

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR TERRELL,
Appellant,
vs.
MS. JACKSON, CHAIRMAN, NEVADA
STATE BOARD OF PAROLE AND
PROBATION COMMISSION,
Respondents.

No. 52081

FILED

APR 14 2009

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY J. Alvarado
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a petition for a writ of habeas corpus. First Judicial District Court, Carson City; James Todd Russell, Judge.

On April 29, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus challenging a parole revocation. The State opposed the petition. Appellant filed a reply. On July 2, 2008, the district court dismissed the petition. This appeal followed.

First, appellant claimed that his due process rights were violated because the parole revocation hearing was not conducted within 60 days of his detainment. Appellant failed to demonstrate that his due process rights were violated. “[R]evocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations.” Morrissey v. Brewer, 408 U.S. 471, 480 (1972). Morrissey requires a hearing within a reasonable time after a parolee is taken into custody and the court reasoned that two months was not unreasonable. Id. at 488. Further,

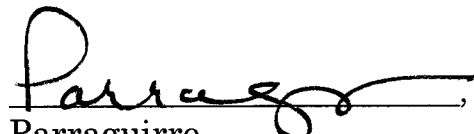
NRS 213.1517(3) requires that the parole board hold a hearing within 60 days of a prisoner's return to the custody of the Nevada Department of Corrections. Here, the length of time was not unreasonable and NRS 213.1517 was not violated. Appellant was confined in the Washoe County Jail on January 8, 2008, transferred to the Department of Corrections on February 22, 2008 and a parole revocation hearing was held on March 12, 2008. As such, the parole revocation hearing was held within 60 days of his transfer to the Department of Corrections. Thus, appellant failed to demonstrate that his due process rights were violated, and the district court did not err in denying this claim.

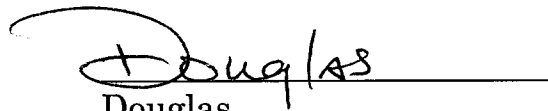
Second, appellant claimed that the parole board erred because "Assembly Bill 510, Section 8, Paragraph 8.6" required the parole board to order him to a community correctional center, a conservation camp, a facility of minimum security, or other place of confinement for not more than six months rather than revoke his parole. Instead, the parole board revoked appellant's parole and ordered him to serve three years in the Nevada State Prison. Appellant failed to demonstrate that the parole board erred. The legislature amended NRS 213.152 in 2007. 2007 Nev. Stat., ch. 525, § 8.6 at 3183-84. Under NRS 213.152, the parole board may order a parolee who violated the terms of parole to a residential confinement facility instead of revoking parole. Placement in a residential confinement facility is discretionary and the parolee's criminal record and seriousness of the crime committed are considered when making that determination. *Id.* As the parole board's determination of placement in a residential confinement facility is discretionary and not mandatory, appellant failed to demonstrate that the parole board erred by revoking

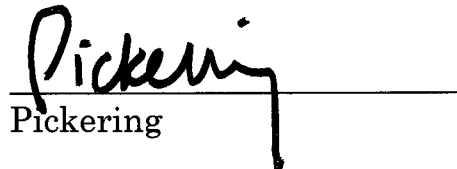
his parole and ordering him to the Nevada State Prison. Therefore, the district court did not err in denying this claim.

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.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

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