

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT L. STOCKMEIER,  
Petitioner,  
vs.  
NEVADA BOARD OF PAROLE  
COMMISSIONERS,  
Respondent.

No. 49859

**FILED**

SEP 07 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY A. Alvarado  
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This proper person petition for a writ of mandamus seeks to clarify petitioner's rights under, or the validity of, NRS 213.130(3), as recently amended.<sup>1</sup>

Petitioner Robert L. Stockmeier, an inmate at the Lovelock Correctional Center, is scheduled for a parole hearing in early 2008. In light of this upcoming hearing, Stockmeier seeks to clarify how recent amendments to one of the parole hearing statutes, NRS 213.130,<sup>2</sup> will affect his rights. As amended effective October 1, 2007, NRS 213.130(3) provides, with emphasis added, that parole board "meetings are quasi-judicial and must be open to the public. No rights other than those conferred pursuant to this section or pursuant to specific statute

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<sup>1</sup>Petitioner's motion for leave to proceed with in forma pauperis status is granted; the filing fees for this petition are waived. NRAP 21(e).

<sup>2</sup>2007 Nev. Stat., ch. 528, §§ 10.5, 17, at 3261-62, 3265.

concerning meetings to consider prisoners for parole are available to any person with respect to such meetings.”<sup>3</sup>

In his petition, Stockmeier asserts that, under the NRS 213.130 amendments, the quasi-judicial nature of the meeting is a right conferred by statute, entitling him, in addition to those other rights detailed in the statute, to the basic trial protections set forth in Stockmeier v. State, Department of Corrections.<sup>4</sup> In Stockmeier, we noted that parties in quasi-judicial proceedings are generally afforded four minimum protections: “(1) the ability to present and object to evidence, (2) the ability to cross-examine witnesses, (3) a written decision from the public body, and (4) an opportunity to appeal to a higher authority.”<sup>5</sup>

Thus, here, Stockmeier argues that this court should interpret NRS 213.130, as amended, to include these minimum protections—for example, the right to appeal—and he urges this court to set forth procedures for so doing. In the alternative, Stockmeier contends that subsection 3 of the statute is invalid, rendering parole meetings non-quasi-judicial (and thus arguably subjecting them to the open meeting law). In other words, Stockmeier seeks a declaration of his rights or the statute’s status under the amendments, in light of Stockmeier.

A writ of mandamus is generally available to compel the performance of an act that the law requires, or to control a manifest abuse

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<sup>3</sup>Id. § 10.5(3), at 3261. Some other rights conferred under the statute relate to notice and an opportunity to be heard. Id. § 10.5(9), at 3262.

<sup>4</sup>122 Nev. 385, 135 P.3d 220 (2006).

<sup>5</sup>Id. at 391-92, 135 P.3d at 224.

or an arbitrary or capricious exercise of discretion.<sup>6</sup> Mandamus is an extraordinary remedy, and it is within this court's sole discretion to determine if such petitions will be considered.<sup>7</sup> Typically, a writ of mandamus will not issue if petitioner has a plain, speedy, and adequate remedy in the ordinary course of law.<sup>8</sup> Although we have invoked our jurisdiction despite the availability of declaratory relief actions when "circumstances reveal[ed] urgency or strong necessity," or when "an important issue of law need[ed] clarification" and our consideration of the petition furthered public policy,<sup>9</sup> such instances are rare; generally, a writ of mandamus is available to correct a past action, not to direct future action.<sup>10</sup>

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<sup>6</sup>NRS 34.160; see Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991); Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

<sup>7</sup>See Smith, 107 Nev. 674, 818 P.2d 849.

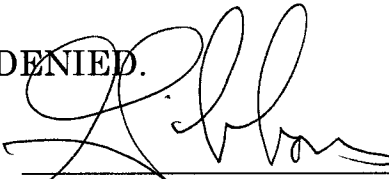
<sup>8</sup>NRS 34.170; Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

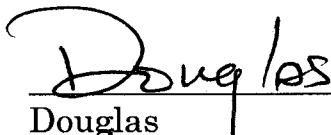
<sup>9</sup>Falke v. Douglas County, 116 Nev. 583, 586, 3 P.3d 661, 662-63 (2000).

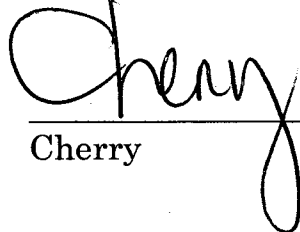
<sup>10</sup>See Brewery Arts Ctr. v. State Bd. Examiners, 108 Nev. 1050, 1053-54, 843 P.2d 369, 372 (1992) ("[A] writ of mandamus will not be 'granted in anticipation of a supposed omission of duty, however strong the presumption may be that the persons whom it is sought to coerce by the writ will refuse to perform their duty when the proper time arrives.' 'It is incumbent on the relator to show, not only that the respondent has failed to perform the required duty, but that the performance thereof is actually due from him at the time of the application.'" (internal citations omitted)).

Here, we conclude that our extraordinary intervention is not warranted, as the circumstances do not appear urgent or of strong necessity, and our consideration of this petition would not necessarily further public policy. In particular, at this time, Stockmeier has neither asserted nor been denied any rights under the revised NRS 213.130. Moreover, the amendments contemplate the adoption of new rules and regulations concerning these issues,<sup>11</sup> and the parole board has not requested our guidance on this matter. Accordingly, we decline to exercise our discretion to consider this petition that seeks to direct the board's future actions, and we

ORDER the petition DENIED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

cc: Robert Leslie Stockmeier  
Attorney General Catherine Cortez Masto/Carson City

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<sup>11</sup>See 2007 Nev. Stat., ch. 528, §§ 17, at 3265.