

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN H. ROSKY,  
Appellant,  
vs.  
THE STATE OF NEVADA BOARD OF  
PAROLE COMMISSIONERS,  
Respondent.

No. 84410-COA

FILED

NOV 08 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

John H. Rosky appeals from an order of the district court denying a petition for a writ of mandamus filed on November 22, 2021. Second Judicial District Court, Washoe County; Kathleen A. Sigurdson, Judge.

On appeal, Rosky argues the district court erred by denying his petition for a writ of mandamus. A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, NRS 34.160, or to control discretionary action where “discretion is manifestly abused or is exercised arbitrarily or capriciously,” *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). A writ of mandamus is an extraordinary remedy, *Poulos v. Eighth Judicial Dist. Court*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982), and a petitioner bears 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). We review the district court’s denial

of Rosky's writ petition for an abuse of discretion. See *Reno Newspapers v. Sheriff*, 126 Nev. 211, 214, 234 P.3d 922, 924 (2010).

In February 2020, Rosky was denied parole until 2023. Thereafter, it was discovered that Rosky was not actually eligible for parole in 2020, and the Board of Parole Commissioners (Board) issued an order to that effect in September 2020. However, the Board entitled that order as an "order rescinding previous action to grant parole." Rosky was considered for parole again in 2021 and was denied. After that hearing, the Board issued another order correcting the September 2020 rescission order indicating that it was an order rescinding a previous *denial* of parole, not rescinding a previous *grant* of parole.

In his petition for a writ of mandamus, Rosky sought an order directing the Board to enter an order granting him parole. Rosky claimed that he had a "specific expectation" that parole would be granted after the Board issued the September 2020 rescission order, even though the Board had previously denied parole. He claimed the title of the order demonstrated that the Board had intended to grant parole at the February 2020 hearing or had reconsidered *sua sponte* its order to deny parole.

The district court denied the petition because Rosky failed to demonstrate that the Board was required, as a duty of its office, to grant him parole and he failed to demonstrate the Board acted in an arbitrary and capricious manner. Specifically, the district court found that the title of the September 2020 rescission order contained a clerical error and the order was not a reconsideration of its previous denial of parole. As a result, the district court held that Rosky did not have a reasonable expectation of being

granted parole based on the September 2020 rescission order. The district court further held that even if the Board had granted Rosky parole, the Board was permitted to rescind the grant of parole before his release from prison, and thus, Rosky did not have a constitutionally protected liberty interest in parole.


The record supports the decision of the district court. Nothing in the substance of the September 2020 rescission order indicated that the Board had reconsidered its decision from the February 2020 hearing. The title of the order appears to have been a clerical error. Moreover, even if the Board's order could be construed as it having granted parole, Rosky did not demonstrate he had a protected liberty interest in being paroled because he had not yet actually received the benefit of parole. *See Kelch v. Dir., Nev. Dep't of Prisons*, 107 Nev. 827, 831, 822 P.2d 1094, 1096 (1991) (holding a prisoner was entitled to due process where the prisoner "actually received the benefit conferred by the Pardons Board"); *accord Jago v. Van Curen*, 454 U.S. 14, 14-15, 21 (1981) (holding a prisoner was not entitled to due process where a grant of parole was rescinded prior to the prisoner's release). Therefore, we conclude the district court did not abuse its discretion by denying Rosky's petition for a writ of mandamus.

Rosky also argues the district court erred by adopting the State's proposed order. Rosky does not demonstrate any inaccuracies contained in the district court's order, nor does he demonstrate that the adoption of the proposed order adversely affected the outcome of the proceedings or his ability to seek full appellate review. Therefore, we conclude Rosky fails to demonstrate he is entitled to relief on this claim.

See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Kathleen A. Sigurdson, District Judge  
John H. Rosky  
Attorney General/Carson City  
Attorney General/Dep't of Public Safety/Carson City  
Washoe District Court Clerk