

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

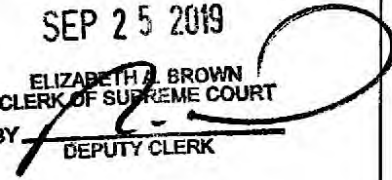
CHARLES HERBERT STANTON,
Appellant,
vs.
PERRY RUSSELL, WARDEN,
Respondent.

No. 77447-COA

FILED

SEP 25 2019

ELIZABETH J. BROWN
CLERK OF SUPREME COURT

BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Charles Herbert Stanton appeals from an order of the district court denying a petition for a writ of mandamus filed on July 18, 2018. First Judicial District Court, Carson City; James E. Wilson, Judge.

Stanton was paroled to his final sentence in the underlying case in January 2018. He petitioned the district court to order the Nevada Department of Corrections to base the start date of that sentence on his parole-eligibility date and not the effective date indicated by the Board of Parole Commissioners.


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 the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170.

The district court found Stanton had a plain, speedy, and adequate remedy in the ordinary course of law: His claim is a challenge to the computation of time served and, thus, must be raised in a postconviction

petition for a writ of habeas corpus. See NRS 34.724(2)(c). As a separate and independent ground to deny relief, the district court determined Stanton's claim lacked merit. Stanton was seeking a retroactive grant of parole to his parole-eligibility date. However, as the Nevada Supreme Court has long stated, there is no statutory authority or caselaw that allows for the retroactive grant of parole. See *Williams v. State Dep't of Corr.*, 133 Nev. 594, 600 n.7, 402 P.3d 1260, 1265 n.7 (2017). Further, we note that eligibility for parole is not a guarantee of parole. See NRS 213.10705 ("No person has a right to parole."). We conclude the district court did not err by denying Stanton's petition, and we.

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹To the extent Stanton seeks an order directing the Board of Parole Commissioners to backdate the effective date of his grant of parole, this would be new argument that we need not consider on appeal. See *Rimer v. State*, 131 Nev. 307, 328 n.3, 351 P.3d 697, 713 n.3 (2015). Nevertheless, this claim would fail for the reasons discussed above.

cc: Hon. James E. Wilson, District Judge
Charles Herbert Stanton
Attorney General/Carson City
Carson City Clerk