**[Cite as *State ex rel. Wolfe v. Ohio Adult Parole Auth.*, 2008-Ohio-5619.]**

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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|---|---|---|
| State ex rel. Javelen Wolfe, | : | |
| Relator, | : | |
| v. | : | No. 08AP-346 |
| Ohio Adult Parole Authority, | : | (REGULAR CALENDAR) |
| Respondent. | : | |

D E C I S I O N

Rendered on October 30, 2008

*Javelen Wolfe*, pro se.

*Nancy H. Rogers*, Attorney General, and *Emily C. Hvizdos*, for respondent.

IN MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

BROWN, J.

**{¶1}** Relator, Javelen Wolfe, has filed an original action requesting that this court issue a writ of mandamus ordering respondent, Ohio Adult Parole Authority ("APA"), to comply with pre-Senate Bill 2 guidelines with respect to calculation of relator's parole eligibility dates.

**{¶2}** This matter was referred to a magistrate of this court pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals. On June 25, 2008, the APA filed a motion to dismiss. Relator filed a memorandum contra in which he attached various documents, and the magistrate subsequently converted the APA's motion to dismiss to a motion for summary judgment. On July 30, 2008, the magistrate issued a decision, including findings of fact and conclusions of law, recommending that summary judgment be granted in favor of the APA. (Attached as Appendix A.)

**{¶3}** Relator has filed objections to the magistrate's decision. Relator's primary objection raises the same argument he presented before the magistrate; specifically, that his eligibility for parole has not been properly calculated under pre-Senate Bill 2 guidelines. The magistrate, after considering the documents submitted by relator, addressed and rejected that argument. Based upon this court's review, we agree with the magistrate's reasoning and analysis in finding that relator's eligibility for parole was properly calculated based upon pre-Senate Bill 2 law, and we therefore conclude no genuine issue of material fact exists as to that issue.

**{¶4}** Relator also contends the magistrate did not address his argument that changes in parole guidelines prior to his first parole hearing constituted an ex post facto violation. This court, however, has consistently rejected similar arguments. See, e.g., *Harris v. Ohio Adult Parole Auth.,* Franklin App. No. 05AP-451, 2005-Ohio-5166, at ¶11 (under Ohio law, "since an inmate has no constitutional right to parole, a change in parole eligibility does not amount to an ex post facto imposition of punishment"); *Budd v. Kinkela,* Franklin App. No. 01AP-1478, 2002-Ohio-4311, at ¶10 ("a prisoner has no right to rely on the parole guidelines in effect prior to his parole hearing date, and, thus, any application

of amended parole guidelines are not retroactively applied ex post facto"); *Wright v. Ghee,* Franklin App. No. 01AP-1459, 2002-Ohio-5487, at ¶37 ("application by the OAPA of parole guidelines not in effect at the time an inmate was first sentenced does not violate ex post facto prohibitions"). Thus, we find no genuine issue of material fact exists as to whether the APA's use of guidelines was violative of constitutional ex post facto prohibitions.

**{¶5}** Following an independent review, we conclude that the magistrate properly determined that summary judgment should be granted in favor of respondent. Accordingly, relator's objections to the magistrate's decision are overruled, respondent's motion for summary judgment is granted, and the requested writ of mandamus is denied.

*Objections overruled; motion for summary judgment granted; and writ of mandamus denied.*

SADLER and TYACK, JJ., concur.

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# APPENDIX A

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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|---|---|---|
| The State ex rel. Javelen Wolfe, | : | |
| Relator, | : | |
| v. | : | No. 08AP-346 |

Ohio Adult Parole Authority, : (REGULAR CALENDAR)

Respondent. :

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M A G I S T R A T E ' S D E C I S I O N

Rendered on July 30, 2008

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*Javelen Wolfe*, pro se.

*Nancy H. Rogers*, Attorney General, and *Emily C. Hvizdos*, for respondent.

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IN MANDAMUS
ON MOTION FOR SUMMARY JUDGMENT

**{¶6}** Relator, Javelen Wolfe, has filed this original action requesting that this court issue a writ of mandamus ordering respondent, Ohio Adult Parole Authority ("APA"), to calculate his parole eligibility under pre-Senate Bill 2 guidelines, remove the word "life" from his sentence and insert the number 25 years and to immediately release him from confinement.

Findings of Fact:

**{¶7}** 1. Relator is an inmate currently incarcerated at Ross Correctional Institution.

**{¶8}** 2. On January 20, 1994, relator was convicted of one count of murder with a firearm specification. On January 25, 1994, relator was sentenced to serve a term of 15 years to life plus an additional term of three years of actual incarceration for a gun

specification which was to be served consecutive and prior to his indefinite term of imprisonment. The court further ordered that relator receive 284 days of jail-time credit to be applied to his sentence.

**{¶9}** 3. It was determined that relator would be eligible to appear before the parole board on October 14, 2006.

**{¶10}** 4. Before the date relator would first be eligible for parole, relator was sanctioned by the Rules Infraction Board and accrued a denial of good time totaling 299 days. This was added to his minimum sentence. However, relator earned 38 days of jail-time credit for participating in various educational programs. As such, an additional eight months and 21 days was added to his sentence (299 – 38 = 261 additional days—the equivalent of eight months and 21 days).

**{¶11}** 5. Furthermore, on July 31, 2000, relator was sentenced to serve an additional six months sentence consecutive with his original sentence for harassment, in violation of R.C. 2921.38(A), a felony of the fifth degree.

**{¶12}** 6. The additional time added to his sentence, eight months and 21 days plus six months, added an additional 14 months and 21 days to relator's sentence and changed the date when he would first be eligible for parole to December 29, 2007.

**{¶13}** 7. Relator actually received his parole hearing on November 6, 2007. At that time, relator was denied parole and it was determined that his next parole hearing would occur in 48 months, sometime in November 2011.

**{¶14}** 8. On April 25, 2008, relator filed the instant mandamus action arguing that the APA had not properly determined his eligibility for his first parole hearing. Relator provides various calculations in his complaint and asserts that the APA calculated his

eligibility under post-Senate Bill 2 guidelines whereby relator was required to serve one day for every day of his sentence instead of proximately two-thirds of a day for every day of his sentence. Relator asserts and attaches as exhibit B to his memorandum contra documentation indicating that with a minimum or definite sentence of one year, the minimum time before release or parole eligibility is eight months and 13 days.

**{¶15}** 9. The APA filed a motion to dismiss and relator filed a memorandum contra. Relator attached various documents to his memorandum contra in an effort to document his entitlement to a writ of mandamus in this action. Because the APA will not be prejudiced thereby, the magistrate is converting the motion to dismiss into a motion for summary judgment so that relator's additional documentation can be considered.

**{¶16}** 10. The matter is currently before the magistrate as a motion for summary judgment.

Conclusions of Law:

**{¶17}** The Supreme Court of Ohio has set forth three requirements which must be met in establishing a right to a writ of mandamus: (1) that relator has a clear legal right to the relief prayed for; (2) that respondent is under a clear legal duty to perform the act requested; and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28.

**{¶18}** A motion for summary judgment requires the moving party to set forth the legal and factual basis supporting the motion. To do so, the moving party must identify portions of the record which demonstrate the absence of a genuine issue of material fact.

*Dresher v. Burt* (1996), 75 Ohio St.3d 280. Accordingly, any party moving for summary judgment must satisfy a three-prong inquiry showing: (1) that there is no genuine issue as to any material facts; (2) that the parties are entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, which conclusion is adverse to the party against whom the motion for summary judgment is made. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64.

**{¶19}** Relator is correct to assert that he is entitled to application of pre-Senate Bill 2 calculations. For the reasons that follow, the magistrate finds that relator's eligibility for parole has been properly calculated under pre-Senate Bill 2 calculations.

**{¶20}** The documents submitted by relator establish the following: (1) with zero dimunation in his sentence, relator's first hearing date would have been April 13, 2011. Relator's exhibit C. This calculation would have followed post-Senate Bill 2 guidelines. (2) As of January 25, 1997, relator had served the three-year sentence for the gun specification. Thereafter, relator had 14 years plus two and one-half months left on his sentence without the reductions taken according to pre-Senate Bill 2. (3) As relator's exhibit B indicates, one year is equivalent of eight months and 13 days. As such, relator's sentence of 14 years plus two and one-half months is/was converted to nine years and nine and one-half months after the pre-Senate Bill 2 calculations. (4) As such, relator was first eligible for parole October 14, 2006 (January 26, 1997 plus nine years and nine and one-half months). This is the date set out in relator's exhibit C.

**{¶21}** As noted in the findings of fact, relator was charged an additional 261 days, the period he was denied good-time credit. Further, relator was sentenced to serve an additional six months on the harassment conviction. The sum of that time is 14 months

and 21 days. Therefore, relator's new date for which he would first be eligible for parole was December 29, 2007 (October 14, 2006 plus 14 months and 21 days).

**{¶22}** Relator's first parole hearing was actually held before December 29, 2007; it was held November 6, 2007. At that time, it was determined that relator would not be released on parole. As such, contrary to the fact that relator believes his calculations have been misconstrued, relator inaccurately construed the relevant time periods. Because relator himself asserts that "the reason why he's alleging that the OAPA denied him a meaningful consideration is because the OAPA had changed relators' earliest, and meaningful consideration board date 'twice' before he was able to have a first meaningful hearing," relator is not challenging the decision to deny him parole in spite of the fact that he requests that he be immediately released from incarceration.

**{¶23}** By arguing that his time should be computed so that one year equals eight months and 13 days, relator is asserting that two-thirds of one year constitutes one year for purposes of determining his eligibility for parole (eight is two-thirds of 12). The documents relator himself has attached to his memorandum contra clearly indicate that two-thirds of a year was used to calculate relator's first hearing date. As noted in exhibit C, relator's first hearing date would have been in February 2008 if his time was computed so that one year equaled one year. Instead, his first hearing date was calculated at two-thirds so that his actual first hearing date was in October 2006. Relator's eligibility for parole has been determined appropriately.

**{¶24}** Because relator's eligibility for parole has been properly calculated under pre-Senate Bill 2 guidelines as demonstrated by relator's own documentation, the magistrate concludes that relator is not entitled to a writ of mandamus because he has

not demonstrated that his first hearing date was miscalculated. As such, summary judgment should be granted in favor of respondent and relator's action should be dismissed.

*/s/ Stephanie Bisca Brooks*
STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).