

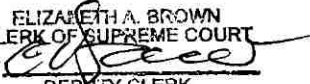
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK HOOPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87281-COA

FILED

JUN 13 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Mark Hooper appeals from a district court order dismissing a petition for “writ of habeas corpus pursuant to NRS. 213.1517(4) and NRS. 34.360 et seq.” filed on May 25, 2023. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Hooper argues the district court erred by dismissing his claim that the Nevada Board of Parole Commissioners (Parole Board) failed to hold a timely revocation hearing after Hooper was taken into the custody of the Nevada Department of Corrections (NDOC) for violating his parole because the record does not support the district court’s conclusion that he waived his right to a timely parole revocation hearing. A parolee that has been taken into custody has a due process right to a revocation hearing within a reasonable time. *Matter of Smith*, 138 Nev. 133, 135-36, 506 P.3d 325, 327-28 (2022). However, “where a parolee delays the revocation hearing by requesting continuances pending the outcome of the parolee’s new criminal charges, neither due process nor NRS 213.1517 will require the Parole Board to hold the revocation hearing within 60 days of the parolee’s return to NDOC.” *Id.* at 136 n.2, 506 P.3d at 329 n.2.

After Hooper filed his petition, the State filed a motion to dismiss in which it argued that Hooper waived his right to a timely parole

revocation hearing by seeking continuances during revocation proceedings. In support of its argument, the State purportedly attached as an exhibit a disk containing video of parole revocation proceedings (Exhibit G). On May 22, 2024, this court entered an order directing transmission of Exhibit G. Thereafter, the district court filed a document stating that it did not have Exhibit G and that it had not been filed or submitted for filing with the district court.

In light of these circumstances, we conclude the record lacks the details necessary to support the district court's conclusion that Hooper waived his right to a timely parole revocation hearing. Because Hooper's claim that the Parole Board failed to hold a timely revocation hearing is not belied by the record and, if true, may entitle him to some relief, we conclude Hooper is entitled to an evidentiary hearing on his claim. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

¹The district court also found that Hooper's claim was not cognizable because he challenged the Board's actions regarding the timeliness of his parole revocation hearing and was moot because the petition was filed after Hooper's parole was revoked. In light of *Smith*, we reject those conclusions.

cc: Hon. Erika D. Ballou, District Judge
Mark Hooper
Attorney General/Carson City
Clark County District Attorney
Attorney General/Las Vegas
Eighth District Court Clerk