

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL HAYS,
Appellant,
vs.
STATE OF NEVADA, EX REL.
PSYCHOLOGICAL REVIEW PANEL,
Respondent.

No. 49161

FILED

MAY 08 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order denying a petition for a writ of mandamus that sought to void an action taken by the Psychological Review Panel for violating Nevada's Open Meeting Law. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

We review a district court's decision to grant or deny a petition for a writ of mandamus for an abuse of discretion.¹ A writ of mandamus is generally available to compel the performance of an act that the law especially enjoins as a duty resulting from an office, trust, or station,² or to control a manifest abuse of discretion.³ Mandamus is an extraordinary remedy, and the decision as to whether a petition will be entertained lies within the court's discretion.⁴

¹DR Partners v. Bd. of County Comm'rs, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000).

²NRS 34.160.

³Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

⁴Kussman v. District Court, 96 Nev. 544, 612 P.2d 679 (1980).

In his civil proper person appeal statement, appellant Michael Hays argues that the district court abused its discretion in denying writ relief for two reasons. First, he argues that, under Stockmeier v. Psychological Review Panel,⁵ the certification required by NRS 213.1214 applies only to sex offenders. Because he was convicted of a nonsexual, category B felony under the child neglect and abuse statute, NRS 200.508, Hays asserts, he should not have been required to go before the Psych Panel, even though NRS 200.508 is listed as one of the statutes to which Psych Panel certification applies.⁶

In its response, respondent State of Nevada, ex rel. Psychological Review Panel, asserts that Hays has waived this argument by failing to raise it below. The record reveals that Hays's district court petition for a writ of mandamus did not address this issue, and although Hays supplemented his petition with "addendums" that sought a judicial clarification that he was not a sex offender,⁷ Hays never submitted this particular argument, that he was not subject to Psych Panel review under NRS 213.1214 and Stockmeier, to the district court. Accordingly, he waived this argument.⁸

⁵122 Nev. 534, ___, 135 P.3d 807, 811 (2006).

⁶NRS 213.1214(5)(d).


⁷As the district court record does not contain any certificates of service of these addendums, it is unclear whether Hays ever served the addendums on respondent.

⁸Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). To the extent that Hays, through the addendums, attempted to raise this issue, we cannot agree with his reading of Stockmeier, which would abrogate the Legislature's requirement that persons convicted under NRS 200.508 obtain Psych Panel certification before being released

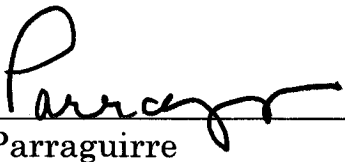
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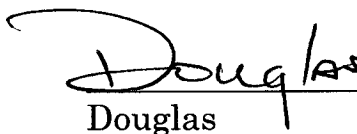
Second, Hays argues that the district court abused its discretion in denying him writ relief because, even though the Psych Panel minutes do not reveal that the Panel deliberated in a closed session and allowed impermissible public comment, a review of the videotape would support his contentions that the Panel did so. According to the Psych Panel notice and agenda, the Psych Panel meeting was to have been videotaped in its entirety. Thus, while respondent asserts that the audio recording malfunctioned and as a result no audio recording is available, it appears that a videotape of the proceeding might exist. Accordingly, we conclude that the district court should have determined whether any videotape exists and, if so, reviewed that videotape with the parties' input before ruling on this matter. Therefore, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

 J.

Maupin

 J.
Parraguirre

 J.
Douglas

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on parole. See Paramount Ins. v. Rayson & Smitley, 86 Nev. 644, 649, 472 P.2d 530, 533 (1970). (recognizing that courts should interpret a statute to avoid rendering any language nugatory); NRS 213.1214(5)(d).

cc: Hon. Jackie Glass, District Judge
Michael Hays
Attorney General Catherine Cortez Masto/Las Vegas
Clark County District Attorney David J. Roger
Eighth District Court Clerk