

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAYMOND E. STEWART,
Petitioner,
vs.
STATE OF NEVADA PAROLE BOARD,
Respondent.

No. 74081

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 and/or prohibition challenges the Board of Parole Commissioners' denial of parole for Raymond E. Stewart. Stewart asserts the Board's denial of parole "based on certain immutable characteristics, such as seriousness of the underlying offense, violates the due process clause" and "the Board failed to follow its own internal guidelines in assessing the applicable aggravating and mitigating factors." Stewart 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 prohibition may issue to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the district court. NRS 34.320. 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

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“[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 Stewart may challenge the Board’s actions, we consider whether the Board’s actions warrant issuance of a writ of mandamus.¹ 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. Marrow*, 127 Nev. 265, 271, 255 P.3d 224, 228 (2011). And Nevada law clearly allows the Board to deny parole based on the severity of the crime committed. NRS 213.1099(2)(c); NRS 213.10885(2)(a). Therefore, the Board’s consideration of the severity of Stewart’s offense does not warrant mandamus relief.


Further, Stewart has not demonstrated the Board failed to follow its internal guidelines in assessing the applicable aggravating and mitigating factors. The record before this court shows the Board identified one applicable aggravating factor—“Impact on victim(s) and/or community. Victim was stabbed to death.” The Board identified three mitigating factors, including that Stewart has remained infraction free since 2005, Stewart has programmed, and this is the only conviction of record for Stewart. The Board’s reason for denying parole was the “Impact on victim(s) and/or community.” The Board’s internal guidelines state this factor should be indicated “if the offense caused the death or disability to a person.” *Nevada Parole Guidelines Aggravating and Mitigating Factors*


¹Prohibition is not an appropriate vehicle for the relief Stewart is seeking.

Definitions, http://parole.nv.gov/uploadedFiles/parolenvgov/content/Information/Aggravating_and_Mitigating_Factors_Definitions.pdf (last visited December 15, 2017). Therefore, we conclude the factor of "Impact on victim(s) and/or community" was properly applied to Stewart and application of this factor does not warrant mandamus relief. Accordingly, we

ORDER the petition DENIED.


Silver, C.J.


Tao, J.


Gibbons, J.

cc: Raymond E. Stewart
Attorney General/Carson City