

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID MARISCAL,
Appellant,
vs.
BRIAN E. WILLIAMS, WARDEN SDCC;
NEVADA DEPARTMENT OF
CORRECTIONS PAROLE BOARD
DIVISION; AND THE STATE OF
NEVADA,
Respondents.

No. 68657

FILED

MAR 16 2016

FRIGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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; Linda Marie Bell, Judge.

In his September 22, 2014, petition, appellant David Mariscal claimed the parole board improperly conducted a late parole hearing and as a result, the Nevada Department of Corrections improperly calculated his sentence.

The record indicates Mariscal was originally sentenced in 1994 to serve two consecutive terms of life without the possibility of

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).


parole. The district court later concluded Mariscal was entitled to a new sentencing hearing and conducted the new sentencing hearing. Following that sentencing hearing, the district court entered an amended judgment of conviction in 2007, sentencing Mariscal to serve consecutive terms of life with the possibility of parole in ten years. Later in 2007, the parole board conducted Mariscal's first parole hearing, but denied parole. In 2009, the board conducted a second hearing, granted Mariscal parole for his first term, and Mariscal began serving his second term. The record before this court demonstrates Mariscal will be eligible for his next parole hearing in 2019.

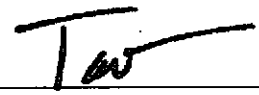
In his petition, Mariscal asserted he should have received a parole hearing in 2003, he had served at least four years longer for his first term than was appropriate, and accordingly, he should receive credit for those four years towards his second term. Our review of the record reveals Mariscal is not entitled to relief.


Mariscal was not entitled to a parole hearing in 2003 because at that time he was still serving life without the possibility of parole. The parole board conducted a prompt hearing after the district court amended Mariscal's sentence and Mariscal failed to demonstrate any error in this regard. *See Niergarth v. Warden*, 105 Nev. 26, 29, 768 P.2d 882, 884 (1989) (holding that no statutory authority or case law permits a retroactive grant of parole). As Mariscal failed to demonstrate any error regarding the timing of his parole hearing, he also did not demonstrate he

has improperly served an additional four years or that the credits for those four years should actually be applied towards his second term. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Linda Marie Bell, District Judge
David Mariscal
Attorney General/Carson City
Attorney General/Las Vegas
Clark County District Attorney
Eighth District Court Clerk

²We have reviewed all documents Mariscal has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Mariscal 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.