

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES H. BESSETTE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 36624

**FILED**

JAN 02 2002

JAMES T. M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
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.

On August 2, 1988, the district court convicted appellant, pursuant to a jury verdict, of sexual assault upon a victim 65 years of age or older, and grand larceny auto. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison for sexual assault, to be served concurrently with a term of ten years for grand larceny. This court dismissed appellant's direct appeal.<sup>1</sup>

On May 4, 2000, appellant filed a proper person petition for a writ of mandamus in the district court. Appellant sought an order compelling the Nevada Board of Parole Commissioners and the Nevada Psychiatric Evaluation Panel: (1) to not follow Nevada Prison Regulation 537(V)(A)(5)(a) because it conflicts with the plain language of NRS 213.1214; and (2) to stop improperly denying him certification based on his refusal to admit guilt. On July 31, 2000, the district court entered an order denying appellant's petition. This appeal followed.

Our review of the record on appeal reveals that the district court properly denied appellant's petition. Parole is an act of grace; a prisoner has no constitutional right to parole.<sup>2</sup> NRS 213.1214 provides

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<sup>1</sup>Bessette v. State, Docket No. 19410 (Order Dismissing Appeal, February 1, 1991).

<sup>2</sup>NRS 213.10705; Niergarth v. Warden, 105 Nev. 26, 768 P.2d 882 (1989).

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the manner in which a prisoner convicted of sexual assault may be paroled. Specifically, NRS 213.1214(1) requires that before a prisoner who has been convicted of sexual assault can be released on parole, a psychiatric panel must certify that the prisoner is "not a menace to the health, safety or morals of others." NRS 213.1214(2) further requires that "[a] prisoner who has been certified . . . and who returns for any reason to the custody of the department of prisons may not be paroled unless a panel recertifies him." No prisoner has a right under the statute to be certified or to continue to be certified, nor may any prisoner "bring a cause of action against the state, its political subdivisions, agencies, boards, commissions, departments, officers or employees for not certifying or refusing to place a prisoner before a panel for certification."<sup>3</sup>

In turn, Nevada Prison Regulation 537(V)(A)(5)(a), requires prisoners seeking release on parole to a consecutive sentence to be first certified by the Nevada Psychiatric Evaluation Panel.<sup>4</sup> The regulation does not conflict with the statutory scheme as set forth in NRS 213.1214.

Therefore, appellant was properly required to appear before a psychiatric panel for certification in order to be eligible for an institutional parole to his consecutive sentence. Further, appellant has no cause of action to challenge the psychiatric panel's basis for not

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<sup>3</sup>NRS 213.1214(4).

<sup>4</sup>Nevada Prison Regulation 537(V)(A)(5)(a) provides in pertinent part:

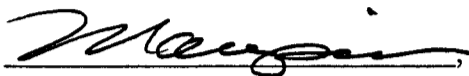
There are restrictions placed on parole eligibility for persons convicted of committing or attempting to commit certain offenses which involve sexually deviant behavior or behavior which offends public morals and decency. . . . Persons so convicted may not be paroled from that sentence unless a "Psych Panel" first certifies that the inmate is not a menace to the health, safety or morals of others. . . . Certification for parole eligibility is offense specific, applying only to the singular sentence or concurrent sentences for which it was granted. A separate certification is required for each consecutive sentence which falls under the purview of the Psych Panel.


(Emphasis added.)

certifying him.<sup>5</sup> Accordingly, we conclude that the district court properly denied appellant's petition.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

 C.J.  
Maupin

 J.  
Shearing

 J.  
Becker

cc: Hon. Sally L. Loehrer, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
James H. Bessette  
Clark County Clerk

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<sup>5</sup>See NRS 213.1214(4).

<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>7</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.