

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN KINFORD,
Appellant,
vs.
NEVADA PAROLE BOARD
COMMISSIONERS,
Respondent.

No. 74434

FILED

OCT 16 2018

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

ORDER OF AFFIRMANCE

Steven Kinford appeals from a district court order denying a petition for a writ of mandamus filed on September 19, 2017.¹ First Judicial District Court, Carson City; James Todd Russell, Judge.

In his petition, Kinford appeared to claim the Nevada Board of Parole Commissioners erred by basing its parole decision on his “past criminal history,” failing to adequately consider the programs he has completed during his incarceration, and relying on the results of the Static-99R assessment.


“[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 or to control an arbitrary or capricious exercise of discretion.” *Hickey v. Eighth Judicial Dist. Court*, 105 Nev. 729, 731, 782 P.2d 1336, 1337 (1989) (internal citation omitted). “An arbitrary or capricious exercise


¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3). We note the State was not required to file a response to Kinford’s pro se brief, see NRAP 46A(c), and we deny Kinford’s motion to set his appeal for oral argument, see NRAP 34(f)(3).


of discretion is one founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law.” *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011) (internal citation and quotation marks omitted). “We generally review a district court’s grant or denial of writ relief for an abuse of discretion.” *Koller v. State*, 122 Nev. 223, 226, 130 P.3d 653, 655 (2006).

We conclude the district court did not abuse its discretion by denying Kinford’s mandamus petition because the Nevada Supreme Court has recently held that “challenges to the evidence supporting Parole Board decisions” are not reviewable and determined that the Static-99R assessment satisfies the risk assessment requirements of NRS 213.1214(1). *Coles v. Bisbee*, 134 Nev. ___, ___, 422 P.3d 718, 720 (2018). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²We decline to consider Kinford’s due process, ex post facto, and application claims because they were not raised in the petition Kinford filed below, and therefore they were not considered by the district court in the first instance. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 103 P.3d 25 (2003).

cc: Hon. James Todd Russell, District Judge
Steven Kinford
Attorney General/Carson City
Carson City Clerk