IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID JIMMENEZ MIRELES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39241

FILED

NOV 22 2002

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 habeas corpus.

On January 29, 1982, the district court convicted appellant, pursuant to a guilty plea, of sexual assault and burglary. The district court sentenced appellant to serve in the Nevada State Prison a term of life and a consecutive term of ten years. No direct appeal was taken.

On September 5, 200, the parole board denied appellant parole because the psychiatric panel refused his recertification pursuant to NRS 213.1214(2). On July 12, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court challenging the revocation of his parole. The State opposed the petition. On March 7, 2002, the district court denied appellant's petition. This appeal followed.

In his petition, appellant argued that the recertification requirement pursuant to NRS 213.1214(2) was improperly applied because he had previously been certified for parole by a psychiatric panel

pursuant to former NRS 200.375.[1] Appellant argued that therefore, the instant certification requirement was a violation of due process, ex post facto, a bill of attainder and subjected him to an illegal civil commitment. These claims are without merit.

Parole is an act of grace; a prisoner has no constitutional right to parole.[2] The subject of parole is within the legislative authority.[3] NRS 213.1214(2) requires recertification of a prisoner who, after being certified, is returned to the custody of the department of prisons. Thus, the parole board did not err in applying NRS 213.1214(2) to appellant. Appellant has no right to certification or continued certification by the psychiatric panel.[4]

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[1]NRS 200.375 was repealed effective October 1, 1997, see 1997 Nev. Stat., ch. 524, § 22, at 2513, and codified under NRS 213.1214. Former NRS 200.375 provided:

> (1) No person convicted of sexual assault may be paroled unless a board consisting of:
>
> (a) The administrator of the mental hygiene and mental retardation division of the department of human resources;
>
> (b) The director of the department of prisons; and
>
> (c) A physician authorized to practice medicine in Nevada who is also a qualified psychiatrist,
>
> certifies that the person so convicted was under observation while confined in an institution of the department of prisons and is not a menace to the health, safety or morals of others.

[2]NRS 213. 10705; Niergarth v. Warden, 105 Nev. 26, 768 P.2d 882 (1989).

[3]Pinana v. State, 76 Nev. 274, 283, 352 P.2d 824, 829 (1960).

[4]See NRS 213.1214(4).

Further, there is no ex post facto violation when the law merely alters the method of imposing a penalty and does not change the quantum of punishment.[5] Finally, appellant was convicted and sentenced pursuant to a criminal charge pursuant to NRS 200.364, NRS 200.366 and NRS 205.060. Thus, appellant is not currently subjected to a civil commitment. Therefore, the district court did not err in denying appellant's petition.

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.[6] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

cc: Hon. Nancy M. Saitta, District Judge
Attorney General/Carson City
Clark County District Attorney
David Jimmenez Mireles
Clark County Clerk

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[5]Land v. Lawrence, 815 F. Supp. 1351 (D. Nev. 1993).

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