


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VICTOR DENNIS DANA,
Appellant,
vs.
MICHAEL KEELER, COMMISSIONER;
MINERVA DE LA TORRE,
COMMISSIONER; ERIC
CHRISTIANSEN, COMMISSIONER;
MARY BAKER, COMMISSIONER; AND
THE STATE OF NEVADA BOARD OF
PAROLE,
Respondents.

No. 82505-COA

FILED

SEP 29 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Victor Dennis Dana appeals from a district court order denying a petition for a writ of mandamus. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

In his petition for a writ of mandamus, Dana challenged the decision to deny his parole by respondents, and sought an order directing the Board of Parole Commissioners (Board) to conduct a new parole hearing. In particular, Dana asserted that the Board improperly considered NAC 213.518(2)(k) (whether the prisoner has committed increasingly serious crimes) as an aggravating factor in denying his parole. Dana argued that NAC 213.518(2)(k) did not apply to him because, pursuant to the Board's internal guidelines, that factor should not be applied when the prisoner is serving a life sentence or a sentence for sexual assault, which Dana was. The district court denied Dana's writ petition, concluding that NAC 213.518(2)(k) did apply to him because in 2016, the Board's internal guidelines were amended and no longer included the provision precluding application to those serving life sentences or sentences for sexual assault,

21-27962

and that Dana failed to otherwise demonstrate that the Board improperly applied its procedures. 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, Dana challenges the district court's denial of his petition for a writ of mandamus, asserting that the district court abused its discretion in failing to consider whether the Board improperly applied the NAC 213.518(2)(k) aggravating factor to his parole consideration. But contrary to Dana's assertion and, as noted above, the district court's order indicates that it did consider this argument and specifically concluded that the Board did not improperly apply the aggravating factor. Moreover, Dana has failed to offer any argument addressing the district court's conclusion that since NAC 213.518(2)(k)'s amendment in 2016, that aggravating factor would apply to Dana. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived."); *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006). Thus, we discern

no abuse of discretion in the district court's conclusion in this regard.¹ See *Kay*, 122 Nev. at 1105, 146 P.3d at 805.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
Victor Dennis Dana
Attorney General/Carson City
Attorney General/Dep't of Public Safety/Carson City
Clerk of the Court/Court Administrator

¹As to Dana's assertion that the district court erred in failing to make its own findings and in failing to sign its written order, we likewise conclude that this argument does not warrant relief. Based on our review of the record, the district court's order includes sufficient findings of fact and conclusions of law supporting its decision to deny writ relief and the filed order is signed by the Honorable Jim C. Shirley, District Judge.