

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALAN E. WYATT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53516

FILED

SEP 25 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On March 17, 2008, appellant filed a proper person petition for a writ of mandamus in the district court. The State opposed the petition. On October 7, 2008, the district court entered an order dismissing the petition. On October 28, 2008, the district court vacated the October 7, 2008 order. Appellant filed a response to the State's opposition. On April 29, 2009, the district court denied the petition as moot. This appeal followed.

In his petition, appellant claimed that the Parole Board failed to conduct a timely parole hearing, and consequently, appellant sought an order directing the Parole Board to conduct a parole hearing.

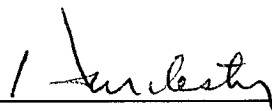
A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station or to control an arbitrary or capricious exercise of discretion. NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). A writ of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

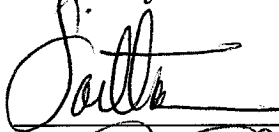
34.170. Pursuant to NRS 213.140, when a prisoner becomes eligible for parole, the Parole Board shall consider parole.

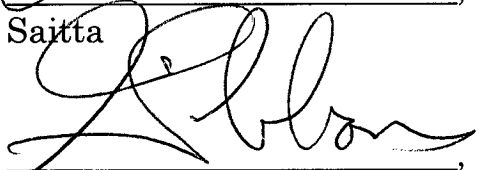
Subsequent to the filing of his petition, appellant discharged the sentence at issue in the instant case. In light of this fact, the district court determined that the petition was moot. We conclude that the district court did not abuse its discretion in denying the petition as moot. The only relief available, a parole hearing, was rendered moot by the subsequent discharge of the sentence. The fact that appellant has a consecutive sentence left to serve does not alter this analysis as Nevada does not recognize retroactive parole and appellant must be eligible for parole on each sentence in order to be considered for parole. See Niergarth v. Warden, 105 Nev. 26, 29, 768 P.2d 882, 884 (1989); see also NRS 213.140. Therefore, we affirm the order of the district court denying 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 Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Hardesty


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Jackie Glass, District Judge
Alan E. Wyatt
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk