IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCOS CHALA,
Appellant,
vs.
NEVADA BOARD OF PAROLE COMMISSIONERS, AND HOWARD SKOLNIK, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS,
Respondents.

No. 53230

FILED

AUG 21 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
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 mandamus. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

On July 25, 2008, appellant filed a proper person petition for a writ of mandamus in the district court. Appellant filed a document requesting the appointment of counsel. The State filed a motion to dismiss the petition and an opposition to the request for counsel. On November 26, 2008, the district court dismissed the petition and did not appoint counsel to represent appellant in the proceedings below. This appeal followed.[1]

[1]To the extent that appellant challenged the denial of his request for counsel, we conclude that the district court did not abuse its discretion in denying the appointment of counsel.

09-20461

In his petition, appellant claimed that the Chairman of the Board of Parole Commissioners exceeded statutory authority in repeatedly denying appellant parole. Appellant further appeared to claim that his credits were not properly computed or applied by the Department of Corrections.

The district court dismissed the petition because it was erroneously filed in the criminal case.[2] Based upon our review of the record on appeal, we conclude that this was an insufficient reason to dismiss the petition. Even assuming that a petition for a writ of mandamus should be filed in a separate civil action, the filing of a petition for a writ of mandamus in a criminal case appeared to be a filing issue for the district court clerk's office and a curable defect.[3] Nevertheless, relief was properly denied in this case, and we affirm the decision to dismiss the petition for the reasons discussed below. See Kraemer v. Kraemer, 79

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[2]The district court further noted that the State had argued that the petition was required to be personally served on the Attorney General. Nothing in the provisions in NRS chapter 34 relating to writs of mandamus required personal service of the petition for a writ of mandamus and such a requirement appears manifestly unfair to an incarcerated person. NRS 34.200 expressly recognizes that the application for a writ of mandamus may in actuality be made without notice to the adverse party, although the court would issue an alternative writ if the writ is allowed. However, if the district court determines to issue or grant the writ, the writ itself must be treated and served in the same manner as a summons in a civil action. See NRS 34.280(1). A petition or application for a writ of mandamus is distinct from the writ that is issued by the court.

[3]Even if a petitioner designated a criminal case number on the face of his petition, nothing would prevent the clerk of the district court from filing the petition as a separate action.

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).

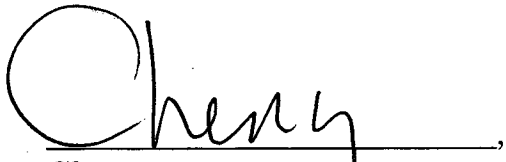
A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station or to control an arbitrary or capricious exercise of discretion. NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). A writ of mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law. NRS 34.170.

Appellant was not entitled to relief by way of a petition for a writ of mandamus in the instant case. First, appellant's challenge to the denial of parole was patently without merit. Parole is an act of grace; a prisoner has no constitutional right to parole. See NRS 213.10705; Niergarth v. Warden, 105 Nev. 26, 28, 768 P.2d 882, 883 (1989). NRS 213.10705 explicitly states that "it is not intended that the establishment of standards relating [to parole] create any such right or interest in liberty or property or establish a basis for any cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees." NRS 213.1099 does not create a constitutionally cognizable liberty interest. See Severance v. Armstrong, 96 Nev. 836, 839, 620 P.2d 369, 370 (1980). Further, a challenge to the computation of time served must be raised in a post-conviction petition for a writ of habeas corpus filed in the district court for the county in which appellant is

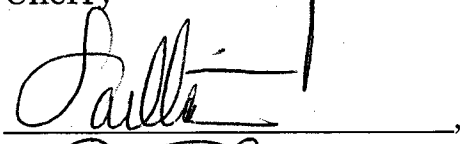
incarcerated.[4] NRS 34.724(2)(c); NRS 34.738(1). Therefore, we affirm the decision of the district court to dismiss the petition.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

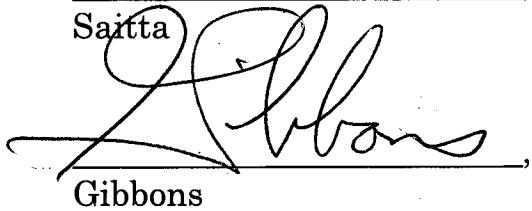
ORDER the judgment of the district court AFFIRMED.[5]



_____, J.
Cherry



_____, J.
Saitta



_____, J.
Gibbons

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[4]We note that a claim that the Department incorrectly calculated his credits is insufficient to warrant relief; to avoid denial, a petitioner must set forth specific factual allegations not belied by the record, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

[5]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Valorie Vega, District Judge
Marcos Chala
Attorney General Catherine Cortez Masto/Las Vegas
Eighth District Court Clerk