

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAFIK VARTANPOUR,

Appellant,

vs.

CHRISTOPHER P. DERICCO,

CHAIRMAN; ERIC CHRISTIANSEN;

MICHAEL KEELER; MINERVA DE LA

TORRE; AND THE STATE OF NEVADA

BOARD OF PAROLE,

Respondents.

No. 82533-COA

FILED

AUG 19 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Rafik Vartanpour appeals from an order of the district court denying a petition for a writ of mandamus. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Vartanpour argues the district court erred by denying his February 21, 2020, petition. In his petition, Vartanpour claimed the Nevada Board of Parole Commissioners (Board) improperly denied his request 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 mandamus will not issue, however, if the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170. "Petitioners carry 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). "We generally review a district court's grant or denial of writ relief

for an abuse of discretion.” *Koller v. State*, 122 Nev. 223, 226, 130 P.3d 653, 655 (2006).

“Parole is an act of grace in Nevada, and this court will not disturb a decision to deny parole for any reason authorized by statute.” *Anselmo v. Bisbee*, 133 Nev. 317, 323, 396 P.3d 848, 853 (2017). 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.*

First, Vartanpour claimed the denial of his request for parole was improperly based upon certain immutable characteristics, such as the severity of his offense. However, because “Nevada law clearly allows for the denial of parole based on the severity of the crime committed, it cannot be said that the Board acted contrary to established law in considering the seriousness of the underlying offense.” *Id.* at 321, 396 P.3d at 851. Accordingly, the Board properly considered the severity of Vartanpour’s offense. Therefore, we conclude the district court did not err by denying this claim.


Second, Vartanpour contended the Board relied on an improper aggravating factor when denying his request for parole: the nature of Vartanpour’s record becoming increasingly more serious. Vartanpour’s claim was based upon an older version of the guidelines for this aggravating factor, one that prohibited its application for certain offenses. However, the record in this matter demonstrated that the version of the aggravating factor utilized by the Board when considering Vartanpour’s request for parole did not contain a prohibition on the use of that factor for any of Vartanpour’s offenses. Thus, Vartanpour failed to demonstrate that the

Board relied upon an improper aggravating factor when it denied his request for parole. Therefore, we conclude the district court did not err by denying this claim.

Finally, Vartanpour argues on appeal that the district court erred by adopting the State's proposed order denying his petition. Vartanpour does not identify any factual inaccuracy or legal reason why the district court should not have adopted and signed the proposed draft order. Moreover, Vartanpour does not demonstrate the adoption of the proposed order adversely affected the outcome of the proceedings or his ability to seek full appellate review. *See* NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). Therefore, we conclude Vartanpour is not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
Rafik Vartanpour
Attorney General/Carson City
Clerk of the Court/Court Administrator