

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 39270

FILED

JUN 08 2005

JANEY M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant John Witherow's petition for a writ of mandamus. First Judicial District Court, Carson City; William A. Maddox, Judge.

On June 20, 2001, Witherow filed a proper person petition for a writ of mandamus in the district court. On February 6, 2002, the district court denied Witherow's petition. This appeal followed.

In his petition, Witherow requested documents pertaining to the parole board's decision to deny him parole on two occasions. Specifically, Witherow contended that he has a statutory and common law right to copies of any documents referencing the purchase and ownership of a .22 caliber rifle, as well as any letters from individuals opposed to his release on parole. Further, Witherow claimed that he was entitled to a document explaining the reasons he was denied parole and a list of the evidence the parole board relied upon in coming to such a decision.

A writ of mandamus is available to compel the performance of any act that the law requires as a duty resulting from an office, trust or

station, or to control an arbitrary or capricious exercise of discretion.¹ A writ of mandamus is an extraordinary remedy, and it is in the discretion of the district court whether a petition will be entertained.²

We conclude that the district court did not abuse its discretion in denying Witherow's petition. Parole is an act of grace of the State and no person has a right to parole.³ The establishment of standards relating to parole does not establish a basis for a cause of action against the State or its employees.⁴ Therefore, any failure of the parole board to disclose information to Witherow cannot serve as a basis for a cause of action. Further, the parole board is not constitutionally required to provide Witherow with a list of reasons he was denied parole.⁵

Moreover, NRS 213.1075 provides, "all information obtained in the discharge of official duty by a parole . . . officer or employee of the Board is privileged and may not be disclosed directly or indirectly to anyone other than the Board, the judge, district attorney or others entitled to receive such information." Notably, the potential parolee himself is not specifically listed as exempt from the non-disclosure requirement. We are not persuaded by Witherow's argument that the sole purpose of the statute was "to protect the privacy rights of the person that is the subject

¹See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

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

³NRS 213.10705.

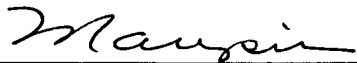
⁴Id.

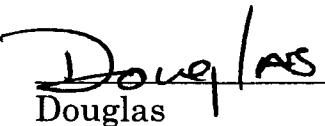
⁵See Weakland v. Bd. of Parole Comm'rs, 100 Nev. 218, 678 P.2d 1158 (1984).

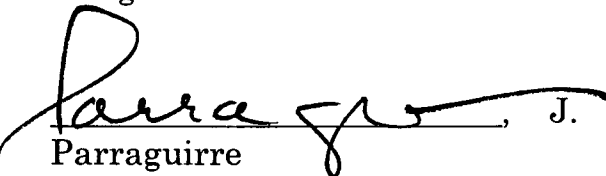
of the information," and that he is necessarily entitled to receive the documents. Additionally, NRS 213.130(8) provides that certain information received by the board pertaining to the victim is confidential. We therefore conclude that Witherow failed to demonstrate that he was entitled to extraordinary relief.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Witherow is not entitled to relief and that briefing and oral argument are unwarranted.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

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

⁷We have reviewed all documents that Witherow has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that Witherow has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.

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