

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN WITHEROW,  
Appellant,  
vs.  
DORLA M. SALLING, CHAIRMAN,  
BOARD OF PAROLE  
COMMISSIONERS,  
Respondent.

No. 38768

FILED

MAY 30 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On October 18, 2001, appellant filed a proper person petition for writ of mandamus in the district court. On October 19, 2001, the district court denied the petition. This appeal followed.

In his petition, appellant contended that Dorla Salling, chairman of the board of parole commissioners, has failed to comply with the provisions of NRS 213.10885 which require her to adopt, by regulation, standards to assist the board in determining whether to grant or to revoke parole. He also claimed that there is no standard to assist the board in determining whether to reinstate parole after revocation of parole.

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.<sup>1</sup> A

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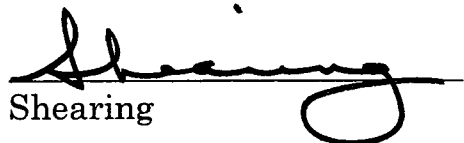
<sup>1</sup>See NRS 34.160.

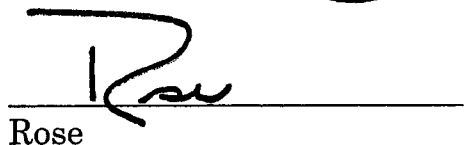
mandamus is an extraordinary remedy, and it is in the discretion of the district court whether a petition will be entertained.<sup>2</sup>

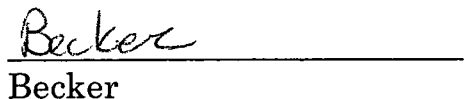
We conclude that the district court did not abuse its discretion in denying appellant's petition. The board of parole commissioners adopted standards regarding the release on or revocation of parole by adding NAC 213.500 to 213.560 to the Nevada Administrative Code in 1990. Nothing in those provisions suggests that the standards only apply to the initial grant or revocation of parole. In fact, NAC 213.520(4) states that one standard to take into consideration in granting parole is whether the person had previously failed to complete parole. Appellant's parole was revoked after he was arrested for a crime while on parole. Thus, appellant is not entitled to extraordinary 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.<sup>3</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Shearing

 J.  
Rose

 J.  
Becker

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<sup>2</sup>See County of Clark v. Doumani, 114 Nev. 46, 952 P.2d 13 (1998).

<sup>3</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. William A. Maddox, District Judge  
Attorney General/Carson City  
John Witherow  
Carson City Clerk