

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN WITHEROW,  
Appellant,  
vs.  
WARDEN, ELY STATE PRISON, E.K.  
MCDANIEL,  
Respondent.

No. 38644

FILED

MAY 30 2002

JANET E. M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On May 4, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On July 17, 2001, the district court dismissed two of the four claims raised in appellant's petition and requested that the attorney general file a response to one of the remaining claims. The attorney general filed a response. On September 27, 2001, the district court dismissed appellant's petition in its entirety. This appeal followed.

In his petition, appellant claimed that he was denied his due process right to a full, fair, and impartial parole hearing when the parole board considered and relied upon confidential information not provided to appellant in denying appellant parole. We conclude that the district court did not err in denying this claim. The legislature has declared that "parole . . . is an act of grace of the state. No person has a right to parole . . . and it is not intended that the establishment of standards relating

thereto create any such right or interest in liberty or property or establish a basis for any cause of action against the state, its political subdivisions, agencies, boards, commissions, departments, officers or employees.”<sup>1</sup> Therefore, any alleged reliance upon confidential information does not serve as a basis for a cause of action. Thus, appellant is not entitled to relief.

Next, appellant claimed that he was denied due process when the parole board failed to provide him with the reasons they denied him parole pursuant to NRS 213.10887. We conclude that the district court did not err in denying this claim. NRS 213.10887 does not require the parole board to disclose to appellant the reasons they denied him parole. As stated previously, parole is an act of grace of the state and appellant does not have a liberty interest; thus, the board is not constitutionally required to render any statement of reasons why they denied parole.<sup>2</sup> Further, the board may consider relevant factors in denying appellant parole, such as previous parole violations.<sup>3</sup> Appellant’s previous parole was revoked after he violated the terms of his parole when he was arrested for a crime while on parole. Thus, appellant is not entitled to relief.

Next, appellant claimed that he was denied due process when the parole board extended his “parole violation term” without statutory authority. Specifically, appellant claimed that NRS 213.151 through NRS

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<sup>1</sup>See NRS 213.10705.

<sup>2</sup>See id.; see also Weakland v. Board of Parole Commissioners, 100 Nev. 218, 678 P.2d 1158 (1984).

<sup>3</sup>See NRS 213.10885.

213.1519 does not provide for the extension of a “parole violation term.” The district court did not err in denying this claim. NRS 213.1519 states that “a parolee whose parole is revoked by decision of the board for a violation of any rule or regulation governing his conduct. . .[m]ust serve such part of the unexpired maximum term of his original sentence as may be determined by the board.”<sup>4</sup> In addition, NRS 213.142 states that “[u]pon denying the parole of a prisoner, the board shall schedule a rehearing. . .[t]he date on which the rehearing is to be held is within the discretion of the board.” Appellant violated the terms of his parole after he was arrested for a crime while on parole. The board subsequently determined to deny appellant parole in July of 1999 and in January of 2001. Appellant’s next parole eligibility date is scheduled for November of 2002. As stated previously, parole is an act of grace of the state and no person has a right to parole.<sup>5</sup> Thus, appellant is not entitled to relief.

Lastly, appellant claimed that he was denied due process at his parole hearing when the parole board denied him parole without having adopted “the statutorily mandated standards required to guide their discretion in such matters” pursuant to NRS 213.10885. We conclude that the district court did not err in denying this claim. The parole board has adopted standards regarding the release on and revocation of parole in NAC 213.500 to NAC 213.560. Thus, appellant is not entitled to relief.

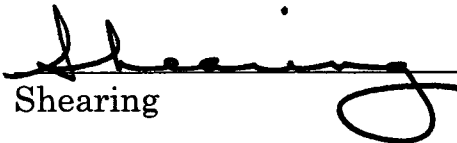
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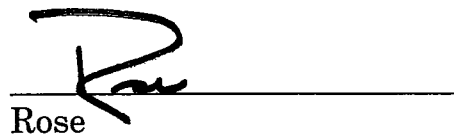
<sup>4</sup>See NRS 213.1519.

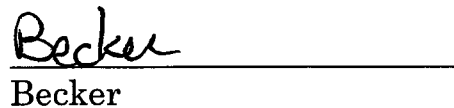
<sup>5</sup>See NRS 213.10705; see also Weakland, 100 Nev. 218, 678 P.2d 1158.

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.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Shearing

 J.  
Rose

 J.  
Becker

cc: Hon. Steve L. Dobrescu, District Judge  
Attorney General/Carson City  
John Witherow  
White Pine County Clerk

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<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).