IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK MOOR,
Appellant,
vs.
THE STATE OF NEVADA BOARD OF PAROLE COMMISSIONERS, NEVADA DEPARTMENT OF CORRECTIONS AND WARDEN STEPHANIE HUMPHREY,
Respondents.

No. 55921

FILED

MAR 17 2011

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 appellant's petition for a writ of habeas corpus and mandamus.[1] First Judicial District Court, Carson City; James Todd Russell, Judge.

In his petition filed on April 23, 2009, appellant claimed that the State Board of Parole Commissioners (Board) violated his due process rights at a December 8, 2008, hearing because the Board did not release him on parole. Appellant was not entitled to habeas relief. Appellant is lawfully confined pursuant to a judgment of conviction, the validity of which he did not dispute. See NRS 34.480.

As a separate and independent ground to deny habeas relief, any process due to appellant was minimal, Swarthout v. Cooke, 562 U.S. ___, ___, 131 S. Ct. 859, 861-62 (2011) (per curiam), and he failed to

[1]This 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).

demonstrate a violation of the due process clause.[2] To the extent appellant challenged the denial of parole, parole is an act of grace of the State, and there is no cause of action permitted when parole has been denied. See NRS 213.10705; Niergarth v. Warden, 105 Nev. 26, 28, 768 P.2d 882, 883 (1989).

As yet another separate and independent ground to deny habeas relief, appellant's claim that his parole should have been reinstated after three years was barred by the doctrine of the law of the case. See Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). This court has previously held that appellant was entitled only to a new parole hearing after three years, not to release. Moor v. State, Docket No. 47889 (Order of Affirmance, January 10, 2007). Moreover, as appellant would have been required to obtain a new, favorable panel certification before he could again be eligible for release on parole, NRS 213.1214(2), the Board could not have affirmatively determined any future release date. Accordingly, we conclude that the district court did not err in denying appellant habeas relief.[3]

---

[2]To the extent appellant claimed that holding the hearing outside his presence violated any rights, we note that at the time of the hearing, the statutory provisions requiring a prisoner to be present at the hearing were suspended. 2008 Nev. Stat. 24th Spec. Sess., ch. 6, §2, at 7. Such a suspension is within the authority of the legislature. See Pinana v. State, 76 Nev. 274, 283, 352 P.2d 824, 829 (1960), receded from on other grounds by In re Application of Shin, 125 Nev. ___, ___, 206 P.3d 91, 97-98 (2009).

[3]The district court erroneously denied appellant's petition as procedurally barred pursuant to NRS 34.810. However, that section applies only to post-conviction petitions for a writ of habeas corpus. NRS 34.720. Appellant's petition, which challenged neither the judgment of conviction, sentence, nor computation of time, was not such a post-conviction petition. Id. We nevertheless affirm the district court's decision for the reasons discussed herein. See Wyatt v. State, 86 Nev. 294,

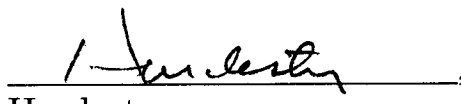
continued on next page . . .

Appellant also sought an order directing the Board (a) to adopt parole regulations specific to inmates who have previously had their parole from the same sentence revoked and (b) to release him on parole. Appellant failed to demonstrate that he was entitled to relief. See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981); Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982). Appellant's claim regarding separate parole regulations is barred by the doctrine of the law of the case.[4] Hall, 91 Nev. at 316, 535 P.2d at 799. Moreover, as indicated above, appellant did not demonstrate that he was entitled to parole.

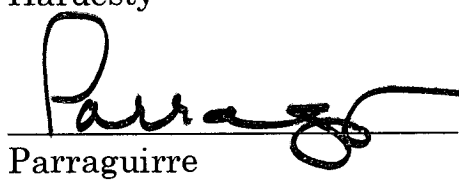
For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Saitta



_____, J.
Hardesty



_____, J.
Parraguirre

. . . *continued*

298, 468 P.2d 338, 341 (1970) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

[4]Moor v. State, Docket No. 47889 (Order of Affirmance, January 10, 2007).

cc: Hon. James Todd Russell, District Judge
Mark Moor
Attorney General/Carson City
Carson City Clerk