

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON RICHARD NELSON,

No. 37714

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JAN 02 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Jason Richard Nelson's petition for a writ of mandamus.

On December 8, 1994, Nelson was convicted of level-two trafficking in a controlled substance. The district court sentenced Nelson to serve a prison term of 15 years, and then suspended execution of the sentence and placed Nelson on probation for a period not to exceed 5 years. On July 18, 1995, the district court revoked Nelson's probation, reinstating his original 15-year prison term.

On August 17, 2000, Nelson filed a petition for a writ of mandamus, requesting that the court order the Nevada Parole Board to consider Nelson as a candidate for parole. After conducting a hearing, the district court denied Nelson's petition.


Nelson contends that the district court erred in denying his petition for a writ of mandamus because, pursuant to NRS 213.120, he is eligible for parole since he has served 5 years or one-third of his 15-year sentence.¹ We conclude that the district court did not err in denying Nelson's petition.

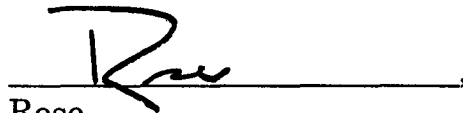
¹Although a claim of parole eligibility should be raised in a post-conviction petition for a writ of habeas corpus, the district court reached the merits of Nelson's petition for a writ of mandamus, treating the petition as a motion to reconsider the district court's prior order denying his petition for a writ of habeas corpus that raised the identical parole eligibility issue. We conclude that the district court did not abuse its discretion in treating Nelson's petition for a writ of mandamus as a motion to reconsider its earlier order.


NRS 213.120(1) provides that “[e]xcept as otherwise provided . . . by statute for certain specified offenses, a prisoner who was sentenced to prison for a crime committed before July 1, 1995, may be paroled when he has served one-third of the definite period of time for which he has been sentenced.”² However, NRS 213.120(1) is inapplicable here because, at the time that Nelson was sentenced, NRS 453.3405(1) explicitly provided that a defendant convicted of a violation of NRS 453.3385 must serve the mandatory minimum term of imprisonment before being eligible for parole.³ Nelson was convicted of possession of a trafficking quantity of a controlled substance pursuant to NRS 453.3385(2), which required, in part, “imprisonment in the state prison for life or for a definite term of not less than 10 years.”⁴ Therefore, Nelson’s sentence requires that he serve a mandatory minimum term of 10 years before he is eligible for parole.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Richard Wagner, District Judge
Attorney General/Carson City
Pershing County District Attorney
Kyle B. Swanson
Pershing County Clerk

²Emphasis added.

³See 1985 Nev. Stat., ch. 78, § 2, at 159.

⁴1983 Nev. Stat., ch. 111, § 2, at 287.