

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARRYL ORLANDUS CLARK,  
Petitioner,  
vs.  
CONNIE S. BISBEE, CHAIRMAN;  
SUSAN JACKSON, COMMISSIONER;  
MICHAEL KEELER, COMMISSIONER;  
CHRISTOPHER DERICCO,  
COMMISSIONER; AND THE STATE OF  
NEVADA BOARD OF PAROLE,  
Respondents.

No. 74910

**FILED**

APR 11 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Youney  
DEPUTY CLERK

*ORDER DENYING PETITION*

This is an original petition for a writ of mandamus challenging the Board of Parole Commissioners' denial of parole for Darryl Orlandus Clark. Clark asserts he was denied his right to be considered for parole because the Board improperly applied NAC 213.518(2)(k) when considering him for parole. Clark seeks an order directing the Board to vacate the denial of his parole and to conduct a new parole hearing.

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station, NRS 34.160, or to control a manifest abuse or arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). The writ will not issue if the petitioner has a plain, speedy and adequate remedy in the ordinary course of law. NRS 34.170. Petitions for extraordinary writs are addressed to the sound discretion of the court, *see State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983), and the "[p]etitioner[ ] carr[ies] the burden of demonstrating that extraordinary

relief is warranted,” *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Because there is no applicable statutory vehicle through which Clark may challenge the Board’s actions, we consider whether the Board’s actions warrant issuance of a writ of mandamus. See *Anselmo v. Bisbee*, 133 Nev. \_\_\_, \_\_\_, 396 P.3d 848, 850 (2017). “[G]iven its discretionary language, Nevada’s parole statute creates no protectable liberty interest sufficient to invoke the Due Process Clause.” *Id.* (quotation marks omitted). And “this court generally will not review the evidence supporting a decision of the Board.” *Id.* at \_\_\_, 396 P.3d at 851. However, “eligible Nevada inmates have a statutory right to be considered for parole by the Board,” and “[t]his court cannot say that an inmate receives proper consideration when the Board’s decision is based in part on an inapplicable aggravating factor.” *Id.* at \_\_\_, 396 P.3d at 853.


The record in this court indicates the Parole Risk Assessment and Guideline that was prepared for the Board’s consideration of Clark for parole in 2017 identified “Nature of criminal record is increasingly more serious” as an applicable aggravating factor. See NAC 213.518(2)(k). It further appears application of this factor to Clark may have been improper under the Board’s internal guidelines.<sup>1</sup> Nevertheless, we conclude that,

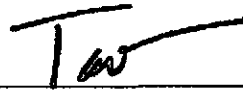
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<sup>1</sup>The *Nevada Parole Guidelines Aggravating and Mitigating Factors Definitions* indicate they were last revised in November 2016, see *Nevada Parole Guidelines Aggravating and Mitigating Factors Definitions*, [http://parole.nv.gov/uploadedFiles/parolenvgov/content/Information/Aggravating\\_and\\_Mitigating\\_Factors\\_Definitions.pdf](http://parole.nv.gov/uploadedFiles/parolenvgov/content/Information/Aggravating_and_Mitigating_Factors_Definitions.pdf) (last visited March 16, 2018), however, it appears this is incorrect and they have been modified since March 21, 2017. Specifically, we note the Board’s internal guideline for the aggravating factor under NAC 213.518(2)(k) now differs from the version that was quoted in *Anselmo*. Compare *id.*, with *Anselmo*, 133 Nev.

because the order denying parole does not identify this aggravating factor as a basis for the denial of parole, Clark cannot demonstrate that the Board's decision to deny parole was based, even in part, on application of an inapplicable aggravating factor. Accordingly, we conclude mandamus relief is not warranted, and we

ORDER the petition DENIED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Darryl Orlandus Clark  
Attorney General/Carson City  
Eighth District Court Clerk

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at \_\_\_, 396 P.3d at 852. It is unclear which version of the internal guidelines was in effect at the time Clark was considered for parole in 2017.

<sup>2</sup>To the extent Clark challenges previous denials of parole based on improper application of aggravating factors, we conclude mandamus relief is not warranted because, even assuming there was error, by virtue of his parole hearing in 2017, Clark has already received the only relief he would be entitled to.