

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 01/6/11  
RUTH WILLINGHAM,  
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BY: DN

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

DOUGLAS BORCHERS, ) No. 1 CA-CV 10-0492A  
)  
Petitioner/Appellant, ) DEPARTMENT B  
)  
v. ) Maricopa County  
) Superior Court  
DUANE BELCHER, SR., in his ) No. LC2009-000696-001 DT  
capacity as Chairman and )  
Executive Director of the ARIZONA )  
BOARD OF EXECUTIVE CLEMENCY; ) **DECISION ORDER**  
CHARLES L. RYAN, in his capacity )  
as the Director of the ARIZONA )  
DEPARTMENT OF CORRECTIONS, )  
)  
Respondents/Appellees. )  
\_\_\_\_\_ )

The Court, Presiding Judge Donn Kessler and Judges Diane M. Johnsen and Sheldon H. Weisberg participating, has considered Douglas Borchers's appeal from the superior court's denial of his special action petition challenging actions by the Arizona Board of Executive Clemency (the "Board").

Borchers was sentenced in 1974 to 20 years to life imprisonment for rape. In 2006, the Board granted him parole conditioned on his relocation to Arkansas. Later, at Borchers's request, the Board temporarily suspended the "Arkansas-only" provision to allow him to finish a sex-offender treatment program in Arizona. On January 5, 2009, after he remained in

Arizona upon his successful completion of the sex-offender program, Borchers was taken into custody and re-incarcerated.<sup>1</sup> The Board held two hearings to consider Borchers's requests that his parole be modified to remove the "Arkansas-only" provision. The evidence before the Board was that Arkansas would not permit Borchers to reside there unless he lived with his parents under strict telephone and Internet controls, and Borchers's parents refused to agree to such conditions. The Board refused Borchers's requests to modify the terms of his parole.

We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), -2101(E) (2003). Constitutional claims are questions of law that we review *de novo*. *Little v. All Phoenix S. Cmty. Mental Health Ctr., Inc.*, 186 Ariz. 97, 101, 919 P.2d 1368, 1372 (App. 1995). We have granted Borchers's request to resolve his appeal on an expedited basis pursuant to Arizona Rule of Civil Appellate Procedure 29.

Borchers argues the Board lacked the power to return him to prison without due process as required by *Morrissey v. Brewer*, 408 U.S. 471 (1972). Although a parolee is not entitled to "the full panoply of rights due a [criminal] defendant," the

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<sup>1</sup> Upon Borchers's reincarceration, the Arizona Department of Corrections ("ADOC") placed him in maximum security detention and designated him as a "parole violator."

revocation of parole deprives an individual of a conditional liberty, which requires due process. *Id.* at 479-82. The minimum requirements of due process for parole revocation proceedings include:

(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.

*Id.* at 489.

Borchers argues that the Board's decisions refusing to modify his terms of parole effectively constitute decisions revoking his parole. Accepting *arguendo* that proposition, we conclude the Board granted Borchers the due process rights to which he may have been entitled.

Parole revocation proceedings involve two questions: (1) Whether the parolee has violated a condition of his parole, and (2) whether as a consequence, parole should be revoked. *Id.* at 480-81. Borchers does not dispute that he violated a condition of his parole by remaining in Arizona rather than relocating to Arkansas. Instead, Borchers argues only that his parole should

not have been revoked because he could not satisfy the condition that he relocate to Arkansas.

The Board conducted two hearings in which Borchers was permitted to testify and offer evidence in support of his position. At each of the hearings, Borchers presented witnesses to testify to his reformed character, and the Board allowed him to question adverse witnesses. Borchers does not complain that the Board did not explain its reasons for its rulings.

Because it is undisputed that Borchers violated parole and because the Board afforded Borchers a fair opportunity to present mitigating evidence with respect to whether re-incarceration was justified, we cannot conclude that Borchers was denied due process. See also *Cooper v. Arizona Board of Pardons and Paroles*, 149 Ariz. 182, 184, 717 P.2d 861, 863 (1986) (judicial review of Board's denial of parole is limited to ensure due process; appellate courts "cannot act as a superparole board").

Borchers cites *Long v. Arizona Board of Pardons and Parole*, 180 Ariz. 490, 885 P.2d 178 (App. 1994), *Thomas v. Arizona State Board of Pardons and Paroles*, 115 Ariz. 128, 564 P.2d 79 (1977), and *Stewart v. Arizona Board of Pardons and Paroles*, 156 Ariz. 538, 753 P.2d 1194 (App. 1988), in support of his argument that this court should order his release. These cases are inapposite, however. In each case, the defendant either

disputed that he had violated parole or was denied the ability to present mitigating evidence.

For these reasons,

**IT IS ORDERED** affirming the superior court's orders denying relief.<sup>2</sup>

/s/

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DONN KESSLER, Presiding Judge

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<sup>2</sup> Our order is without prejudice to any administrative or judicial proceeding Borchers might bring to challenge what he asserts is ADOC's incorrect administrative characterization of him as a "parole violator."