IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WYDEVEN,
Appellant,
vs.
WARDEN, LOVELOCK CORRECTIONAL CENTER, JACK PALMER AND NEVADA BOARD OF PAROLE COMMISSIONERS,
Respondents.

No. 50748

FILED

JUL 22 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing appellant's petition for a writ of habeas corpus. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

On May 31, 2007, appellant filed a proper person petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On November 2, 2007, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant claimed that his continued incarceration violated due process. Specifically, he claimed that (1) the Parole Board abused its discretion in denying parole despite appellant's favorable Psychological Review Panel result, (2) the Parole Board abused



08-18872

its discretion and violated appellant's due process rights in departing from its established parole guidelines, and (3) the Parole Board improperly granted appellant parole only to amend its order and deny parole after a later hearing.

Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing the petition. Parole is an act of grace; a prisoner has no constitutional right to parole.[1] NRS 213.10705 explicitly states that "it is not intended that the establishment of standards relating [to parole] create any such right or interest in liberty or property or establish a basis for any cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees." The decision of whether or not to grant parole lies within the discretion of the parole board and the creation of standards does not restrict the Parole Board's discretion to grant or deny parole.[2] A due process claim may not be successfully made in the instant case because NRS 213.1099 does not create a constitutionally cognizable liberty

---

[1]See NRS 213.10705; Niergarth v. Warden, 105 Nev. 26, 28, 768 P.2d 882, 883 (1989).

[2]See NRS 213.1099(2) (providing that the parole board shall consider the standards established by the board and other factors in determining whether to deny or grant parole); NAC 213.560(1) (stating that the standards do not restrict the parole board's discretion to grant or deny parole).

interest.[3] Further, it appears the "grant" of parole was a clerical error, and the clerical error was corrected by the amended order.[4] Even assuming that the "grant" was not a clerical error, without actually being released, and thus, receiving the benefit of parole, the purported notification of a grant of parole also does not confer a constitutionally protected liberty interest sufficient to invoke due process.[5] Appellant failed to demonstrate an equal protection violation.[6] Therefore, we affirm the order of the district court.

---

[3]See Severance v. Armstrong, 96 Nev. 836, 839, 620 P.2d 369, 370 (1980).

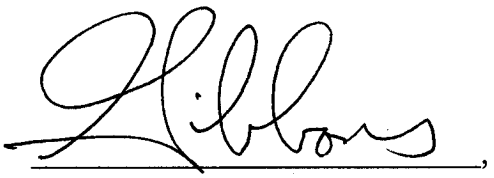
[4]The initial order that appellant contended granted him release actually stated that the parole commissioners' final action was to deny parole, it merely contained errors that indicated that the panel members present initially recommended granting parole.

[5]See Jago v. Van Curen, 454 U.S. 14, 17 (1981); Kelch v. Director, 107 Nev. 827, 830, 822 P.2d 1094, 1095 (1991).

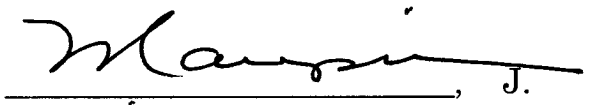
[6]Appellant failed to demonstrate any purposeful discrimination or discriminatory effect in the denial of his parole. See generally Lane v. State, 110 Nev. 1156, 1160-62, 881 P.2d 1358, 1362-63 (1994) (holding that a defendant who alleges an equal protection violation has the burden of demonstrating purposeful discrimination or discriminatory effect), vacated on other grounds on rehearing 114 Nev. 299, 956 P.2d 88 (1998); see also McCleskey v. Kemp, 481 U.S. 279, 292 (1987).

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.[7] Accordingly, we

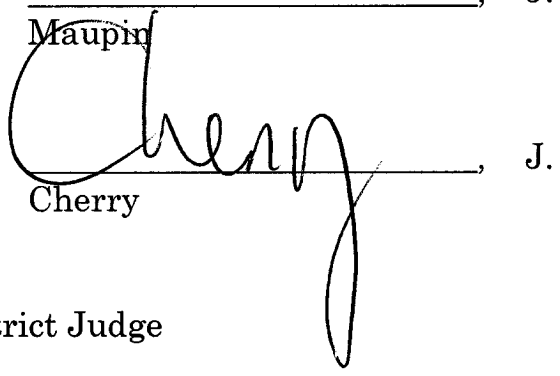
ORDER the judgment of the district court AFFIRMED.[8]



_____, C. J.
Gibbons



_____, J.
Maupin



_____, J.
Cherry

cc: Hon. Richard Wagner, District Judge
James Wydeven
Attorney General Catherine Cortez Masto/Carson City
Pershing County Clerk

---

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

[8]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.