

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRENCE EUGENE RIDER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36179

FILED

JAN 31 2002

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

ORDER OF AFFIRMANCE

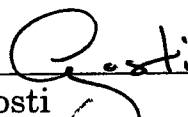
This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

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 properly denied 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.²


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Sally L. Loehrer, District Judge
Attorney General/Carson City
Clark County District Attorney
Lawrence Eugene Rider
Clark County Clerk

¹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

²We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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LAWRENCE E. RIDER,

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Petitioner,

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CASE NO. C67112
DEPT NO. XV

V.

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SHERMAN HATCHER, Warden, et al.,

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ORDER

Respondents.

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This matter came on for hearing on April 27, 2000 pursuant to Petitioner Lawrence Rider's petition for writ of habeas corpus filed November 3, 1999. The Petitioner was present in court, and the Respondents were also present, represented by Deputy Attorney General Victor-Hugo Schulze, II.

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In the petition, Rider challenges actions of the NRS 213.1214 panel, "certification panel", in denying certification that the Petitioner is not a menacc to the health, safety or morals of others. The challenges to the actions of the certification panel concern the panel's September 29, 1999 meeting.

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Initially, because the petition was filed on November 3, 1999, the court will reject the contentions raised by the Respondents in their December 13, 1999 Opposition that the petition is untimely under NRS 34.726, that the petition abuses the writ, and that the petition raises claims which are not cognizable on habeas corpus under NRS 34.810 based upon the Petitioner's earlier Guilty plea. The court finds that the Petition was brought not under NRS 34.724, but under the general provision of NRS 34.360. Because the petition was not brought pursuant to NRS 34.724, the time limitations of NRS 34.726, and the subject-matter limitations of NRS 34.810(1)(a) do not apply. To the extent that

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COUNTY CLERK

JUL 13 2000

ST. JAMES
COUNTY CLERK'S OFFICE
150 E. WASHINGTON ST.
SUITE 300
LAS VEGAS, NEVADA

1 the limitations period codified in NRS 34.726 might arguably be extended to apply to habeas petitions
2 brought pursuant to NRS 34.360, the court finds the petition to be timely insofar as it challenges the
3 propriety of the acts of the certification panel at its September 29, 1999 meeting. Finally, because the
4 Petitioner could not have challenged the panel's actions in any earlier petition, the challenged acts not
5 occurring until September, 1999, this petition does not abuse the writ.

6 The court has considered the claims which appear in the petition for writ of habeas corpus filed
7 on November 3, 1999. The court will not consider claims raised in the subsequent "Amendment" dated
8 January 14, 2000 since the Petitioner failed to seek leave from the court to amend his petition, and
9 because proposed claim 5, challenging the State's adherence to the plea agreement, has been waived by
10 not having been raised in one of the Petitioner's earlier petitions, NRS 34.810 and is time-barred, NRS
11 34.726, and because proposed claim 6 merely repeats the substance of claim 1 regarding the application
12 of the Open Meeting Law.

13 In the petition, the Petitioner raises the following claims:

- 14 1. That the Petitioner's 14th Amendment right to procedural Due Process was violated
15 when the certification panel failed to provide sufficient notice to the Petitioner pursuant
16 to the Open Meeting Law, NRS 241.033(1), of its meeting where the Petitioner's case
17 was considered.
- 18 2. That the Petitioner's 14th Amendment right to substantive Due Process was violated
19 when the Petitioner was evaluated under a statute, NRS 213.1214, which contained no
20 guidelines or standards governing panel decision-making, and which did not require a
21 finding of mental illness and dangerousness.
- 22 3. That the Petitioner's 5th Amendment right to be free from increased punishment after
23 rendition of sentence was violated when the certification panel failed to properly comply
24 with the notice provisions of the Open Meeting Law.
- 25 4. That the Petitioner's right to be free from the application of ex post facto penal laws
26 which affect his sentence was violated when NRS 213.1214 was enacted containing a
27 "disclaimer" of rights, remedies, and liabilities.

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SUITE 3900
LAS VEGAS, NEVADA

1 After having duly considered the pleadings and exhibits filed herein, the arguments of the
2 parties, and being familiar with the applicable law, the court makes the following Findings of Fact,
3 Conclusions of Law, and enters the following Order:

4 **FINDINGS OF FACT**

- 5 1. That the Petitioner, Lawrence Eugene Rider, was convicted of Sexual Assault in the
6 Eighth Judicial District Court by Judgment of Conviction entered November 5, 1984, in
7 case no. C67112.
- 8 2. That the Petitioner received a sentence of Life imprisonment, with the possibility of
9 parole.
- 10 3. That on September 22, 1999, the Petitioner appeared before the NRS 213.1214
11 certification panel, and was denied certification.
- 12 4. That prior to his appearance before the certification panel, the Petitioner was personally
13 served with notice of the meeting, as demonstrated by Exhibits 3 and 4 to the
14 Respondents' Response to Petition.

15 **CONCLUSIONS OF LAW**

- 16 1. The notice of the September 22, 1999 certification panel meeting which was personally
17 served on the Petitioner and signed by him on September 2, 1999 fully complies with the
18 notice requirements of NRS 241.033. Any claim to the contrary by the Petitioner is
19 wholly frivolous.
- 20 2. The Petitioner's Due Process claims are not cognizable and have no legal merit because
21 A Due Process claim is cognizable only if there is a recognized liberty or property
22 interest at stake. Rizzo v. Dawson, 778 F.2d 527, 530 (9th Cir. 1985), citing, Bd. Of
23 Regents of California v. Roth, 408 U.S. 564 (1972). Nevada's parole application and
24 release statutes, NRS 213.1099, et seq., do not create any liberty or property interest.
25 Kelso v. Armstrong, 616 F. Supp. 367 (D. Nev. 1985). Land v. Lawrence, 815 F.
26 Supp. 1351 (D. Nev. 1993). NRS 213.1214 creates neither a liberty interest nor a
27 property interest, and it does not create any expectation of release. Id. See, Greenholtz
28 v. Inmates of the Nebraska Penal and Correction Complex, 442 U.S. 1 (1979).

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Because no liberty interest is at stake, Due Process is not implicated.

- 3. The application of the requirements of NRS 213.1214 to the Petitioner's sentence does not violate the ex post facto clause because the statute neither alters the definition of the crime of Sexual Assault nor increases the punishment for that crime. See, Land v. Lawrence, supra, 815 F. Supp. 1351. Stevens v. Warden, 114 Nev. Adv. Op. 128, 969 P.2d 945 (1998). Morales v. California Dept. of Corrections, 16 F.3d 1001 (9th Cir. 1994). NRS 213.1214 is not, in any event, a penal law. Glauner v. Miller, 184 F.3d 1053 (9th Cir. 1999).
- 4. NRS 213.1214 is not unconstitutionally vague. Glauner v. Miller, 184 F.3d 1053 (9th Cir. 1999).

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED THAT the Petitioner's petition for writ of habeas corpus is DENIED.

DATED: July 13, 2000

Lacey Cochran
DISTRICT COURT JUDGE

Submitted by:

FRANKIE SUE DEL PAPA
Attorney General

By: V. - H. Schulze
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