

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC WILLIAM ZESSMAN,
Appellant,
vs.
THE STATE OF NEVADA BOARD OF
PAROLE COMMISSIONERS,
Respondent.

No. 72551

FILED

DEC 29 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Eric William Zessman appeals from a district court order denying his August 28, 2016, petition for writ of habeas corpus.¹ First Judicial District Court, Carson City; James Todd Russell, Judge.

The Nevada Board of Parole Commissioners revoked Zessman's parole, finding it was the second time he had absconded and he failed to cooperate upon being arrested. Zessman's petition challenged the revocation of his parole.

Zessman first argued the State failed to provide him timely notice of the preliminary inquiry hearing, a copy of the allegations against him, and the evidence to be used against him. Zessman signed documents three days after his arrest and more than a month before his parole revocation hearing indicating he was waiving a preliminary inquiry hearing

¹The district court mistook Zessman's petition for a *postconviction* petition for a writ of habeas corpus, determined it was outside the scope of postconviction relief, and construed it as a petition for writ of mandamus.

This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

and had received a copy of the alleged violations and a notice of his rights. Zessman's claims were thus belied by the record, and we conclude the district court did not err in rejecting this argument.

Zessman next argued the State failed to prove the factual allegations against him and, even if it had, any violations fell short of additional criminal conduct. Parole may be properly revoked when the evidence and facts reasonably satisfy the Nevada Board of Parole Commissioners that the parolee's conduct "has not been as good as required by the conditions of [parole]." *Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974); see *Hornback v. Warden*, 97 Nev. 98, 100, 625 P.2d 83, 84 (1981) (holding the same standards apply to parole and probation revocation). Here, one of Zessman's conditions of parole was obtaining permission before changing his residence. His parole officer wrote in a violation report that Zessman moved without even notifying her of his new address. We therefore conclude the State provided sufficient evidence to reasonably satisfy the Nevada Board of Parole Commissioners that Zessman's conduct was not as good as required by a condition of his parole. Further, we note Zessman admitted in his petition he moved and did not obtain prior permission to do so. Accordingly, we conclude the district court did not err in rejecting this argument.

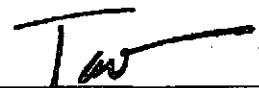
Zessman next argued he was denied his right to confront his parole officer at the parole revocation hearing regarding what she wrote in the violation report. The district court found Zessman waived his right to confront witnesses against him in his notice of rights, which he signed three days after his arrest. In that notice, he initialed but left blank the section where he was to write in the name of witnesses he wished to confront. The district court's finding is supported by the record before this court. Further,

we note Zessman did not allege he asserted his right to confront witnesses at the hearing, and he failed to provide the district court with a transcript of the hearing to demonstrate he preserved his right and the error was not harmless. *See Franco v. State*, 109 Nev. 1229, 1237, 866 P.2d 247, 252 (1993). We therefore cannot conclude the district court erred in rejecting Zessman's argument.

Finally, Zessman argued he was entitled to relief because the State failed to present at the parole revocation hearing exculpatory evidence he claims he gave to the Division of Parole and Probation. Zessman did not identify what the evidence was or demonstrate it was not presented at the hearing. We therefore cannot conclude the district court erred in rejecting this argument. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 C.J.
Silver

 J.
Tao

 J.
Gibbons

cc: Hon. James Todd Russell, District Judge
Eric William Zessman
Attorney General/Carson City
Attorney General/Las Vegas
Carson City Clerk