IN THE SUPREME COURT OF THE STATE OF NEVADA

CLIFFORD MITZLAFF STONE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37509

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 May 8, 1986, the district court convicted appellant, pursuant to a guilty plea, of one count of sexual assault. The district court sentenced appellant to serve a term of life in the Nevada State Prison with parole eligibility after he had served ten years.

On March 20, 2000, appellant filed a proper person petition for writ of mandamus or prohibition in the district court. The State opposed the petition. Appellant filed a response. On March 8, 2001, the district court denied the petition. This appeal followed. Based upon our review of the record, and for the reasons discussed below, we conclude that the district court did not abuse its discretion in denying appellant's petition.

In his petition, appellant first contended that the parole board's use of newly enacted parole guidelines violated the separation of powers doctrine and the Ex Post Facto Clause. Appellant challenged the parole board's use of newly enacted parole likelihood success factors that recommend appellant serve a minimum term of fifteen years prior to being released on parole. Appellant argued that the parole board's use of these factors violates the separation of powers doctrine because he believes the factors effectively increase the amount of time he should spend incarcerated prior to being released on parole beyond the time specified by statute.

We conclude that the district court did not abuse its discretion in rejecting appellant's claim challenging the parole board's use of newly enacted parole guidelines. Parole is an act of grace; a prisoner has no

constitutional right to parole.[1] The parole board has not acted in violation of the separation of powers doctrine. The subject of parole is within the legislative authority.[2] The decision of whether or not to grant parole lies within the discretion of the parole board.[3] NRS 213.10885(1) provides that the parole board shall adopt specific standards or guidelines to assist the board in determining whether to grant or deny parole. NRS 213.10885(5) further requires the parole board to conduct a comprehensive review of the standards every second year and adopt revised standards if any are determined to be ineffective. The parole board's application of newly enacted parole guidelines did not violate the Ex Post Facto Clause.[4]

Appellant next claimed that the parole board's requirement that he be certified pursuant to NRS 213.1214 within one year before a parole hearing was an ex post facto violation and violated the separation of powers doctrine.[5] Appellant stated that he had been certified in 1991

---

[1]See NRS 213.10705; Niergarth v. Warden, 105 Nev. 26, 768 P.2d 882 (1989).

[2]See Pinana v. State, 76 Nev. 274, 283, 352 P.2d 824, 829 (1960).

[3]See NRS 213.1099(2) (providing that the parole board shall consider the standards and other factors in determining whether to grant or deny parole); NAC 213.560(1) (stating that the standards do not restrict the parole board's discretion to grant or deny parole).

[4]See generally Vermouth v. Corrothers, 827 F.2d 599 (9th Cir. 1987) (holding that federal parole guidelines were not laws for ex post facto purposes).

[5]NRS 213.1214 provides:

> 1. The board shall not release on parole a prisoner convicted of an offense listed in subsection 5 unless a panel consisting of:
>
> (a) The administrator of the division of mental health and developmental services of the department of human resources or his designee;
>
> (b) The director of the department of prisons or his designee; and
>
> (c) A psychologist licensed to practice in this state or a psychiatrist licensed to practice medicine in this state,
>
> certifies that the prisoner was under observation while confined in an institution of the department of prisons and is not a menace to the health, safety or morals of others.

pursuant to NRS 200.375 and that the 1991 certification should remain valid unless it is formally rescinded.[6] Appellant argued that recertification within one year of a parole hearing was not required on the date of his offense, arrest or conviction. Therefore, appellant believed that recertification violated the Ex Post Facto Clauses of the United States and Nevada Constitutions. Appellant further argued that the separation of powers doctrine was violated because the attorney general usurped legislative power in advising the department of prisons that they may require recertification within one year of a parole hearing.[7]

We conclude that the district court did not abuse its discretion in rejecting appellant's challenge to recertification. The parole board's requirement that a prisoner be recertified within one year of a parole hearing is a reasonable interpretation and application of NRS 213.1214. NRS 213.1214(4) specifically provides that "[t]his section does not create a right in any prisoner to be certified or continue to be certified. No prisoner may bring a cause of action against the state, its political subdivisions, agencies, boards, commissions, departments, officers or employees for not certifying . . . pursuant to this section."[8] Appellant did not show that he is not permitted to apply for parole, only that he must be certified before he will be considered eligible. Because a prisoner has no right to continue to be certified, a recertification requirement is a reasonable restriction placed on parole eligibility. The Ex Post Facto Clause "is aimed at laws that 'retroactively alter the definition of crimes or increase the punishment for

---

[6]NRS 200.375, the certification statute in effect at the time appellant was convicted, was repealed effective October 1, 1997, and the certification requirement was codified under NRS 213.1214. See 1997 Nev. Stat., ch. 524, §§ 10, 22, at 2506, 2513.

Appellant's certification in 1991 occurred approximately five years before he was even eligible for parole. The State notes in its opposition that appellant had been denied recertification in 1995, 1997, 1998, and 1999.

[7]The attorney general concluded that "recertification by the sexual offense psychiatric panel may lawfully be required of an offender . . . when the previous certification was not rendered within one year of the current parole application hearing." See 94-13 Op. Att'y Gen. 80 (1994).

[8]Emphasis added.

criminal acts.'"[9] There is no ex post facto violation when the law merely alters the method of imposing a penalty and does not change the quantum of punishment.[10] Finally, the attorney general did not usurp legislative authority; an opinion of the attorney general is an advisory opinion "upon question of law to guide public officials," and it is not binding upon this court.[11] Thus, the attorney general did not violate the separation of powers doctrine.

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.[12] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[13]

_____, J.
Maupin

_____, J.
Young

_____, J.
Agosti

cc: Hon. Lee A. Gates, District Judge
Attorney General
Clark County District Attorney
Clifford Mitzlaff Stone
Clark County Clerk

---

[9]California Dept of Corrections v. Morales, 514 U.S. 499, 504 (1995) (quoting Collins v. Youngblood, 497, U.S. 37, 43 (1990)); see also Stevens v. Warden, 114 Nev. 1217, 969 P.2d 945 (1998).

[10]See Land v. Lawrence, 815 F. Supp. 1351 (D. Nev. 1993) (rejecting a prisoner's ex post facto challenge to the certification requirement of NRS 200.375).

[11]Cannon v. Taylor, 88 Nev. 89, 91, 493 P.2d 1313, 1314 (1972).

[12]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

[13]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.