

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD M. PHILLIPS, SR.,
Appellant,
vs.
WARDEN, N.N.C.C., GEORGE GRIGAS,
Respondent.

No. 34626

FILED

NOV 18 1999

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. On April 17, 1996, the district court convicted appellant of one count of trafficking in a controlled substance and one count of unlawful possession of a controlled substance not for the purpose of sale. See NRS 453.3385(1); NRS 453.336. The district court sentenced appellant to serve a term of six years for trafficking and a concurrent term of three years for possession in the Nevada State Prison. On June 4, 1996, the district court entered an amended judgment of conviction granting appellant forty-one days of credit for time served.

On September 10, 1997, appellant filed a proper person post-conviction 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 July 30, 1999, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he was entitled to an initial appearance before the parole board on the trafficking count approximately one year after sentencing. Appellant stated that a prison staff member had advised him that he must serve a three-year mandatory minimum term before he could appear before the parole board. Appellant argued that the district court did not impose a mandatory minimum term for parole eligibility.

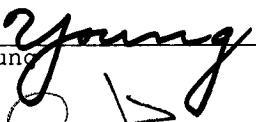
Preliminarily, we note that the district court states in the order denying the petition that appellant expired his


sentence and was released from prison on July 9, 1999. Because appellant only raised a challenge to his sentence, this appeal is moot. See generally Johnson v. Director, Dep't Prisons, 105 Nev. 314, 316, 774 P.2d 1047, 1049 (1989) (stating that expiration of a defendant's sentence rendered any question concerning computation of the sentence moot).

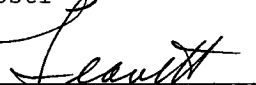
Moreover, appellant's contention lacks merit. Based on the statute in effect at the time of appellant's offense for trafficking in a controlled substance in March of 1995, appellant was required to serve a minimum term of three years before parole eligibility. Appellant was convicted pursuant to NRS 453.3385(1), which provided for a term of imprisonment of not less than three years nor more than twenty years.¹ Further, NRS 453.3405(1) provides that a person sentenced pursuant to NRS 453.3395 "is not eligible for parole until he has actually served the mandatory minimum term of imprisonment prescribed by the section under which he was convicted."

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 Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976). Accordingly, we

ORDER this appeal dismissed.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

¹The 1995 amendment to NRS 453.3385(1) reduced the penalty to a minimum term of not less than one year and a maximum term of not more than six years. See 1995 Nev. Stat., ch. 443, § 296 at 1288. This amendment became effective on July 1, 1995, and does not apply to offenses committed prior to that date. See 1995 Nev. Stat., ch. 443, §§ 393-94, at 1340.

cc: Hon. Michael R. Griffin, District Judge
Attorney General
Carson City District Attorney
Ronald M. Phillips, Sr.
Carson City Clerk