

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARENCE E. LANCASTER,
Petitioner,

vs.

NEVADA BOARD OF PAROLE
COMMISSIONERS,
Respondent.

No. 47917

FILED

DEC 11 2006

ORDER DENYING PETITION

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

This is a proper person petition for a writ of mandamus. Petitioner seeks an order directing the respondent to reset his mandatory parole eligibility release date.

Petitioner asserts that in 2005 he was convicted of attempted burglary and sentenced to a term of imprisonment of 14 to 48 months. Petitioner asserts that the Nevada Board of Parole Commissioners met on May 22, 2006, and denied petitioner parole at that hearing, but granted mandatory parole release when eligible. Petitioner asserts that he was informed his mandatory parole release date was March 22, 2007, and that his projected discharge date was September 23, 2007. Petitioner claims that his mandatory parole release date should be September 23, 2006, and that the latter date violates NRS 213.1215.

NRS 213.1215(1) provides that "a prisoner sentenced to imprisonment for a term of 3 years or more . . . must be released on parole 12 months before the end of his maximum term, as reduced by any credits

he has earned to reduce his sentence."¹ NRS 213.1215(6) further provides that "[f]or the purposes of this section, the determination of the 12-month period before the end of a prisoner's term must be calculated without consideration of any credits he may have earned to reduce his sentence had he not been paroled."

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station or to control an arbitrary or capricious exercise of discretion.² A writ of mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law.³

It was unclear from this court's initial review if petitioner was entitled to the relief he sought. Specifically, it was not clear from this court's review of the documents before it if the mandatory parole release date should be set at September 23, 2006—one year from the expiration of the projected expiration date set forth in the prison's correspondence with petitioner—as argued by petitioner. It was not clear whether the projected expiration date of September 23, 2007, was based upon the calculation of credits earned as if petitioner had not been paroled. If the September 23, 2007 projected expiration date was based upon the calculation of credits earned as if petitioner had not been paroled, petitioner would not be permitted to use September 23, 2007, to calculate

¹Petitioner asserts that neither of the exceptions set forth in NRS 213.1215(1)(a), (b) apply to him.

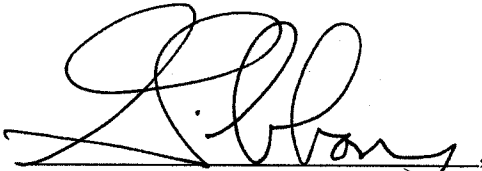
²See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

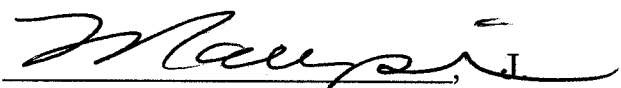
³See NRS 34.170.

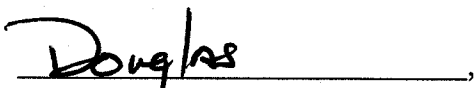
his discharge date pursuant to NRS 213.1215(6). It was not clear if the March 22, 2007 mandatory parole release date set forth in the prison's correspondence was based upon a projected expiration date of March 22, 2008—a date that excluded credits pursuant to NRS 213.1215(6).

Therefore, this court directed the attorney general to file a response on these issues. The attorney general has filed a response. Based upon our review of the documents before this court and the attorney general's response, we conclude that petitioner is not entitled to the relief requested. Petitioner's argument that his mandatory parole release date should have been September 23, 2006, is without merit as this date would include credits that are properly excluded by NRS 213.1215(6). Petitioner has not demonstrated that any error has been made in calculating his mandatory parole release date. Accordingly, we

ORDER the petition DENIED.


Gibbons J.


Maupin


Douglas J.

cc: Clarence E. Lancaster
Attorney General George Chanos/Carson City
Clark County Clerk