

IN THE SUPREME COURT OF THE STATE OF NEVADA

KOU LO VANG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51177

FILED

MAY 20 2009

TRACIE K. LINDEMAN
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 a petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

On November 19, 1986, the district court convicted appellant, pursuant to a jury verdict, of one count each of conspiracy to commit murder, first-degree murder, conspiracy to commit murder with the use of a deadly weapon and first-degree murder with the use of a deadly weapon. The district court sentenced appellant to serve three consecutive terms of life in the Nevada State Prison with the possibility of parole for the murder counts and the deadly weapon enhancement, plus two consecutive terms of six years for the conspiracy counts. This court dismissed appellant's appeal from his judgment of conviction and sentence. Vang v. State, Docket No. 17993 (Order Dismissing Appeal, November 22, 1988). The remittitur issued on December 13, 1988. Appellant unsuccessfully sought post-conviction relief. Vang v. State, Docket No. 28905 (Order

Dismissing Appeal, July 21, 1998) and Vang v. State, Docket No. 47495 (Order of Affirmance, December 21, 2006).

On February 20, 2007, appellant filed a proper person petition for a writ of habeas corpus in the district court. The State opposed the petition. On April 18, 2007, the district court denied the petition. This appeal followed.

First, appellant claimed that he was not given a meaningful parole hearing on April 29, 2003 because he was not allowed to attend the hearing. Even assuming, without deciding, that appellant had a right to attend the parole hearing, appellant failed to demonstrate that he was entitled to any relief in the instant case. Appellant alleged that he was not allowed to attend the parole hearing on April 29, 2003 and appellant has since had two parole hearings.¹ Appellant did not allege that he was absent from either hearings. Any alleged error committed by the board in not having appellant appear personally before the board was harmless under these circumstances.² Therefore, the district court did not err in denying this claim.

¹Appellant had parole hearings on April 19, 2006, and on July 30, 2007.

²NRS 213.130(9), which provides that the parole board must not deny parole to a prisoner unless the prisoner had been given the opportunity to be present at the parole board meeting, was not enacted until 2007. 2007 Nev. Stat., ch. 528, § 10.5, pg. 3261-62.

Second, appellant claimed that the Department of Corrections incorrectly added a deadly weapon enhancement to his conviction for conspiracy to his inmate file. Appellant alleged this error adversely affected his ability to be paroled. Appellant claimed that, due to the error in his inmate file, his equal protection and due process rights were violated because the parole board did not base its parole decision on accurate evidence. Appellant further claimed that the error caused his crime severity level to be improperly set by the parole board at Category A-1, but that he should have been classified at a Category A-3.

Appellant was informed by the parole board that it used his presentence investigation report and the judgment of conviction to determine whether to grant him parole and not the Department of Corrections information.³ As such, appellant cannot demonstrate any prejudice by any alleged mistakes in the Department of Corrections information or that the parole board did not rely on accurate evidence. Further, as appellant was convicted of first-degree murder, he failed to demonstrate that he should not be considered at Category A-1. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that he was denied mandatory parole and that this denial violated his liberty interest in parole. Appellant

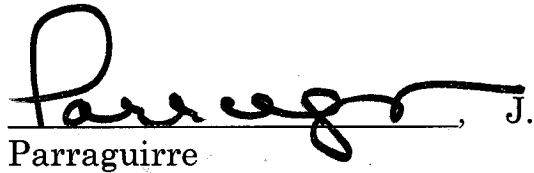
³The State claimed that any errors in the Department of Corrections information have since been corrected and the information accurately reflects appellant's judgment of conviction.

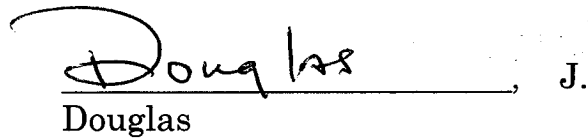
failed to demonstrate that he was entitled to be paroled. Parole is an act of grace; a prisoner has no constitutional right to parole. See NRS 213.10705; Niergarth v. Warden, 105 Nev. 26, 28, 768 P.2d 882, 883 (1989). NRS 213.10705 explicitly states that “it is not intended that the establishment of 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. 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). Further, NRS 213.1215 provides that a prisoner must be released at least 12 months before the expiration of his maximum term. Appellant is serving a life term and life terms do not expire. Thus, appellant is not eligible for a mandatory parole and the decision to deny him parole did not violate his liberty interests. Therefore, the district court did not err in denying this claim.

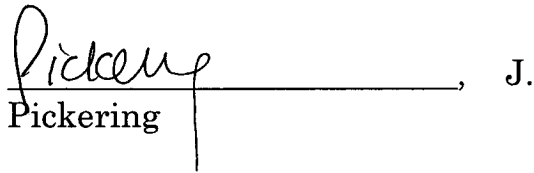
Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted. See Luckett v. Warden, 91

Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Douglas W. Herndon, District Judge
Kou Lo Vang
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁴We 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.