

**No. 85759-COA**

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IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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Elizabeth A. Brown  
Clerk of Supreme Court

GODERICK VILADELGADO,

*Petitioner,*

v.

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

*Respondents.*

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**RESPONDENTS' PETITION FOR REHEARING**

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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 file this Petition for Rehearing. This Petition is based on the attached Points and Authorities, the Respondents' Appendix (RA), and the papers and pleading(s) on file with this Court.

### **POINTS AND AUTHORITIES**

The State seeks rehearing of the decision in *Villadelgado v. Bd. of Parole Commissioners*, No. 85759-COA, 2023 WL 3362844, at \*1–2 (Nev. App. May 10, 2023), pursuant to NRAP 40.

NRAP 40 provides that the Court may consider rehearing a case when it can be demonstrated that “the court has overlooked or misapprehended a material fact in the record or a material question of law in the case.” NRAP 40(c)(2). Here, this Court has overlooked a material question of law. This case concerns whether the Parole Board properly used the specialized risk assessment at Petitioner Goderick Villadelgado’s hearing that is conducted by the Nevada Department of Corrections (NDOC) for sexual offenders. In the resulting Order, this Court concluded that the Parole Board should not use the NRS sexual offender assessment for Villadelgado based on Nevada law and the information presented. However, this Court then

ordered that the Board not apply any of the aggravating or mitigating factors in Villadelgado's case. This Court presumably meant to restrict the Parole Board from using the sexual risk assessment, and not all aggravating and mitigating factors.

The use of the aggravating and mitigating factors is outside of the scope of the arguments raised by Villadelgado and of the analysis provided by the Court. Indeed, under the current NACs adopted by the Parole Board, the Board always considers the aggravating and mitigating factors, placing different emphasis on the factors depending on the initial assessment. NAC 213.516 currently provides in section (2) that "[a]fter an initial assessment is established pursuant to subsection 1, the Board will consider the initial assessment in accordance with NAC 213.518." See <https://www.leg.state.nv.us/Register/2021Register/R114-21P.pdf>; <https://www.leg.state.nv.us/Register/2021Register/R115-21AP.pdf> (reorganizing and amending the NAC 213.518 factors).<sup>1</sup> NAC 213.518 provides that the Board will consider the initial assessment and "may consider the relevant aggravating and mitigating factors." See NAC 213.518(1), located at <https://www.leg.state.nv.us/Register/2021Register/R115-21AP.pdf>.<sup>2</sup>

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<sup>1</sup> NAC 213.514 has also been updated. See <https://www.leg.state.nv.us/Register/2021Register/R116-21A.pdf>.

<sup>2</sup> The Board also updated the factor definitions. See [https://parole.nv.gov/uploadedFiles/parolenvgov/content/Information/Aggravating\\_and\\_Mitigating\\_Factors\\_Definitions-1-2018.pdf](https://parole.nv.gov/uploadedFiles/parolenvgov/content/Information/Aggravating_and_Mitigating_Factors_Definitions-1-2018.pdf).

These Administrative Regulations provide the Board with discretion to consider these factors when determining whether a person is appropriate for parole. Significantly, the weight given to the factors varies depending on the recommendation from the initial assessment. These aggravating and mitigating factors concern important considerations such as any prior sexual and violent offenses, any prior revocations, whether the victim was a minor or a member of a vulnerable population, the impact on the victim and the community, institutional programming, stable release plans, and community support. *See id.* The initial assessment is not meant to restrict the Board from considering these important factors. Rather, it informs the Board as to how much weight to give the factors. Accordingly, the Board requests that this Court clarify the Order to align it with the current law and with the issues raised by Villadelgado in his writ petition.

Moreover, should this Court grant rehearing, it may also consider Villadelgado's status as an offender who is subject to the sex offender assessment that is utilized for parole purposes. While the State failed to provide the confidential Presentence Investigation Report (PSI) that demonstrated that the claims against Villadelgado were all sexually related, *see* Answer at 5, the Court can consider the PSI by taking judicial notice of the Court record in the underlying conviction case.

*See* Eighth Judicial District Court Case C-20-347446-1.<sup>3</sup> Villadelgado's conviction for child abuse in this case involved sexual abuse or sexual exploitation, as outlined in the PSI. *See* NRS 213.1214(6)(d)(7). Accordingly, NDOC and the Parole Board properly replied upon the PSI to determine that Villadelgado is subject to the sex offender assessment. *See Stockmeier v. State, Bd. of Parole Comm'rs*, 127 Nev. 243, 252, 255 P.3d 209, 215 (2011).

Based on the forgoing, the Parole Board respectfully requests that this Court Grant the instant Petition for Rehearing.

RESPECTFULLY SUBMITTED this 24th day of May, 2023.

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<sup>3</sup> Pursuant to NRS 176.156(5), the PSI is not to be made part of a public record.

## **CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 40**

I hereby certify that this petition for rehearing 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 petition has been prepared in a proportionally spaced typeface using Microsoft Word 365 14 pt. Times New Roman type style.

I further certify that this brief complies with the page limitations of NRAP 40 because it is proportionately spaced, has a typeface of 14 points or more, and contains 1,175 words.

Finally, I hereby certify that I have read this petition, 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 40, which requires every assertion in the petition 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 petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 24th day of May, 2023.

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## **CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General and that on May 24, 2023, I filed the foregoing document via this Court's electronic filing system. I served a copy of the foregoing Respondents' Petition for Rehearing by placing said document in the U.S. Mail, postage prepaid, addressed to:

Goderick Villadelgado #1237799  
High Desert State Prison  
P.O. Box 650  
Indian Springs, NV 89070

/s/ A. Coffman

A. Coffman, an employee of  
the office of the Nevada Attorney General