

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MIGUEL ANGEL RAMIREZ,
Petitioner,

vs.

CONNIE S. BISBEE, CHAIRMAN;
SUSAN JACKSON, TONY CORDA,
ADAM ENDEL, MICHAEL KEELER,
COMMISSIONERS; THE STATE OF
NEVADA BOARD OF PAROLE; AND
THE STATE OF NEVADA;
Respondents.

No. 75381

FILED

JUL 27 2018

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

ORDER DENYING PETITION

This is an original petition for a writ of mandamus and/or prohibition challenging the Board of Parole Commissioners' denial of "re-parole" for Miguel Angel Ramirez.¹ Ramirez asserts he was denied his right to be considered for parole because the Board improperly applied NAC 213.518(2)(k) when considering him for "re-parole."² Therefore, Ramirez

¹The record before this court indicates Ramirez was granted parole in 2010, but his parole was revoked in 2015. Ramirez was reconsidered for parole in 2017. To the extent Ramirez attempts to challenge the revocation of his parole in 2015 or the processes that lead to the revocation of his parole, we conclude this court's intervention by way of extraordinary relief is not warranted because he has an adequate remedy at law for raising these challenges. *See* NRS 34.170; NRS 34.330. Therefore, we decline to consider those claims.

²Ramirez also asserts the retroactive application of NRS 213.1214, NRS 213.1243, and NRS 213.1245 was improper because it resulted in a longer period of incarceration for him. We conclude this court's intervention by way of extraordinary relief is not warranted as to this claim. Ramirez can raise this claim in a petition brought pursuant to 42 U.S.C. § 1983, and therefore he has an adequate remedy at law. *See* NRS 34.170; NRS 34.330. Therefore, we also decline to consider this claim.

seeks an order directing the Board to vacate the denial of his parole and to conduct a new “re-parole” hearing.

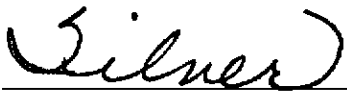
A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station, NRS 34.160, or to control a manifest abuse or arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). 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. Neither writ will issue if petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170; NRS 34.330. 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 Ramirez 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.

The record in this court indicates the Parole Risk Assessment and Guideline that was prepared for the Board's consideration of Ramirez for parole in 2017 identified "Nature of criminal record is increasingly more serious" as an applicable aggravating factor. See NAC 213.518(2)(k). Unlike in *Anselmo*, it appears application of this factor was not improper under the Board's internal guidelines because the Board had modified its internal guidelines with respect to this aggravating factor in November of 2016. See *Nevada Parole Guidelines Aggravating and Mitigating Factors Definitions*, [http://parole.nv.gov/uploadedFiles/parolenvgov/content/Information/Aggravating and Mitigating Factors Definitions.pdf](http://parole.nv.gov/uploadedFiles/parolenvgov/content/Information/Aggravating%20and%20Mitigating%20Factors%20Definitions.pdf) (last visited July 19, 2018); [http://parole.nv.gov/Meetings/Public Meetings 2016/](http://parole.nv.gov/Meetings/Public%20Meetings%202016/) (last visited July 19, 2018). Even were application of NAC 213.518(2)(k) improper under the Board's internal guidelines, because the order denying parole does not identify this aggravating factor as a basis for the denial of parole, Ramirez could not demonstrate that the Board's decision to deny parole was based, even in part, on application of an inapplicable aggravating factor. Accordingly, we conclude mandamus relief is not warranted on this basis, and we

ORDER the petition DENIED.


Silver, C.J.


Tao, J.


Gibbons, J.

cc: Miguel Angel Ramirez
Attorney General/Carson City
Eighth District Court Clerk