

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY WHITE,
Appellant,

vs.

JIM BENEDETTI, WARDEN;
HOWARD SKOLNIK, DIRECTOR
NEVADA DEPARTMENT OF
CORRECTIONS; NEVADA PAROLE
COMMISSION, AND THE STATE OF
NEVADA,
Respondents.

No. 51952

FILED

JAN 30 2009
TRACEY 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 mandamus. First Judicial District Court, Carson City; James Todd Russell, Judge.

On November 24, 2004, the district court convicted appellant, pursuant to a guilty plea, of robbery in district court case number C202792. The district court sentenced appellant to serve 36 to 120 months in the Nevada State Prison. Appellant was provided with 27 days of credit for time served.

On May 19, 2005, the district court convicted appellant, pursuant to a guilty plea, of battery constituting domestic violence (third offense) in district court case number C208555. The district court sentenced appellant to serve 12 to 30 months in the Nevada State Prison. Appellant was provided with 185 days of credit for time served.

On April 8, 2008, appellant filed a proper person petition for a writ of mandamus in the district court. The State opposed the petition.

On May 23, 2008, the district court denied the petition. This appeal followed.

In his petition, appellant claimed that the respondents failed to properly apply and calculate his statutory credits. Based upon this alleged error, appellant claimed that he was denied a timely parole hearing pursuant to NRS 213.1215.

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 or capricious exercise of discretion. NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). A writ of mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law. NRS 34.170.

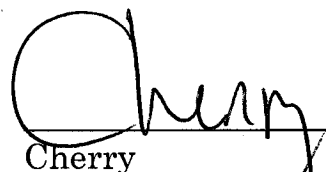
The district court concluded appellant had a plain, speedy and adequate remedy in the ordinary course of law to challenge his claim regarding credits. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that a writ of mandamus was not available to challenge the application and calculation of his statutory credits. NRS 34.724(2)(c) provides that a post-conviction petition for a writ of habeas corpus is the only remedy available to challenge the computation of time served. Thus, we conclude that the district court did not err in denying this claim.

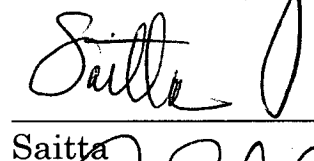
Next, the district court concluded that appellant had no due process right to mandatory parole release and that the documents submitted by the respondents indicated that appellant was not yet eligible for a mandatory parole release pursuant to NRS 213.1215. Without deciding the issue regarding a due process right to mandatory parole

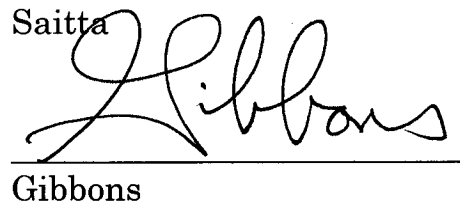
release, we conclude that appellant failed to demonstrate that he was deprived of timely release pursuant to NRS 213.1215. NRS 213.1215(1) provides that certain eligible prisoners must be released on parole 12 months before the end of the maximum term. NRS 213.1215(3) further provides that at least 2 months before a prisoner would otherwise be paroled, the Parole Board may require the prisoner to serve the remainder of his sentence if the Board determines that there is a reasonable probability that the prisoner will be a danger to public safety while on parole. Appellant failed to demonstrate that any protected rights were violated under NRS 213.1215. The documents before this court indicate that appellant had a projected expiration date of January 17, 2010. Thus, appellant was not eligible for mandatory parole release when he filed his petition. Therefore, we conclude that 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 Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Cherry

 _____, J.
Saitta

 _____, J.
Gibbons

cc: Hon. James Todd Russell, District Judge
Anthony White
Attorney General Catherine Cortez Masto/Carson City
Carson City Clerk