

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Spencer Broaddus, :
Petitioner :
 :
v. : No. 416 M.D. 2009
 : Submitted: February 12, 2010
Pennsylvania Board of Probation :
and Parole, :
Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: April 30, 2010

Before the Court are the preliminary objections of the Pennsylvania Board of Probation and Parole (Board) to a petition for review in the nature of a complaint in mandamus filed by Spencer Broaddus, *pro se*. Asserting that the Board violated his constitutional rights by denying him parole, Broaddus seeks a writ of mandamus from this Court directing the Board to release him on parole. The Board contends that the complaint does not state a cause of action in mandamus. We agree and will dismiss Broaddus' petition.

Broaddus is currently incarcerated at SCI-Graterford. According to his complaint, Governor Milton Shapp commuted his life sentence in 1977, and he was released on parole. Following his conviction for indecent assault in 1986, Broaddus was recommitted as a parole violator. He was reparaoled in 1987. In 1996, Broaddus was charged with violating three conditions of his parole and

recommitted to serve his unexpired life sentence. Following two appeals to this Court, the Board recalculated Broaddus' backtime and recommitted him as a technical parole violator to serve fifty-four months.

The heart of Broaddus' complaint is that the Board wrongfully denied him parole in 2003, 2004, 2006 and 2007.¹ Broaddus cites a Board decision of November 20, 2008, denying parole on several grounds: failure to complete or comply with institutional programs; negative recommendation of the Department of Corrections; past parole supervision history; assessment of Broaddus as presenting a risk to the community; Broaddus' refusal to acknowledge his commission of the offenses for which he was incarcerated; Broaddus' refusal to accept responsibility for his actions; and Broaddus' lack of remorse. Response to Preliminary Objections, Exhibit 1. However, the Board also stated in this decision that Broaddus could be considered for parole on April 2010, or earlier, if so recommended by the Department of Corrections.

Broaddus argues that the Board has denied him parole for constitutionally impermissible reasons. Specifically, the Board has violated the due process clause, the *ex post facto* clause, the double jeopardy clause and the equal protection clause of the United States Constitution.² Broaddus argues that these constitutional violations entitle him to a writ of mandamus ordering his release on parole.

¹ Broaddus asserts that his backtime was incorrectly calculated and should have expired in 2001. It is not clear why Broaddus considers this calculation relevant. Once backtime is served, Broaddus' maximum sentence is the end of his life, not a specific term of years. The commutation did not change the term of his sentence; it is still for life.

² Broaddus seeks sanctions but does not identify these putative sanctions. We will not consider sanctions in light of our disposition of this case.

The Board filed preliminary objections. It has filed a demurrer to Broaddus' request for a writ of mandamus because his constitutional claims lack any validity. In addition, the Board asserts that the complaint fails to conform to various rules of the Pennsylvania Rules of Civil Procedure because it is not formatted in paragraphs and did not attach the Board's written decision challenged in the complaint.

As has often been explained, mandamus is an extraordinary remedy that compels the government's performance of a ministerial or mandatory duty but not its exercise of discretion in a particular way. *Burkett v. Frank*, 841 A.2d 646, 649 (Pa. Cmwlth. 2004). In mandamus, the plaintiff must prove that he has a clear legal right to the relief requested, that the government has a duty to act and that he has no other adequate remedy at law. *Id.* A writ of mandamus can be issued to the Board where needed to compel it to follow mandatory procedures that govern an application for parole. *Id.* The Board based its demurrer on the argument that Broaddus does not have a clear right to relief because his constitutional claims lack merit. We address Broaddus' constitutional claims, and the Board's objections thereto, *seriatim*.³

³ Our standard of review is as follows:

In reviewing preliminary objections, all well pleaded relevant material facts are to be considered as true, and preliminary objections shall only be sustained when they are free and clear from doubt. In ruling on preliminary objections in the nature of a demurrer, the Court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion.

McGriff v. Pennsylvania Board of Probation and Parole, 809 A.2d 455, 458 (Pa. Cmwlth. 2002) (citation omitted).

First, Broaddus asserts that the Board violated his right to due process. He explains that he cannot be deprived of liberty without due process of law and that the Board is interfering with his liberty by refusing to release him from prison. The Board counters that due process does not guarantee a right to be released on parole.

Due process under the United States Constitution provides that “no state shall ... deprive any person of life, liberty, or property, without due process of law.” U.S. CONST. amend. XIV §1.⁴ However, as this Court has previously explained, parole is a favor granted by the state to an inmate who has established the likelihood of functioning as a law-abiding citizen upon release; there is no right to parole. *Evans v. Pennsylvania Board of Probation and Parole*, 820 A.2d 904, 913 (Pa. Cmwlth. 2003). Stated otherwise, “a prisoner has no constitutionally protected liberty interest in being released from confinement prior to the expiration of his maximum term of sentence.” *Id.* In sum, neither the United States nor the Pennsylvania Constitution gives Broaddus a due process right to be released on parole prior to serving his complete sentence.

Second, Broaddus asserts that the Board’s refusal to grant him parole violates the *ex post facto* clause because he would have been granted parole had there not been a change in the applicable statute. Specifically, he claims that the

⁴ Broaddus has a similar guarantee under Article 1, Section 9 of the Pennsylvania Constitution. *Evans v. Pennsylvania Board of Probation and Parole*, 820 A.2d 904, 913 n.15 (Pa. Cmwlth. 2003).

1996 amendment to Section I of what is commonly known as the “Parole Act”,⁵ 61 P.S. § 331.1 (1996), violates the prohibition against *ex post facto* law.

This Court has explained the 1996 amendment to the Parole Act as follows:

Prior to the 1996 Amendment, Section 1 of the “Parole Act”, 61 P.S. §331.1 (1995), provided that “[t]he value of parole as a disciplinary and corrective influence and process is hereby recognized, and it is declared to be public policy of this Commonwealth that persons subject or sentenced to imprisonment for crime shall, on release therefrom, be subjected to a period of parole.”

In 1996 Section 1 of the “Parole Act”, 61 P.S. §331.1 (1996), was amended to provide that “the board shall first and foremost seek to protect the safety of the public” and “[i]n addition to this goal, the board shall address input by crime victims and assist in the fair administration of justice by ensuring the custody, control, and treatment of paroled offenders.”

Sheffield v. Pennsylvania Department of Corrections, 894 A.2d 836, 840 n.2 (Pa. Cmwlth. 2006). In sum, the 1996 amendment established that the goal of the Parole Act is the protection of public safety and that crime victims should be allowed to provide input on parole decisions. Broaddus contends that this amendment has diminished his chance to be paroled, in violation of the *ex post facto* clause.

An increase in a criminal penalty can violate the *ex post facto* clauses of the United States⁶ and Pennsylvania Constitutions in some circumstances.⁷ U.S.

⁵ Act of August 6, 1941, P.L. 861, *as amended*, 61 P.S. §§331.1-331.34a, *repealed by* Act of August 11, 2009, P.L. 147, No. 33, §11(b). The Parole Act has been consolidated and is currently found at Sections 6101-6153 of the Prisons and Parole Code, 61 Pa. C.S. §§6101-6153.

⁶ The United States Constitution provides:

(Footnote continued on the next page . . .)

CONST. art 1, §10, cl. 1; PA. CONST. art. 1, §17.⁸ In *Cimaszewski v. Pennsylvania Board of Probation and Parole*, 582 Pa. 27, 868 A.2d 416 (2005), the Supreme Court considered whether the 1996 amendment violated the *ex post facto* clause. It held that to make out an *ex post facto* claim, the inmate must plead facts to show “that the 1996 amendment, as applied to him, creates a significant risk of prolonging his incarceration.” *Id.* at 45, 868 A.2d at 427. Stated otherwise, the complaint must plead facts to show “that under the pre-1996 Parole Act, the Board would likely have paroled the inmate.” *Id.* at 46, 868 A.2d at 427.

We agree with the Board that Broaddus’ pleading does not contain the requisite facts, *i.e.*, that he would have likely been paroled but for the 1996 amendment. Broaddus makes no attempt to explain how the 1996 amendment negatively impacted the likelihood of his parole. Instead, the complaint simply offers the bald assertion that the Board has violated the Parole Act and nullified his commutation. We conclude that the complaint does not state a claim under the *ex post facto* clause of the United States or the Pennsylvania Constitution.

(continued . . .)

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

U.S. CONST. art. 1, §10, cl. 1.

⁷ The Pennsylvania Constitution provides:

No *ex post facto* law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed.

PA. CONST. art. 1, §17.

⁸ Our state and federal *ex post facto* clauses are evaluated by using the identical analysis. *Evans*, 820 A.2d at 909.

In Broaddus' third claim, he asserts that the Board's refusal to grant him parole has placed him in double jeopardy. Specifically, Broaddus asserts that because he does not accept responsibility for his past offenses and refuses to participate in a sexual offender program, the Board has placed him in double jeopardy. The Board counters that these arguments do not constitute a valid double jeopardy claim.

The double jeopardy clause is found in the Fifth Amendment to the U.S. Constitution and applies to the States through the Fourteenth Amendment. *Benton v. Maryland*, 395 U.S. 784, 794 (1969). The Fifth Amendment provides that no "person be subject for the same offence to be twice put in jeopardy of life or limb...." U.S. CONST. amend. V. Pennsylvania's corresponding proscription has been construed as being coextensive with the federal amendment and similarly provides that "[n]o person shall, for the same offense, be twice put in jeopardy of life or limb...." PA. CONST. art 1, §10. Double jeopardy protects an individual from being tried and convicted more than once for the same alleged crime. *Forbes v. Pennsylvania Department of Corrections*, 931 A.2d 88, 94 (Pa. Cmwlth. 2007).

Broaddus' claim that being denied parole has placed him in double jeopardy is without merit for several reasons. First, civil proceedings before an administrative agency, such as the Board, are not governed by double jeopardy. *Hughes v. Pennsylvania Board of Probation and Parole*, 473 A.2d 225, 228 (Pa. Cmwlth. 1984). Second, a parole proceeding before the Board is simply not a *criminal* prosecution. *McClure v. Pennsylvania Board of Probation and Parole*, 461 A.2d 645, 647 (Pa. Cmwlth. 1983). Broaddus has already been convicted and

is serving his sentence. In short, double jeopardy is not applicable to a parole application.⁹

Finally, Broaddus claims that the Board violated his right to equal protection because thousands of Pennsylvania felons have been paroled, but he has not. As an African-American senior citizen, Broaddus believes his “case is one of extreme prejudice if not race-based and disturbing from and by the Board.” Petition for Review at 8. The Board argues that Broaddus’ complaint does not plead a valid equal protection claim.

The equal protection clause of the Fourteenth Amendment provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV, §1. The Pennsylvania Constitution states that “[n]either the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.” PA. CONST. art. 1, §26. Equal protection under the state and federal constitutions is analyzed using the same standard. *Commonwealth v. Albert*, 563 Pa. 133, 138, 758 A.2d 1149, 1151 (2000).

The essence of equal protection under the law is that “like persons in like circumstances will be treated similarly.” *Curtis v. Kline*, 542 Pa. 249, 254, 666 A.2d 265, 267 (1995). However, equal protection does not prevent the “Commonwealth from classifying individuals for the purpose of receiving different treatment, and does not require equal treatment of people having different needs.”

⁹ Further, in *Wilson v. Pennsylvania Board of Probation and Parole*, 942 A.2d 270, 273 (Pa. Cmwlth. 2008), we held that an inmate does not have a liberty interest as to a recommendation that he participate in sex offender programming. Also, the Board may recommend such a program based on the inmate’s complete criminal history, regardless of whether the sentence he is currently serving involves a sex offense. *Id.* at 273-274.

Id. at 255, 666 A.2d at 267 (citation omitted). Stated otherwise, “a classification must rest upon some ground of difference which justifies the classification and has a fair and substantial relationship to the object of the legislation.” *Id.* at 255, 666 A.2d at 268.

We agree with the Board that Broaddus has not pled any facts to show he was subjected to disparate treatment based on membership in a particular class. Nor has Broaddus pled any facts that would demonstrate he has been treated differently than any other inmate who is seeking to be paroled.

Because Broaddus’ complaint has not stated a clear right to relief under any of his constitutional theories, we sustain the Board’s demurrer and dismiss the petition for review with prejudice.¹⁰

MARY HANNAH LEAVITT, Judge

¹⁰ As we have granted the preliminary objection in the nature of a demurrer, we need not consider the Board’s remaining preliminary objections.

