

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK NEWELL,
Appellant,
vs.
THE STATE OF NEVADA
DEPARTMENT OF CORRECTIONS,
Respondent.

No. 75913

FILED

DEC 19 2019

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for a writ of mandamus. First Judicial District Court, Carson City; James E. Wilson, Judge.

Appellant, an inmate at the time he brought this appeal, sought a writ of mandamus to compel the Nevada Department of Corrections (NDOC) to comply with the timing provisions of Administrative Regulation Inmate Grievance Procedure 740 (AR 740). The district court denied the petition as moot, finding that NDOC had answered all of Newell's outstanding grievances and writ relief was improper. While this appeal was pending, Newell filed a Notice of Changed Circumstances indicating he has been released on parole.

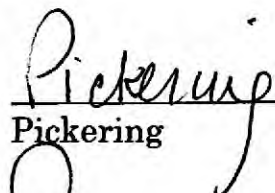
On appeal, Newell argues his claim is an exception to mootness because it is capable of repetition yet evades review. Nevada employs a three-factor test to determine whether a claim is capable of repetition yet evading review. *See Bisch v. Las Vegas Metro. Police Dep't*, 129 Nev. 329, 334-35, 302 P.3d 1108, 1113 (2013); *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (explaining that a claimant must prevail on three factors to fall within the capable-of-repetition exception: (1) the duration of the challenged action must be "relatively short," (2) there must

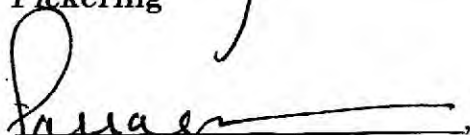
be a likelihood that a similar issue will arise in the future, and (3) the matter must be one of public importance). The district court found that, despite Newell being in custody and so facing the possibility of future, untimely resolved grievances, his claim did not satisfy the factors above. We agree and note that Newell's current parolee status adds another layer of mootness to his claim. He is on parole, and to anticipate that he will violate parole and be returned to prison, there to suffer a grievance NDOC fails to timely resolve, requires a prediction we decline to indulge. *Cf. United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1542 (2018) (declining to anticipate that an individual will violate a lawful criminal statute, thereby invoking the capable-of-repetition exception to mootness).


This court reviews a district court's decision to grant or deny a writ petition under an abuse of discretion standard. *City of Reno v. Reno Gazette-Journal*, 119 Nev. 55, 58, 63 P.3d 1147, 1148 (2003). Here, the district court did not abuse its discretion by denying appellant's petition for a writ of mandamus.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Pickering

 _____, J.
Parraguirre

 _____, J.
Cadish

cc: Hon. James E. Wilson, District Judge
Pisanelli Bice, PLLC
Attorney General/Las Vegas
Carson City Clerk