IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES L. TAYLOR,
Appellant,
vs.
WARDEN, LOVELOCK CORRECTIONAL CENTER, CRAIG FARWELL,
Respondent.

No. 42427

FILED

JUL 27 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
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, Judge.

On June 20, 1995, the district court convicted appellant, pursuant to a guilty plea, of one count of use of a minor in the production of pornography. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole.

On January 13, 2003, appellant filed a proper person petition for a writ of habeas corpus challenging the continued legality of his confinement. The State filed a motion to dismiss the petition. Appellant filed a response. On November 14, 2003, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant claimed that his rights to due process, equal protection, free exercise of religion, and to be free from cruel and unusual punishment were violated. Specifically, he claimed that a member of the psych panel was biased against him because of his Wiccan beliefs. Appellant claimed that he was asked about sexual content in the Book of Shadows, a Wiccan text. Appellant asserted that certification was

denied because of religious bias. Appellant requested that he be immediately released or provided a fair hearing by a different psych panel. Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing appellant's petition.

NRS 213.1099(1) provides that the Parole Board may release on parole a prisoner who is otherwise eligible. However, this very broad discretion accorded to the Parole Board to release a prisoner on parole is limited by NRS 213.1214 for certain prisoners. NRS 213.1214(1) specifically provides that the Parole Board shall not release a prisoner convicted of certain enumerated offenses on parole unless the prisoner is certified by a psych panel that he does not represent a high risk to reoffend. Appellant is subject to the certification requirement.[1]

The Legislature did not intend to permit a prisoner to challenge the psych panel's decision not to certify. NRS 213.1214(4) specifically provides:

> This section does not create a right in any prisoner to be certified or to continue to be certified. No prisoner may bring a cause of action against the State, its political subdivisions, or the agencies, boards, commissions, departments, officers or employees of the State or its political subdivisions for not certifying a prisoner pursuant to this section or refusing to place a prisoner before a panel for certification pursuant to this section.

NRS 213.10705 likewise states:

> The Legislature finds and declares that the release or continuation of a person on parole or probation is an act of grace of the state. No person

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[1]See NRS 213.1214(5)(e).

> has a right to parole . . . and it is not intended that the establishment of standards relating thereto 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.

Thus, appellant failed to demonstrate due process was implicated by the failure of the Parole Board to certify appellant.[2] Moreover, even assuming that appellant was permitted to challenge the denial of certification, appellant failed to demonstrate that he did not receive an adequate hearing and that the denial of certification was based upon his religious beliefs. The psych panel gave appellant unsatisfactory marks in every category considered in determining whether a prisoner is a high risk to reoffend. Appellant failed to demonstrate that these unsatisfactory marks were the result of any improper consideration of his religious beliefs.[3]

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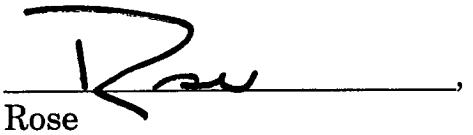
[2]See generally Weakland v. Bd. of Parole Comm'rs, 100 Nev. 218, 678 P.2d 1158 (1984) (recognizing that Nevada's parole statutory scheme did not create a constitutionally cognizable liberty interest); cf. Greenholtz v. Inmates of Neb. Penal and Correctional Complex, 442 U.S. 1 (1979) (holding that there is not a constitutional right to be conditionally released before expiration of a valid sentence, but recognizing that the state may create a liberty interest with the language used in the statutory scheme).

[3]See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984) (requiring a petitioner to support his claims with specific factual allegations); see also O'Lone v. Estate of Shabazz, 482 U.S. 342, 348, 349 (1987) (recognizing that a prisoner's constitutional rights may be limited and that these limitations "arise both from the fact of incarceration and from valid penological objectives—including deterrence of crime, rehabilitation of prisoners, and institutional security" and restating that a prison regulation that infringes upon a prisoner's constitutional rights is valid "if it is reasonably related to legitimate penological interests").

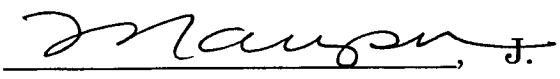
Finally, for the reason discussed above, appellant's claims relating to his equal protection rights and right to be free from cruel and unusual punishment lack merit.[4] Thus, we affirm the order of the district court dismissing appellant's petition.

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.[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Rose



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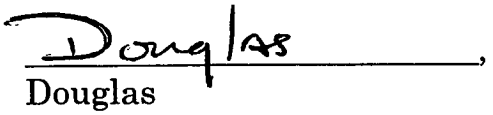

_____, J.
Douglas

cc: Hon. Richard Wagner, District Judge
James L. Taylor
Attorney General Brian Sandoval/Carson City
Pershing County Clerk

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[4]Id. at 349 ("To ensure that courts afford appropriate deference to prison officials, we have determined that prison regulations alleged to infringe constitutional rights are judged under a 'reasonableness' test less restrictive than that ordinarily applied to alleged infringements of constitutional rights.").

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