

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

William Sherratt,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20090993-CA
v.)	
)	F I L E D
Board of Pardons and Parole,)	(May 13, 2010)
)	
Respondent and Appellee.)	2010 UT App 128

Third District, Salt Lake Department, 090910491
The Honorable Kate A. Toomey

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

Before Judges Orme, Thorne, and Roth.

PER CURIAM:

William Sherratt appeals the district court's order dismissing his petition for extraordinary relief. This matter is before the court on its sua sponte motion for summary disposition on the basis that the grounds for review are so insubstantial as not to merit further proceedings and consideration by this court. Additionally, both parties have requested sanctions against the other.

Sherratt raises numerous issues in response to the court's motion for summary disposition that have been resolved in prior cases. Specifically, Sherratt raises several issues relating to (1) his underlying conviction (raised in the context of extraordinary writs against the Board of Pardons and Parole (the Board)), (2) the constitutionality of Utah's indeterminate sentencing structure, (3) his lack of access to sex offender therapy due to his refusal to admit his guilt and the Board's reliance on that fact in making its parole decision, and (4) the Board's refusal to investigate the alleged confession of another inmate to the crimes for which Sherratt was convicted. This court has resolved these issues in prior appeals brought by Sherratt. See Sherratt v. Utah Bd. of Pardons & Parole, 2010 UT App 12U (mem.) (per curiam); Sherratt v. Friel, 2006 UT App 3U

(mem.) (per curiam). Accordingly, the district court properly dismissed all issues raised by Sherratt that had previously been adjudicated in prior cases.¹

Next, Sherratt argues that the district court erred in failing to conduct an evidentiary hearing on his petition for extraordinary relief after that court had initially determined that his petition was not frivolous. The court committed no such error. Due to the length of Sherratt's petition, the district court made no initial determination as to whether the petition was frivolous on its face. Instead, it requested a response from the Board, which, in turn, filed a motion to dismiss. Upon review of the motion to dismiss, the district court properly determined that Sherratt set forth no claim for which relief could be granted. Accordingly, because Sherratt did not present a legal theory upon which relief could be granted, no evidentiary hearing was necessary. Further, because the trial court determined that as a matter of law Sherratt was not entitled to relief on any of his claims, the district court did not err in failing to obtain a transcript of the parole hearing.

Turning to the decision of the Board to deny Sherratt parole, Sherratt asserts that the Board violated Sherratt's due process rights because his sentence has now greatly exceeded the sentencing matrix for the crime of which he was convicted. The Utah Supreme Court has previously rejected similar claims. See Monson v. Carver, 928 P.2d 1017, 1023 (Utah 1996) (determining that sentencing guidelines do not create a liberty interest of any kind and to hold otherwise would transform Utah's indeterminate sentencing structure into a determinate sentencing structure). Thus, the district court properly dismissed Sherratt's claims relating to whether any sentencing matrix required his release from prison.

Sherratt also complains that his rights were violated because only a single member of the Board conducted his parole hearing. Sherratt asserts that he had a right to appear before the entire Board. However, Utah Code section 77-27-2(f) expressly authorizes a single Board member to conduct any "investigation, inquiry, or hearing that the [B]oard has authority to undertake or hold." Utah Code Ann. § 77-27-2(f) (2008). Thus, a single member of the Board was authorized to conduct Sherratt's parole hearing.

¹Sherratt attempts to differentiate some of the issues raised in this case with issues raised in previous appeals based upon the facts developed during his parole hearing. However, such facts are not relevant to the legal issues raised.

As for the other issues raised by Sherratt, we determine that they are wholly without merit and do not warrant further discussion. See State v. Carter, 776 P.2d 886, 896 (Utah 1989).

We turn next to the parties' cross-motions for sanctions. We deny both motions. While this court is mindful of the number of cases filed by Sherratt, the present case involves his attempt to seek redress from a new decision of the Board involving his continued incarceration. Under the circumstances of this case, we do not believe imposition of sanctions or future filing restrictions on Sherratt are warranted. Sherratt's cross-motion for sanctions is wholly without merit.

The decision of the district court is affirmed, and the parties' cross-motions for sanctions are denied.

Gregory K. Orme, Judge

William A. Thorne Jr., Judge

Stephen L. Roth, Judge