IN THE SUPREME COURT OF THE STATE OF NEVADA

HAROLD EDWARD HARTER,
Appellant,
vs.
DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, HOWARD SKOLNIK AND PSYCHOLOGICAL REVIEW PANEL,
Respondents.

No. 52464

FILED

APR 21 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a petition for a "writ of mandamus and prohibition, refusal to adhere to psychologist evaluation of risk level i.e., low risk." Sixth Judicial District Court, Pershing County; John M. Iroz, Judge.

On April 1, 2008, appellant filed a petition for a "writ of mandamus and prohibition, refusal to adhere to psychologist evaluation of risk level i.e., low risk." The State filed a motion to dismiss the petition. On August 19, 2008, the district court denied the petition. This appeal followed.

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion. NRS 34.160; see Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04,

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637 P.2d 534, 536 (1981). Further, a writ of prohibition may issue if a lower court acts in excess of its jurisdiction. NRS 34.320; Goicoechea v. District Court, 96 Nev. 287, 289, 607 P.2d 1140, 1141 (1980). A writ of mandamus or a writ of prohibition will not issue, however, if a petitioner has a "plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170; NRS 34.330. Finally, mandamus and prohibition are extraordinary remedies, and the decision of "whether a petition will be entertained lies within the discretion of this court." See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982) (mandamus); Bowler v. District Court, 68 Nev. 445, 453, 234 P.2d 593, 598 (1951) (prohibition).

In his petition, appellant first claimed that the psych panel assessed him as a high risk offender, even though he had been evaluated to be low risk by a separate evaluation.[1] Appellant claimed that he was deemed high risk by the psych panel out of vindictiveness due to a previous challenge to a psych panel ruling. This claim challenged the psych panel's failure to certify him. There is no cause of action to challenge the psych panel's failure to certify. NRS 213.1214(4). Further, appellant failed to provide evidence of a separate assessment as low risk to reoffend or any evidence that the panel acted out of vindictiveness, and as such put forth only bare and naked claims. Hargrove v. State, 100 Nev.

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[1]Pursuant to NRS 213.1214, a psych panel must certify that an offender is not a high risk to reoffend before certain offenses may be eligible for parole.

498, 502, 686 P.2d 222, 225 (1984). Therefore, the district court did not abuse its discretion in denying this claim.

Second, appellant claimed that, under NRS 179D.510, he must be brought before a district court to determine his status as a high risk offender.[2] As such, appellant claimed that the assessment by the psych panel violated his rights. Appellant further claimed that, as NRS 179D.510 was enacted after his conviction, application of NRS 179D.510 is a violation of the prohibition against ex post facto punishment and double jeopardy. Appellant failed to demonstrate that NRS 179D.510 was applicable in the instant case. NRS 179D.510 provided for the procedure in which a prosecuting attorney may have petitioned a district court for a declaration that the sex offender was a sexually violent predator before the sex offender was released and had to register as a sex offender. As NRS Chapter 179D governs community notification of sex offenders, NRS 179D.510 was inapposite to the proceedings before the psych panel. To the extent that appellant challenged the parole board's decision to deny parole, that challenge was without merit as a prisoner has no constitutional right to parole. See NRS 213.10705; Niergarth v. Warden, 105 Nev. 26, 768 P.2d 882 (1989). Therefore, we conclude that the district court did not abuse its discretion in denying this claim.

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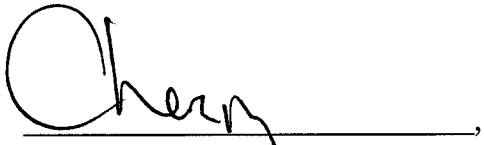
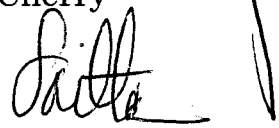
[2]NRS 179D.510 was repealed by the legislature, effective July 1, 2008. 2007 Nev. Stat., ch. 485, §§ 56, 57, at 2780.

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. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Cherry



_____, J.
Saitta

_____, J.
Gibbons

cc: Sixth Judicial District Court Dept. 2, District Judge
Harold Edward Harter
Attorney General Catherine Cortez Masto/Carson City
Pershing County Clerk