

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENNETH PATTON,
Appellant,
vs.
THE NEVADA BOARD OF PAROLE
COMMISSIONERS; CHRISTOPHER
DERICCO, COM.; SUSAN JACKSON,
COM.; AND ADAM ENDEL, COM.,
Respondents.

No. 85239-COA

FILED

JAN 23 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kenneth Patton appeals from an order of the district court denying a petition for a writ of mandamus. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Patton first argues that the district court erred by construing his 2020 petition as a postconviction petition for a writ of habeas corpus. In his petition, Patton contended that the Nevada Board of Parole Commissioners (Parole Board) relied on improper aggravating factors when it denied his requests for parole in 2013 and 2018.

Pursuant to NRS 34.720, a petitioner may utilize a postconviction petition for a writ of habeas corpus to request “relief from a judgment of conviction or sentence in a criminal case” or to “[c]hallenge[] the computation of time that the petitioner has served pursuant to a judgment of conviction.” NRS 34.720 does not permit a petitioner to challenge the actions of the Parole Board. Moreover, the Nevada Supreme Court has stated that there is no applicable statutory vehicle for a petitioner to challenge the Parole Board’s actions and, accordingly, permitted such a

challenge to proceed through a petition for a writ of mandamus. *Anselmo v. Bisbee*, 133 Nev. 317, 319, 396 P.3d 848, 850 (2017). Because Patton filed a petition for a writ of mandamus and Patton's claim was not within the scope of claims permissible in a postconviction petition for a writ of habeas corpus, the district court erred by construing his petition as a postconviction petition for a writ of habeas corpus.¹ Nevertheless, as we explain below, Patton is not entitled to relief, and therefore, we affirm. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) ("If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.").

Patton next argues that the district court erred by concluding that he was not entitled to relief. As stated previously, Patton claimed in his 2020 petition that the Parole Board utilized improper aggravating factors when it denied his requests for parole in 2013 and 2018. Patton therefore requested an order directing the Parole Board to conduct a new parole hearing. Patton, in fact, received a new parole hearing in 2021.

"[A] controversy must be present through all stages of the proceeding, and even though a case may present a live controversy at its

¹On appeal, Patton appears to raise claims regarding his trial-level proceedings. However, the district court informed the parties that it would not consider such claims, and its order denying relief does not reference any trial-level claims. Patton's challenge to his trial-level proceedings involve issues of fact, and we decline to resolve such claims in the first instance. *See Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) ("[A]n appellate court is not an appropriate forum in which to resolve disputed questions of fact."). Moreover, we note that mandamus relief would not be available for such claims. *See* NRS 34.160 (providing when the writ may issue); NRS 34.170. Therefore, to the extent that Patton challenges his trial-level proceedings, we decline to consider those claims.

beginning, subsequent events may render the case moot.” *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (internal citations omitted). “A case is moot if it seeks to determine an abstract question which does not rest upon existing facts or rights.” *Newman v. State*, 132 Nev. 340, 344, 373 P.3d 855, 857 (2016) (2016) (internal quotation marks omitted).

Because no statutory authority or caselaw permits a retroactive grant of parole, *see Niergarth v. Warden*, 105 Nev. 26, 29, 768 P.2d 882, 884 (1989), a new parole hearing was the appropriate remedy to redress Patton’s alleged error, *see Anselmo*, 133 Nev. at 323, 396 P.3d at 853. However, Patton stated in his informal brief that he received a parole hearing in 2021. As Patton received his requested relief, his claim became moot upon receiving the new parole hearing. Therefore, Patton is not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Susan Johnson, District Judge
Kenneth Patton
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk