

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE O'CONNER BEARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41151

FILED

DEC 03 2003

ORDER OF AFFIRMANCE

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

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

On May 19, 1998, the district court convicted appellant, pursuant to a jury verdict, of unlawful trafficking in a controlled substance (count I), unlawful possession of a controlled substance for purpose of sale (count II), felony abuse and neglect of a child (count III), gross misdemeanor abuse and neglect of a child (count IV), and two counts of being an ex-felon in possession of a firearm (counts VI and VII). The district court sentenced appellant to serve multiple consecutive and concurrent terms in the Nevada State Prison. On appeal, this court reversed appellant's convictions for counts I, III, and IV.¹ The remittitur issued on March 7, 2002.

On March 19, 2002, appellant filed a motion to amend the judgment of conviction, arguing that his three remaining sentences should run concurrently. The district court entered an amended judgment of

¹Beard v. State, Docket No. 32560 (Order Reversing in Part and Affirming in Part, August 16, 1999).

conviction on March 21, 2002.² Appellant was sentenced to a term of 19 to 48 months for count II, and terms of 28 to 72 months for counts VI and VII. The sentences for counts VI and VII were imposed to run concurrently to each other, and consecutively to count II.

Beard appealed the amended judgment of conviction, arguing that the district court violated his double jeopardy rights by increasing his sentences after he had begun serving them. He claimed that it was error for the court to impose consecutive sentences when his original sentences for these convictions were imposed to run concurrently. This court affirmed the amended judgment of conviction.³ This court subsequently denied a petition for rehearing,⁴ and a petition for en banc reconsideration.⁵

On December 16, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to

²On May 9, 2002, the district court entered a second amended judgment of conviction, correcting a mistake concerning the sentence for count VII. On June 27, 2002, the district court entered a third amended judgment of conviction, providing that appellant receive 155 days credit for pre-sentence incarceration.

³Beard v. State, Docket No. 39738 (Order of Affirmance, November 5, 2002).

⁴Beard v. State, Docket No. 39738 (Order Denying Rehearing, December 4, 2002).

⁵Beard v. State, Docket No. 39738 (Order Denying En Banc Reconsideration, February 20, 2003).

represent appellant or to conduct an evidentiary hearing. On March 6, 2003, the district court denied appellant's petition. This appeal followed.

Appellant claimed that his due process and equal protection rights were violated when he did not receive a parole hearing before his first sentence expired. Our review of the record on appeal reveals that the district court did not err in denying this claim. Parole is an act of grace by the State, and a prisoner does not have the right to parole.⁶ Furthermore, "it is not intended that the establishment of standards relating [to parole] 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."⁷ No protected liberty interest was infringed when appellant did not receive a parole hearing because no liberty interest was at stake.⁸ Appellant would have a protected liberty interest only if he had actually received the benefit promised—if he had been released on parole.⁹

The record reveals that appellant did not receive a parole hearing before his sentence for count II expired because he was serving a longer concurrent sentence for count I at the time.¹⁰ Appellant did not

⁶NRS 213.10705; see also Severance v. Armstrong, 96 Nev. 836, 839, 620 P.2d 369, 370 (1980).

⁷NRS 213.10705.

⁸See Kelch v. Director, 107 Nev. 827, 829-30, 822 P.2d 1094, 1095-96 (1991).

⁹See id. at 830, 822 P.2d at 1095; see also Jago v. Van Curen, 454 U.S. 14, 17 (1981).

¹⁰See NRS 213.1213.

become eligible for parole on count II until the remittitur issued from this court's reversal of his conviction for count I. When the remittitur issued and he was re-sentenced on March 21, 2002, appellant had been discharged from his sentence for count II after serving the appropriate time. We decline to apply parole retroactively or to recompute time served on an expired sentence.¹¹ Therefore, we affirm the order of the district court.

Appellant additionally alleged that the parole board violated his due process and equal protection rights by misapplying parole guidelines and denying him parole. We conclude that appellant's argument is without merit. The parole board has a great deal of discretion in its ability to grant or deny parole.¹² The guidelines contained in NAC 213.510 through 213.550

may be considered by the board in determining whether to grant, deny, continue or revoke parole, but nothing contained in those sections shall be construed to restrict the authority of the board to: (a) [d]eny or revoke parole in any case in which application of the standards indicates that parole should be granted or continued.¹³

Furthermore, because a prisoner only has a hope of parole and not a constitutionally cognizable interest, the board's discretionary decision to

¹¹See Niergarth v. State, 105 Nev. 26, 29, 768 P.2d 882, 884 (1989); Johnson v. Director, 105 Nev. 314, 316-17, 774 P.2d 1047, 1048-49 (1989).

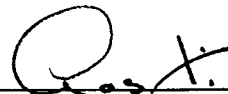
¹²See NAC 213.560(1).

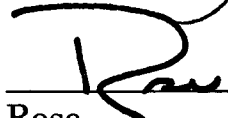
¹³Id.; see also NRS 213.10705.


deny parole may be made without any statement of reasons why parole is denied.¹⁴ Therefore, we affirm the order of the district court on this issue.

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.¹⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁶


_____, C.J.
Agosti


_____, J.
Rose


_____, J.
Maupin

cc: Hon. Kathy A. Hardcastle, District Judge
George O'Conner Beard
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁴Weakland v. Bd. of Parole Comm'rs, 100 Nev. 218, 219-20, 678 P.2d 1158, 1160 (1984).

¹⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁶We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.