

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE R. COLATO,
Appellant,
vs.
NEVADA BOARD OF PAROLE
COMMISSIONERS,
Respondent.

No. 64202

FILED

APR 15 2015

TRAZIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order dismissing a petition for a writ of mandamus challenging a parole decision. Sixth Judicial District Court, Pershing County; Michael Montero, Judge.

Appellant Jose R. Colato, an inmate, was initially eligible for parole in January 2009. At that time, respondent the Nevada Board of Parole Commissioners (the Parole Board or the Board) denied him parole and scheduled him for a rehearing in October 2012, with a potential release date in January 2013. Because Colato had less than ten years remaining on his sentence, however, he should have been scheduled for rehearing one year earlier, with a potential release date in January 2012. See NRS 213.142 (requiring a parole rehearing to be held within three years of a denial if the inmate has ten years or less remaining on his or her sentence). At his rehearing in October 2012, Colato brought this mistake to the Parole Board's attention, and the Board conceded that his rehearing should have been scheduled one year earlier. To remedy this error, the Parole Board agreed that it would consider Colato's parole based on a potential eligibility date in January 2012. Following his parole

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hearing, Colato received notice from the Parole Board that it had decided to grant him parole with an effective date of October 1, 2012.

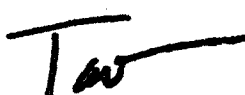
After unsuccessfully appealing the decision to the Parole Board, Colato filed a district court petition for a writ of mandamus, arguing that the Parole Board could have granted him parole effective January 2012, or it could have denied him parole and scheduled him for a rehearing, but it could not have granted him parole with an effective date later than January 2012. The Parole Board opposed the petition, and the district court ultimately dismissed it, concluding that the Board had acted within its discretion. This appeal followed. At the direction of the Nevada Supreme Court, the Parole Board has filed a response to Colato's civil appeal statement.

Having considered the parties' arguments and the record on appeal, we conclude that the district court did not abuse its discretion by dismissing Colato's writ petition. *See Reno Newspapers, Inc. v. Haley*, 126 Nev. ___, ___, 234 P.3d 922, 924 (2010) (explaining that the denial of a writ petition is generally reviewed on appeal for an abuse of discretion). Contrary to Colato's arguments, when considering him for parole based on the January 2012 eligibility date, the Parole Board was not constrained to either grant him parole effective on that date or deny him parole all together and schedule him for a rehearing. Instead, the Board had the discretion to determine the effective date of his parole. *See Nevada Board of Parole Commissioners Operation of the Board, "Parole Grant" ¶ 2* (Effective February 24, 2011) ("Grants of parole may be made at initial parole eligibility or at any subsequent hearing after a denial. If the grant occurs at a subsequent hearing the release date will be at the Board's discretion."). Thus, the Parole Board acted within its discretion when it

decided to grant him parole but delay the effective date until October 2012. *See id.* Because Colato did not demonstrate that the Parole Board was required by law to make any grant of parole effective as of January 2012, he was not entitled to a writ of mandamus ordering that relief. *See* NRS 34.160 (providing that 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 station). As a result, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Michael Montero, District Judge
Jose Roberto Colato, Jr.
Attorney General/Carson City
Pershing County Clerk