1099. Again, to the extent that appellant challenged the Parole Board's decision to deny parole, that challenge was without merit as a prisoner has no constitutional right to parole.[6] Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant 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 production of pornography, was not subject to the certification requirement when it was committed in 1994.[7]

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[6]See id.

[7]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 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).

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 reoffend. Appellant is subject to the certification requirement.[8] The Ex Post Facto Clause "is aimed at laws that 'retroactively alter the definition of crimes or increase the punishment for criminal acts.'"[9] 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.[10] In the instant case, requiring appellant to be certified before release on parole does not constitute an additional punishment.[11] Again, 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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[8]See NRS 213.1214(5)(e).

[9]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).

[10]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).

[11]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.[12] Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that the Parole Board erroneously determined that he would have to wait five years for a parole hearing after the Board had denied parole in 2005. When appellant committed the crime of use of a minor in the production of pornography in 1994, 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 the sentence.[14] Appellant claimed that various constitutional rights were violated by application of NRS 213.142 to him as amended.

Our review of the record on appeal reveals that appellant's claim had merit. The 1995 amendment extending the time for parole rehearings to prisoners who had more than ten years remaining on the sentence did not apply to offense committed before July 1, 1995.[15] However, on October 6, 2005, the Parole Board issued an amended order

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

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

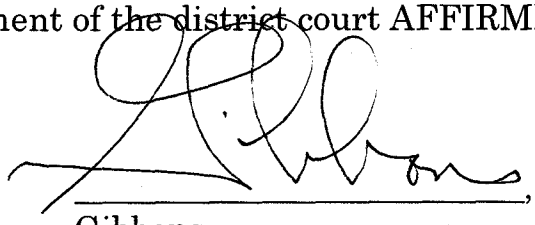
[14]See 1995 Nev. Stat., ch. 444, § 32, at 1360-61.

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

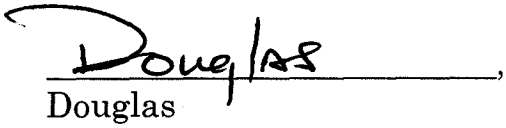
in which it changed appellant's date for further consideration for parole from June 1, 2010 to June 1, 2008. Because the Parole Board corrected its error, this claim was rendered moot. Therefore, we conclude that the district court did not err in denying this claim.

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.[16] Accordingly, we

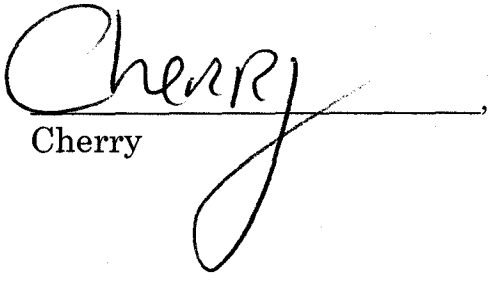
ORDER the judgment of the district court AFFIRMED.[17]



_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Cherry

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

[17]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Richard Wagner, District Judge
Mark Moor
Attorney General Catherine Cortez Masto/Carson City
Pershing County District Attorney
Pershing County Clerk