

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD MONTOYA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37969

FILED

MAY 15 2002

JANET M. BLOOM
CLERK OF SUPREME COURT
By: *Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of mandamus.

On May 22, 2001, appellant filed a proper person post-conviction petition for a writ of mandamus in the district court. On May 22, 2001, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that the parole board violated appellant's due process rights and the Parole Board Rules and Guidelines by rescinding their order granting appellant parole, before appellant was released on parole, without conducting a fair revocation hearing with counsel present. Appellant's parole was rescinded because of prison disciplinary infractions following the grant of parole.

Our review of the record on appeal reveals that the district court did not err in denying appellant's petition. A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion.¹ A writ will not issue, however, if

¹See NRS 34.160.

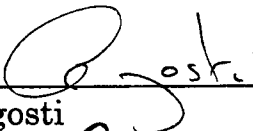
appellant has a plain, speedy, and adequate remedy in the ordinary course of law.² Further, a mandamus is an extraordinary remedy, and it is in the discretion of the district court whether a petition will be entertained.³


Appellant had a plain, speedy, and adequate remedy at law by way of a properly filed petition for a writ of habeas corpus. Thus, appellant is not entitled to relief.

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.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

²See NRS 34.170.

³See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).

⁴See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁵We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

cc: Hon. Michael R. Griffin, District Judge
Attorney General/Carson City
Carson City District Attorney
Richard Montoya
Carson City Clerk