

IN THE SUPREME COURT OF THE STATE OF NEVADA

HARVEY LEE PYNE,
Appellant,
vs.
WARDEN, NORTHERN NEVADA
CORRECTIONAL CENTER, DON
HELLING,
Respondent.

No. 42446

FILED

JUN 09 2004

ORDER OF AFFIRMANCE

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

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

On March 10, 1988, the district court convicted Pyne, pursuant to a guilty plea, of sexual assault. The district court sentenced Pyne to serve a term of life in the Nevada State Prison with the possibility of parole after five years. No direct appeal was taken.

On June 27, 2003, Pyne filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Pyne or to conduct an evidentiary hearing. On November 24, 2003, the district court denied Pyne's petition. This appeal followed.

In his petition, Pyne first contended that the parole board's decision to rescind his parole violated his due process rights. Pyne specifically argued that the parole board created a liberty interest in parole when he was approved for parole on June 5, 2001. Pyne was subsequently unable to locate suitable housing, and could not provide an

approved parole release plan. On March 24, 2003, the parole board rescinded Pyne's grant of parole.

We conclude that Pyne's claim is without merit. Parole is in act of grace by the State.¹ As such, a prisoner has no right to parole.² Pyne's grant of parole was conditioned on the subsequent approval of a parole release plan, but no parole release plan was approved. No protected liberty interest was encroached upon by the parole board's rescission of the grant of parole because Pyne never received the benefit promised—he was never actually released on parole.³ Consequently, "the parole board was not required to conform to the dictates of due process in reversing its original decision,"⁴ and the district court did not err in denying this claim.

Pyne next claimed that his lack of certification pursuant to NRS 213.1214 violated his due process rights. Pyne claimed that although the certification statute requires the prisoner to be "under observation while confined in an institution of the Department of Corrections,"⁵ the certification panel is not provided with a definition of "observation."

¹NRS 213.10705; see also Severance v. Armstrong, 96 Nev. 836, 620 P.2d 369 (1980).

²Id.

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

⁴Kelch, 107 Nev. at 830, 822 P.2d at 1095 (citing Jago, 454 U.S. at 17).

⁵NRS 213.1214(1)(c).

Further, the certification panel's assessment sheets do not list "observation" as a category for evaluation.

Pyne did not allege, and there is nothing in the record to suggest, that he was denied certification because he was not under observation. Rather, Pyne's certification notification stated that he was denied certification because he was found to represent a high risk to re-offend. Pyne failed to adequately articulate how the observation requirement infringed his due process rights. To the extent that Pyne is challenging the panel's decision to deny certification, we note that NRS 213.1214(4) specifically prohibits a prisoner from bringing a cause of action against the State due to lack of certification. Thus, we affirm the order of the district court with respect to this claim.

Next, Pyne alleged that he was arbitrarily and capriciously raised from a tier 1 level of notification to a tier 2 level of notification.⁶ Pyne argued that he was determined to be a tier 1 notification level while on parole in September 1998, but was arbitrarily elevated to a tier 2 notification level in September 2002. We note that during the intervening four years, however, Pyne violated his parole conditions, his parole was revoked, and he was returned to prison. Therefore, we conclude that Pyne failed to establish that he was arbitrarily raised one notification level, and the district court did not err in denying this claim.

Lastly, Pyne contended that the Division of Parole and Probation failed to assist him in developing an approved parole release plan, in violation of NRS 213.140. Pyne failed to provide specific facts to

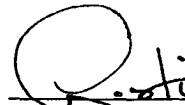
⁶See NRS 179D.720-730.


support this claim, however.⁷ We further note that this claim would be more appropriately raised in a petition for a writ of mandamus, rather than a petition for a writ of habeas corpus.⁸ Therefore, we affirm the order of the district court with respect to this claim.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Pyne is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Michael R. Griffin, District Judge
Harvey Lee Pyne
Attorney General Brian Sandoval/Carson City
Carson City Clerk

⁷See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

⁸See NRS 34.150-310.

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).