

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENNETH EDWARD WYMAN,
Petitioner,
vs.
CONNIE S. BISBEE; AND NEVADA
STATE PAROLE BOARD,
Respondents.

No. 74165

FILED

DEC 28 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus challenges the Board of Parole Commissioners' denial of parole for Kenneth Edward Wyman. Wyman asserts the Board improperly relied on static, rather than dynamic, factors as aggravating factors when considering him for parole. He asserts the static factors, such as the age of the victim and the impact on the victim and/or community, were already considered at sentencing and cannot be used to predict his risk of success or failure on parole. Wyman asks this court to reverse the Board's denial of his parole and remand for a new parole hearing at which the inapplicable static factors and the misrepresentations in his presentence investigation report are not considered.

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,

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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); *see also State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983). "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 Wyman 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 288 (reiterating that no cause of action exists when parole is denied).

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 Wyman'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. Here the Board considered two aggravating and two mitigating factors. The two aggravating factors were: "crime was targeted against a child or person at greater vulnerability because of age/disability: 10 year old victim" and "impact on victim(s) and/or

community.” Both were properly considered as aggravators. See NAC 213.518(2)(g), (n); *Nevada Parole Guidelines Aggravating and Mitigating Factors Definitions*, http://parole.nv.gov/uploadedFiles/parolenvgov/content/Information/Aggravating_and_Mitigating_Factors_Definitions.pdf (last visited December 15, 2017). Although these factors were also likely considered when Wyman’s sentence was imposed, Wyman has not demonstrated the Board failed to follow its internal guidelines by considering these aggravating factors, along with mitigating factors, when considering him for parole. Further, Wyman has not demonstrated the Board’s standards are not “effective in predicting the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued.” NRS 213.10885(6). Therefore, we conclude the Board’s application of these aggravating factors to Wyman does not warrant mandamus relief.

ORDER the petition DENIED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Kenneth Edward Wyman
Attorney General/Carson City