

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE SULTON HENDERSON,

No. 35446

Appellant,

vs.

DIRECTOR, NEVADA DEPARTMENT OF  
PRISONS, ROBERT BAYER,

Respondent.

FILED

NOV 17 2000

*H. Stovall*

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court denying appellant's petition for a writ of habeas corpus. The State has filed a motion to dismiss this appeal as moot. Appellant opposes the motion to dismiss the appeal.

On August 26, 1977, the district court convicted appellant, pursuant to a jury trial, of one count of burglary (Count I), one count of the infamous crime against nature with the use of a deadly weapon (Count II), one count of rape with the use of a deadly weapon (Count III), and one count of robbery with the use of a deadly weapon (Count IV). The district court sentenced appellant to serve terms in the Nevada State Prison as follows: for Count I, ten years; for Count II, two consecutive terms of life with the possibility of parole, to be served consecutively to Count I; for Count III, two consecutive terms of life with the possibility of parole, to be served concurrently to Count II; and for Count IV, two consecutive terms of fifteen years, to be served concurrently to Count III.

On April 5, 1982, appellant was granted parole. In 1991, appellant was found to have violated a condition of parole. However, the parole board reinstated appellant's parole with two special conditions: "1. California only, 2. Complete parenting guidance classes as ordered by California Probation Dept."

On April 6, 1999, the Nevada Division of Parole and Probation issued a parole violation report. Appellant was charged with violating the laws and conduct condition of parole.<sup>1</sup> Appellant was subsequently returned to Nevada for parole revocation proceedings. On May 11, 1999, the parole board, at the conclusion of a parole revocation hearing, resolved to take no action on the charge that appellant had violated the laws and conduct condition of parole and continued appellant on parole with all previous special conditions. On June 2, 1999, and July 20, 1999, the State of California rejected appellant's application to return to California for supervision as a parolee. On June 18, 1999, while appellant was awaiting final resolution of his application to be returned to California pursuant to the special conditions of his parole, appellant appeared before the psychiatric panel and was certified as not being a menace to the health, safety and morals of others pursuant to NRS 213.1214(2).<sup>2</sup>

On July 27, 1999, appellant filed a petition for a writ of habeas corpus in the district court challenging the continued legality of his confinement after the conclusion of his parole revocation hearing.<sup>3</sup> The State opposed the petition. On December 15, 1999, the district court denied appellant's

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<sup>1</sup>The laws and conduct condition is a general condition of parole that requires a parolee to "comply with all municipal, county, state and federal laws, and ordinances" and to conduct himself/herself "as a good citizen."

<sup>2</sup>NRS 213.1214(2) provides, "A prisoner who has been certified pursuant to subsection 1 and who returns for any reason to the custody of the department of prisons may not be paroled unless a panel recertifies him in the manner set forth in subsection 1."

<sup>3</sup>In his petition, appellant argued that his continued confinement violated his due process rights because the Nevada Parole Board did not revoke his parole and instead elected for appellant to continue on parole. Appellant blamed his continued confinement on the fact that the Department of Prisons was requiring him to be certified by the psychiatric panel pursuant to NRS 213.1214(2). Appellant claimed that application of the certification requirement of NRS 213.1214 violated the Ex Post Facto Clause because it was enacted after he had committed his offense.

petition as moot because appellant had been released on parole on October 15, 1999. This appeal followed.

The State has filed a motion to dismiss this appeal as moot because appellant's challenge to the continued legality of his confinement was rendered moot when he was released on parole on October 15, 1999.

Appellant opposes the motion to dismiss on the ground that he has raised claims "capable of repetition, yet evading review." Appellant bases his opposition upon his claim that NRS 213.1214 violates the Ex Post Facto Clause. Appellant argues that he is "not the only person convicted of sex crimes in the past" and that other "[p]ersons convicted of sex crimes prior to the enactment of NRS 213.1214(2) in 1997 can find themselves in the same predicament as [appellant]."


"[T]he duty of every judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before it." *NCAA v. University of Nevada*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981). This court has recognized that a claim "'capable of repetition, yet evading review' . . . falls within an exception to the mootness doctrine." *Langston v. State, Dep't of Mtr. Vehicles*, 110 Nev. 342, 344, 871 P.2d 362, 363 (1994).


Based upon our review of the documents before this court, we conclude that appellant's appeal is moot. Appellant challenged the continued legality of his confinement in his petition. Appellant was released on parole on October 15, 1999. Appellant has already been granted the relief sought in his petition, cessation of custody. We conclude that appellant's claim did not fall into the narrow scope of claims "capable of repetition, yet evading review." See id.; see generally *Spencer*

v. Kemna, 523 U.S. 1, 17-18 (1998). Accordingly, we grant the State's motion to dismiss the appeal and we

ORDER this appeal dismissed.

  
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Shearing J.

  
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Agosti J.

  
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Leavitt J.

cc: Hon. William A. Maddox, District Judge  
Attorney General  
State Public Defender  
Carson City Clerk