

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GODERICK VILADELGADO,

Petitioner,

v.

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

Respondents.

**RESPONDENTS' PETITION FOR REVIEW BY
THE NEVADA SUPREME COURT**

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Elizabeth A. Brown
Clerk of Supreme Court

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 Review by the Nevada Supreme Court. This Petition is based on the attached Points and Authorities and the papers and pleadings on file with this Court.

POINTS AND AUTHORITIES

The State seeks review 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 40B by the Nevada Supreme Court.

NRAP 40B provides that the Nevada Supreme Court may consider reviewing a Nevada Court of Appeals a case at its discretion. In exercising this discretion, the Court considers *inter alia* “[w]hether the case involves fundamental issues of statewide public importance.” NRAP 40B(a)(3).

Here, the Court of Appeals has overlooked a material question of law and this error involves fundamental issues of statewide public importance. This case arises from a Writ of Mandamus that was erroneously granted by the Nevada Court of Appeals. This case concerns whether the Parole Board properly used the specialized

risk assessment¹ at Petitioner Goderick Villadelgado's hearing that is conducted by the Nevada Department of Corrections (NDOC) for sexual offenders.² In the resulting Order, the Court of Appeals granted the writ and concluded that the Parole Board should not use the NRS sexual offender assessment for Villadelgado based on Nevada law and the information presented. However, the court then ordered that the Board not apply any of the aggravating or mitigating factors that it typically

¹ Pursuant to NRS 213.1214(1), the Nevada Department of Corrections "shall assess 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.

² 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 denied parole. *See id.*

considers when determining whether to grant parole. The Court of Appeals presumably meant to restrict the Parole Board from using the sexual risk assessment, and not all aggravating and mitigating factors. The Parole Board sought rehearing on this issue, which was denied.

However, the Board's discretionary use of the aggravating and mitigating factors is outside of the scope of the arguments raised by Villadelgado and of the legal analysis provided by the Court of Appeals. The Board did not enact the Nevada Administrative Code (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.

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).³ 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>.⁴

These Administrative Regulations provide the Board with discretion to consider these aggravating and mitigating factors when determining whether a person is appropriate for parole, even when the guideline does not mandate such consideration. While the weight given to the factors varies depending on the recommendation from the initial assessment, the initial assessment does not exclusively control the Board’s consideration.

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).

³ NAC 213.514 has also been updated. *See* <https://www.leg.state.nv.us/Register/2021Register/R116-21A.pdf>.

⁴ The Board also updated the factor definitions. *See* https://parole.nv.gov/uploadedFiles/parolenvgov/content/Information/Aggravating_and_Mitigating_Factors_Definitions-1-2018.pdf.

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* NAC 213.516. 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 review the decision of the Court of Appeals to align it with the current law and with the issues actually raised by Villadelgado in his writ petition. If the decision of the Court of Appeals is left as it stands, the Parole Board will be restricted from considering its aggravating and mitigating factors when considering whether to release Villadelgado on parole. The Board cannot determine the probability that Villadelgado can “live and remain at liberty without violating the law if parole is granted or continued” without considering aggravators and mitigators such as victim impact. NRS 213.10885(2); NAC 213.516.

The Court of Appeals erred in making this expansive ruling and this error involves fundamental issues of statewide public importance. The Order granting Villadelgado’s writ petition inappropriately ties the hands of the Parole Board and does not allow the Board to fulfil its statutory mandate. This decision cannot be

reconciled with Nevada law requiring that the Parole Board assess a person's ability to be released on parole while not posing a danger to the welfare of the public.

Moreover, should this Court grant review, 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-20-347446-1.⁵ 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 relied 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 review the Court of Appeals decision to align it with Nevada law and order that Villadelgado's Petition for Writ of Mandamus be denied. 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

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

or capricious exercise of discretion, writ relief was not appropriately issued in this case. *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981); NRS 34.160.

RESPECTFULLY SUBMITTED this 17th day of July, 2023.

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CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 40B

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 40B because it is proportionately spaced, has a typeface of 14 points or more, and contains 1,920 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 40B, 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 17th day of July, 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 July 17, 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:

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/s/ M. Neumann
M. Neumann, an employee of
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