

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE S. MOLINA-VIZCARRA,
Petitioner,
vs.
CONNIE S. BISBEE, CHAIRMAN
STATE OF NEVADA BOARD OF
PAROLE,
Respondent.

No. 74347

FILED

FEB 13 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 Jose S. Molina-Vizcarra. Molina-Vizcarra asserts the Board improperly applied NAC 213.518(2)(k) when it considered him for parole in 2012. He further asserts that at his last parole hearing in 2017 the Board did not consider or apply all mitigating factors under NAC 213.518(3). Molina-Vizcarra seeks an order vacating the Board's denial of his parole and directing the Board to reconsider him for parole.

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). A writ of mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law. NRS 34.170. Further, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered. *See Poulos v. Eighth*

Judicial Dist. Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982). “Petitioner[] 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 Molina-Vizcarra may challenge the Board’s actions, we consider whether the Board’s actions warrant issuance of a writ of mandamus. The Nevada Supreme Court has consistently pointed out that the discretionary language of the parole statute “does not create a protectable liberty interest sufficient to invoke the Due Process Clause.” *State ex rel. Bd. of Parole Comm’rs v. Morrow*, 127 Nev. 265, 271, 255 P.3d 224, 228 (2011). And this court generally will not review the evidence supporting a decision of the Board. *Cf. id.* at 271-72, 255 P.3d at 228 (reiterating that no cause of action exists when parole is denied).

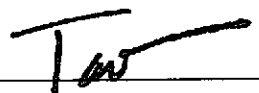
Although “[t]his court will not review the ultimate decision of the Board to grant or deny parole,” “Nevada law clearly confers a right to be ‘consider[ed]’ for parole.” *Anselmo v. Bisbee*, 133 Nev. ___, ___, 396 P.3d 848, 852 (2017) (quoting NRS 213.140(1)). Nevada law requires the Board to promulgate detailed standards to determine whether the release of an inmate on parole is appropriate. NRS 213.1099(2); NRS 213.10885(1). These standards are codified in the Nevada Administrative Code. Based on Molina-Vizcarra’s risk assessment score, the Board was to consider aggravating and mitigating factors set forth in NAC 213.518 when determining whether to grant or deny parole. *See* NAC 213.516.

It appears the Board may have improperly applied the aggravating factor in NAC 213.518(2)(k) when considering Molina-Vizcarra for parole in 2012. *See Anselmo*, 133 Nev. at ___, 396 P.3d at 852-53.

However, the record demonstrates that when the Board considered Molina-Vizcarra for parole in 2017 it did not apply the aggravating factor in NAC 213.518(2)(k), but it did consider other applicable aggravating and mitigating factors. While the record does not demonstrate the Board applied every mitigating factor Molina-Vizcarra asserts the Board should have applied when considering him for parole in 2017, Molina-Vizcarra has not provided anything to support his assertion that these additional factors actually applied to him. Thus, he has not demonstrated the Board failed to consider any mitigating factors they were required to consider. Because Molina-Vizcarra has already received the only relief he would be entitled to—reconsideration for parole where the inapplicable aggravating factor is not applied—and because the record does not demonstrate the Board failed to properly consider applicable aggravating and mitigating factors when considering Molina-Vizcarra for parole in 2017, we conclude mandamus relief is not warranted. Therefore, we

ORDER the petition DENIED.


Silver, C.J.


Tao, J.


Gibbons, J.

cc: Jose S. Molina-Vizcarra
Attorney General/Carson City