

IN THE SUPREME COURT OF THE STATE OF NEVADA

DWIGHT CONRAD SOLANDER,

Petitioner,

vs.

NEVADA DEPARTMENT OF
CORRECTIONS; AND NEVADA
DEPARTMENT OF PUBLIC
SAFETY DIVISION OF PAROLE
AND PROBATION,

Respondents.

No. 86614

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**ANSWER TO PETITION
FOR WRIT OF MANDAMUS**

I. INTRODUCTION

The emergency petition for writ of mandamus seeks to compel the Nevada Department of Public Safety, Division of Parole and Probation to recommend Mr. Solander for early discharge of his parole pursuant to NRS 213.1543. See Emerg. Pet. Specifically, Mr. Solander argues he meets each of the requirements listed in NRS 213.1543.

Respondent respectfully disagrees because Mr. Solander has repeatedly failed parole condition, “E. Pay all applicable fines and fees on a schedule determined by the Division of Parole and Probation.” See Ex. E Declaration of Lt. Kyle Stewart and exhibits thereto.

II. PROCEDURAL BACKGROUND

Petitioner Dwight Solander filed the pending Emergency Petition for Writ of Mandamus on May 22, 2023. This Court issued its Order Directing Answer on May 24, 2023, providing Respondent fourteen (14) days to file an Answer to assist the court in resolving the petition. The instant Answer now follows.

The lone dispute is whether Mr. Solander meets each of the requirements of NRS 213.1543.

III. STANDARD OF REVIEW

The writ should be denied because the performance sought by Petitioner is not required by law because all of the required conditions under NRS 213.1543 are not met in this case.

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 a manifest abuse or arbitrary or capricious exercise of discretion.” *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931, 267 P.3d 777, 779 (2011). “An arbitrary or capricious exercise of discretion is one founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law.” *State v. Eighth Judicial Dist. Court (Zogheib)*, 130 Nev. 158, 161, 321 P.3d 882, 884 (2014), *as modified* (Apr. 1, 2014), *reh’g denied* (May 30, 2014) (quotation omitted). Furthermore, this Court “will exercise [its] discretion to consider such a petition only when there is no ‘plain, speedy and adequate remedy in the ordinary course of law.’” *Cheung v. Eighth Judicial Dist. Court*, 121 Nev. 867, 869, 124 P.3d 550,

552 (2005) (quoting NRS 34.170; NRS 34.330). “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).

As will be illustrated below, the writ must fail because Mr. Solander does not meet each of the requirements of NRS 213.1543. Therefore, NRS 213.1543, when applied to this case, does not result in “an act that the law requires” and therefore Parole and Probation’s determination to not recommend Solander for early discharge of parole is not a “manifest abuse or arbitrary or capricious exercise of discretion.” *State v. Eighth Judicial Dist. Court (Armstrong)*.

IV. ARGUMENT

Petitioner seeks relief pursuant to NRS 212.1543, which states in pertinent part:

NRS 213.1543 Division to recommend early discharge of certain parolees; regulations.

1. Notwithstanding any other provision of law, and except as otherwise provided in subsection 3, the Division shall recommend the early discharge of a person from parole to the Board if a parolee:

(a) Has served at least 12 calendar months on parole supervision in the community and is projected to have not more than 12 calendar months of community supervision remaining to serve on any sentence;

(b) **Has not violated any condition of parole during the immediately preceding 12 months;**

(c) Is current with any fee to defray the costs of his or her supervision charged by the Division pursuant to NRS 213.1076;

(d) Has paid restitution in full or, because of economic hardship that is verified by the Division, has been unable to make restitution as ordered by the court; and

(e) Has completed any program of substance use treatment or mental health treatment or a specialty court program as mandated by the Board.

. . . **(emphasis added)**.

NRS 213.1076 provides:

NRS 213.1076 Fee to defray costs of supervision;
regulations; waiver.

1. The Division shall:

(a) Except as otherwise provided in this section, charge each parolee, probationer or person supervised by the Division through residential confinement a fee to defray the cost of his or her supervision.

(b) Adopt by regulation a schedule of fees to defray the costs of supervision of a parolee, probationer or person supervised by the Division through residential confinement. **The regulation must provide for a monthly fee of at least \$30.**

2. The Chief may waive the fee to defray the cost of supervision, in whole or in part, if the Chief determines that payment of the fee would create an economic hardship on the parolee, probationer or person supervised by the Division through residential confinement.

3. Unless waived pursuant to subsection 2, **the payment by a parolee**, probationer or person supervised by the Division through residential confinement of a fee charged pursuant to subsection 1 **is a condition of his or her parole**, probation or residential confinement. **(emphasis added)**.

Finally, NAC 213.230 states:

NAC 213.230 Fee required; amount; exception. (NRS 213.1076) **Each parolee or probationer shall, during the term of the parole or probation, pay a monthly fee of \$30 to the Division of Parole and Probation of the Department of Public Safety to help defray the cost of supervision** unless he or she receives a waiver as provided in subsection 2 of NRS 213.1076. **(Emphasis added)**.

Mr. Solander does not meet the requirements of NRS 213.1543 because he has never received a waiver to the parole condition of paying \$30 per month to defray the cost of supervision and subsequently has violated the condition by going months on end without making the payment. See Ex. E Dec. of Lt. K. Stewart and attached exhibits. The payment of the monthly fee is a condition of parole by statute. NRS 213.1076(3). As to the statute in question, NRS 213.1543, Mr. Solander

has therefore violated a condition of his parole multiple times over the course of the last 12 months; therefore, Solander does not meet the requirement under NRS 213.1543 (1)(b). *Id.* at paragraph 10 and Ex. D.

Mr. Solander may argue he has no outstanding fees to the division as of May 2023 and therefore he meets conditions (1)(c) under NRS 213.1543. This condition must be read in conjunction with the preceding condition of no violations over the prior 12 months. For example, if a parolee had a waiver of their monthly supervisory fee, they would not be in violation of (1)(b) and under (1)(c) the parolee could “catch up” so to speak and make a lump payment. Here, Mr. Solander has no such waiver so even if he is caught up now, he still violated the condition of his parole to pay his monthly supervisory fee during each month he failed to remit payment. It should also be noted Mr. Solander still has outstanding court fees from the time of his conviction. See Ex. E at paragraphs 7 & 8 and Ex. C.

Recommendation for early discharge from parole requires adherence to each part of NRS 213.1543. Here, Mr. Solander has failed to do so.

V. CONCLUSION

Respondent respectfully asks this court to deny the petition for writ of mandamus for the reasons stated herein.

Dated this 7th day of June, 2023.

AARON D. FORD
Attorney General

By: /s/ Adam D. Honey
Adam D. Honey (Bar No. 9588)
Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
(702) 486-3573 (phone)
(702) 486-3773 (fax)

CERTIFICATE OF COMPLIANCE

1. 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 2010 in 14 pt. font and Times New Roman; or

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2. 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 either:

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3. 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. 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.

RESPECTFULLY SUBMITTED this 7th day of June, 2023.

AARON D. FORD
Attorney General

By: /s/ Adam D. Honey
Adam D. Honey
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 7th day of June, 2023, and e-served the same on all parties listed on the Court's Master Service List.

I further certify that any of the participants in the case that are not registered as electronic users will be mailed the foregoing document by First-Class Mail, postage prepaid.

Dwight Solander
700 Elm St. #29
Boulder City, NV 890005

/s/ Sheri Regalado

Sheri Regalado, an employee of
the office of the Nevada Attorney General