

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM CATO SELLS, JR.,
Appellant,
vs.
DORLA M. SALLING, CHAIRPERSON,
NEVADA STATE BOARD OF PAROLE,
Respondent.

No. 42275

FILED

JUN 02 2004

ANNETTE M. CLONK
CLERK OF SUPREME COURT
DEPUY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a petition for a writ of habeas corpus.

On April 22, 1994, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary, one count of possession of a stolen vehicle, and one count of possession of burglary tools. The district court adjudicated appellant a habitual criminal and sentenced him to serve two concurrent terms of life in the Nevada State Prison with the possibility of parole and a consecutive term of one year in the Clark County Detention Center. On November 28, 1995, the district court entered an amended judgment of conviction to include additional credits. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued May 21, 1996. Appellant unsuccessfully sought post-conviction relief.²

¹See Sells v. State, Docket No. 25953 (Order Dismissing Appeal, May 1, 1996).

²See Sells v. State, Docket No. 38115 (Order of Affirmance, September 5, 2002); Sells v. State, Docket Nos. 31265, 33994, 34062 (Order of Affirmance, December 4, 2000).

On June 17, 2003, appellant filed a petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition. Appellant filed an opposition to the State's motion, and the State filed a reply. On October 15, 2003, the district court dismissed the petition. This appeal followed.

In his petition, appellant claimed that his incarceration had been rendered illegal by the parole board. Appellant claimed that his crime severity level was improperly set by the parole board at Category A-3, which would require appellant to serve 240 to 270 months under the parole guidelines established by the parole board. Appellant claimed that the Category A-3 determination was based upon a mistaken assumption that he had been adjudicated a habitual criminal pursuant to NRS 207.010(2) (the large habitual criminal provision).³ Appellant claimed that his crime severity level should have been set at Category B-2 because the judgment of conviction set forth that he was adjudicated a habitual criminal pursuant to NRS 207.010(1) (the small habitual criminal provision).⁴ Appellant reasoned that a Category B-2 crime severity level would reduce the time that he would have to serve under the parole guidelines.

³See 1985 Nev. Stat., ch. 544, § 1, at 1643-44 (setting forth in subsection 2 that a defendant convicted of three or more felonies may be adjudicated a habitual criminal and sentenced to serve a term of life with the possibility of parole after ten years had been served or life without the possibility of parole).

⁴See 1985 Nev. Stat., ch. 544, § 1, at 1643 (setting forth in subsection 1 that a defendant convicted of two felonies may be adjudicated a habitual criminal and sentenced to serve a term of ten to twenty years).

The district court concluded that appellant's claim of illegal incarceration was based upon a mistaken belief that appellant had only been adjudicated a habitual criminal under the small provision. The documents before the district court indicated that appellant was adjudicated a habitual criminal under the large provision and that the judgment of conviction contained a typographical error to the extent that it indicated otherwise. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant's illegal incarceration claim lacked merit. The record supports the district court's determination that the judgment of conviction contained a typographical error relating to the subsection of NRS 207.010 under which appellant was adjudicated. The record reveals that appellant was adjudicated a habitual criminal pursuant to the large habitual criminal provision, subsection 2 at the time of his offense, on the basis of proof of at least three prior felony convictions and that appellant was sentenced to serve a term of life with the possibility of parole after ten years. There is no support in the record for appellant's argument that he was adjudicated a habitual criminal under the small habitual criminal provision. Moreover, parole is an act of grace of the state; a prisoner has no right to be released on parole.⁵ The decision of whether or not to grant parole lies within the discretion of the parole board.⁶ Finally, to the extent that


⁵See NRS 213.10705; Niergarth v. Warden, 105 Nev. 26, 768 P.2d 882 (1989).


⁶See NRS 213.1099(2) (providing that the parole board shall consider the standards established by the board and other factors in determining whether to deny or grant parole); NAC 213.560(1) (stating that the standards do not restrict the parole board's discretion to grant or deny parole).

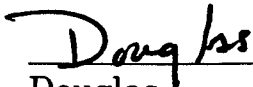
appellant challenged the validity of the judgment of conviction and sentence, appellant's habeas corpus petition was filed in the wrong district court.⁷

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Dan L. Papez, District Judge
William Cato Sells Jr.
Attorney General Brian Sandoval/Carson City
Attorney General Brian Sandoval/Ely
White Pine County Clerk

⁷See NRS 34.738(1).

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).