

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUSSELL YEAGER,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, CRAIG
FARWELL,
Respondent.

No. 42354

FILED

JUN 25 2004

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing appellant's petition for a writ of habeas corpus. Sixth Judicial District Court, Pershing County; Richard Wagner, District Judge.

On May 31, 2002, appellant filed a proper person petition for a writ of habeas corpus in the district court. The State opposed the petition, and appellant filed a response. On September 18, 2003, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant contended that his continued confinement was in violation of due process and the prohibition against cruel and unusual punishment. Specifically, appellant claimed that he was granted parole on April 2001, only to have the grant of parole rescinded when Massachusetts refused to accept him. He then claimed that he was granted parole a second time in January 2002, upon approval of a release plan. Although he submitted multiple release plans, the plans

were seemingly rejected, and he was not provided assistance he claims in formulating a release plan contrary to the requirements of NRS 213.140.¹ It appears that the second grant of parole was also rescinded.

Our review of the record on appeal reveals that the district court did not err in dismissing appellant's petition. Parole is an act of grace of the state; a prisoner has no right to parole.² Further, NRS 213.10705 explicitly states that "it is not intended that the establishment of standards relating [to parole] create any such right or interest in liberty or property or establish any basis for any cause of action against the State, its political subdivisions, agencies, boards, commissions, departments,

¹NRS 213.140(2) provides:

If the release of a prisoner on parole is authorized by the board, the division shall:

(a) Review and, if appropriate, approve each prisoner's proposed plan for placement upon his release; or

(b) If his plan is not approved by the division, assist the prisoner to develop a plan for his placement upon release,

before he is released on parole. The prisoner's proposed plan must identify the county in which the prisoner will reside if the prisoner will be paroled in Nevada.

²See NRS 213.10705; Severance v. Armstrong, 96 Nev. 836, 620 P.2d 369 (1980).

officers or employees." No protected liberty interest was impinged upon by the parole board's subsequent rescission of the grant of parole because appellant had never received the benefit promised; appellant was never actually released on parole.³ Accordingly, "the parole board was not required to conform to the dictates of due process in reversing its original decision."⁴ Thus, appellant was not subject to cruel and unusual punishment when his parole was rescinded. The issue of whether the division failed to assist him in developing a plan is rendered moot by the subsequent rescission of appellant's parole. Moreover, NRS 213.140(2) does not require the Division to draft or fashion a parole plan on behalf of appellant; rather, the Division is only required to provide assistance. Appellant failed to demonstrate that the lack of an approved parole plan was due to deficient assistance from the Division.⁵ Therefore, we affirm the order of the district court dismissing appellant's petition.


³Jago v. Van Curen, 454 U.S. 14, 17 (1981); see also Kelch v. Director, 107 Nev. 827, 830, 822 P.2d 1094, 1095 (1991).


⁴Kelch, 107 Nev. at 830, 822 P.2d at 1095.


⁵In light of appellant's status as a parole violator, and given the severity of the crime (first degree murder), this court agrees with the district court that the Division has "a duty of overriding and paramount importance in taking appropriate steps to protect society upon [appellant's] release."

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.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Richard Wagner, District Judge
Russell Yeager
Attorney General Brian Sandoval/Carson City
Pershing County Clerk

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