

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEROY COLLINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 34695

FILED

JUN 15 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's petition for a writ of mandamus.

On July 21, 1998, appellant filed a proper person petition for a writ of mandamus in the district court. The State opposed the petition, and appellant filed a reply. On July 30, 1999, the district court denied appellant's petition. This appeal followed.

In his petition, appellant argued that the decisions of the psychiatric panel and parole board to deny him parole were harsh, arbitrary, unreasonable and an abuse of discretion. Appellant further argued that the decisions violated his federal and state equal protection rights. Appellant stated that he had been convicted in 1977 of the crime of rape, for which he received a sentence of life with the possibility of parole. Appellant indicated that he had been certified pursuant to former NRS 200.375 and paroled in 1987, but that his parole had been revoked due to subsequent convictions in 1989 and 1990. Specifically, he was

subsequently convicted of three counts of sexual assault with the use of a deadly weapon, three counts of robbery with the use of a deadly weapon, and one count of burglary. Appellant argued that the district court should invalidate a prison regulation that requires certification by the psychiatric panel for an institutional parole because there is no imminent danger to the public.¹ Appellant believed he should not be subject to the certification requirement until he was eligible for a parole to the streets. Appellant requested the district court to order the parole board to reconsider his parole application.

Based upon our review of the record on appeal, we conclude that the district court did not abuse its discretion in denying appellant's petition for a writ of mandamus.² Parole is an act of grace of the state; a prisoner has no constitutional right to parole.³ The subject of parole is within the legislative authority.⁴ The Legislature has provided for the manner in which a prisoner convicted of sexual assault may be paroled.⁵ NRS 213.1214(1) provides that

¹Appellant noted that due to his subsequent convictions he had six consecutive life terms to serve in addition to the life term he was serving for the 1977 conviction.

²See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).

³NRS 213.10705; Niergarth v. Warden, 105 Nev. 26, 768 P.2d 882 (1989).

⁴Pinana v. State, 76 Nev. 274, 283, 352 P.2d 824, 829 (1960).

⁵See NRS 213.1214.

the parole board shall not release a prisoner who has been convicted of sexual assault on parole unless a psychiatric panel certifies that the prisoner is "not a menace to the health, safety or morals of others." NRS 213.1214(2) provides that "[a] prisoner who has been certified . . . and who returns for any reason to the custody of the department of prisons may not be paroled unless a panel recertifies him." NRS 213.1214(4) provides that, "[t]his section does not create a right in any prisoner to be certified or continue to be certified. No prisoner may bring a cause of action against the state, its political subdivisions, agencies, boards, commissions, departments, officers or employees for not certifying." Nevada Prison Regulation 537(V)(A)(5)(a) properly fits within this statutory scheme.⁶ Thus, appellant was properly required to appear before a psychiatric panel for certification in order to be eligible for an institutional

⁶Nevada Prison Regulation (V)(A)(5)(a), in pertinent part, provides:

There are restrictions placed on parole eligibility for persons convicted of committing or attempting to commit certain offenses which involve sexually deviant behavior or behavior which offends public morals and decency. . . . Persons so convicted may not be paroled from that sentence unless a "Psych Panel" first certifies that the inmate is not a menace to the health, safety or morals of others. . . . Certification for parole eligibility is offense specific, applying only to the singular sentence or concurrent sentences for which it was granted. A separate certification is required for each consecutive sentence which falls under the purview of the Psych Panel.

parole. Appellant failed to demonstrate that his equal protection rights were violated.⁷ Appellant further failed to demonstrate that the decisions of the psychiatric panel or parole board were harsh, arbitrary, unreasonable or an abuse of discretion. Therefore, the district court did not err in denying appellant the relief requested.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹

Young J.
Young
Leavitt J.
Leavitt
Becker J.
Becker

cc: Hon. Michael R. Griffin, District Judge
Attorney General
Carson City District Attorney
Leroy Collins
Carson City Clerk

⁷Plyler v. Doe, 457 U.S. 202 (1982); Armijo v. State, 111 Nev. 1303, 904 P.2d 1028 (1995).

⁸See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

⁹We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.