

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAUSTEVEION DELANO JOHNSON,
Petitioner,

vs.

CONNIE S. BISBEE, CHAIRMAN; ED
GRAY; LUCILLE MONTERDE;
MICHAEL KEELER; TONY CORDA,
COMMISSIONERS, AND BOARD OF
PAROLE COMMISSIONERS; AND
JAMES DZURENDA, DIRECTOR OF
NDOC,
Respondents.

No. 74536

FILED

APR 11 2018

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

ORDER DENYING PETITION

This original petition for a writ of mandamus challenges the Board of Parole Commissioners' denial of parole for Lausteveion Delano Johnson. Johnson asserts he has been denied his right to be considered for parole because: (1) the Board improperly applied NAC 213.518(2)(k); (2) the Board considered a more serious charge, rather than the one he was actually convicted of; (3) the Board misapplied its own internal guidelines by not listing all mitigating factors that applied to him; and (4) application of the amended risk assessment process, which bases risk on the crime of conviction, compels the Board to deny parole and essentially converts his sentence of life with the possibility of parole to a term of life without the possibility of parole. Johnson requests this court to direct the Board to vacate the denial of his parole and to conduct a new parole hearing.

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, NRS 34.160, or to control a manifest abuse or arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement Dist. v.*

Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). The writ will not issue if the petitioner has a plain, speedy and adequate remedy in the ordinary course of law. NRS 34.170. Petitions for extraordinary writs are addressed to the sound discretion of the court, *see State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983), and the “[p]etitioner[] carr[ies] the burden of demonstrating that extraordinary relief is warranted,” *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Because there is no applicable statutory vehicle through which Johnson may challenge the Board’s actions, we consider whether the Board’s actions warrant issuance of a writ of mandamus. *See Anselmo v. Bisbee*, 133 Nev. ___, ___, 396 P.3d 848, 850 (2017). “[G]iven its discretionary language, Nevada’s parole statute creates no protectable liberty interest sufficient to invoke the Due Process Clause.” *Id.* (quotation marks omitted). And “this court generally will not review the evidence supporting a decision of the Board.” *Id.* at ___, 396 P.3d at 851. However, “eligible Nevada inmates have a statutory right to be considered for parole by the Board,” and “[t]his court cannot say that an inmate receives proper consideration when the Board’s decision is based in part on an inapplicable aggravating factor.” *Id.* at ___, 396 P.3d at 853.

We conclude Johnson has failed to demonstrate mandamus relief is warranted. Based on the record Johnson provided, it appears Johnson raised all of his claims before the Board on appeal from its order denying parole. The Board sent Johnson a letter in which it identified and discussed these issues. The Board’s letter indicates that the discrepancies regarding the crime and number of counts Johnson was convicted of were corrected and a corrected order denying parole was issued on May 11, 2016.

The Board's letter further acknowledges that the aggravating factor under NAC 213.518(2)(k) was not properly applied to him and should have been corrected in the May 11, 2016, corrected order. Because this was not corrected, the Board stated this aggravating factor would be removed and a new corrected order reflecting that change would be sent to Johnson. Johnson does not allege that these corrections were not made and he has not provided this court with copies of the corrected orders. Because the record indicates the Board considered Johnson's challenges, recognized errors, and ultimately issued new orders denying parole that corrected the improper application of NAC 213.518(2)(k) and the discrepancies regarding the offense and number of counts Johnson was convicted of, we conclude Johnson has failed to demonstrate he did not receive proper consideration for parole.

While the record does not demonstrate the Board applied every mitigating factor Johnson asserts it should have considered, he has not demonstrated the Board failed to consider any mitigating factors it may have been required to consider. Further, Johnson himself indicates that, although "Community and/or Family Support" was not listed among his mitigating factors, at his parole hearing numerous family and community members were present in support of him, his son spoke on his behalf, and the Board noted the many support letters they had received on his behalf. Therefore, we conclude Johnson has failed to demonstrate he did not receive proper consideration for parole on this basis.

Finally, even assuming the risk assessment process has changed since Johnson was imprisoned, Johnson does not have a statutory right to be assessed under previous standards of assessment, *see* NRS 213.1214(3), and he has not demonstrated that the changes have infringed

upon his right to receive proper consideration for parole. The record does not support Johnson's assertion that the Board solely used the offense of conviction to assess his risk level. Further, Nevada law clearly allows the Board to deny parole based on the severity of the crime committed. See NRS 213.1099(2)(c); NRS 213.10885(2)(a). Therefore, the Board's consideration of immutable characteristics such as the severity of Johnson's offense does not warrant mandamus relief. See *Anselmo*, 133 Nev. at ___, 396 P.3d at 851.

Because Johnson has not demonstrated he has been denied his right to be considered for parole by the Board, we conclude extraordinary relief is not warranted and we

ORDER the petition DENIED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Lausteveion Delano Johnson
Attorney General/Carson City