IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFREDO AGUILAR,

Appellant,

vs.

WARDEN, NEVADA STATE PRISON, JOHN IGNACIO, DEPARTMENT OF PAROLE AND PROBATION, AND NEVADA STATE BOARD OF PAROLE COMMISSIONERS,

Respondents.

No. 35604

FILED

NOV 28 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant Alfredo Aguilar's petition for a writ of mandamus.

On November 18, 1996, the district court convicted Aguilar, pursuant to an Alford[1] plea, of one count of trafficking in a controlled substance. The district court sentenced Aguilar to serve a term of twelve years in the Nevada State Prison. We dismissed Aguilar's direct appeal.[2]

On November 8, 1999, Aguilar filed a proper person petition for a writ of mandamus in the district court. The State opposed the petition. Aguilar filed a response. On January 20, 2000, the district court denied Aguilar's petition. This appeal followed.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or

[1]North Carolina v. Alford, 400 U.S. 25 (1970).

[2]Aguilar v. State, Docket No. 29705 (Order Dismissing Appeal, May 5, 1999).

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station, or to control an arbitrary or capricious exercise of discretion.[3] In his petition, Aguilar claimed that the Board of Parole Commissioners' rescission of its grant of parole to him was an arbitrary and capricious exercise of discretion. This claim was premised on his belief that he is not required to serve a mandatory minimum of five years before becoming eligible for parole. We disagree.

NRS 453.3405 provides that a person convicted of trafficking in a controlled substance must serve the mandatory minimum term of imprisonment prescribed by the section under which he was convicted.[4] At the time Aguilar committed his crime, NRS 453.3395(2) required the district court to sentence an offender to a term "not less than 5 years nor more than 20 years."[5] Clearly, the minimum term under this statute was five years.[6] Thus, Aguilar is not eligible for parole until he has served at least five years. As such, the board was not permitted to release Aguilar on parole.[7] The board properly corrected its mistake by rescinding its parole grant; the rescission was not an arbitrary or capricious exercise of discretion. Therefore, we conclude that the district court did not abuse its discretion in denying Aguilar's petition.

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[3]NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

[4]See 1985 Nev. Stat., ch.78, § 2, at 159.

[5]See 1995 Nev. Stat., ch. 443, § 298, at 1289; id. § 393, at 1340.

[6]See Charlie Brown Constr. Co. v. Boulder City, 106 Nev. 497, 503, 797 P.2d 946, 949 (1990), overruled on other grounds by Calloway v. City of Reno, 116 Nev. 250, 993 P.2d 1259 (2000) ("Where the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.").

[7]See NRS 213.1099 (1) ("[T]he board may release on parole a prisoner who is otherwise eligible for parole pursuant to NRS 213.107 to 213.157, inclusive.").

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that the district court did not err and that briefing and oral argument are unwarranted.[7] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____ J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. Michael R. Griffin, District Judge
Attorney General/Carson City
Alfredo Aguilar
Carson City Clerk

[7]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).