

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRY D. BRIGGS, SR.,  
Appellant,  
vs.  
WARDEN, HIGH DESERT STATE  
PRISON, GEORGE GRIGAS,  
Respondent.

No. 39534

FILED

AUG 18 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court dismissing appellant's petition for a writ of mandamus.

On September 18, 2001, appellant filed a proper person petition for a writ of mandamus in the district court. The State filed a motion to dismiss the petition, and appellant filed an opposition. On February 1, 2002, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant argued that NRS 213.1215 created a protected liberty interest in release on parole because of the inclusion of the words "must" and "shall."<sup>1</sup> Given this mandatory language, appellant

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<sup>1</sup>NRS 213.1215, in pertinent part, provides:

1. Except as otherwise provided in subsections 3, 4, and 5 and in cases where a consecutive sentence is still to be served, if a prisoner sentenced to imprisonment for a term of 3 years or more:

(a) Has not been released on parole previously for that sentence; and

(b) Is not otherwise ineligible for parole,

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argued that the Parole Board acted arbitrarily in denying his application for mandatory release on parole. Appellant requested an evidentiary hearing and release on parole.

Based upon our review of the record on appeal, we conclude that the district did not abuse its discretion in dismissing appellant's petition.<sup>2</sup> NRS 213.1215 did not create an absolute liberty interest in mandatory release on parole. Rather, NRS 213.1215 provides for mandatory release on parole twelve months before the end of a maximum term unless: (1) a consecutive sentence is still to be served by a prisoner; (2) a prisoner is sentenced for a term of less than three years; (3) a prisoner has previously been released on parole for the sentence at issue; (4) a prisoner is otherwise ineligible for parole; (5) the Parole Board finds, two months before a prisoner would otherwise be paroled, that there is a reasonable probability that the prisoner will be a danger to public safety

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*... continued*

he must be released on parole 12 months before the end of his maximum term . . . .

3. If the board finds, at least 2 months before a prisoner would otherwise be paroled pursuant to subsection 1, that there is a reasonable probability that the prisoner will be a danger to public safety while on parole, the board may require the prisoner to serve the balance of his sentence and not grant the parole provided for in subsection 1.


4. If the prisoner is the subject of a lawfully request from another law enforcement agency that he be held or detained for release to that agency, the prisoner must not be released on parole, but released to that agency.


<sup>2</sup>See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).


while on parole; or (6) the prisoner is subject to the lawful request from another law enforcement agency.<sup>3</sup> In the instant case, the Parole Board denied parole and found that there was a reasonable probability that appellant would be a danger to public safety while on parole. Thus, appellant failed to demonstrate that the Parole Board acted arbitrarily in denying his application for mandatory release on parole.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.<sup>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Rose

 J.  
Maupin

 J.  
Gibbons

cc: Hon. Jackie Glass, District Judge  
Terry D. Briggs Sr.  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>3</sup>See NRS 213.1215(1), (3).

<sup>4</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).