IN THE SUPREME COURT OF THE STATE OF NEVADA

USMAN ANUKU SADIQ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54066

FILED

DEC 11 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. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

On April 23, 2009, appellant filed a proper person petition for a writ of mandamus in the district court. The State opposed the petition. Appellant filed a response. On June 11, 2009, the district court denied the petition. This appeal followed.

In his petition, appellant claimed that the Parole Board acted arbitrarily and capriciously in denying parole. Appellant asserted that he should have been granted parole because he was rated a low risk to reoffend and he had served the minimum sentence imposed by the district court. Appellant further claimed that he was denied the right to be present at the 2008 parole hearing. Finally, appellant suggested that he was denied parole because of his race.

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 failed to demonstrate that the Parole Board acted in an arbitrary and capricious manner in denying parole. Appellant had no constitutional right to be granted parole as parole is an act of grace. See NRS 213.10705; Niergarth v. Warden, 105 Nev. 26, 768 P.2d 882 (1989). Appellant had no right to serve less than the lawfully imposed sentence. NRS 213.1099 (providing that the decision to release on parole is discretionary); Weakland v. Bd. of Parole Comm'rs, 100 Nev. 218, 678 P.2d 1158 (1984) (recognizing that Nevada's parole statutory scheme did not create a constitutionally cognizable liberty interest); cf. Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1 (1979) (holding that there is not a constitutional right to be conditionally released before expiration of a valid sentence, but recognizing that the state may create a liberty interest with the language used in the statutory scheme). 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." Appellant was not entitled to be present at the 2008 hearing.[1]

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[1]NRS 213.130 was amended in 2007 to specifically provide for the right to be present at a parole hearing. 2007 Nev. Stat., ch. 528, § 10.5, at 3261-62. However, subsequent to that enactment, at a 2008 special session, the legislature determined that this provision was suspended until June 30, 2009. 2008 Nev. Stat. 24th Special Session, ch. 6, § 2, at 7.

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The Parole Board may deviate from the guidelines in deciding whether to grant to deny parole; the guidelines are merely one factor for consideration in making the decision. NRS 213.1099(2); N.A.C. 213.560 (providing that the Parole Board may deviate from its standards based upon several factors, including the severity of the offense, the facts of the offense, and the need for continued confinement to protect the public). Appellant failed to demonstrate that race played any part in the decision to deny parole. 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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

. . . *continued*

At the time the hearing was conducted in this case, the provision requiring a prisoner to be present was suspended.

cc: Hon. Stefany Miley, District Judge
Usman Anuku Sadiq
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk