

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA BOARD OF
PAROLE COMMISSIONERS,
Appellant,
vs.
LAWRENCE RONALD VALENTINE,
Respondent.

No. 83601
FILED

MAR 28 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order granting respondent's petition for a writ of mandamus. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

While on parole, Lawrence Valentine applied for early discharge under NRS 213.1543. The Parole Division verified that he met the statutory requirements, including an economic hardship that exempted him from paying restitution, and it recommended early discharge to appellant State of Nevada Board of Parole Commissioners (the Board). The Parole Division later informed Valentine that the Board denied his early discharge because he was not current on his supervision fees, one of the statutory conditions. Valentine made all supervision fee payments, but the Parole Division diverted those payments to restitution pursuant to a policy it developed to foster victim's rights, consistent with Marsy's Law, Nev. Const., art. 1, § 8A. Valentine petitioned the district court for a writ of mandamus to order the Board to grant his early discharge, which that court granted. The Board appeals, but this case was moot prior to our consideration because Valentine's sentence has expired. Additionally, Valentine has not filed an answer or appeared in this appeal in any way, and all notices sent to him have been returned as undeliverable. To assist

us in resolving the mootness and justiciability issues this case now presents, we invited amicus curiae briefing, which has concluded.

Nevada requires a live controversy between two interested and adverse parties. *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986). This court observes a “firm jurisdictional bar on advisory opinions.” *Echeverria v. State*, 137 Nev. 486, 490, 495 P.3d 471, 475 (2021). We consider only actual controversies resolvable by enforceable judgments—once the controversy is gone, the case is moot. *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (collecting cases). “Without a justiciable controversy, the power of the court to pronounce on the law ends.” *Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 136 Nev. 155, 167, 460 P.3d 976, 988 (2020) (Pickering, C.J., concurring in part and dissenting in part). Nevada allows a narrow mootness exception for an issue that “involves a matter of widespread importance that is capable of repetition, yet evading review.” *Id.* at 158, 460 P.3d at 982 (citing *Personhood Nev.*, 126 Nev. at 602, 245 P.3d at 574). To come within this exception, “[t]he party seeking to overcome mootness must prove that (1) the duration of the challenged action is relatively short, (2) there is a likelihood that a similar issue will arise in the future, and (3) the matter is important.” *Id.*

The first prong is easily met—the time frame is short, because NRS 213.1543 is available only to parolees with 12 months or fewer remaining on their sentence, so a challenge may elude this court’s consideration. The second prong—the problem is a recurring one—presents a closer call. The statute giving rise to this case did not take effect until 2019. As the Board concedes, “Valentine’s application for early discharge” was “perhaps the first of its kind received by the Division and the Parole Board”; Valentine “sought release based on NRS 213.1543, a new early

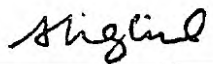
discharge law that had become effective only months earlier.” Nothing suggests this is a recurring issue for Valentine, and while it is conceivable the supervision fee issue may recur in other cases, the Board has not cited any cases to show that it has. Further, NRS 213.1543 has only come up in one other appellate case. *See Solander v. Nev. Dep’t of Corr.*, No. 86614, 2023 WL 4553923, at *1 (Nev. July 14, 2023) (Order Granting Petition for Writ of Mandamus). This suggests that this issue is not recurring, and we conclude this prong is not met.

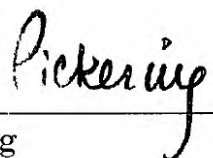
Finally, the third prong—importance—is not met. *See Valdez-Jimenez*, 136 Nev. at 160-61, 460 P.3d at 983 (this court may consider petitions that “raise legal questions of first impression and statewide importance that are likely to recur in other cases” on the merits) (citing the advisory mandamus standard in *Archon Corp. v. Eighth Jud. Dist. Ct.*, 133 Nev. 816, 822-23, 407 P.3d 702, 708 (2017)). The Board does not point to other parolees affected by the district court’s interpretation nor does it cite cases to show that Nevada courts are divided on this matter. That the Board would like clarification as to its policy does not overcome mootness, since the second or third prongs of the *Valdez-Jimenez* test are not met. Furthermore, Valentine has no stake in defending the district court order and there is no relief that this court can grant to appellant because we cannot order Valentine back on parole. The posture of these parties removes this case from the *Valdez-Jimenez* mootness exception because the appeal is not merely moot—the respondent Valentine is not interested and not adverse. Amicus curiae briefing cannot cure this justiciability deficiency because amicus “cannot assume the functions of a party.” 3B C.J.S. *Amicus Curiae* § 17 (2013). The Board has presented no authority suggesting amicus curiae may stand in as an interested party to create a live

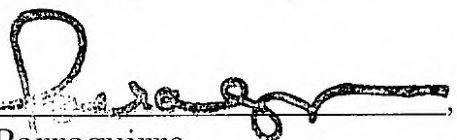
controversy. Likewise, our research has found not a single case—in Nevada, federally, or any other state—allowing amicus curiae to stand in the shoes of a disinterested and non-adverse respondent to create a justiciable controversy in a moot appeal.

Because this appeal is moot without any exception and because Valentine is neither an interested nor adverse party, any opinion on the merits would be strictly advisory in nature. Accordingly, we

ORDER this appeal DISMISSED.


_____, J.
Stiglich


_____, J.
Pickering


_____, J.
Parraguirre

cc: Hon. Adriana Escobar, District Judge
Attorney General/Carson City
Attorney General/Las Vegas
Lawrence Ronald Valentine
American Civil Liberties Union of Nevada/Las Vegas
Federal Public Defender/Las Vegas
Eighth District Court Clerk