

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDOLPH L. BARNUM,  
Appellant,  
vs.  
PSYCHOLOGICAL REVIEW PANEL;  
THE STATE OF NEVADA  
DEPARTMENT OF CORRECTIONS;  
AND THE STATE OF NEVADA BOARD  
OF PAROLE COMMISSIONERS,  
Respondents.

No. 55651

**FILED**

**MAR 18 2011**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a petition for a writ of mandamus that sought to compel a parole hearing or reconsideration of the Psychological Review Panel recertification, to be properly conducted, based on assertions that (1) the automatic revocation of appellant's 2007 Psychological Review Panel certification due to the passage of time was arbitrary and in violation of NRS 213.1214; (2) a liberty interest protected him from the arbitrary revocation of his certification; and (3) the 2009 Psychological Review Panel decision to deny recertification was arbitrary and capricious, as he displayed no negative behavior warranting the change in certification. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

Having considered the record and appellant's proper person appeal statement, we conclude that the district court did not abuse its discretion in denying appellant mandamus relief. See DR Partners v. Bd. of County Comm'rs, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (reviewing a district court's decision to grant or deny a petition for a writ of mandamus for an abuse of discretion); Round Hill Gen. Imp. Dist. v. Newman, 97 Nev.

601, 603-04, 637 P.2d 534, 536 (1981) (holding that a writ of mandamus is generally available to compel the performance of an act that the law enjoins as a duty, or to control a manifest abuse of discretion).


First, appellant cannot challenge the Psychological Review Panel's refusal to recertify him based on their decision that appellant was at high-risk to reoffend. NRS 213.1214(4) (prohibiting prisoner lawsuits challenging certification decisions by the Psychological Review Panel). To the extent that appellant is challenging the validity of a prison regulation under Nevada law, the regulation at issue, regarding the automatic revocation of a Psychological Review Panel certification, is consistent with Nevada law. Compare NRS 213.1214(3) (stating that Psychological Review Panel certification can be revoked at any time), with AR 813.01 § 12 (effective September 1, 2006) (stating that if a Psychological Review Panel certifies an inmate as not being a high risk to reoffend, and then the Parole Board denies parole to that inmate for two years or longer, "the certification of the Panel is considered revoked and the offender must appear before the Panel again to seek a new certification").<sup>1</sup> Second, no authority supports appellant's claim that he enjoys a liberty interest sufficient to invoke due process protections prohibiting the automatic revocation of his Psychological Review Panel certification. See NRS 213.1214(4) (providing that "[t]his [Psychological Review Panel] section

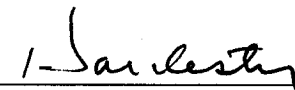
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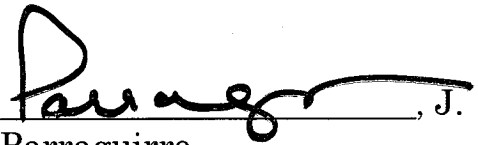
<sup>1</sup>The 2006 version of AR 813.01 § 12 applies to this appeal, as appellant's alleged cause of action arose before the 2006 version was amended.

does not create a right in any prisoner to be certified or to continue to be certified").<sup>2</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Richard Wagner, District Judge  
Randolph L. Barnum  
Attorney General/Carson City  
Pershing County Clerk

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<sup>2</sup>Having considered appellant's remaining arguments on appeal, we conclude that they lack merit.