

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERNANDO R. JIMENEZ,
Appellant,


vs.

THE STATE OF NEVADA BOARD OF
PAROLE COMMISSIONERS; NEVADA
DEPARTMENT OF CORRECTIONS;
AND WARDEN, LOVELOCK
CORRECTIONAL CENTER, JACK
PALMER,
Respondents.

No. 54629

FILED

MAY 07 2010

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 habeas corpus.¹ Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

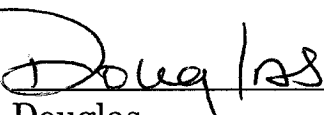
Having reviewed the record on appeal, we conclude that substantial evidence supports the decision of the district court to deny relief and that the district court did not err as a matter of law. Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). We therefore affirm

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

the denial of the petition for the reasons stated in the attached district court order. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Richard Wagner, District Judge
Fernando R. Jimenez
Attorney General/Carson City
Attorney General/Reno
Pershing County Clerk

²We 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.

FILED

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1 Case No. PI 08-0633

2 Dept. No. 1

DONNA GILES
DISTRICT COURT CLERK

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IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

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IN AND FOR THE COUNTY OF PERSHING

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* * * *

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FERNANDO R. JIMENEZ,)

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Petitioner,)

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vs.)

ORDER

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NEVADA BOARD OF PAROLE)

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COMMISSIONERS, et al.,)

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Respondents.)

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On July 7, 2008 Petitioner filed a Petition for a Writ of Habeas Corpus and Mandamus. This Court on August 11, 2008 issued an Order to Respond. On September 12, 2008 Respondents filed an Answer. On September 19, 2008 Petitioner filed a Motion for Extension of Time Pursuant to NRCP 5(b), and on October 8, 2008 Petitioner filed an Opposition to Motion to Respondents' Motion to Deny Petition. On October 15, 2008 Respondents filed a Motion to Strike, and Petitioner promptly filed Petitioner's Opposition Motion to Deny the Respondents'

1 Motion to Strike. Finally, on August 24, 2009 Respondent filed
2 a Request for Submission.

3 DISCUSSION

4 This Court has reviewed the Petition for Writ of
5 Habeas Corpus and Mandamus and other pleadings herein.

6 This Court finds that intervention by way of mandamus
7 is not warranted by this Court but will treat Petitioner's writ
8 as one of Habeas Corpus.
9

10 The Court also finds, pursuant to NRS 34.750(5),
11 Petitioner's Opposition to Motion to Respondents' Motion to
12 Deny Petition filed on October 15, 2008 was improper as such
13 pleading is not permitted by law. This Court grants
14 Respondents' Motion to Strike.
15

16 In regards to the Habeas Petition, Petitioner has no
17 liberty interest to a parole hearing before the Parole Board on
18 a specific date. In Nevada, the release of an inmate on parole
19 "is an act of grace of the state." NRS 213.10705.

20 Specifically, NRS 213.10705 states:

21 The Legislature finds and declares that
22 the release or continuation of a person
23 on parole or probation is an act of
24 grace of the State. No person has a
25 right to parole or probation, or to be
26 placed in residential confinement, and
it is not intended that the
establishment of standards relating or
thereto create any such right or
interest in liberty or property or

1 establish a basis for any cause of
2 action against the State, its political
3 subdivisions, agencies, boards,
4 commissions, departments, officers or
5 employees.

6 In Weakland v. Board of Parole Comm'rs, 100 Nev. 218,
7 219-220, 678 P.2d 1158, 1159-1160 (1984), the Court said that
8 the Board of Parole has discretion to grant parole release.
9 The Court in Weakland also said that where a statute merely
10 gives rise to a hope of release on parole, i.e., parole release
11 is not mandatory under the parole statute, constraints of due
12 process do not apply, since there is no liberty interest. Id.
13 Weakland applies here since Petitioner here merely had a hope
14 of appearing before the Parole Board for parole consideration
15 prior to his parole eligibility date.

16 Furthermore, since the filing of his Petition,
17 Petitioner was scheduled for a parole hearing, and the Parole
18 Board was and is aware of Petitioner's parole eligibility
19 pursuant to NRS 213.130(1), thus rendering Petitioner's claims
20 moot. Also, in regards to Petitioner's claim that the State
21 violated its plea agreement with him, the Parole Board is
22 independent and is not bound by the terms of such plea
23 agreements.

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CONCLUSION

For the reasons above, Respondents' Motion to Strike is GRANTED, and the Petition for Writ of Habeas Corpus and Mandamus is hereby DENIED.

IT IS SO ORDERED.

DATED this 11th day of September, 2009.



RICHARD A. WAGNER
DISTRICT JUDGE