

No. 85759

IN THE SUPREME COURT OF THE STATE OF NEVADA

GODERICK VILADELGADO,

Petitioner,

v.

BOARD OF PAROLE COMMISSIONERS; DONNA VERCHIO; ERIC
CHRISTIANSEN; LAMICIA BAILEY; AND SCOTT WEISENTHAL,

Respondents.

RESPONDENTS' ANSWER TO PETITION FOR WRIT OF MANDAMUS

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Respondents, the State of Nevada Board of Parole Commissioners, Commissioner Donna Verichio, Commissioner Eric Christiansen, Commissioner Lamicia Bailey, and Commissioner Scott Weisenthal (Parole Board), by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada, and Kathleen Brady, Senior Deputy Attorney General, hereby files this Answer to the Petition for Writ of Mandamus. This Answer is based on the attached Points and Authorities, the Respondent’s Appendix (RA), and the papers and pleading(s) on file with this Court.

POINTS AND AUTHORITIES

I. INTRODUCTION AND ISSUE STATEMENT

Petitioner Goderick Villadelgado is an inmate housed with the Nevada Department of Corrections (NDOC). After being denied parole, Villadelgado filed the instant Petition for Writ of Mandamus. Therein, Villadelgado seeks reversal of the Parole Board’s decision to deny him parole on April 21, 2022. Petition at 1. Villadelgado argues that the Parole Board assessed him as a moderate risk level despite his risk assessment score of 0. *Id.* at 2. He contends that he should have been assessed a low risk to reoffend, and because the risk level was low and the severity level was high, the aggravating and mitigating factors should not have been considered. *Id.* at 3. He argues that “[u]nder NAC 213.516, high severity level and low risk level entitled [him] to parole.” *Id.* Villadelgado seeks reversal and vacation

of the Order, nominal and punitive damages, filing fees and costs, and equitable relief. *Id.* at 4.

However, as will be addressed in more detail below, the Parole Board properly denied parole and writ relief is not warranted in this case.

II. FACTS AND PROCEDURAL HISTORY

In 2020, Villadelgado was convicted of child abuse with substantial bodily harm and sentenced to prison. *See* RA 001-002, Judgment of Conviction.

The Parole Board first considered Villadelgado for parole on April 21, 2022. *See* RA 005, Order. As part of this consideration for parole, NRS 213.1214(4) and NAC 213.514 provide for the use of two separate risk assessments for sexual offenders, with them both being considered. Villadelgado scored a 0 on the Parole Risk Assessment for his risk to reoffend generally and had an offense severity of high. *Id.* However, on the Static-99R risk assessment conducted for sexual offenders, Villadelgado scored a 1 for risk to reoffend sexually, which placed him at an average risk to reoffend sexually. *See* RA 003-004, Static 99-R. Pursuant to the guideline, the risk was assessed as moderate and the guideline recommendation was to consider factors. *See* RA 006, Order.

The Board then considered the aggravating and mitigating factors and unanimously denied parole. *Id.* In the reasons for denial, the Parole Board listed that the crime was targeted against a child, the nature of the criminal record is

increasingly more serious, a prior conviction for a violent offense, and the impact on the victim(s) and/or the community. *Id.*

Villadelgado submitted an appeal to the Parole Board, which was denied. *See* RA 007, 6-15-22 appeal letter; RA 008-010, 7-14-22 response.

This writ petition followed.

III. ARGUMENT

The Petition should be denied because Villadelgado cannot show that extraordinary relief is warranted.

A. Standard for Granting Writ Relief.

”A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion.” *Bd. of Parole Commissioners v. Second Judicial Dist. Court*, 135 Nev. 398, 399–400, 451 P.3d 73, 76 (2019). “As a general rule, mandamus is not available when the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law.” *Id.* at 400, 451 P.3d at 76 (citing NRS 34.170; *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004)). “Mandamus will not lie to control discretionary action, unless discretion is manifestly abused or is exercised arbitrarily or capriciously.” *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603–04, 637 P.2d 534, 536 (1981). ”An exercise of discretion is considered arbitrary if it is ‘founded on prejudice or preference rather than on reason’ and capricious if it is

‘contrary to the evidence or established rules of law.’” *State, Dep’t. of Pub. Safety v. Coley*, 132 Nev. 149, 153, 368 P.3d 758, 760–61 (2016) (quoting *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931–32, 267 P.3d 777, 780 (2011)). “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). “[B]ecause a writ of mandamus is an extraordinary remedy, the decision to entertain a petition for the writ lies within [this Court’s] discretion.” *Gonzalez v. Eighth Judicial Dist. Court*, 129 Nev. 215, 217, 298 P.3d 448, 449–50 (2013).

B. The Parole Board Properly Denied Villadelgado Parole and Did Not Act Arbitrarily or Capriciously.

Villadelgado makes arguments concerning his risk level and entitlement to parole. However, the Parole Board properly considered Villadelgado for parole pursuant to the applicable statutes, regulations, guidelines, and law.

In his Petition, Villadelgado argues that his risk level was inappropriately assessed as a moderate risk when his general risk assessment score was 0. Petition at 1-2. However, Villadelgado fails to understand that as a sex offender, he is subject to the use of two risk assessment scores to determine his risk to reoffend generally and his risk to reoffend in a sexual manner.

Pursuant to NRS 213.1214(1), the NDOC “assess[es] each prisoner who has been convicted of a sexual offense to determine the prisoner’s risk to reoffend in a

sexual manner using a currently accepted standard of assessment” and provides the results to the Board. The statute further mandates that “[t]he Board shall consider an assessment prepared pursuant to this section before determining whether to grant or revoke the parole of a person convicted of a sexual offense.” NRS 213.1214(4). And this Nevada law further provides for the Board to adopt regulations to specify how the Board will consider these risk assessments. *Id.* at (5).

In line with this mandate, the Parole Board enacted NAC 213.514. *See* RA 011-015, R116-21. NAC 213.514 provides that the Board considers both the general risk assessment and the sexual risk assessment when determining which risk level to apply to the inmate.

In assessing Villadelgado for parole, the Parole Board followed NAC 213.514 and it considered both risk assessments. Then, in accordance with the NAC, the Parole Board used the higher of the two assessments to assess Villadelgado as a moderate risk to reoffend. *See* NAC 213.514.

Because Villadelgado’s risk was assessed as moderate pursuant to NAC 213.514, the NAC 213.516 guideline recommendation was to consider factors. *See* RA 005, Order. The Board then considered the aggravating and mitigating factors and unanimously denied parole. *Id.* In the reasons for denial, the Parole Board listed that the crime was targeted against a child, the nature of the

criminal record is increasingly more serious, a prior conviction for a violent offense, and the impact on the victim(s) and/or the community. *Id.*

Villadelgado contends that he should have been assessed a low risk to reoffend, and because the risk level was low and the severity level was high, the aggravating and mitigating factors should not have been considered. Petition at 3. He argues that “[u]nder NAC 213.516, high severity level and low risk level entitled [him] to parole.” *Id.* However, as shown above, the Parole Board properly considered risk factors based on the assessment that he is an average risk to commit a new sexual offense.

Furthermore, there is no entitlement to parole in Nevada. The Nevada Legislature has expressly stated that its creation of standards relating to parole does not establish a basis for any cause of action. NRS 213.10705. “[P]arole is an act of grace of the State and there is no cause of action when parole has been denied.” *See* NRS 213.10705; *Niergarth v. Warden*, 105 Nev. 26, 28, 768 P.2d 882, 883 (1989). “No person has a right to parole or probation, or to be placed in residential confinement” NRS 213.10705. Indeed, “Nevada’s parole statute does not create a liberty interest to sustain a due process claim.” *Coles v. Bisbee*, 134 Nev. 508, 511–12, 422 P.3d 718, 721 (2018).

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Moreover, NAC 213.516 does not create an entitlement to parole. Indeed, NAC 213.516 sets forth an initial assessment that is considered in conjunction with the other NACs to determine if parole might be appropriate under the circumstances. *See* RA 016-021, R114-21. It is only one consideration of many in “determining the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued.” NRS 213.10885(2). Specifically, NRS 213.10885(2) provides, in pertinent part, that the Board shall consider:

all other factors which are relevant in determining the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued. The other factors the Board considers must include, but are not limited to:

- (a) The severity of the crime committed;
- (b) The criminal history of the person;
- (c) Any disciplinary action take against the person while incarcerated;
- (d) Any previous parole violations or failures;
- (e) Any potential threat to society or to the convicted person; and
- (f) The length of his or her incarceration.

The Board did not enact the NAC 213.516 initial assessment to be considered in a vacuum. Instead, the Board enacted the various NACs in Chapter 213 to assist it in rendering a fair determination as to whether parole is appropriate under the circumstances.

Furthermore, the Nevada Supreme Court has always recognized that parole release is a purely discretionary executive function not subject to judicial review. *See, e.g., State, Bd. of Parole Comm'rs v. Morrow*, 127 Nev. 265, 270-72, 255 P.3d

224, 227-28 (2011). In *Anselmo v. Bisbee*, the Nevada Supreme Court reaffirmed that because “Nevada inmates have no protectable liberty interest in release on parole,” the court “will not disturb a determination of the [Parole Board] to deny parole for any reason authorized by regulation or statute.” 133 Nev. 317, 396 P.3d 848, 849 (2017). The Nevada Supreme Court in *Anselmo* made it clear that parole consideration is a statutory right in Nevada that does not involve a protected liberty interest. *Id.* at 318, 396 P.3d at 849. The Court provided that “[g]iven the clear discretionary language of Nevada’s parole statute, this court has consistently held that Nevada inmates have no protectable liberty interest in release on parole.” *Id.* The Court then provided that, “[n]onetheless, eligible Nevada inmates do have a statutory right to be considered for parole by the Board.” *Id.* The Court determined that “[w]hen the Board clearly misapplies its own internal guidelines in assessing whether to grant parole, this court cannot say that the inmate received the consideration to which they are statutorily entitled.” *Id.* The Court in *Anselmo* then pointed out that while there is a statutory right under NRS 213.140 for an eligible inmate to be considered for parole, ““the release . . . of a person on parole . . . is an act of grace of the State. No person has a right to parole”” *Id.* (quoting NRS 213.10705).

Villadelgado cites to *Anselmo* saying that he did not receive proper parole consideration because the “Parole Board’s designation of moderate risk level with

zero risk score is a statutory and constitutional defect.” Pet. at 3-4. However, as previously explained, the Parole Board’s designation of the risk assessment level for Villadelgado is consistent with NRS 213.1214 and 213.514. The Parole Board was required under NRS and NAC to consider both the risk assessment for general recidivism and the risk assessment that assesses risk to reoffend sexually. In this case, Villadelgado has not and cannot show that the Board improperly applied its statutes, regulations, or guidelines, and as such, writ relief is not appropriate.

Because writs “will not be exercised unless legal, rather than factual, issues are presented,” and only may issue to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion, writ relief was not appropriate in this case. *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981); NRS 34.160. Based on the forgoing, the Parole Board respectfully requests that this Court deny Villadelgado’s Petition for Writ of Mandamus.

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IV. CONCLUSION

Based on the forgoing, the Parole Board respectfully requests that this Court Deny the instant Petition for Writ of Mandamus.

RESPECTFULLY SUBMITTED this 7th day of March, 2023.

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V. 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 Microsoft Word 2016 14 pt. Times New Roman type style.

I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 2,838 words.

Finally, I hereby certify that I have read this appellate brief, and 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 every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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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 7th day of March, 2023.

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VI. CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on March 7, 2023, I filed the foregoing document via this Court's electronic filing system. I served a copy of the foregoing Respondents' Answer to Petition for Writ of Mandamus by placing said document in the U.S. Mail, postage prepaid, addressed to:

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