

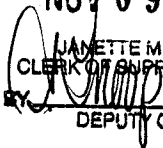
IN THE SUPREME COURT OF THE STATE OF NEVADA

HOWARD LEE WHITE,
Appellant,
vs.
NEVADA DEPARTMENT OF
CORRECTIONS, GLEN WHORTON,
DIRECTOR, DIVISION OF PAROLE &
PROBATION, AND MONICA J. HOWK,
Respondents.

No. 49643

FILED

NOV 09 2007

JAMETTE M. BLOOM
CLERK OF SUPREME COURT
BY  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 mandamus. First Judicial District Court, Carson City; William A. Maddox, Judge.

On June 12, 1987, appellant was convicted, pursuant to a jury verdict, of burglary. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after 10 years had been served. Appellant was paroled on this sentence in December 1996. Appellant's parole was revoked shortly thereafter.

On December 30, 1997, appellant was convicted, pursuant to a jury verdict, of battery causing substantial bodily harm, burglary, and attempted robbery with the use of a deadly weapon. The district court adjudicated appellant a habitual criminal and sentenced appellant to

serve a term of life without the possibility of parole, to be served consecutively to the sentence imposed for the 1987 conviction.

On June 29, 2006, appellant filed a proper person petition for a writ of mandamus in the district court. The State opposed the petition, and appellant filed a reply to the State's opposition. On May 31, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that he had been denied an appearance before the Board of Parole Commissioners ("Board") since September 2000. Appellant sought an order from the district court compelling the Board to schedule and conduct a hearing to consider 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 and capricious exercise of discretion.¹ A writ of mandamus may issue only where there is no plain, speedy, and adequate remedy at law.² Petitions for extraordinary writs are addressed to the sound discretion of the court.³

¹NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

²NRS 34.170.

³State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 662 P.2d 1338 (1983).

In the record below, it was undisputed that appellant had not been considered for parole since 2000. The district court found that although NRS 213.142 would generally require the Board to consider a prisoner's parole eligibility at least every 3 to 5 years, appellant was not entitled to such a hearing. In making its decision, the district court relied on the provisions in NRS 176.035(2) that relate to a defendant who commits a subsequent felony offense while under a sentence of imprisonment for a felony. NRS 176.035(2) states in relevant part, "[i]f the person is sentenced to a term of imprisonment for life without the possibility of parole, the sentence must be executed without reference to the unexpired term of imprisonment and without reference to his eligibility for parole." The district court found that this language rendered appellant's sentence of life without the possibility of parole the controlling sentence for the purpose of determining appellant's parole eligibility.

Based upon our review of the documents presented, we conclude that the district court did not abuse its discretion in denying appellant's petition for extraordinary relief. NRS 176.035(2) specifically provides that a sentence of life without the possibility of parole becomes the controlling sentence and must be executed without reference to a prisoner's eligibility for parole on other terms. Because appellant was sentenced to a term of life without the possibility of parole, this sentence became the controlling sentence and appellant is not entitled to a parole hearing on his term of life with the possibility of parole.

To the extent that appellant argued that applying NRS 176.035(2) to him constituted an ex post facto violation because the statute was amended to include the relevant language in 2001, we conclude this claim lacked merit. The Ex Post Facto Clause "is aimed at laws that 'retroactively alter the definition of crimes or increase the punishment for criminal acts.'"⁴ 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.⁵ In the instant case, applying the amended language in NRS 176.035(2) to appellant and designating appellant's sentence of life without the possibility of parole as the controlling sentence, thereby eliminating subsequent parole hearings, does not change the quantum of appellant's punishment or alter the definition of appellant's crimes.⁶ The amended language in NRS 176.035(2) merely had the effect of relieving the Board of having to schedule costly and time-consuming parole hearings for prisoners who have no reasonable chance of being released on

⁴California Dept. of Corrections v. Morales, 514 U.S. 499, 504-05 (1995) (quoting Collins v. Youngblood, 497 U.S. 37, 43 (1990)); see generally Stevens v. Warden, 114 Nev. 1217, 969 P.2d 945 (1998).

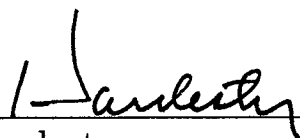
⁵See Land v. Lawrence, 815 F. Supp. 1351, 1353 (D. Nev. 1993) (rejecting a prisoner's ex post facto challenge to the certification requirement of NRS 200.375).

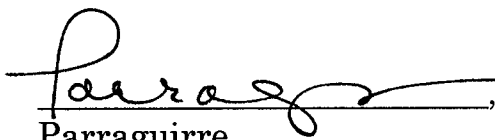
⁶See Morales, 514 U.S. at 509-10 (holding that the application of an amendment authorizing the deferral of subsequent parole suitability hearings did not increase the punishment attached to respondent's crime).

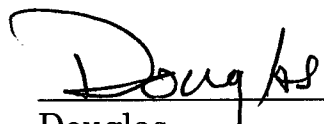
parole because NRS 213.085 guarantees that prisoners similarly situated to appellant will never be paroled from a sentence of life without the possibility of parole.⁷ Therefore, we affirm the denial of appellant's petition.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. William A. Maddox, District Judge
Howard Lee White
Attorney General Catherine Cortez Masto/Reno
Carson City Clerk

⁷See id. at 507.

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).