

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MITCHELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49099

FILED

OCT 31 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's petition for a writ of mandamus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On March 4, 1982, the district court convicted appellant, pursuant to a jury verdict, of one count each of murder with the use of a deadly weapon and attempted robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison for murder with the use of a deadly weapon, plus two consecutive terms of seven and one-half years for robbery with the use of a deadly weapon. This court dismissed appellant's appeal from his conviction and sentence.¹

On January 25, 2005, appellant filed a proper person petition for a writ of mandamus in the district court. The State opposed the petition. The district court appointed counsel to assist appellant, and counsel filed a supplemental petition. On September 5, 2007, the district court denied appellant's petition. This appeal followed.

¹Mitchell v. State, Docket No. 14088 (Order Dismissing Appeal, December 1, 1983).

In his petition, appellant claimed that the parole board's use of parole guidelines, enacted after his conviction, to deny him parole constituted an ex post facto violation. Appellant further claimed that the parole board erred in determining his parole success likelihood factors. Finally, appellant claimed that the parole board impermissibly applied recently enacted guidelines to increase the amount of time he must serve before being paroled on a deadly weapon enhancement term beyond the time he was required to serve on the term for the primary offense. Appellant sought an order from the district court directing the parole board to cease using the parole guidelines and laws that became effective on July 1, 1995, when reviewing him for parole.

A writ of mandamus is available to compel the performance of an act that 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 may issue only where there is no plain, speedy, and adequate remedy at law.³ Petitions for extraordinary writs are addressed to the sound discretion of the court.⁴

Our review of the record on appeal reveals that the district court did not abuse its discretion by denying appellant's petition. Parole is an act of grace; a prisoner has no constitutional right to parole.⁵ The

²NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603, 637 P.2d 534, 536 (1981).

³NRS 34.170.

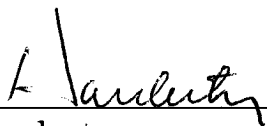
⁴State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983).

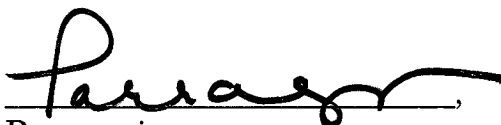
⁵See NRS 213.10705; Niergarth v. Warden, 105 Nev. 26, 768 P.2d 882 (1989).

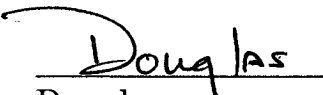
parole board's application of revised parole guidelines did not violate the Ex Post Facto Clause.⁶ The subject of parole is within the legislative authority,⁷ and the parole board properly applied the amended parole guidelines to appellant.⁸ Appellant failed to demonstrate that a due process violation, or any other constitutional violation, required extraordinary relief. Accordingly, we affirm the district court's order denying extraordinary relief.

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁶See generally Vermouth v. Corrothers, 827 F.2d 599 (9th Cir. 1987) (holding that federal parole guidelines were not laws for ex post facto purposes).

⁷See Pinana v. State, 76 Nev. 274, 283, 352 P.2d 824, 829 (1960).

⁸NRS 213.10885(1), (5); NRS 213.1099(2); NAC 213.560(1).

⁹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Lee A. Gates, District Judge
James Mitchell
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk