

IN THE SUPREME COURT FOR THE STATE OF NEVADA

MICHAEL P. ANSELMO,

Petitioner,

vs.

CONNIE BISBEE, CHAIRMAN; SUSAN JACKSON; TONY CORDA; MICHAEL KEELER, COMMISSIONERS; AND THE NEVADA BOARD OF PAROLE COMMISSIONERS,

Respondents.

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**EMERGENCY PETITION
FOR WRIT OF MANDAMUS
ORDERING RESPONDENTS
TO COMPLY WITH THE
NEVADA SUPREME
COURT'S WRIT TO VACATE
2014 PAROLE DENIAL**

**EMERGENCY RELIEF
UNDER NRAP 27(E)
REQUESTED BY
April 30, 2019**

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RULE 26.1 DISCLOSURE

Pursuant to Nevada Rule of Appellate Procedure ("NRAP") 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal:

1. There are no corporations or entities subject to disclosure; and
2. The following law firms have represented Petitioner:
 - (a) Brownstein Hyatt Farber Schreck, LLP

DATED this 15th day of April, 2019.

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ROUTING STATEMENT

The Supreme Court of Nevada should retain this writ proceeding because it involves an issue that is of statewide importance. *See* NRAP 17(a)(12). That is, by way of this petition, Petitioner is asking this Court to order Respondents – the Nevada Board of Parole Commissioners and the individual Parole Commissioners – to comply with a Writ of Mandamus issued by this Court to *vacate* a previous parole denial and conduct a *rehearing*. The citizens of the State of Nevada have an interest in the Nevada Board of Parole Commissioners adhering to mandates issued by this Court. Additionally, this Court is already familiar with the underlying facts and has an interest in ensuring that its Writ is strictly complied with.

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I. INTRODUCTION

This Court previously held that Respondents¹ committed clear error when they considered an inapplicable aggravating factor in denying Petitioner Michael Anselmo (“Petitioner” or “Michael”) parole in 2014 (“2014 Parole Denial”). In an effort to cure this injustice, this Court issued a Writ of Mandamus in 2017 (“Writ”) which very explicitly ordered Respondents to “*vacate* [their] November 14, 2014, denial of parole and conduct a new parole hearing in which NAC 213.518(2)(k) is not applied.” (AR 199) (emphasis added).

Not only did the Respondents wait nearly a year to conduct the purported *rehearing*, but at the *rehearing*, Respondents completely disregarded this Court’s mandate to vacate the 2014 Parole Denial. That is, paying mere lip service to this Court’s directives, the Respondents took the position that they had the authority to either (i) maintain the three year denial of parole (since 2014), making the grant of parole effective as of 2018 *or* (ii) decide to vacate the 2014 Parole Denial, making the grant of parole effective as of 2014. Frankly, this Court did not give Respondents that option. It ordered Respondents to *vacate* the 2014 Parole Denial.

Whether it be a result of Respondents’ desire to punish Petitioner for their mistake during the 2014 parole hearing or a result of Respondents’ belief that they

¹ The original proceeding seeking writ relief named the “State of Nevada Board of Parole”, which was later corrected by this Court as the “Board of Parole Commissioners.” (Appellate Record “AR” 236).

are untouchable, Respondents (not surprisingly) opted to disobey this Court's Writ to vacate the 2014 Parole Denial, and instead, maintained the 2014 Parole Denial, resulting in Michael's grant of parole being effective as of 2018. This is a flagrant violation of this Court's Writ. Not to mention that this results in Michael serving an additional three (3) years behind bars due to no fault of his own.

To be clear, if the Respondents would have complied with the Court's Writ and vacated the 2014 Parole Denial, following the Court-ordered rehearing wherein the Board granted parole, Michael would have been paroled on his murder conviction as of 2015. Consequently, he would have begun serving his ten-year escape conviction in 2015. Because of Michael's good time credit and work credit, Michael would be released on his escape conviction in April 2019. But for Respondents' error and refusal to obey this Court's Writ, Michael would be released from prison *this month*.

Because Respondents chose to maintain the 2014 Parole Denial instead of vacating it – as this Court mandated – Michael did not begin serving his ten-year escape conviction until 2018. Put simply, Michael lost three years due to Respondents' errors and conscious disregard for their own parole guidelines and this Court's Writ. Such a result cannot be what this Court anticipated in ordering Respondents to *vacate* the 2014 Parole Denial and conduct a rehearing.

While Michael exhausted all other avenues in an attempt to convince the Respondents to adhere to this Court's directives, Respondents have brushed off the practical result of their conduct – Michael being punished for their error – and have had the audacity to double down on their position that they had the option of vacating the 2014 Parole Denial or maintaining it.

It is extremely significant that Respondents' blatant disregard for this Court's Writ will very quickly result in Michael being wrongfully imprisoned. As undersigned counsel was just made aware of this, relief in this petition is sought on an emergency basis. Absent a mandate from this Court on an expedited basis ordering Respondents to adhere to this Court's Writ and vacate the 2014 Parole Denial, Michael will suffer irreparable harm.

So there can be no doubt, Michael is not seeking by way of this petition a review of the ultimate decision of Respondents to grant or deny parole. The Board granted Michael parole. (AR 305-307). Rather, Michael is simply asking this Court to order Respondents to obey the Writ to vacate the 2014 Parole Denial. Ensuring that its Writ is complied with is certainly within this Court's purview. Consequently, this Court should grant Michael's petition in its entirety.

II. RELIEF SOUGHT

By way of this emergency petition, Petitioner seeks a writ of mandamus from this Court (i) clarifying that this Court's Writ explicitly required Respondents

to vacate the 2014 Parole Denial, resulting in any new parole decision having effect as if it were reached in 2014, and (ii) instructing the Respondents to adhere to this Court's Writ ordering the Respondents to "*vacate* [their] November 14, 2014, denial of parole and conduct a new parole hearing in which NAC 213.518(2)(k) is not applied."

Petitioner seeks this relief on an emergency basis, because, absent a ruling in the next fourteen (14) days, the Respondents' error will cause Petitioner to suffer irreparable harm in the form of not receiving credit for three years he served in prison following the 2014 Parole Denial. Specifically, as Petitioner would be released to the streets on his escape conviction in April 2019 if the Respondents had adhered to this Court's Writ, Petitioner will suffer extreme irreparable harm if this petition is heard in the ordinary course.

III. ISSUES PRESENTED

1. Whether the Respondents failed to adhere to this Court's Writ – which ordered Respondents "to vacate your November 14, 2014, denial of parole and conduct a new parole hearing in which NAC 213.518(2)(k) is not applied" – when they purported to conduct a *rehearing* and granted parole without *vacating* the 2014 Parole Denial, resulting in an effective release date of 2018, as opposed to 2015.

2. Whether extraordinary relief by way of a writ of mandamus is proper here because, absent a mandate from this Court requiring Respondents to strictly adhere to the Writ, the Respondents' error during Michael's 2014 parole hearing will result in Petitioner being further punished by serving three additional years in prison.

3. Whether this Court intended its Writ to result in Respondents vacating, not maintaining, the 2014 Parole Denial, having the consequence of any parole decision made following the mandated *re*hearing being effective as if it were issued in 2014.

IV. FACTS NECESSARY TO UNDERSTAND THE ISSUES PRESENTED BY THE PETITION

A. Michael Is Sentenced To Prison And Begins A Journey Of Rehabilitation, Which Results In His Life Sentence Being Commuted To Five Years To Life.

In May of 1972, Michael was sentenced to a term of life without the possibility of parole. (AR 28). Four years later, in November of 1976, Michael pled guilty to the crime of escape and was sentenced to a ten (10) year term to run consecutive to his life sentence. (AR 29). Thereafter, in 1977, he entered a guilty plea to an escape charge and was sentenced to a fixed term of ten (10) years to run consecutive to his other sentences. (AR 30).

For the next twenty-eight (28) years of his life, Michael served his sentence without committing any crimes or garnering any additional convictions. Rather,

he set out on a journey of rehabilitation, education, and reformation. That is, Michael began participating in programs offered through the Department of Corrections and earning degrees in various fields. (AR 46).

Michael's accomplishments and dedication to reforming his life behind bars did not go unnoticed. In fact, on December 14, 2005, after Michael had served more than thirty-three (33) years and six (6) months in prison, the Board of Pardons issued an "Order Commuting Sentence" pursuant to NRS 213.010 – NRS 213.100 ("Commutation Order"). (AR 31). The Commutation Order commuted Michael's life sentence to a "term of five years to life", and commuted Michael's ten year sentence for his 1977 escape conviction to run concurrent therewith. (*Id*). The Commutation Order did not impact Michael's ten-year sentence for his 1976 escape conviction. (*Id*).

B. As Michael's Commuted Sentence Provides For The Possibility Of Parole, Michael Applies For Parole Four Separate Times, But Is Routinely Denied The Same.

Because Michael's life sentence was commuted, he became eligible for parole in 2006. *See* NRS 213.120(1). Unfortunately, despite the fact that he had engaged in all available rehabilitative programs, was a productive and contributing inmate, and was nearly infraction free for decades, Michael was continuously denied parole based on a fixed factor he could never change – the severity of his crime. Beginning with his first parole hearing in 2006, and spanning over the next

eight (8) years, Michael applied for parole each time he was eligible,² but was denied parole every single time he was considered, totaling four parole denials. (AR 33-34, 36-38, 42-43, 45-46, 61-62). As this Court has already ruled, in denying Michael parole in both 2012 and 2014, the Parole Board *improperly* based its decision on an inapplicable factor - the "[n]ature of the criminal record is increasingly more serious: Previous offenses are property crimes". (AR 43, 45, 46).

As is relevant to the instant petition, Michael appeared before the Board on November 17, 2014 ("2014 Hearing"). (AR 45). At that time, Michael was sixty-two (62) years old, having served more than forty-two (42) years and five (5) months in prison. (AR 28). During the 2014 Hearing, the three Commissioners who conducted Michael's parole hearing ("Sitting Commissioners") asked Michael questions related to his parole application. (AR 61-62). In light of several mitigating factors, Michael's "Low Risk" ranking, and the Board's discussions with Michael during the 2014 Hearing, the Sitting Commissioners recommended *granting* Michael parole. (AR 45). Despite the fact that the Sitting Commissioners recommended granting Michael parole, the four *non-sitting* members ("Non-Sitting Commissioners"), who had no opportunity to even speak to Michael, voted to deny Michael's application for parole. (*Id.*)

² On November 17, 2011, the Board issued an "Order of Taking No Action", providing that no action was taken on Michael's eligibility for parole "due to a lack of information needed to make a recommendation." (AR 40).

According to the "Order Denying Parole" issued on November 17, 2014, ("2014 Parole Denial"), the four Non-Sitting Commissioners refused to ratify the Sitting Commissioners' recommendation because the (i) "[n]ature of criminal record is increasingly more serious," which the Board is forbidden from considering, and (ii) "[i]mpact on victim(s) and/or community", which, as explained in the form, relates to the immutable fact that a twenty-two (22) year old was murdered in 1971. (AR 45).

As a result of the Parole Board's 2014 Parole Denial, Michael was not eligible for parole consideration until 2018. That is, in the 2014 Parole Denial, the Board stated that "further consideration of parole is denied until 02/01/2018." (*See id.*)

C. Following The Final Denial Order, Michael Petitioned The District Court For A Writ And Eventually Filed An Appeal To This Court And Was Appointed Pro Bono Counsel.

After having exhausted all other possible remedies, on December 24, 2014, Michael filed a petition for a writ of habeas corpus against the Respondents³ in the First Judicial District Court of the State of Nevada in and for Carson City challenging the Board's Final Denial Order ("Petition"). (AR 1). Respondents sought a dismissal of the Petition (AR 23-26), and on March 6, 2015, the District Court signed the proposed order submitted by Respondents ("Dismissal Order"),

³ Commissioner Keeler was not named as a Respondent in Michael's Petition. (AR 1).

granted the Motion to Dismiss, and found that Michael did not "set forth a cognizable claim for habeas relief because parole is an act of grace of the State, and there is no cause of action permitted when parole has been denied." (AR 55-56).

Upon receipt of the Dismissal Order, on March 18, 2015, Michael initiated an appeal entitled *Anselmo v. Brisbee, et al.* (CASE NO.: 67619) (the "Parole Appeal"). (AR 67-69). Following a request from this Court, on May 27, 2015, the record on appeal was filed with this Court, and the Parole Appeal was submitted for decision. (Docket No. 15-40341). After several requests from this Court for the appointment of pro bono counsel (*see* Docket No. 15-35985; *see also* Docket No. 16-05617), undersigned counsel filed a Notice of Appearance on behalf of Michael on March 16, 2016. (Docket No. 16-08347).

D. Michael Files His Opening Brief Arguing, Among Other Things, That The Board Failed To Follow Its Own Guidelines And Respondents Respond By Asserting That The Guidelines Are Not "Officially Adopted".

On June 21, 2016, Michael filed his Opening Brief in the Parole Appeal, wherein he advanced several arguments relating to the 2014 Hearing and the 2014 Parole Denial. (AR 71-151). As is particularly relevant to this petition and the issues raised herein, Michael argued in his Parole Appeal (among other things) that in denying him parole and issuing the 2014 Parole Denial, the Board failed to adhere to its own guidelines and is, therefore, subject to judicial review. (AR 122-

123). In relying on *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 496-99, 661 S.E.2d 106, 112 (2008), Michael argued that despite the fact that "[p]arole is a privilege, not a right," an inmate does "have a right to require the Board to adhere to statutory requirements in rendering a decision." (AR 121).

On July 20, 2016, Respondents filed their Answering Brief, wherein they attempted to distinguish *Cooper* and disingenuously argued that "the 'guidelines' that [Michael] refers to are part of a document on the Parole Board website providing the public with definitions for certain terms, and not an officially adopted standard..." (AR 174-177). Thereafter, on September 20, 2016, Michael filed his Reply Brief pointing out the deficiencies in Respondents' arguments against *Cooper* and the other issues raised in the Opening Brief. (AR 365-405).

E. The Court Held Oral Argument And Issued An Advanced Opinion Instructing The Board To Vacate The Final Board Denial And Conduct A New Parole Hearing Wherein They Follow Their Own Guidelines.

On March 16, 2017, this Court held oral argument on the Parole Appeal before the Northern Panel 17, the Honorable Justices Hardesty, Parraguirre and Stiglich. (AR 183). After hearing argument from counsel and considering the briefs submitted in support thereof, on June 29, 2017, the Court issued an Order directing the clerk of the court to "convert [Michael]'s appeal into an original petition for a writ of mandamus" in light of the fact that Michael argued that he

"was entitled to a new parole hearing on the basis that the Parole Board violated its own internal guidelines in assessing [his] suitability for parole." (AR 185-187).

On the same day, this Court appropriately issued an Advanced Opinion ("Opinion") finding, among other things, that the "Board's consideration of the inapplicable aggravator in NAC 213.518(2)(k) infringed upon [Michael]'s statutory right to receive proper consideration for parole. Given the Board's clear error, we conclude that extraordinary relief is necessary in this instance." (AR 188-197). In light of this finding, this Court very explicitly directed the Board to *vacate* the 2014 Parole Denial and conduct a *rehearing* without considering that factor: "Therefore, we grant Anselmo's petition for extraordinary relief, and direct the clerk of this court to issue a writ of mandamus instructing the Board to vacate its November 14, 2014, denial of parole and conduct a new parole hearing in which NAC 213.518(2)(k) is not applied." (AR 197).

The Deputy Clerk of this Court sent a letter to undersigned counsel dated that same day, enclosing the original and one copy of the Writ of Mandamus ("Writ") and one copy of the Opinion for service upon Respondents, including the Board. (AR 198). The Writ was also very clear in its mandate to the Board: "[Y]ou are instructed to vacate your November 14, 2014, denial of parole and conduct a new parole hearing in which NAC 213.518(2)(k) is not applied." (AR 199). On July 5, 2017, the Respondents, including the Board, received a copy of

the Writ and the Opinion, both of which contained this Court's clear directives. (AR 200).

F. Despite This Court's Well-Reasoned And Supported Opinion And Straightforward Writ, The Board Tried Everything It Could To Avoid Having To Comply With The Same.

Upon receipt of the Writ, the Board did not immediately vacate the 2014 Parole Denial and schedule a *rehearing* as directly ordered by this Court; rather, the Respondents filed a Petition for Panel Rehearing ("Petition for Rehearing"), wherein they characterized the Opinion as "a disfavored advisory opinion" and actually argued, among other arguments, that the Board "does not have a duty to follow all of its guidelines in every case." (AR 201-211). As NRAP 40(d) does not permit a response to any such petition unless the Court orders the same, Michael did not respond to the Petition for Rehearing at that time. Without justification, and without seeking a stay of this Court's Writ, the Respondents did absolutely nothing for the nearly four (4) months following the filing of their Petition for Rehearing.

Thereafter, on October 11, 2017, this Court ordered Michael to respond to the Petition for Rehearing within 15 days of the order. (AR 212). Accordingly, on October 30, 2017, Michael filed his Answer to Petition for Panel Rehearing ("Answer"). (AR 213-235). As is particularly relevant here, in his Answer, Michael appropriately noted that the Opinion was far from advisory, as it could

(and should) "result in [him] being granted parole and being given credit for his time served since his November 2014 denial." (AR 215). Also of importance is the fact that during that time, the only parole hearing that was scheduled for Michael was the statutorily required parole hearing Michael was set to receive three years following his 2014 Parole Denial. Put simply, without seeking a stay of the Writ, the Board failed to *vacate* the 2014 Parole Denial and failed to schedule a *rehearing* in direct contravention of this Court's Writ. (*Id*).

As the Petition for Rehearing completely lacked merit and was an obvious ploy to avoid to the obeying the Court's Writ and to needlessly prolong Michael's incarceration, on November 16, 2017, this Court issued an Order Correcting Opinion and Denying Rehearing, which simply corrected the name of the Board and denied the request for rehearing. (AR 236).

G. The Board Conducts The Statutorily Mandated Parole Hearing And Grants Michael Parole Effective February 1, 2018, But Still Refuses To Vacate The 2014 Parole Denial And Conduct The Rehearing Ordered By This Court.

Because Michael was statutorily eligible for parole consideration three years following his 2014 Denial Order (November 17, 2014), the Board conducted a parole hearing on November 16, 2017. (AR 238-240). After hearing from undersigned counsel and Michael, the Board issued its Order Granting Parole on his "Murder 1st Degree" charge ("Order Granting Parole"), with an effective date of February 1, 2018. (*Id*). The decision to grant parole was unanimous, and was

based upon Michael's "positive institutional record," that there is "community support and/or family support," that Michael must serve a consecutive sentence" and that Michael has "participated in programs specific to addressing behavior that led to incarceration." (AR 238). According to his Parole Risk Assessment & Guideline worksheet, his Total Risk Score was 5, his Guideline Risk was "Low Risk" and his Offense Severity was "Highest". (AR 240). Notably, this, along with the aggravating and mitigating factors, are identical to the Board's assessment of Michael in 2014, which resulted in the 2014 Parole Denial. (AR 46). The only difference was that the Board did not consider that the nature of the crime was increasingly more serious – the factor this Court ordered it not to consider. (AR 240).

H. In Continuing To Ignore This Court's Directive, The Board Refuses To Conduct A Rehearing And, Instead, Attempts To Disrupt This Court's Writ By Filing A Petition For En Banc Consideration.

As was obvious from the face of the Order Granting Parole, the Board had no intention of actually complying with this Court's directives in the Writ to *vacate* the 2014 Parole Denial and conduct a *rehearing*. That is, on December 3, 2017, Respondents – without ever seeking a stay of the Writ – filed another petition for reconsideration, this time seeking *en banc* reconsideration ("Second Petition for Rehearing"). (AR 241-259). Without ordering Michael to respond, this Court issued an order summarily denying the Second Petition for Rehearing. (AR 260).

Because both of Respondents' attempts at disrupting the Court's Writ failed, this Court issued a Notice in Lieu of Remittitur, notifying the parties that the "Order and decision entered herein has, pursuant to the rules of this court, become effective." (AR 262).

I. After Taking No Action With Respect To The Writ For Almost A Year, The Board Finally (Purportedly) Held The Rehearing Ordered By This Court.

Having sat on their hands for almost a year after this Court issued its Writ mandating that the Board vacate the 2014 Parole Denial and conduct a *rehearing*, the Board finally scheduled a *rehearing* for Michael to occur in April of 2018 ("2018 Rehearing"). (AR 263). Unfortunately, during the 2018 Rehearing, it became clear that the Board had no intention of actually complying with this Court's mandate – despite being denied reconsideration twice! (AR 264-283). That is, while Commissioner Jackson represented that the 2018 Rehearing was being held in accordance with the Court's Writ, what happened after that was far from what this Court ordered. (AR 268).

In direct defiance of this Court's Writ to *vacate* the 2014 Parole Denial, Commissioner Corda proceeded to (improperly) inform Michael that "what can happen as a result of this [rehearing] is we can maintain the previous grant that we had already granted you parole effective on the date that we granted you or we can grant you effective back when you were eligible on the 2014 hearing, which was in February 2015." (AR 269). Despite Michael appropriately questioning these

purported "options" the Board could take – which are found nowhere in this Court's Writ – Commissioner Corda doubled down on the position: "What we -- we could decide is just to maintain that grant like we did or we could decide to give you the grant back when you were eligible, 2015." (AR 270).

Michael was then asked why the Board should "decide to give [him] the parole in 2015 versus when [they] granted in 2017." (*Id*) Setting aside the obvious – that this Court mandated that the Board *vacate* the 2014 Parole Denial which would result in a 2015 effective date of parole – Michael stated that nothing has changed and that the only thing different is that three years passed. (AR 271).⁴

Consistent with the Board's refusal to adhere to this Court's mandate and continued attempts to thwart this Court's ruling, following this 2018 Rehearing, the Board issued an Order Granting Parole, with an effective date of February 1, 2018 ("2018 Grant of Parole"), which equates to *Michael* being punished with an extra

⁴ Notably, Commissioner Corda then expressly recognized that Michael's risk assessment was the same as when he was considered for parole in 2014, that his aggravating factors (with the exception of the factor this Court ordered the Board not to consider) are the same as when he was considered for parole in 2014, and that the mitigating factors are the same as when he was considered for parole in 2014. (AR 271-275). Even though Commissioner Corda recognized that Michael is the same man he was back in 2014, he still insisted that the Board needed to determine whether to "maintain [his] parole grant as is or to revert it back to when [he was] eligible in 2015." (AR 278). Not only does nothing in Michael's record support the Board having him serve three extra years in prison, but doing so is completely inapposite with this Court's Writ.

three (3) years in prison because *the Board* failed to adhere to its own guidelines in 2014. (AR 305).

Because this Court's Writ did not provide the Board with the option of making his parole effective as of 2015 or as of 2018, following the 2018 Grant of Parole, on May 16, 2018, Michael sent a letter to the Board requesting reconsideration of the effective date of his parole. (AR 310-311). The Board refused to reconsider its decision and sent Michael a letter on June 27, 2018, stating the same. (AR 309). Despite the Writ ordering Respondents to *vacate* the 2014 Parole Denial, the Board admitted in this letter that there would be “no change” to the 2014 Parole Denial. (*Id.*).

As it was clear that the Board had no intention of complying with this Court's Writ and vacating the 2014 Parole Denial, Michael attempted to file a *pro se* Motion for Clarification of Court Order and Order to Enforce Order with this Court on June 28, 2018, in the Parole Appeal. (AR 361-364). Because this Court had already issued its decision on the matter and the Notice in Lieu of Remittitur, on July 2, 2018, the Deputy Clerk returned Michael's Motion unfiled and advised that this Court no longer had jurisdiction over the matter. (AR 360).

On July 3, 2018, Michael again tried to reason with the Board in a subsequent letter, to no avail. (AR 314-315). Notably, the Board recognized in its response letter to Michael on July 31, 2018, that it expressly disobeyed the Writ's

mandate to vacate the 2014 Parole Denial – "the Board's decision was to maintain the denial period of three years." (AR 313).

J. Because The Board Refused To Adhere To This Court's Writ, Michael Filed A Pro Se Writ Of Mandamus With The State Court.

Because the Board continued to ignore this Court's Writ and Michael was facing serving three (3) additional years (1,095 days) in prison due to no fault of his own, on September 10, 2018, Michael filed a *pro se* Writ of Mandamus in the First Judicial District Court against Connie Bisbee, Tony Corola, Susan Jackson and the State of Nevada Board of Parole. (AR 316-322). Consistent with his previous attempts to have the Board give him credit for the three (3) years he served in prison following the 2014 Parole Denial, Michael asked the Court, among other things, to order the Board to comply with this Court's Writ. (AR 316-317).

After the Court ordered the Office of the Nevada Attorney General (the "AG") to respond⁵ and undersigned counsel agreed to give the AG additional time to respond, on November 13, 2018, the AG filed its response, arguing that the Board "arguably exceeded its obligations under the writ," and that Michael "received the consideration required" by this Court under the Writ. (AR 284-315). Notably absent from the argument is any demonstration that Respondents vacated the 2014 Parole Denial. (*See id*).

⁵ (AR 323-325).

Thereafter, undersigned counsel appeared on behalf of Michael and worked with the AG to supplement the record with the transcript of the 2018 Rehearing so that the lower court would have the opportunity to fully examine the facts. (AR 326-351). Without giving Michael a chance to file anything in reply to the AG's response, on November 19, 2018, the Court issued its Order denying Michael's requested relief and finding that the 2018 Rehearing complied with this Court's Writ. (AR 352-357, 406-413). Similarly, the Court made no finding that the 2014 Parole Denial had been properly vacated. (*See id.*)

Having exhausted all of his possible remedies to no avail, Michael now seeks a writ from this Court ordering the Respondents to comply with this Court's Writ to vacate the 2014 Parole Denial – with the Respondents' parole decision following the Court ordered rehearing being effective as of 2015. As demonstrated below, Michael has no adequate remedy and such extraordinary relief is required to ensure that he does not serve three (3) additional years in prison because of the Board's failure to adhere to its own guidelines.

V. REASONS WHY THE WRIT SHOULD ISSUE – POINTS AND AUTHORITIES

A. Writ Relief Is Available To Clarify Important Issues of Law And To Compel Performance When There Is No Adequate Remedy At Law.

“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; *Int'l*

Game Tech., Inc. v. Second Judicial Dist. Court, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); *see also Humphries v. Eight Judicial Dist. Court*, 129 Nev. 788, 791, 312 P.3d 484, 486 (2013). Where there is no plain, speedy, and adequate remedy in the ordinary course of law, extraordinary relief may be available. NRS 34.170; *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991); *see also Oxbow Const., LLC v. Eight Judicial Dist. Court*, 130 Nev. 867, 872, 335 P.3d 1234, 1238 (2014). Whether a writ of mandamus will be considered is within this Court’s sole discretion. *Smith*, 107 Nev. at 677, 818 P.2d at 851; *see also Libby v. Eight Judicial Dist. Court*, 130 Nev. 359, 363, 325 P.3d 1276, 1278 (2014).

An appeal is generally an adequate legal remedy precluding writ relief. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004); *see also Bradford v. Eight Judicial Dist. Court*, 129 Nev. 584, 586, 308 P.3d 122, 123 (2013). This Court nonetheless may exercise its discretion to consider a writ petition when “an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition.” *Oxbow Constr., LLC v. Eight Judicial Dist. Court*, 130 Nev. 867, 872, 335 P.3d 1234, 1238 (2014) (internal quotations marks omitted). Writ relief is undoubtedly warranted here.

B. Writ Relief Is Necessary To Clarify This Court's Writ, To Compel Respondents To Strictly Comply With This Court's Writ And To Ensure Petitioner Does Not Suffer Irreparable Harm Due To Respondents' Failure To Do The Same.

To begin, by way of this petition, Michael asks this Court to issue a writ of mandamus (i) clarifying that this Court's Writ explicitly required Respondents to vacate the 2014 Parole Denial, resulting in any new parole decision having effect as if it were reached in 2014, and (ii) instructing the Respondents to adhere to this Court's Writ ordering the Respondents to "*vacate* [their] November 14, 2014, denial of parole and conduct a new parole hearing in which NAC 213.518(2)(k) is not applied." As such, Michael is requesting that this Court "compel the performance of an act that the law requires as a duty resulting from office, trust or station..." *See* NRS 34.160. Issuing a writ of mandamus is, therefore, appropriate.

Further, as this Court recognized in the Parole Appeal (AR 187-197), there is no "applicable statutory vehicle through which [Michael] may challenge the Board's conduct" and "there is no plain, speedy, and adequate remedy in the ordinary course of law" that would address the nature of the relief sought – instructions from this Court mandating that the Respondents comply with its Writ. *See* NRS 34.170. In fact, as outlined herein, Michael has made numerous attempts to obtain this relief by other avenues, to no avail. (*See* Section IV, *supra*). Extraordinary relief in the form of a writ is certainly

warranted here, where the Respondents have consciously disobeyed this Court's Writ and refused to correct their error.

As they have in the lower Court, Respondents will likely argue in response to this petition that mandamus is not proper to review or correct judicial acts, no matter how erroneous. (*See* AR 288). This argument is off base, especially in light of this Court's Writ instructing Respondents to correct their "clear error" by vacating the 2014 Parole Denial and conducting a rehearing. (AR 197).

These types of arguments – that turn a blind eye to this Court's Writ – are precisely why clarification is needed. In plain language, this Court ordered Respondents to "vacate" the 2014 Parole Denial. (*Id.*). Instead of vacating the 2014 Parole Denial, Respondents (i) held a hearing to determine whether their grant of parole should be retroactively applied, (ii) "determined that there would be no change to the denial period determined at [Michael's] 11-17-2014 hearing and [his] subsequent grant effective date," and (iii) admitted their failure to obey the Writ: "the Board[']s decision was to maintain the denial period of three years." (AR 309, 322, 332-351). Contrary to Respondents' position, the Board did not go beyond the Court's directive when it held this 2018 Rehearing. (AR 288). It did the *exact opposite*.

To "vacate" means to "make legally void."⁶ The definition of "maintain" is to "keep in an existing state."⁷ It is hard to imagine how the Respondents believe that they complied with a Court mandate to "vacate" something, when they admit that they in fact "maintained" it. If clarification of an important legal issue was ever needed, this is the case. *See Oxbow Constr., LLC*, 130 Nev. at 872, 335 P.3d at 1238. Respondents obviously have some confusion as to the meaning of these terms and clarification is necessary. Because of Respondents' confusion (or purposeful misreading of the Writ) as to this Court's Writ, Michael faces being imprisoned for three (3) additional years due to Respondents' error in the 2014 Parole Denial.

As this Court can understand, judicial economy is best served by the grant of this petition, resulting in the Court's clarification that its Writ expressly mandated Respondents to *vacate* the 2014 Parole Denial. *See id.* Michael should not be forced to refile lengthy appeals, petitions, motions, etc., in an attempt to have Respondents comply with this Court's clear directive.

So there can be no doubt, Michael is not seeking by way of this petition a review of the ultimate decision of Respondents to grant or deny parole. The Board granted Michael parole. (AR 305-307). Michael is simply asking the

⁶ See <https://www.merriam-webster.com/dictionary/vacate>, last visited on April 11, 2019.

⁷ <https://www.merriam-webster.com/dictionary/maintain#synonyms>, last visited April 11, 2019.

Court to order Respondents to comply with the remaining portion of the Writ to *vacate* the 2014 Parole Denial, resulting in the Board’s decision on parole being effective as if it were entered in 2014.

VI. CONCLUSION

Based on the foregoing, Petitioner respectfully requests that this Court issue a writ of mandamus (i) clarifying that this Court’s Writ explicitly required Respondents to vacate the 2014 Parole Denial, resulting in any new parole decision having effect as if it were reached in 2014, and (ii) instructing the Respondents to adhere to this Court’s Writ ordering the Respondents to “*vacate* [their] November 14, 2014, denial of parole and conduct a new parole hearing in which NAC 213.518(2)(k) is not applied.”

Petitioner also respectfully requests this relief on an emergency basis, because, absent a ruling in the next fourteen (14) days, the Respondents’ error will cause Petitioner to suffer irreparable harm in the form of not receiving credit for three years (1,095 days) he served in prison following the 2014 Parole Denial.

...

...

...

That is, as Petitioner would be released on his escape conviction in April 2019 (this month) if the Respondents had adhered to this Court's Writ, Petitioner will suffer extreme irreparable harm if this petition is heard in the ordinary course.

DATED this 15th day of April, 2019.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: /s/ Kirk B. Lenhard

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Attorneys for Petitioner Michael P. Anselmo

NRAP 27(E) CERTIFICATE
OF NEED FOR EMERGENCY RELIEF

I, Emily A. Ellis, Esq., declare:

1. I am a lawyer with Brownstein Hyatt Farber Schreck, LLP, counsel of record for Petitioner Michael P. Anselmo.

2. I certify that the relief requested in this Petition is needed on an emergency basis. Unless the Nevada Board of Parole Commissioners is ordered to strictly adhere to this Court's Writ, Petitioner will continue to be wrongfully imprisoned and will suffer irreparable harm.

3. As explained in this Petition, urgency of immediate review is present because had the Respondents complied with the Court's Writ mandating them to vacate the 2014 Parole Denial and to conduct a *rehearing*, resulting in an effective parole date of 2015 for his murder conviction, Petitioner would be released on his escape conviction in April, 2019 – *this month*.

4. If this Petition is not heard on an expedited basis, Petitioner will remain incarcerated and will be wrongfully stripped of his freedom during the pendency of the Petition. As such, good cause exists to hear this Petition on an expedited basis.

5. Undersigned counsel just learned of the fact that, but for Respondents' failure to adhere to this Court's Writ, Petitioner should be

preparing for his release on the escape conviction due to his credit for good time and work credit. In other words, Petitioner would not just be eligible for parole in April 2019; rather, because of his credits for good time and work credit, he should be released this month.

6. The contact information (including telephone numbers) for the attorneys in this case is as follows: Kirk B. Lenhard, Esq., and Emily A. Ellis, Esq., of Brownstein Hyatt Farber Schreck, LLP, 100 North City Parkway, Suite 1600, Las Vegas, NV 89106-4614, Telephone: (702) 382-2101; Opposing Counsel is as follows: Jeffrey M. Conner, Deputy Solicitor General, Office of the Attorney General, 100 North Carson Street, Carson City, NV 89701-4717, Telephone: (775) 684-1136.

7. Opposing counsel was notified that Petitioners would be challenging the Respondents' conduct by writ, and have been emailed a copy of this Petition concurrently with its submission to this Court.

8. Additionally, Petitioner sought the relief herein at the District Court level, but was denied the same. As he petitioned the District Court as a *pro se* litigant, however, not all arguments herein were before the District Court.

I declare the foregoing under penalty of perjury under the laws of the State of Nevada.

EMILY A. ELLIS, ESQ

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Office Word 2010 in size 14 font in double-spaced Times New Roman. I further certify that I have read this brief and that it complies with NRAP 21(d).

Finally, I hereby certify that to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires that every assertion in this brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 15th day of April, 2019.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: /s/ Kirk B. Lenhard

Kirk B. Lenhard, Esq., Nevada Bar No. 1437

Emily A. Ellis, Esq., Nevada Bar No. 11956

Mackenzie Warren, Esq., NV Bar No. 14642

Attorneys for Petitioner Michael P. Anselmo

VERIFICATION

I, Emily A. Ellis, hereby declare as follows:

1. I am an attorney at the law firm of Brownstein Hyatt Farber Schreck, LLP and counsel for the Petitioner in the matter herein.
2. I have read the foregoing **EMERGENCY PETITION FOR WRIT OF MANDAMUS ORDERING RESPONDENTS TO COMPLY WITH THE NEVADA SUPREME COURT'S WRIT TO VACATE 2014 PAROLE DENIAL** and know the contents thereof.
3. The same is true of my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 15th day of April, 2019, in Las Vegas, Nevada.



EMILY A. ELLIS, ESQ.

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and that on this 15th day of April, 2019, I caused the above and foregoing **EMERGENCY PETITION FOR WRIT OF MANDAMUS ORDERING RESPONDENTS TO COMPLY WITH THE NEVADA SUPREME COURT'S WRIT TO VACATE 2014 PAROLE DENIAL** to be served via electronic service through the Court's filing system, and via United States Mail, postage prepaid and properly addressed to the following:

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Phone (775) 684-1136
Fax (775) 684-1108

Dated: April 15, 2019.

/s/ Paula Kay
Employee of Brownstein Hyatt Farber Schreck, LLP