

IN THE SUPREME COURT OF THE STATE OF NEVADA

PETER JASON HELFRICH,
Petitioner(s),

v.

THE STATE OF NEVADA; HDSP;
AARON D. FORD; JAMES
DZURENDA; PAROLE AND
PARDONS BOARD; BRIAN
WILLIAMS; AND JAMES SCALLY,

Respondent(s),

Case No. 86882

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ANSWER TO PETITION FOR WRIT OF MANDAMUS

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Respondents, by and through counsel, Aaron D. Ford, Nevada Attorney General, and Jaimie Stilz, Senior Deputy Attorney General, hereby jointly submit this Answer to Petition for Writ of Mandamus in accordance with NRAP 21(b)(2), as directed by this Court’s orders on July 26, 2023 and September 14, 2023. This joint response is supported by Respondents’ Appendix (RA) and all other pleadings, papers, and exhibits on file herein.

I.

INTRODUCTION

In his Petition, Petitioner Peter Jason Helfrich claims the Nevada Department of Corrections (NDOC) maintains “mandatory secret policies” for parole release. Helfrich complains of several issues regarding these policies, as well as a variety of issues related to the conditions of his previous confinement. Helfrich seeks issuance of a writ directing the Nevada Department of Corrections (NDOC) and the Nevada Board of Parole Commissioners to forego their regulations and terms for parole release and “immediately release” Helfrich on parole with “\$500 (or more) ‘Gate Money’.”

This Court should deny Helfrich’s Petition. First, Helfrich fails to state a claim for which relief can be granted. His complaints regarding the NDOC and Parole Board’s conditions of parole and the alleged conditions of his previous confinement are not cognizable in a petition for writ of mandamus. Second, even if Helfrich’s

request was cognizable, his request is moot because he is already out on parole. Therefore, a petition to this Court for a writ of mandamus is inappropriate. Accordingly, Helfrich fails to make the showing necessary for the extraordinary relief he seeks.

II.

STATEMENT OF THE CASE AND FACTS

Helfrich was previously serving a sentence for Battery with Use of a Deadly Weapon. I-RA-0001. Helfrich appeared before the Parole Board on January 25, 2023. *See id.* The Parole Board granted parole as of April 16, 2023. *See id.* Helfrich is now out on parole. I-RA-0002.

On July 5, 2023, Helfrich filed the instant *Petition for Writ of Mandamus* with this Court seeking issuance of a writ directing the Nevada Department of Corrections (NDOC) and the Nevada Board of Parole Commissioners to forego their regulations and terms for parole release and “immediately release” Helfrich on parole with “\$500 (or more) ‘Gate Money’.” *See Petition.* This Court issued orders on July 26, 2023, and September 14, 2023, directing an answer to Helfrich’s Petition.

III.

STANDARD OF REVIEW

A petition for writ of mandamus is governed by NRS 34.150 to NRS 34.310, inclusive. A writ of mandamus is a judicial remedy available for a superior court to

compel a subordinate court or public authority to perform a lawful act. This Court may issue a writ of mandamus “to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust, or station,” or to control a manifest abuse of or arbitrary or capricious exercise of discretion. NRS 34.160; *Rugamas v. Eighth Jud. Dist. Ct.*, 129 Nev. 424, 430 (2013) (citing *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04 (1981)). But whether to do so in a particular case is entirely within this Court’s discretion. *Okada v. Eighth Judicial Dist. Court*, 134 Nev. 6, 8 (2018).

A writ may not issue where the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170. Mandamus is an extraordinary remedy, and the decision to entertain a petition lies within the discretion of this Court. *Hickey v. District Court*, 105 Nev. 729, 731 (1989). To justify the issuance of a writ of mandamus to enforce the performance of an act by a public officer, the act must be one that the law requires as a duty resulting from the office, and there must be an actual omission on the part of the officer to perform it. *Mineral County v. Dep’t of Conserv. & Natural Res.*, 117 Nev. 235, 243 (2001); *Brewery Arts Center v. State Bd. of Examiners*, 108 Nev. 1050, 1054 (1992); *State ex rel. Blake v. Daugherty*, 48 Nev. 299, 231 P. 384, 385 (1924).

A writ of mandamus is not to be granted in anticipation of an omission of a duty, however strong the presumption may be that the officer will refuse to perform

his duty when the time for performance arrives. *Brewery Arts Center*, 108 Nev. at 1054. An *actual default or omission* of a duty is an essential prerequisite to the issuance of a writ of mandamus, as is the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Lawton v. Public Serv. Comm'n*, 44 Nev. 102, 108, 112 (1920).

In addition, mandamus will not issue unless the petitioner shows a clear legal right to the relief demanded. *Blake*, 48 Nev. 299, 231 P. at 385. Mandamus will lie to compel an officer or tribunal exercising judicial functions to act, but never to review or correct such judicial acts, however erroneous they may be. *York v. Board of County Comm'rs*, 89 Nev. 173, 174 (1973); *State of Nevada v. Eighth Judicial Dist. Court*, 116 Nev. 127, 133 (2000).

IV.

ARGUMENT

A. HELFRICH IS NOT ENTITLED TO EXTRAORDINARY RELIEF BECAUSE HIS CLAIMS ARE NOT COGNIZABLE.

In his Petition, Helfrich incorrectly challenges the NDOC and Parole Board's terms of parole, as well as his conditions of previous confinement. He is mistaken; pursuant to United States Supreme Court precedent, inmates do not have any protectable due process or liberty interest in release on parole, unless that right is created by state statute. *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7 (1979). This Court has held that Nevada's parole statute creates no

“protectable liberty interest sufficient to invoke the Due Process Clause.” *State, Bd. of Parole Comm'rs v. Morrow*, 127 Nev. 265, 271 (2011). Release on or continuation of parole is an act of grace – it is not a right nor a liberty interest. *See* NRS 213.10705; *see also Goldsworthy v. Hannifin*, 86 Nev. 252, 256 (1970) (reiterating that parole is not a constitutional right, but rather a right bestowed by legislative grace). The Nevada Board of Parole Commissioners possesses exclusive discretion whether to grant or deny parole or retake a parolee, and the Board may deviate from the parole likelihood success standards. *See* NRS 213.1099; NRS 213.150; NAC 213.560(2); *see also Weakland v. Bd. of Parole Comm'rs*, 100 Nev. 218, 220 (1984) (holding that because no due process right to parole exists, the Board is not constitutionally required to provide any reason for the denial of parole).

In other words, there is no right to parole in Nevada. Parole is an act of grace by the State; a prisoner has no constitutional right to parole. *See Niergarth v. Warden*, 105 Nev. 26, 28 (1989); *see also Anselmo v. Bisbee*, 133 Nev. 317, 319 (2017). There is no cause of action when the Board denies parole. NRS 213.10705 explicitly states that “it is not intended that the establishment of standards relating [to parole] create any such right or interest in liberty or property or establish a basis for any cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees.”

NRS 213.1099 provides that the Board “may” release a prisoner on parole.

Therefore, the statute does not confer a legitimate expectation of parole release and does not create a constitutionally cognizable liberty interest sufficient to invoke due process. *Severance v. Armstrong*, 96 Nev. 836, 839 (1980); *Weakland*, 100 Nev. at 219-20. A due process protected interest arises only if a state statute mandates that parole “shall” be granted “unless” a designated exception applies. *Baumann v. Arizona Dept. of Corrections*, 754 F.2d 841, 844 (9th Cir.1985). It should be noted that the right to apply for parole is a constitutionally protected interest; it is the expectancy of release that is not protected. *See Severance*, 97 Nev. at 839.

Helfrich’s challenge to his parole release is therefore not a cognizable basis for writ of mandamus. The Parole Board has the exclusive right and discretion over granting or denying parole. As set forth above, parole is an act of grace by the State. Misiewicz has no right to be granted parole, nor does he have any right to serve less than his lawfully imposed sentence; he also has no right to any due process protections. There is no cause of action when parole has been denied, because there has been no omission of any duty and there is nothing for this Court to compel. *See* NRS 34.160; *Rugamas*, 129 Nev. at 430; *Brewery Arts Center*, 108 Nev. at 1054; *Lawton*, 44 Nev. at 108, 112 (1920).

Moreover, Helfrich’s claim lacks merit. The Parole Board’s decision to rely upon the PSI report does not constitute an omission of duty, nor does it rise to the level necessitating extraordinary relief. Accordingly, Helfrich’s request for

extraordinary relief fails.

B. HELFRICH IS NOT ENTITLED TO EXTRAORDINARY RELIEF BECAUSE HIS REQUEST IS MOOT.

In his Petition, Helfrich seeks a writ primarily to require Respondents to release him on parole. But Helfrich is already out on parole. *See* I-RA-0002. Under such circumstances, further answer or consideration of Helfrich's Petition is now moot. There is no cause of action because there has been no omission of any duty and there is nothing for this Court to compel. *See* NRS 34.160; *Rugamas*, 129 Nev. at 430; *Brewery Arts Center*, 108 Nev. at 1054; *Lawton*, 44 Nev. at 108, 112 (1920). Accordingly, Helfrich's request for extraordinary relief fails.

V.

CONCLUSION

Helfrich seeks extraordinary relief from this Court; however, he fails to satisfy the standards for such relief, and his request is moot. Accordingly, this Court should deny his petition for writ of mandamus.

Dated: September 21, 2023.

AARON D. FORD
Attorney General

By: /s/ Jaimie Stilz
Jaimie Stilz (Bar No. 13772)
Senior Deputy Attorney General

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 21(d) and NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed 15 pages.

Finally, I hereby certify that I have read this answer to petition for writ of mandamus, 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 answer complies with all applicable Nevada Rules of Appellate Procedure, including 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: September 21, 2023.

AARON D. FORD
Attorney General

By: /s/ Jaimie Stilz
Jaimie Stilz (Bar No. 13772)
Senior Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *Answer to Petition for Writ of Mandamus* in accordance with this Court's electronic filing system and consistent with NEFCR 9 on September 21, 2023.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

I further certify that some of the participants in the case are not registered as electronic users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following participant:

Peter Jason Helfrich, #1111875
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/s/ J. Stilz
An employee of the Office of the Attorney General