

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Roy Schrock,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 05AP-82
v.	:	(C.P.C. No. 04CVH05-5439)
	:	
Ohio Adult Parole Authority,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

O P I N I O N

Rendered on August 2, 2005

Roy Schrock, pro se.

Jim Petro, Attorney General, and *Jerri L. Fosnaught*, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶1} Plaintiff-appellant, Roy Schrock, appeals pro se from a judgment of the Franklin County Court of Common Pleas granting the Civ.R. 56(C) summary judgment motion of defendant-appellee, Ohio Adult Parole Authority ("OAPA"), regarding OAPA's calculation of plaintiff's eligibility date for parole. Plaintiff appeals, assigning one error:

The trial court abused its discretion when it granted Appellant Summary Judgment to the Appellant (Ohio Adult Parole Authority).

Because the trial court properly granted OAPA's summary judgment motion, we affirm.

{¶2} Plaintiff is an inmate at the Chillicothe Correctional Institution ("CCI"). On June 2, 1989, the Lake County Court of Common Pleas sentenced plaintiff to indefinite life terms on each of 22 counts of rape by force of a child less than 13 years of age, indefinite terms of 10 to 25 years each on 11 counts of kidnapping, and definite terms of two years on each of 11 counts of gross sexual imposition ("GSI"). The trial court ordered the sentences on all counts to be served consecutively.

{¶3} In May 2004, after serving 15 years, plaintiff initiated this action in mandamus, asserting he had served his minimum sentence and therefore was entitled to a parole hearing pursuant to R.C. 2967.13. In December 2004, OAPA moved for summary judgment, contending plaintiff failed to demonstrate his clear legal right to relief. Specifically, OAPA asserted that in order to qualify for parole review, defendant must (1) first serve his definite sentences on each of the 11 GSI convictions, (2) then serve his minimum consecutive indefinite sentences for kidnapping, and (3) finally serve a minimum of 10 years on each of the 22 rape convictions. According to OAPA's motion, plaintiff will not be eligible for a parole hearing until the year 2235. OAPA supported its motion with an affidavit by Mary Oakley, Assistant Chief of the Ohio Department of Rehabilitation and Correction's Bureau of Sentence Computation.

{¶4} On January 10, 2005, the trial court granted OAPA's summary judgment motion, agreeing with OAPA that plaintiff would not be eligible for a parole hearing until 2235. In so holding, the court followed this court's decision in *McMeans v. Ohio Adult Parole Auth.* (Oct. 27, 1998), Franklin App. No. 98AP-42, in which we determined that former R.C. 2967.13 provides eligibility for parole after ten full years of imprisonment only

when an inmate is serving a single term of life imprisonment for rape. The trial court concluded that, in a case where an inmate is serving multiple consecutive terms of life imprisonment, *McMeans* requires that the inmate serve an aggregate of the minimum terms on each of the counts before becoming eligible for parole.

{¶5} In his single assignment of error, plaintiff appears to be asserting the trial court erred in granting summary judgment in favor of OAPA. According to plaintiff, the applicable versions of R.C. 2967.13 and 2929.41 render plaintiff eligible for a parole hearing, thus requiring OAPA to conduct a parole hearing at this time and precluding OAPA's entitlement to judgment as a matter of law.

{¶6} An appellate court's review of summary judgment is conducted under a de novo standard. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41; *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588. Summary judgment is proper only when the party moving for summary judgment demonstrates: (1) no genuine issue of material fact exists, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds could come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence most strongly construed in its favor. Civ.R. 56; *State ex rel. Grady v. State Emp. Relations Bd.* (1997), 78 Ohio St.3d 181.

{¶7} To merit issuance of a writ of mandamus, plaintiff must show a clear legal right to the relief prayed for, OAPA is under a clear legal duty to grant him parole eligibility status, and he lacks a plain and adequate remedy in the ordinary course of the law. See *State ex rel. Chadwell v. Ohio State Racing Comm.*, Franklin App. No. 04AP-903, 2005-Ohio-1126, ¶10.

{¶8} Appellant's appeal presents facts substantially identical to *McMeans*, supra, rendering the holding in that case applicable. In *McMeans*, the plaintiff, Jerry McMeans, was convicted of five counts of forcible rape of a child under the age of 13. As a result, he was sentenced in August 1989 to life imprisonment on each of the five counts, with three of the counts to run concurrently with each other but consecutive to the remaining two counts, which were also to be served consecutively. McMeans filed a declaratory judgment action, seeking a determination that he was eligible for parole after ten, or at most 15 years pursuant to either R.C. 2967.13(F) or 2929.41(E)(2). The trial court granted summary judgment to OAPA, determining that McMeans would only qualify for parole after serving consecutive parole eligibility terms.

{¶9} This court affirmed, concluding that "former R.C. 2967.13(F) * * * provides eligibility for parole after ten full years of imprisonment when serving a *term* of imprisonment of life for rape. Appellant is not serving a *term*, in the singular, but multiple consecutive and concurrent terms. To the extent that his terms are to be served consecutively, the governing provision is that specifically addressing eligibility for parole when serving consecutive sentences, [former] R.C. 2967.25." (Emphasis sic.) According to former R.C. 2967.25, "[a] person serving several indeterminate sentences consecutively becomes eligible for parole upon the expiration of the aggregate of the minimum terms of his several sentences." In applying former R.C. 2967.25 in *McMeans*, this court held that "[f]or purposes of determining the minimum time to be served for parole eligibility under these circumstances, the ten year minimum under R.C. 2967.13(F) would be aggregated, given appellant's sentence of three consecutive life terms, to arrive at a thirty year minimum imprisonment before eligibility for parole pursuant to R.C.

2967.25." Accordingly, we rejected McMeans' contention that he was entitled for eligibility for parole after serving ten years.

{¶10} *McMeans* additionally determined that the cap on minimum terms outlined in former R.C. 2929.41(E) did not apply to McMeans' case because R.C. 2907.02(B) (imposing a life term for forcible rape of a child under 13) was the relevant, more specific, provision. Specifically, we stated that "[w]hile a 'minimum' incarceration of ten years before eligibility for parole is applicable to appellant, as set forth above, this minimum is determined directly under the statutory provisions governing parole, rather than under the general sentencing statutes of R.C. 2929.01 et seq. The corresponding parole statute governing aggregation of minimums is thus * * * R.C. 2976.25 [2967.25], providing that the defendant will become eligible for parole when he has served the sum of the minimum parole term in cases of consecutive sentences."

{¶11} Here, plaintiff's terms of imprisonment all are to be served consecutively. Before becoming eligible for parole, plaintiff is required to serve (1) the definite sentences imposed for his GSI convictions, or 22 years, (2) the aggregate of his minimum consecutive sentences for kidnapping, capped at 15 years pursuant to R.C. 2929.41(E)(2), and (3) the aggregate minimum on the 22 terms of life imprisonment for his rape convictions, or 220 years. The trial court thus properly considered plaintiff's sentence in light of the pertinent statutes and the holding in *McMeans*, and it appropriately concluded plaintiff not only has not served the requisite minimum sentence in order to trigger parole eligibility, but he will not be eligible for parole until 2235, considering the good time to which he is entitled. Because plaintiff's case presents no genuine issues of fact and OAPA correctly asserted plaintiff has not served the minimum

time necessary to render him eligible for parole under *McMeans*, OAPA is entitled to judgment as a matter of law.

{¶12} For the above-stated reasons, we overrule plaintiff's single assignment of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN, P.J., and KLATT, J., concur.
