

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAWRENCE E. SCHWIGER,  
Appellant,  
vs.  
THE STATE OF NEVADA  
DEPARTMENT OF CORRECTIONS;  
AND STATE OF NEVADA PAROLE  
BOARD,  
Respondents.

No. 85455-COA

**FILED**  
MAR 30 2023  
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Lawrence E. Schwiger appeals from an order of the district court denying a petition for a writ of mandamus. First Judicial District Court, Carson City; William A. Maddox, Senior Judge.

Schwiger argues the district court erred in denying his August 23, 2022, petition. In his petition, Schwiger asserted that the Parole Board considered his request for parole in October 2021, denied his request at that time, and scheduled his next parole hearing for October 2024. Schwiger contended that his next parole hearing should occur at an earlier time because respondents should apply the credits he earns pursuant to NRS 209.4465 to reduce the time he must wait between parole hearings.

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. A petitioner “carr[ies] 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).

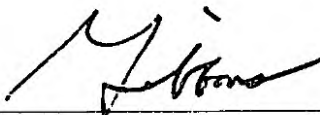
Pursuant to NRS 213.142(1), after denying a prisoner’s request for parole, the Parole Board must schedule a rehearing. The rehearing date is scheduled at the discretion of the Parole Board, but the time between parole hearings must not exceed three years if the prisoner has less than ten years to serve for the relevant sentence. See NRS 213.142. NRS 209.4465 provides for the deduction of statutory credits from a prisoner’s maximum and minimum terms of the sentence. See NRS 209.4465(7) (providing that the credits “[m]ust be deducted from the maximum term or the maximum aggregate term imposed by the sentence” and “[a]pply to eligibility for parole unless the offender was sentenced pursuant to a [certain type of sentencing statute]”); cf. *Hunt v. Warden*, 111 Nev. 1284, 1285, 903 P.2d 826, 827 (1995) (“[T]he legislature did not intend [statutory] credit to be applied to a sentence of life in prison.”).

Schwiger has less than ten years to serve for the relevant sentences, and thus, the Parole Board appropriately scheduled his next parole hearing for a date less than three years after his 2021 parole hearing. Any credits Schwiger has earned pursuant to NRS 209.4465 could have only applied to his maximum sentence and/or affected the date upon which he became eligible for parole, but they could not be applied in a manner so as to reduce the time he must wait between parole hearings. Schwiger’s claim therefore lacked merit. Accordingly, Schwiger did not demonstrate

respondents failed to perform an act which the law requires as a duty resulting from an office, trust, or station, and he did not demonstrate that mandamus relief was necessary to control a manifest abuse or arbitrary or capricious exercise of discretion. For the foregoing reasons, Schwiger failed to meet his burden to demonstrate that extraordinary relief was warranted.

To the extent that Schwiger also challenged the computation of his sentence, he has a plain, speedy, and adequate remedy in the ordinary course of law, as a challenge to the computation of time served must be raised in a postconviction petition for a writ of habeas corpus. See NRS 34.724(2)(c) (stating that a postconviction petition for a writ of habeas corpus “[i]s the only remedy available to an incarcerated person to challenge the computation of time that the person has served pursuant to a judgment of conviction”). Accordingly, the district court did not err in denying the petition for a writ of mandamus, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. William A. Maddox, Senior Judge  
Lawrence E. Schwiger  
Attorney General/Carson City  
Attorney General/Las Vegas  
Carson City Clerk