

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACK ALBERT PATTERSON,
Appellant,
vs.
BOARD OF PAROLE
COMMISSIONERS,
Respondent.

No. 80786-COA

FILED

SEP 11 2020

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

ORDER OF AFFIRMANCE

Jack Albert Patterson appeals from a district court order denying a petition for a writ of mandamus. First Judicial District Court, Carson City; James Todd Russell, Judge.

In his petition for a writ of mandamus, Patterson sought an order directing respondent the Board of Parole Commissioners (Board) to vacate their order denying him parole and to conduct a new parole hearing, asserting that the Board improperly considered NAC 213.518(2)(k) as an aggravating factor in denying his parole. In particular, the Board concluded that Patterson's criminal record began with a juvenile adjudication, he was then convicted of a misdemeanor—for carrying a concealed weapon—and was subsequently convicted of felony lewdness with a child under the age of fourteen—the conviction giving rise to his instant parole request. Based on this progression of convictions, the Board concluded that the nature of Patterson's criminal record was increasingly more serious and denied parole in light of that aggravating factor, amongst others. When Patterson sought reconsideration, the Board denied his requests, explaining the basis

of its decision. The district court denied Patterson's writ petition, concluding that he failed to demonstrate that the Board improperly applied its factors. This appeal followed.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion. NRS 34.160; *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). This court reviews an order resolving a petition for mandamus relief for an abuse of discretion. *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006). This court will not review challenges to the evidence supporting Board decisions, but will consider whether the Board has properly complied with the applicable statutes and regulations. See *Anselmo v. Bisbee*, 133 Nev. 317, 320, 322-23, 396 P.3d 848, 851, 852-53 (2017).

On appeal, Patterson challenges the district court's denial of his petition for a writ of mandamus, asserting that the district court abused its discretion in concluding that the Board appropriately applied the NAC 213.518(2)(k) aggravating factor to his parole consideration. The standards the Board must use when determining whether to grant parole are codified in the Nevada Administrative Code. *Anselmo*, 133 Nev. at 321, 396 P.3d at 851. In making its determination, NAC 213.518(2)(k) provides that the Board may consider, as an aggravating factor, "[w]hether the prisoner has committed increasingly serious crimes." Regarding this aggravating factor, the Board's internal guidelines state:

Nature of criminal record is increasingly more serious.

Indicate this factor if criminal conduct of the person has escalated over time to include violence toward victims or others, or the scale of criminal activity has increased over time. This factor is used as a possible indicator of serious activity in the future.

Nevada Parole Guidelines Aggravating and Mitigating Factors Definitions, http://parole.nv.gov/uploadedFiles/parolenvgov/content/Information/Aggravating_and_Mitigating_Factors_Definitions.pdf (last visited September 2, 2020) [hereinafter *Nev. Parole Guidelines*].

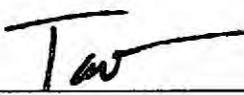
Based on these internal guidelines, Patterson argues, as he did in his writ petition, that the Board incorrectly concluded that the scale of his criminal activity increased over time because his crimes had not become more serious over time, but were the same or less serious with time. Patterson asserts that his juvenile adjudication involved six children and that he was adjudicated on three counts of first degree child molestation in the State of Washington. And in that case, Patterson pleaded guilty to touching three young victims under their clothing and forcing them to reciprocate the touching. But in the instant offense, Patterson argues that his crime only involved one child, an unlawful touching over the clothes, and that there was no reciprocated touching. Thus, Patterson asserts that his juvenile adjudication and the instant conviction were the same, but goes on to argue that the underlying facts in his juvenile adjudication were of a more serious nature than his instant offense, and therefore the scale of his criminal activity had not increased over time.

As noted above, the Board denied Patterson's requests for reconsideration, and in its denials the Board explained that although a similar type of offense was committed, the scale of Patterson's criminal activity increased because he was first adjudicated as a juvenile, was then convicted of a misdemeanor, and his criminal history then increased to include a felony. Thus, while Patterson argues the Board should look to the underlying facts giving rise to the criminal charges to determine whether his criminal conduct has escalated, the Board determined that this factor applied based on the escalation of Patterson's criminal record. The relevant statutory factor provides that the Board is to consider whether the prisoner "committed increasingly serious crimes," and the Board's internal guidelines as to this factor provide that the Board is to consider the increasing seriousness of the "criminal record." See NAC 213.518(2)(k); *Nev. Parole Guidelines*. Based on the plain words in the guidelines and statute, the Board's interpretation of this factor is within the language of the rule, and we cannot conclude that the Board clearly misapplied its own internal guidelines. See *Anselmo*, 133 Nev. at 318, 396 P.3d at 849 (explaining that the Board's decision is not reviewable unless the Board "clearly misapplies its own internal guidelines in assessing whether to grant parole"); *Taylor v. Dep't of Health & Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013) ("Although statutory construction is generally a question of law reviewed de novo, this court defers to an agency's interpretation of its governing statutes or regulations if the interpretation is within the language of the statute." (alteration and internal quotation marks omitted)).

Therefore, because the Board interpreted and applied its guidelines pursuant to the language within the guidelines, we cannot conclude that the district court abused its discretion in denying the petition for a writ of mandamus. *See Kay*, 122 Nev. at 1105, 146 P.3d at 805. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. James Todd Russell, District Judge
Jack Albert Patterson
Attorney General/Carson City
Attorney General/Dep't of Public Safety/Carson City
Carson City Clerk

¹Insofar as Patterson raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.