IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 52285

FILED

DEC 17 2008

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE AND DISMISSING APPEAL IN PART

This is a proper person appeal from an order of the district court dismissing a petition for a writ of habeas corpus and an order denying a motion for reconsideration. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On April 24, 2008, appellant filed a proper person petition for a writ of habeas corpus in the district court. On May 2, 2008, appellant filed a motion for the appointment of counsel, and on May 15, 2008, appellant filed a motion for production of documents. The State filed a motion to dismiss, and appellant filed a response. On September 5, 2008, the district court dismissed the petition and aforementioned motions. Appellant filed a motion to reconsider the decision, and the district court subsequently denied the motion. This appeal filed.[1]

Our review of this appeal reveals a jurisdictional defect regarding a portion of the appeal. The right to appeal is statutory; where

[1]To the extent that appellant appealed the decision to deny his motion for the appointment of counsel and motion for production of documents, we conclude that the district court did not abuse its discretion in denying these motions.

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no statute or court rule provides for an appeal, no right to appeal exists.[2] No statute or court rule provides for an appeal from an order denying a motion to reconsider. Therefore, we dismiss this portion of the appeal.

In his petition for a writ of habeas corpus, appellant challenged actions of the Parole Board, Psych Panel, and Department of Corrections. The district court dismissed the petition on the grounds that the petition was filed in a district court case in which the charges had been dismissed and that the claims were baseless. We conclude that the district court erroneously determined that the filing of the petition in the wrong case warranted dismissal. The proper person petition submitted by appellant for filing did not contain a district court case number; rather, it appears that the clerk of the district court elected to file the petition in the district court case in which the charges had been dismissed. Because appellant was challenging the legality of his continued confinement based on alleged errors relating to parole, appellant's petition was in the nature of a true habeas corpus petition filed pursuant to NRS 34.360. The clerk of the district court should have filed the petition as a new and separate matter from his earlier district court cases. Regardless, based upon our review of the record on appeal, we conclude that the district court did not err in determining that the petition was without merit.

First, appellant claimed that the Parole Board violated his due process rights when the Parole Board "refuse[d] to release [appellant] off of the 'parole violation status.'" Appellant asserted that he was granted parole on a 1977 conviction involving a life sentence for rape in 1987 (district court case number C36811). Appellant stated that his parole for

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[2]Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990).

the 1977 life sentence, what he termed his "grace of the state contract" parole, was revoked in 1989 after he was convicted of new offenses, including multiple sexual assaults (district court case number C82510). Appellant argued in his petition that the Parole Board had no right to require him to go to the Parole Board on the 1977 life sentence. Appellant reasoned that he had an absolute right to institutional parole when he had served the minimum sentence required for parole eligibility, and thus, because he had already reached the minimum term on the 1977 life sentence, the Parole Board should have treated that sentence as being institutionally paroled. Based upon his belief that an institutional parole is a right upon serving a minimum sentence, appellant reasoned that the only parole revoked was his "grace of the state contract" parole, or his parole from the institution to the streets.

Appellant's claims for relief were patently without merit. Although there is a distinction between an institutional parole and a parole from the institution to the streets in terms of an offender's location, there is absolutely no distinction in process. An institutional parole and a parole "to the streets" require the same process—appearance before the Parole Board pursuant to NRS 213.1099. Further, there is no right to parole in Nevada; parole, whether it is institutional from one sentence to another or to the streets, is an act of grace of the State.[3] No protected due process right was infringed, and the district court did not err in determining that no relief was warranted.

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[3]See NRS 213.10705; Niergarth v. Warden, 105 Nev. 26, 28, 768 P.2d 882, 883 (1989).

Next, appellant claimed that his due process rights were violated when he was required to receive Psych Panel certification for parole eligibility. Appellant argued that he should not have had to receive certification for an institutional parole. We conclude that no relief is warranted. NRS 213.1214 requires a sex offender to receive certification from a Psych Panel prior to being released on parole. In 2007, in Stockmeier v. Psychological Review Panel,[4] this court clarified that a sex offender with multiple sentences for sexual crimes need not receive certification from the Psych Panel before being institutionally paroled to the next sentence; instead, a sex offender is only required to receive certification when he is eligible for parole from his final sentence.[5] In Douglas v. State,[6] this court further clarified that Psych Panel certification is required for the sentence for the final sexual offense, whether it is an institutional parole or a parole to the streets.[7] Appellant failed to demonstrate that Psych Panel certification was improperly applied to him after the decision in Stockmeier. Even assuming that appellant was improperly required to receive Psych Panel certification prior to this court's decision in Stockmeier, appellant failed to demonstrate that he was entitled to any relief when he filed his petition as the only remedy available is a parole hearing without the prerequisite of

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[4]122 Nev. 534, 541, 135 P.3d 807, 811 (2006).

[5]Id. at 541-42, 135 P.3d at 812.

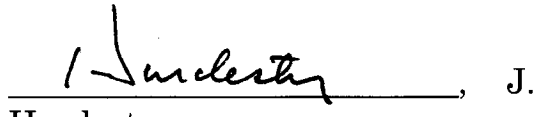
[6]124 Nev. ___, 184 P.3d 1037 (2008).

[7]Id. at ___, 184 P.3d at 1041.

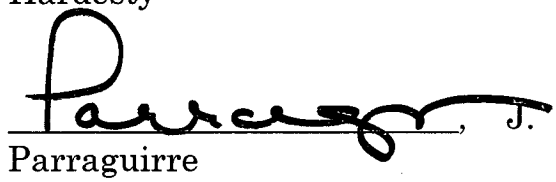
certification. Appellant is not entitled to retroactive parole.[8] Therefore, appellant failed to demonstrate that his constitutional rights were violated, and we conclude that the district court did not err in dismissing this claim.

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.[9] Accordingly, we

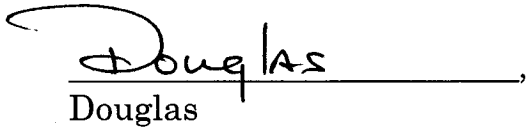
ORDER the September 5, 2008 judgment of the district court AFFIRMED and DISMISS the appeal in part.



_____, J.
Hardesty



_____, J.
Parraguirre



_____, J.
Douglas

cc: Hon. Michelle Leavitt, District Judge
Leroy Collins
Attorney General Catherine Cortez Masto/Las Vegas
Eighth District Court Clerk

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[8]Niergarth v. Warden, 105 Nev. 26, 29, 768 P.2d 882, 884 (1989).

[9]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).