

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MIGUEL ANGEL RAMIREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77777-COA

FILED

APR 27 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Chapman*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Miguel Angel Ramirez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 1, 2016, and a supplemental petition filed on May 7, 2018. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Ramirez argues the district court erred by denying his claim that his due process rights were violated at his parole revocation hearing. Specifically, he claimed the Nevada Board of Parole Commissioners (Parole Board) violated his due process rights because it relied on a new risk assessment when revoking him parole but failed to provide him with a copy of the new risk assessment.

“Parole and probation revocations are not criminal prosecutions; the full panoply of constitutional protections afforded a criminal defendant does not apply.” *Anaya v. State*, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980). Due process protections for parole revocations require the parolee to be provided with: (1) written notice of the claimed violations; (2) disclosure of the evidence used against him; (3) an opportunity to be heard in person and to present witnesses and testimony; (4) notice of the right to confront and cross-examine adverse witnesses; (5) a hearing in front of a neutral and detached hearing body; and (6) a written statement by the

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factfinders as to the evidence relied on and the reasons for revoking parole. See NRS 213.1513; *Morrissey v. Brewer*, 408 U.S. 471, 488-89 (1972). A district court's decision regarding due process violations at a parole revocation hearing is reviewed de novo. See *United States v. Havier*, 155 F.3d 1090, 1092 (9th Cir. 1998). "A due process violation at a revocation proceeding is subject to harmless error analysis." *Id.*

NRS 213.1214(4) requires the Parole Board to consider a risk assessment prior to determining whether to revoke a grant of parole. Here, the Parole Board based its decision to revoke parole on two of the seven violations Ramirez was found guilty of and on the risk assessment report that found Ramirez to be a high risk to reoffend. Thus, the risk assessment report constituted evidence used against Ramirez in determining whether to revoke his parole. We note that a previous risk assessment had found Ramirez to be a moderate risk to reoffend. Ramirez was not given notice that a new risk assessment had been done and he was not told that he was now considered a high risk to reoffend. Therefore, the failure to disclose the risk assessment constituted a due process violation.

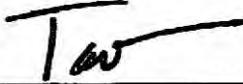
The State argues that the Parole Board was not allowed to disclose the risk assessment to Ramirez based on NRS 213.1075, which limits who the risk assessment may be disclosed to. However, while a parolee is not specifically mentioned in the statute, the statute states "or others entitled to receive such information." Due process requires disclosure of the evidence used against a person in a parole revocation hearing; therefore, Ramirez was a person "entitled to receive such information."¹ Further, given that the Parole Board was required to

¹To the extent the State argues that *Coles v. Bisbee*, 134 Nev. 508, 512, 422 P.3d 718, 721 (2018), states there is no due process violation regarding risk assessment reports, we conclude *Coles* is distinguishable

consider the risk assessment in determining whether to revoke parole and the risk assessment level had changed from the previous risk assessment level, we cannot say that the failure to disclose the new risk assessment was harmless. Accordingly, we reverse and remand this case to the district court to grant the writ and order the Parole Board to hold a new revocation hearing. See *John v. United States Parole Commission*, 122 F.3d 1278, 1284 (9th Cir. 1997) (granting a new parole hearing when the petitioner's due process rights were violated). Therefore, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

from the instant case. In *Coles*, the petitioner challenged the denial of parole and the due process rights are different between a grant or denial of parole and the revocation of a previously granted parole. Compare *Anselmo v. Bisbee*, 133 Nev. 317, 320, 396 P.3d 848, 850-51 (2017) (holding there is no liberty interest in the granting of parole; therefore, there is “no protectable liberty interest sufficient to invoke the Due Process Clause.”) with *Morrissey*, 408 U.S. at 481-84 (parolees have a conditional liberty interest in continued parole; therefore, limited due process rights apply).

²In light of our decision, we decline to address the additional claims Ramirez has raised on appeal.

cc: Hon. Kathleen E. Delaney, District Judge
Gaffney Law
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk