

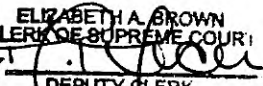
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GODERICK VILLAGELGADO,
Petitioner,
vs.
BOARD OF PAROLE
COMMISSIONERS; DONNA VERCHIO;
ERIC CHRISTIANSEN; LAMICIA
BAILEY; AND SCOTT WEISENTHAL,
Respondents.

No. 85759-COA

FILED

MAY 10 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION

In this original petition for a writ of mandamus, Goderick Villadelgado seeks an order directing the Board of Parole Commissioners (Board) to reverse and vacate its April 21, 2022, order denying Villadelgado parole. Villadelgado contends the Board failed to follow its guidelines when it classified him as a “moderate” risk level. He further claims that, as a result, the Board improperly considered the aggravating and mitigating factors set forth in NAC 213.518 to determine whether he should be paroled.

Mandamus is the appropriate remedy to seek review of the Board’s actions. *See Anselmo v. Bisbee*, 133 Nev. 317, 319, 396 P.3d 848, 850 (2017); *see also* NRS 34.170. 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 a manifest abuse or arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). Further, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered. *See Poulos v. Eighth*

Judicial Dist. Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); *see also State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983). "Petitioner[] carr[ies] 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).

Parole is an act of grace, and Villadelgado has no right to parole. *See* NRS 213.10705. However, the Board has a duty to follow the law and its own regulations and guidelines. *Anselmo*, 133 Nev. at 322-23, 396 P.3d at 852-53 ("[W]hile the decision to grant or deny parole is not generally reviewable, the Board is still obligated to act within established parameters . . .").

The Board was required to conduct an objective risk assessment, NAC 213.514(2) (2012), and based on that result, assign a candidate "for parole a risk level of 'high,' 'moderate' or 'low.'" NAC 213.514(1) (2012). The Board was then required to consider the risk assessment and an offense severity level "to establish an initial assessment regarding whether to grant parole in the manner set forth in NAC 213.516." NAC 213.514(4) (2012); *see* NAC 213.512(2) (2008). The guideline options were 1) "Grant parole at initial parole eligibility," 2) "Grant parole at first or second meeting to consider prisoner for parole," 3) "Consider factors set forth in NAC 213.518," or 4) "Deny parole." NAC 213.516 (2008).

The Board's risk assessment of Villadelgado returned a risk score of "0," which corresponded to a "low" risk to reoffend. *See* Nevada Parole Risk Assessment, https://parole.nv.gov/uploadedFiles/parolenvgov/content/Information/NV_ParoleRiskAssessmentForm.pdf. This

assessment, in conjunction with the offense severity level of “high,”¹ should have led to a guideline recommendation of granting Villadelgado parole at the first or second meeting to consider him for parole. However, the Board applied a different risk assessment to determine that Villadelgado was a “moderate” risk to reoffend and that the guideline recommendation required the Board to consider the factors set forth in NAC 213.518. The Board then considered those factors and denied Villadelgado parole.

In response to an order of the supreme court, the State contends that Villadelgado was properly assessed as a “moderate” risk to reoffend because he was convicted of a sexual offense. Sexual offenders are subjected to a second risk assessment conducted by the Nevada Department of Corrections (NDOC), *see* NRS 213.1214, and the Board bases the risk level on the higher of the two risk assessments. NAC 213.514(3) (2012). The documentation provided by the State indicates only that he was convicted pursuant to NRS 200.508(2)(a)(2) of child abuse, neglect, or endangerment resulting in substantial bodily harm, but nothing in the records provided to this court suggests that “the abuse involved sexual abuse or sexual exploitation.” *See* NRS 213.1214(6)(d)(7) (providing “[a]buse of a child pursuant to NRS 200.508” is a sexual offense if it “involved sexual abuse or sexual exploitation”). Accordingly, we conclude Villadelgado met his burden to establish that the Board abused its discretion when it a) assigned Villadelgado a risk level based on NDOC’s assessment rather than solely on the Board’s own objective risk assessment, and then b) applied the incorrect guideline recommendations based on that incorrect risk level.


¹Villadelgado does not challenge the offense severity level.

Because the Board abused its discretion when it failed to act within its established parameters, we conclude Villadelgado is entitled to relief. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the Board to vacate its April 21, 2022, denial of parole and conduct a new parole hearing in which the Board does not apply the factors enumerated in NAC 213.518.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Goderick Villadelgado
Attorney General/Dep't of Public Safety/Carson City

²Villadelgado also seeks declaratory relief, damages, and filing fees and costs. Such relief is not available in a petition for a writ of mandamus. See NRS 34.160.