

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDWARD BERNARD CLAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68371

FILED

JAN 21 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

In his petition filed on January 15, 2015, appellant Edward Clay challenged the revocation of his parole in Nevada because he claimed he had already been punished in California for violating his parole. Specifically, Clay claimed he was being supervised for his Nevada parole in California pursuant to the interstate compact. After being arrested for new criminal charges in California, Clay had a parole revocation hearing in California on his Nevada parole, and was punished by being sentenced to 180 days in jail. His parole was then reinstated. After serving his jail time, Clay was arrested and returned to Nevada for a parole revocation

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

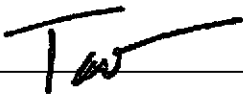
hearing. His parole was then revoked. Clay claimed the Nevada revocation violated his Double Jeopardy rights.

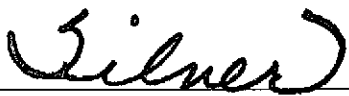
The Double Jeopardy Clause under the United States Constitution protects a defendant from both successive prosecutions and multiple punishments for the same offense. U.S. Const. amend. V; *United States v. Dixon*, 509 U.S. 688, 695-96 (1993); see also Nev. Const. art. 1, § 8; *Jackson v. State*, 128 Nev. ___, ___, 291 P.3d 1274, 1278 (2012) (recognizing the federal and Nevada Constitutions provide the same protections against double jeopardy). Double Jeopardy protections, however, are not implicated here because the purpose of the parole revocation hearing at issue in this case was to determine whether the Parole Board should reinstate Clay's original sentence for the underlying crime due to his parole violations, not to punish Clay for the conduct that led to the parole revocation hearing. See *United States v. Brown*, 59 F.3d 102, 104-05 (9th Cir. 1995) (recognizing the revocation of parole is viewed as the reinstatement of a previous sentence, not as punishment for the actions resulting in the revocation); *Moor v. Palmer*, 603 F.3d 658, 660 (9th Cir. 2010) ("Parole revocation is not a criminal penalty for violating the terms of parole" instead "it is simply a continuation of the punishment for the original crime."). This is true even if the parolee is subjected to more than one parole revocation based on the same underlying act, as Clay alleges is the case here. See *United States v. Clark*, 984 F.2d 319, 320 (9th Cir. 1993) (holding the revocation of both probation and supervised release related to two prior convictions based on a single action by the offending party was permissible and did not implicate double

jeopardy). Therefore, the district court did not err in denying Clay's petition, and we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas W. Herndon, District Judge
Edward Bernard Clay
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We have reviewed all documents Clay has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Clay has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.