

IN THE UTAH COURT OF APPEALS

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William Sherratt,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner and Appellant,)		
)	Case No. 20090310-CA	
v.)		
)	F I L E D	
Utah Board of Pardons and)	(January 22, 2010)	
Parole,)		
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Respondent and Appellee.)		

Third District, Salt Lake Department, 060907262
The Honorable Denise P. Lindberg

Attorneys: William Sherratt, Draper, Appellant Pro Se
Mark L. Shurtleff and Brent A. Burnett, Salt Lake
City, for Appellee

Before Judges McHugh, Orme, and Bench.¹

PER CURIAM:

William Sherratt appeals the district court's order dismissing his petition for extraordinary relief as frivolous and denying his request for quo warranto relief. Sherratt alleges numerous issues for review on appeal. However, most of the issues raised relate either to Sherratt's underlying conviction or to his claims that he did not receive due process during his parole hearing. We affirm.

First, this court and the district courts have repeatedly informed Sherratt that petitions for extraordinary relief are not the proper vehicle for raising issues relating to his underlying conviction or claims of innocence. See e.g., Sherratt v. Friel, 2006 UT App 3 (mem.) (per curiam); see also Manning v. State, 2004 UT App 87, ¶ 18, 89 P.3d 196, aff'd on other grounds, 2005 UT 61 (stating that "rule 65B is not applicable in a challenge focused on a criminal conviction, even if a restriction on

¹The Honorable Russell W. Bench, Senior Judge, sat by special assignment pursuant to Utah Code section 78A-3-102 (2008) and rule 11-201(6) of the Utah Rules of Judicial Administration.

liberty results from the conviction"). Accordingly, the district court properly dismissed all claims Sherratt raised that attempted to attack his underlying conviction.

Next, Sherratt argues that his constitutional rights were violated by the manner in which the Utah Board of Pardons and Parole (the Board) held his 2005 parole hearing.² There is no constitutional right to receive parole prior to the expiration of a valid sentence, and "absent state standards for the granting of parole, decisions of a parole board do not automatically invoke due process protections." Malek v. Haun, 26 F.3d 1013, 1015 (10th Cir. 1994). Under Utah law, decisions of the Board are granted great deference and, thus, as a general rule such decisions are not subject to judicial review. See Walker v. Department of Corr., 902 P.2d 148, 150 (Utah Ct. App. 1995). However, judicial review is allowed to ensure that procedural due process was not denied. See Labrum v. Utah State Bd. of Pardons, 870 P.2d 902, 909 (Utah 1993). In this regard, due process requires that the Board must provide the inmate with adequate notice of the parole hearing and "copies or a summary of the information in the Board's file upon which the Board will rely in deciding whether to grant parole." Peterson v. Utah Bd. of Pardons, 931 P.2d 147, 150 (Utah Ct. App. 1997). There is no evidence in the record that Sherratt failed to receive procedural due process. In fact, Sherratt signed an acknowledgment form on April 26, 2005, stating that he had received the information that the Board planned to consider at the parole hearing. Thus, because the Board provided Sherratt with notice of the hearing and a copy of the documents it planned to rely on at the hearing, Sherratt's rights were not violated. See id. at 150.

On a related note, Sherratt also asserts several issues that, in one way or another, claim that his rights are being violated because he is not allowed access to sex-offender therapy because he refuses to admit that he was guilty of the crimes for which he was convicted. As such, he argues that his inability to complete the sex-offender therapy resulted in the Board denying

²In so doing, Sherratt alleges, among other things, that Utah's indeterminate sentencing structure is unconstitutional. However, this structure has repeatedly been upheld by the courts as constitutional. See Padilla v. Board of Pardons, 947 P.2d 664, 669 (Utah 1997) (rejecting arguments that sentencing scheme violates due process or separation of powers clause); Monson v. Carver, 928 P.2d 1017, 1023 (Utah 1996) (rejecting claim that Utah's sentencing scheme violates constitution because it is mentally cruel to prisoners); Walker v. Department of Corr., 902 P.2d 148, 150 (Utah Ct. App. 1995) (approving the limitations on judicial review of decisions by the Board of Pardons and Parole).

his parole. The Utah Supreme Court has previously resolved this precise issue. See State v. Pritchett, 2003 UT 24 ¶¶ 28-33, 69 P.3d 1278. Specifically, in Pritchett the court held that the Utah probation and parole statute is not unconstitutional because it requires an inmate to admit guilt prior to being admitted into certain sex therapy programs. See id. Accordingly, the district court appropriately dismissed all of Sherratt's claims related to his inability to participate in sex offender therapy.

Sherratt also claims that he was prejudiced by the district court's delay in resolving his appeal. However, much of the delay can be attributed to (1) Sherratt's failure to provide the district court with notice that his various motions were ripe for review and (2) the district court's initial attempt to obtain pro bono counsel for Sherratt. Further, because the court ultimately dismissed Sherratt's claims as frivolous, Sherratt was not prejudiced in any way by the delay in resolving the appeal.

As for the other issues raised by Sherratt, we determine that they are without merit. See State v. Carter, 776 P.2d 886, 896 (Utah 1989).

Affirmed.

Carolyn B. McHugh,
Associate Presiding Judge

Gregory K. Orme, Judge

Russell W. Bench, Senior Judge