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### State Bd. of Parole Comm'rs v. Second Judicial Dist. Court, 135 Nev. Adv. Op. 53 (Oct. 24, 2019) (en banc)

Dallas Anselmo

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*State Bd. of Parole Comm'rs v. Second Judicial Dist. Court*, 135 Nev. Adv. Op. 53 (Oct. 24, 2019) (en banc)<sup>1</sup>

## WRITS OF MANDAMUS FOR SENTENCE MODIFICATION: APPLYING THE CORRECT VERSION OF N.R.S. § 176.033(2)

### **Summary**

The Court confronted several issues in this methodical decision. The Court addressed standing and discretionary review in the context of writ petitions. It next analyzes and determines the applicable version of a particular NRS section. Finally, the Court interprets the applicable version of the statute. The opinion culminates in the granting of a writ of mandamus petition for the Parole Board to correct an inaccurate application of law at the district court level.

### **Facts and Procedural History**

In 1979, Marlin Thompson received two sentences: a life sentence for a first-degree murder conviction and a fifteen-year sentence for attempted murder. He was released on parole in 1992. In 2017, the Parole Board filed a petition to decrease Thompson's sentence. Washoe County opposed this petition because the statute they asserted was applicable provided the minimum sentence for first-degree murder was a life term. The district court denied the petition; the Parole Board appealed and petitioned for a writ of mandamus. The Supreme Court dismissed the appeal for lack of jurisdiction; this opinion addresses the writ of mandamus petition.

### **Discussion**

#### *The Parole Board Has Standing*

Before reaching the merits of the writ petition, the respondents argue that the Board lacks standing because it has no "beneficial interest in the relief sought." A beneficial interest, defined as "a direct and substantial interest that falls within the zone of interests to be protected by the legal duty asserted," is required to obtain standing for a mandamus petition.<sup>2</sup> The Court found that the Parole Board did have a beneficial interest because it has an interest in the extent to which their statutory ability to petition courts for sentence adjustments exists.<sup>3</sup>

*The Parole Board has no other adequate remedy and has presented a question of law that warrants this court's consideration.*

With standing resolved, the Court next moved to the issues of whether a writ of mandamus was an appropriate remedy and whether the Court should exercise its discretion in this case. The general rule precludes writ relief when there is a "plain, speedy, and adequate remedy . . ." In this case, the Parole Board argued that writ relief was the only relief available. Respondents argued

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<sup>1</sup> By Dallas Anselmo

<sup>2</sup> *Heller v. Nev. State Leg.*, 120 Nev. 456, 460-61, 93 P.3d 746, 749 (2004) (quoting *Lindelli v. Town of San Anselmo*, 4 Cal. Rptr. 3d 453, 461 (Ct. App. 2003)).

<sup>3</sup> NEV. REV. STAT. § 176.033(2).

that the Parole Board could obtain alternate relief by seeking commutation of Thompson's sentence through the Board of Pardons Commissioners. The Court was not convinced that a request for such "an act of extraordinary grace" from the Board of Pardons was a legitimate alternative and found the Parole Board's argument persuasive.

The final preliminary issue was whether the Court should exercise the "purely discretionary" power it possesses in the writ of mandamus context.<sup>4</sup> The Court elected to consider the writ in this case because it involved "a pure question of law that is of statewide significance."

*The version of NRS § 176.033(2) in effect when the Parole Board filed its petition applies.*

The Court's first legal question was to determine the applicable version of NRS § 176.033(2). Respondent argues that the 1978 version applies because it was in effect at the time of Thompson's offense; however, the Parole Board argues the 1987 version is effective. The 1978 language required that a parolee serve "one-half of the period of his parole" before the Parole Board could reduce his sentence. This language created a problem because of the impossibility associated with determining "one-half" of a life sentence. The 1987 version addressed this issue and permitted a decrease in sentence after one-half *or ten consecutive years* of a sentence had been served. The Court, addressing respondent's argument, noted that the plain language of the 1987 amendments were not limited to a parolee's offense date.

The Supreme Court also made clear that either version of the statute becomes relevant upon a "triggering event": a specified portion of a sentence served. Additionally, both versions permit the Parole Board to petition the district court "at any time after" the triggering event. Due to this language, and because the date of the offense was not made relevant, the Court elected to apply the 1987 version of the statute because it contained the relevant and effective language at the time the Parole Board petitioned for a sentence modification.<sup>5</sup>

*Life sentences may be modified pursuant to NRS 176.033(2) (1987) to a sentence not less than the minimum parole eligibility prescribed by the applicable penal statute.*

The Court next reviewed, de novo, the statutory interpretation, "even in the context of a writ petition."<sup>6</sup> The respondents argue the sentence cannot be reduced because the applicable statute contained no minimum sentence; however, the Court found this argument without merit because it could permit a scenario in which the Parole Board correctly petitions a Court that would have no ability to grant the petition. This scenario would render the ability to petition "nugatory."

The Court, referencing legislative history, identified the purpose of these amendments was to enable the Parole Board's petition for modification of a life sentence. The Court concluded that a sentence of life with a minimum service requirement before parole eligibility may be decreased to "not less than the period specified for parole eligibility." Additionally, the Parole Board may petition "only after the parolee has served 10 consecutive years on parole."

The Court acknowledged that the above conditions were satisfied in this case, and the district court has the ability to reduce Thompson's sentence. Because the lower court misapplied the law, the Court granted the writ of mandamus petition and remanded.

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<sup>4</sup> State Dep't of Transp. v. Thompson, 99 Nev. 358, 361, 662 P.2d 1338, 1340 (1983).

<sup>5</sup> The statute was amended again in 1995; however, those amendments were not relevant in this case. For this matter, the 1987 version was the "version in effect when the Parole Board filed its petition" in 2017.

<sup>6</sup> Int'l Game Tech., Inc. v. Second Judicial Dist. Court, 124 Nev. 193, 198, 179 P.3d 556, 559 (2008).