IN THE SUPREME COURT OF THE STATE OF NEVADA

PEDRO ROSALES-MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53093

FILED

JUL 09 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 denying a petition for a writ of mandamus (first amendment). First Judicial District Court, Carson City; William A. Maddox, Judge.

On October 28, 2008, appellant filed a proper person petition for a writ of mandamus (first amendment) in the district court. The district court indicated that it was treating the document as a petition for a writ of habeas corpus and ordered a response. Appellant filed a motion for clarification, asserting that the petition was not a petition for a writ of habeas corpus. The State filed a motion to dismiss the petition. Appellant filed a reply. On December 16, 2008, the district court denied the petition. This appeal followed.

In his petition, appellant argued that his classification as a member of a security threat group, the Surenos (a gang), violated his due process rights. Appellant asserted that he had been placed in administrative segregation for over 3 years because of this classification. Appellant asserted that this classification arose when letters written by appellant were intercepted. Appellant claimed that this was a violation of his First Amendment rights.

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Preliminarily, we note that the district court improperly treated the petition as a petition for a writ of habeas corpus. Appellant's claims challenge the conditions of confinement, and as such, they cannot be raised in a petition for a writ of habeas corpus.[1] Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984) (stating that 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 thereof"); 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). Nevertheless, we affirm the order of the district court because the district court reached the correct result in denying the petition for the reasons discussed below. See Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

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.

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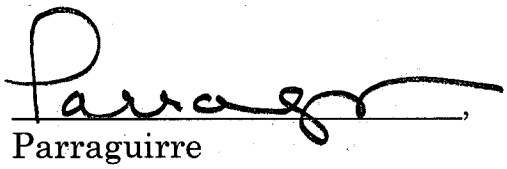
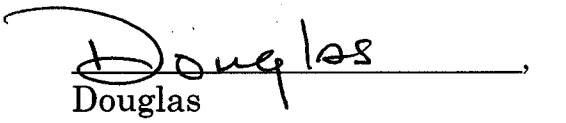
[1]Notably, appellant stated that he was not challenging the loss of statutory good time credits at a prison disciplinary hearing relating to the intercepted letter.

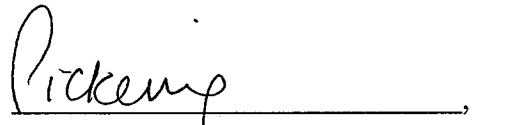
A writ of mandamus will not lie in the instant case because appellant has an adequate remedy in the ordinary course of law. Appellant's challenge to his classification and placement in administrative segregation may be raised in a civil rights petition. Appellant's challenge did not implicate a prior restraint, and thus, his reliance on NRS 34.185 was misplaced. See generally Baby Tam & Co., Inc. v. City of Las Vegas, 154 F.3d 1097, 1100 (9th Cir. 1998) ("A prior restraint exists when the enjoyment of protected expression is contingent upon the approval of government officials."). Therefore, we affirm the order of the district court.

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: First Judicial District Court Dept. 2, District Judge
Pedro Rosales-Martinez
Attorney General Catherine Cortez Masto/Carson City
Carson City Clerk