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Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

CR-19-1005

Alabama Board of Pardons and Paroles

v.

Austin Dwight Dyer

Appeal from Montgomery Circuit Court
(CV-20-900630)

WINDOM, Presiding Judge.

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The Alabama Board of Pardons and Paroles ("the Board") appeals an order of the Montgomery Circuit Court's granting Austin Dwight Dyer's petition for a writ of certiorari and reinstating his parole.

Dyer was sentenced in 2013 to 15 years in prison for his conviction of first-degree unlawful manufacture of a controlled substance, see § 13A-12-218, Ala. Code 1975. Dyer was placed on parole by the Board later that year.

On July 10, 2019, Dyer's parole officer issued a delinquency report alleging that Dyer had been arrested on June 7, 2019, for committing the new offenses of possession of a controlled substance, see § 13A-12-212, Ala. Code 1975, and possession of drug paraphernalia, see § 13A-12-260, Ala. Code 1975. The report indicated that Dyer had been released from custody the day after his arrest. On September 12, 2019, Dyer's parole officer issued a delinquency report alleging that Dyer had been arrested on August 22, 2019, for committing the new offense of first-degree possession of a forged instrument, see § 13A-9-5, Ala. Code 1975. The Board held a revocation hearing on October 7, 2019, at which the hearing

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officer found sufficient evidence that Dyer had committed the new offenses. Based on this finding, the Board revoked Dyer's parole.

On May 8, 2020, Dyer filed a petition for a writ of certiorari in the Montgomery Circuit Court challenging the Board's revocation of his parole. In his petition, Dyer alleged that the Board had failed to comply with § 15-22-32(a), Ala. Code 1975, because it did not timely conduct his parole-revocation hearing. Dyer asserted that the Board's violation of § 15-22-32(a) rendered the revocation of his parole invalid. The Board moved to dismiss the petition. A hearing was held on August 4, 2020, at which counsel for both parties presented oral argument. At the conclusion of the hearing, the circuit court orally granted Dyer's petition and reinstated Dyer's parole. The Board filed a motion to reconsider. On August 10, 2020, the circuit court entered a written order granting Dyer's petition. On that same date, the circuit court also denied the Board's motion to reconsider.

On appeal, the Board argues that the circuit court erred in granting Dyer's petition and in ordering that Dyer be reinstated to parole. Specifically, the Board contends that it still had the authority to revoke

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Dyer's parole even though it did not conduct a parole-revocation hearing within 20 business days of Dyer's arrest.

" 'On petition for writ of certiorari the circuit court is, as is the appellate court, limited in its review of quasi-judicial acts of administrative officers and boards. The limited function of that review is to determine whether the act in question was supported by any substantial evidence, or whether findings and conclusions are contrary to uncontradicted evidence, or whether there was an improper application of the findings viewed in a legal sense. Sanders v. Broadwater, 402 So. 2d 1035 (Ala. Civ. App. 1981). Judicial review of administrative acts and decisions is limited in scope, and ordinarily the courts will only pass on the question of whether the administrative agency has acted within its constitutional or statutory powers, whether its order or determination is supported by substantial evidence, and whether its action is reasonable and not arbitrary. Little Caesar's, Inc. v. Alabama Alcoholic Beverage Control Bd., 386 So. 2d 224 (Ala. Civ. App. 1979).' "

Alabama Bd. of Pardons and Paroles v. Williams, 935 So. 2d 478, 484 (Ala. Crim. App. 2005) (quoting Ellard v. State, 474 So. 2d 743, 750 (Ala. Crim. App. 1984)).

Section 15-22-32(a), Ala. Code 1975, states, in pertinent part:

"Whenever there is a reasonable cause to believe that a prisoner who has been paroled has violated his or her parole, the Board of Pardons and Paroles, at its next meeting, may declare the prisoner delinquent The Department of Corrections, after receiving notice from the sheriff of the county jail where the state prisoner is being held, shall

promptly notify the board of the return of a paroled prisoner charged with violation of his or her parole. Thereupon, the board, a single member of the board, a parole revocation hearing officer, or a designated parole officer shall hold a parole court at the prison or at another place as it may determine within 20 business days and consider the case of the parole violator If a hearing is not held within the specified 20 business days, the parolee shall be released back to parole supervision."

Indeed, § 15-22-32(a) does state that a parolee shall be returned to supervision if a hearing is not conducted within 20 business days of the Board's receiving notice from the Department of Corrections of a paroled prisoner's return. The statute does not, however, prevent the Board from conducting a revocation hearing outside the 20-day period, nor does it render void any action taken by the Board outside the 20-day period.¹ Further, the statute does not provide relief once the parole-revocation hearing has occurred and the Board has revoked parole.²

¹A paroled prisoner's remedy, if any, for the Board's violation of § 15-22-32(a), Ala. Code 1975, would be to file a petition for a writ of habeas corpus; if granted, the petitioner could remain under parole supervision until a parole-revocation hearing is held.

²Although this Court recognizes that federal decisions are not binding on the states, particularly in matters interpreting state statutes, this Court's position accords with that of a federal district court interpreting the same statute. See Robinson v. Lightner, No. 2:17cv 645-

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This Court's review of the Board's decision is limited to whether the Board acted within its constitutional and statutory powers. See Williams, supra. In this case, the Board exercised its statutory authority when it held a parole-revocation hearing and revoked Dyer's parole. Thus, Dyer was not entitled to relief as to this issue, and the circuit court erred in granting Dyer's petition and reinstating his parole.

Accordingly, the circuit court's judgment reinstating Dyer's parole is reversed and the case is remanded for proceedings consistent with this opinion.

REVERSED AND REMANDED.

Kellum, McCool, Cole, and Minor, JJ., concur.

MHT, July 8, 2020 (M.D. Ala.)(not selected for publication in F. Supp.), adopting the report and recommendation of the United States Magistrate Judge issued on June 12, 2020) (holding that § 15-22-32(a), Ala. Code 1975, does not mandate that parole violations should be dropped and can no longer be considered by the Board if a hearing is not held within 20 business days).