

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARYL J. MEANS,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, JACK
PALMER; THE STATE OF NEVADA;
AND THE NEVADA BOARD OF
PAROLE COMMISSIONERS,
Respondents.

No. 54960

FILED

MAR 11 2010

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

In his petition, appellant challenged the denial of parole. Appellant claimed that the denial of parole over the course of 3 separate hearings was an arbitrary and capricious act of the Parole Board because he had little disciplinary history and he participated in prison programming. Appellant further claimed that the Parole Board ignored the requirements of NRS 213.130 at the 2008 hearing and that he was entitled to receive the procedures set forth in NRS 213.130 as amended in

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 Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

2007, regardless of the legislature's temporary halt of those procedures. Finally, appellant appeared to claim that application of newly enacted standards violated ex post facto principles.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition.² Appellant had no right to be granted parole as parole is an act of grace and a prisoner has no right to serve less than the lawfully imposed sentence, and appellant failed to demonstrate that the decision to deny parole was arbitrary or capricious. See NRS 213.10705 (providing that the establishment parole standards does not create any right or interest in liberty or property or establish a basis for any cause of action against the State); NRS 213.1099(1) (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). Appellant further failed to demonstrate the violation of any protected due process right at the 2008 parole hearing.³ Finally, parole guidelines are not laws for ex

²The claims raised in the petition were cognizable only to the extent discussed herein.

³NRS 213.130 was amended in 2007 to provide for certain procedures at the parole hearing, including advance notice to the defendant and the opportunity to be present. 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. At the time the hearing was conducted in this case, the provisions requiring a prisoner to be present or to be provided reasonable notice were suspended. Because parole is within the legislative authority, the legislature may determine how the amendments to NRS 213.130

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post facto purposes. See generally Vermont v. Corrothers, 827 F.2d 599 (9th Cir. 1987). Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Richard Wagner, District Judge
Daryl J. Means
Attorney General/Carson City
Pershing County Clerk

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apply. See Pinana v. State, 76 Nev. 274, 283, 352 P.2d 824, 829 (1960). Any claim relating to an untimely parole hearing was rendered moot by the subsequent hearing.

⁴We 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.