

IN THE SUPREME COURT OF THE STATE OF NEVADA

ISMAEL SANTILLANES,
Appellant,
vs.
THE STATE OF NEVADA BOARD OF
PAROLE COMMISSIONERS,
Respondent.

No. 55193

FILED

JUN 09 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 mandamus.¹ First Judicial District Court, Carson City; James Todd Russell, 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 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.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

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).

cc: Hon. James Todd Russell, District Judge
Ismael Santillanes
Attorney General/DMV/Carson City
Carson City Clerk

ORIGINAL

Case No. 09 EW 00023
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John Glover
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

ISMAEL SANTILLANES,

Petitioner,

v.

STATE OF NEVADA ex rel. BOARD OF
PAROLE COMMISSIONERS, et al.

Respondents.

ORDER

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter comes before the Court upon Petitioner Ismael Santillanes' Petition for Writ of Mandamus. The Petition was opposed by the Respondents, Connie Bisbee, Susan Jackson, Mary K. Baker, Adam Endel, Ed Gray, Maurice Silva and Michael Keeler. This Court, deeming itself fully advised, enters the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT.

Petitioner is an inmate in the custody of the Nevada Department of Corrections. He was arrested in 1984 and convicted in 1986 of the January 1984 murder of Pamela Leavitt. Petitioner received two life sentences with the possibility of parole after 10 years on each count, for his conviction of Murder in the First Degree with a deadly weapon enhancement.

On February 5, 1986, the Nevada Board of Parole Commissioners ("Parole Board") granted Petitioner a parole to his second life sentence.

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1 On October 10, 2008, the Parole Board denied Petitioner parole to the street from his
2 second life sentence.

3 Petitioner filed a Petition for Writ of Mandamus by mailing it to the Court on May 20,
4 2009. On June 5, 2009, this Court ordered the Office of the Attorney General to answer or
5 otherwise respond to the Petition.

6 Petitioner asks for release from prison or for this Court to order the Parole Board to
7 grant him a new hearing and order the Parole Board not to consider the severity of his crime
8 or his criminal history.

9 **CONCLUSIONS OF LAW**

10 The applicable law provides: The issuance of a writ of mandamus to compel an officer
11 of the state must be for a duty resulting from the office and required by law. *State ex rel.*
12 *McGuire v. Watterman*, 5 Nev. 323, 326 (1869) (emphasis added.)

13 Mandamus may not issue unless the petitioner has "a clear, legal right to the relief
14 sought." *Ex Rel. Blake v. County Commissioners*, 48 Nev. 299, 231 P. 384 (1924); *State v.*
15 *Boerlin*, 30 Nev. 473, 98 P. 402 (1908).

16 A petition for writ of mandamus should not be used to control discretionary actions,
17 unless the discretion has been manifestly abused or is exercised in an arbitrary and capricious
18 manner. *State v. Second Jud. Dist. Ct. ex. rel. County of Washoe*, 121 Nev. 413, 415-416 116
19 P. 3d 824, 835 (2005).

20 The Parole Board was acting within its discretion when it denied parole to Petitioner
21 and the Petitioner has not made a showing, nor can he make a showing that he has a clear
22 legal right to the grant of parole.

23 NRS 213.10705 is unambiguous when it states there is no right to parole in the State of
24 Nevada.

25 The legislature finds and declares that the release or continuation of a
26 person on parole or probation is an act of grace of the state. *No person*
27 *has a right to parole or probation, or to be placed in residential*
28 *confinement, and it is not intended that the establishment of standards*
relating thereto 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

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employees. [Emphasis added].

"There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence." *Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex*, 442 U.S. 1, 7 (1979) (emphasis).

As to Petitioner's claims about crime severity, Petitioner's crime severity has always been ranked at the most serious level because he was convicted of murder in the first degree. The Parole Board is mandated by law to consider the seriousness of his crime and his criminal history when making a parole decision. See NRS 213.1099. Parole guidelines are not laws for purposes of the *ex post facto* clause and parole guidelines cannot be used to assert a violation of the *ex post facto* clause.

Petitioner has produced no evidence showing any statute mandated greater punishment for him. His sentence has not changed in the years he has been in prison. He received two life sentences with the possibility of parole after serving ten years. The possibility of parole does not mean that he will receive parole at the first opportunity.


Long-standing case law and statutes reveal that prisoners have no liberty interest or right to parole in the State of Nevada.

ORDER

IT IS HEREBY ORDERED that the Petition should be and hereby is, denied

DATED this 27th day of July 2009.


DISTRICT COURT JUDGE

Submitted by
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