IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM CATO SELLS, JR.,
Appellant,
vs.
WARDEN GLEN WHORTON,
Respondent.

No. 52893

FILED

MAR 18 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
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. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

On November 30, 2005, appellant filed a proper person petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition. Appellant filed a response to the motion to dismiss. Appellant and the State filed further pleadings. On November 14, 2008, the district court dismissed the petition. This appeal followed.

In his petition, appellant challenged his continued classification as a High Risk Potential inmate. Appellant claimed that this classification was a result of a disciplinary incident which should have expired long ago, but that the prison arbitrarily and capriciously maintained the HRP status. Appellant appeared to challenge the denial of parole as a result of his HRP status and his parole score. Appellant complained that the Parole Board previously relied upon the presentence

investigation report that indicated he had 29 prior felony convictions, when in fact he had only 16 or 18 prior felony convictions.[1] Appellant further appeared to challenge the parole board's ex post facto application of a 1995 change in NRS 213.142 to increase the time between parole hearings for an inmate in appellant's situation to 5 years. Compare NRS 213.142(2) ("If the prisoner who is being considered for parole has more than 10 years remaining on the term of his sentence . . . when the Board denies his parole, the elapsed time between hearings must not exceed 5 years.") with 1973 Nev. Stat., ch. 129, § 2, at 190 ("Upon denying an application for parole, the board shall schedule a rehearing. The date for the rehearing shall be at the discretion of the board, but in no case shall the elapsed time between hearings exceed 3 years.").[2] Appellant argued that various constitutional rights were violated by his classification and his classification problems stemmed from retaliation on the part of prison officials.

Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing appellant's petition. This court has "repeatedly held that a petition for [a] writ of habeas corpus may challenge the validity of current confinement, but not the conditions

---

[1]Appellant noted that this error was corrected in 2003.

[2]The 1995 amendments to NRS 213.142 were not made retroactive. 1995 Nev. Stat., ch. 444, §§ 32, 52, at 1360-61, 1381.

thereof." Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984); see also Sandin v. Conner, 515 U.S. 472, 484 (1995) (holding that liberty interests protected by the Due Process Clause will generally be limited to freedom from restraint which imposes an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life). Appellant's claims challenging his HRP classification constitute a challenge to the conditions of confinements. Consequently, appellant's challenge was not cognizable in a petition for a writ of habeas corpus.[3] To the extent that appellant challenged the denial of parole, appellant's claim was without merit as parole is an act of grace of the state and there is no cause of action permitted when parole has been denied. See NRS 213.10705; Niergarth v. Warden, 105 Nev. 26, 768 P.2d 882 (1989). To the extent that appellant challenged the denial of timely parole hearings, the district court found that any confusion regarding NRS 213.142 had been corrected. Appellant failed to establish that he was denied timely parole consideration. Therefore, we affirm the order of the district court dismissing the petition.

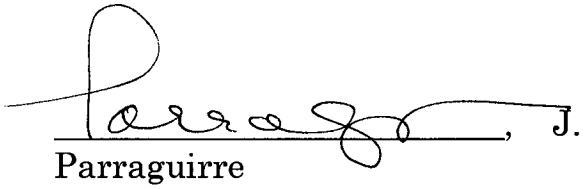
Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

---

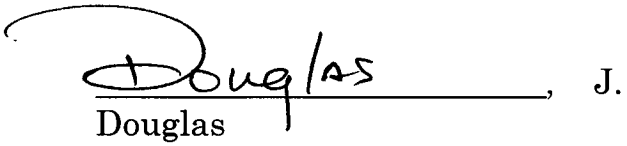
[3]Notably, from the documents submitted in the proceedings below, it appears that appellant is in fact litigating his classification status in a civil rights petition in the federal courts.

briefing and oral argument are unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

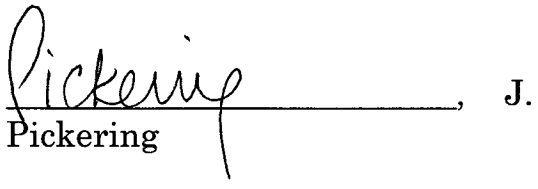
ORDER the judgment of the district court AFFIRMED.



_____, J.
Parraguirre



_____, J.
Douglas



_____, J.
Pickering

cc: Hon. Steve L. Dobrescu, District Judge
William Cato Sells Jr.
Attorney General Catherine Cortez Masto/Ely
White Pine County Clerk