

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC TODD DOUGLAS,

No. 35836

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

NOV 28 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF 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 mandamus.

We have reviewed the record on appeal and for the reasons stated in the attached order of the district court, we conclude that the district court did not abuse its discretion by denying appellant's petition. Therefore, briefing and oral argument are not warranted in this case.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Shearing

Shearing J.

Rose

Rose J.

Becker

Becker J.

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General/Carson City
Clark County District Attorney
Eric Todd Douglas
Clark County Clerk

¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

MAR 15 1 59 PM '00

Shirley B. Thompson
CLERK

1 **ORDR**
FRANKIE SUE DEL PAPA
2 Attorney General
JOE WARD, JR.
3 Senior Deputy Attorney General
State Bar No. 1032
4 Litigation Division
100 N. Carson Street
5 Carson City, Nevada 89701-4717
Telephone: (775) 684-1249
6
Attorneys for Respondent.

7
8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 ***

13 ERIC TODD DOUGLAS,
14
Petitioner,

CASE NO. : 94-C-124118-C
DEPT. NO. : 5

15 vs.

16 DONALD DENISON, CHAIRMAN,
17 THE NEVADA BOARD OF PAROLE
COMMISSIONERS,

18 Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

19
20 Petitioner ERIC TODD DOUGLAS (DOUGLAS), in proper person, filed his Petition for Writ
21 of Mandamus herein on January 31, 2000. Respondent, by and through counsel FRANKIE SUE DEL
22 PAPA, Attorney General of the State of Nevada, and JOE WARD, JR, Senior Deputy Attorney General,
23 filed his response on February 17, 2000. DOUGLAS' reply brief was filed herein on or about February
24 18, 2000. This matter came on regularly for hearing on February 24, 2000. The Court, having
25 considered all of the documents and papers on file herein, makes the following Findings of Fact,
Conclusions of Law and Order.

27 /////

28 /////

RECEIVED
MAR 15 2000

RECEIVED
MAR 15 2000

6531

FINDINGS OF FACT

1
2 Further, On May 9, 1996, DOUGLAS entered a plea of guilty to the crimes of COUNT I - ROBBERY,
3 and COUNT II - ATTEMPT SEXUAL ASSAULT, felonies, committed on the 27th day of September,
4 1994 in violation of NRS 200.380; 193.330, 200.364 and 200.366. On July 18, 1996, the Court
5 sentenced DOUGLAS to 10 years in prison on COUNT I and 20 years in prison on COUNT II, to run
6 concurrent with COUNT I. He was also ordered to pay restitution and was given 203 days credit for
7 time served.

8 On August 17, 1999, DOUGLAS was denied certification by the Nevada Psychological Review
9 Panel (Psych Panel). The Psych Panel concluded that DOUGLAS could not, at the time, be certified as
10 not representing a menace to the health, safety or morals of others.

11 On September 13, 1999, DOUGLAS appeared before the Nevada Board of Parole
12 Commissioners (Parole Board). He was assessed 4 points for "Threat/Display" of a weapon.
13 DOUGLAS was denied parole because, among other things, he did not get certified by the Psych Panel.

14 On December 6, 1999, DOUGLAS wrote to the Parole Board's Chairman complaining about
15 receiving 4 points in the weapons category on his "Parole Success Likelihood Factors." DOUGLAS'
16 complaint about the points assessed to him on his "Parole Success Likelihood Factors" sheet is the crux
17 of his Petition. Parole Board Chairman Denison responded pointing out, inter alia, that the Parole
18 Board considers many things besides the pertinent guidelines reflected in the Parole Success Likelihood
19 Factors sheet. Chairman Denison correctly pointed out that the guidelines were just guidelines and did
20 not interfere with the Parole Board's broad discretion.

CONCLUSIONS OF LAW

21
22 DOUGLAS prays that this Court order the Parole Board to "remove the six (6) points from
23 Petitioner's weapons category of his Parole Success Likelihood Factor score . . . and, grant Petitioner a
24 new parole hearing." Petition at p. 13, ll. 6-11. However, no prisoner, including DOUGLAS, has a
25 constitutional right to be conditionally or unconditionally released before the expiration of his valid

26 /////
27 /////
28 /////
29

1 sentence. *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1, 7 (1979).
2 Furthermore, on August 17, 1999, DOUGLAS was denied certification by the Nevada Psychological
3 Review Panel (Psych Panel) and the Parole Board is prohibited by law from paroling such a prisoner.
4 See NRS 213.1214. Thus, DOUGLAS is not an injured or an aggrieved party here and has no standing
5 to advance his Petition. See *Allum v. Valley Bank*, 109 Nev. 280, 283, 849 P.2d 297, 299 (1993) and
6 *Doe v. Bryan*, 102 Nev. 523, 728 P.2d 443 (1986). "An actual controversy is essential to judicial
7 relief." *Doe v. Bryan*, at 525. Accordingly, DOUGLAS lacks standing to advance his Petition. There is
8 no actual case or controversy for the advancement of DOUGLAS' claim. His Petition is moot due to
9 his Psych Panel denial and can only serve as a tool for inappropriate declaratory relief.

10 Even assuming that DOUGLAS' Petition was ripe, each prisoner's case, including all pertinent
11 surrounding facts and circumstances, is unique. Parole decisions are made on a case by case basis. In
12 this case, DOUGLAS complains about the guidelines as reflected in the Parole Success Likelihood
13 Factors. Typically, when considering a prisoner for a parole release the Parole Board must not only
14 consider these guidelines, which are set forth in the Nevada Administrative Code at NAC 213.510
15 through 213.560, it must consider

- 16 (a) Whether there is a reasonable probability that the prisoner will live
17 and remain at liberty without violating the laws; (b) Whether the release
18 is incompatible with the welfare of society; (c) The seriousness of the
19 offense and the history of criminal conduct of the prisoner; ... (and) (e)
20 Any documents or testimony submitted by a victim...

21 NRS 213.1099(2) and see also NRS 213.10885. The guidelines provide that nothing contained therein
22 can restrict the Parole Board's discretion to grant or deny parole. See, NAC 213.560(1). Such
23 guidelines and factors are merely one of several things considered by the Parole Board in the exercise of
24 its broad discretion. In Nevada, parole is a matter of grace, a privilege and not a right, and is committed
25 entirely to the discretion of the Parole Board. See, NRS 213.10705.

26 Nevada courts have held that, because of the discretionary wording of NRS 213.1099, prisoners
27 only have an unprotected expectancy of a parole release. See, *Kelso v. Armstrong*, 616 F.Supp. 367,
28 369 (1985); *Weakland v. Board of Parole Commissioners*, 100 Nev. 218, 678 P.2d 1158 (1984);
Severence v. Armstrong, 96 Nev. 836, 838-39, 620 P.2d 369, 370 (1980) and *Severence v. Armstrong*,
97 Nev. 95, 624 P.2d 1004 (1981). Given the Parole Board's discretion in making parole release

1 decisions, a federal court applying Nevada law would promptly dispose of DOUGLAS' claim even had
2 he passed the Psych Panel. The *Kelso* court concluded as follows:

3 Nevada statute, NRS 213.1099, provides that the State Board of Parole
4 Commissioners "may" release on parole a prisoner. ... The Board need
5 not even give a statement of reasons why parole is being denied. ...
6 [T]he right to apply for parole is a constitutionally protected interest; it is
7 the expectancy of release that is not protected. ... His umbrage is
8 directed at the defendants' refusal to release him, which is not redressable
9 in federal court *because of the discretionary wording of the Nevada
10 statute.*

11 *Id.* (emphasis added).

12 In upholding the constitutionality of NRS 213.1099, which requires the Parole Board to consider
13 the subject guidelines, the Nevada Supreme Court concluded that "[a] state may be specific or general
14 in defining the conditions for release and the factors that should be considered by the parole authority."
15 *Severance v. Armstrong*, 96 Nev. 836, 838, 620 P.2d 369 (1980). It added the following:

16 No ideal, error-free way to make parole-release decisions has been
17 developed; the whole question has been and will continue to be the
18 subject of experimentation involving analysis of psychological factors
19 combined with fact evaluation guided by the practical experience of the
20 actual parole decisionmakers in predicting future behavior. Our system of
21 federalism encourages this state experimentation. If parole determinations
22 are encumbered by procedures that states regard as burdensome and
23 unwarranted, they may abandon or curtail parole.

24 *Id.* (Quoting *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1 (1979).
25 Nevada's law, that requires the Parole Board to consider the guidelines and other factors, "only give(s)
26 rise to a 'hope' of release on parole, and the Board's discretionary decision to deny parole is not subject
27 to the constraints of due process." *Weakland v. Board of Parole Commissioners and the State of
28 Nevada*, 100 Nev. 218, 220, 678 P.2d 1158 (1984).

29 // // // //

30 // // // //

31 // // // //

32 // // // //

33 // // // //

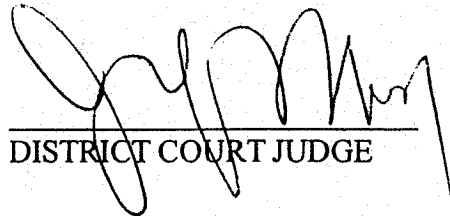
34 // // // //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

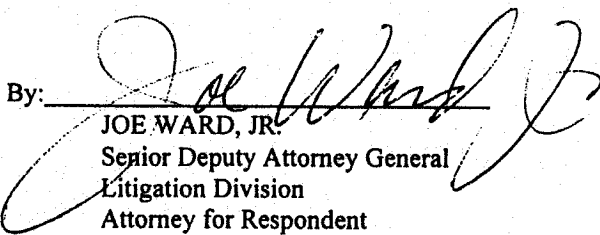
IT IS HEREBY ORDERED that, based upon the foregoing, DOUGLAS' Petition for Writ of Mandamus is denied.

DATED this 14 day of March, 2000.


DISTRICT COURT JUDGE

Submitted by:

FRANKIE SUE DEL PAPA
Attorney General

By: 
JOE WARD, JR.
Senior Deputy Attorney General
Litigation Division
Attorney for Respondent

c:\files\jwdougles.118\order.doc