

\*\*\*\*\*

The “officially released” date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the “officially released” date appearing in the opinion. In no event will any such motions be accepted before the “officially released” date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

The syllabus and procedural history accompanying the opinion as it appears on the Commission on Official Legal Publications Electronic Bulletin Board Service and in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

\*\*\*\*\*

MISSIONARY SOCIETY OF CONNECTICUT v. BOARD  
OF PARDONS AND PAROLES  
(SC 17344)

Sullivan, C. J., and Norcott, Vertefeuille, Zarella, Lavery, Foti and  
Dranginis, Js.

Argued January 22—officially released January 24, 2005\*

*James A. Wade*, with whom was *Andrea F. Donovan*,  
for the appellant (plaintiff).

*Richard Blumenthal*, attorney general, with whom  
were *Steven R. Strom* and *Henri Alexandre*, assistant  
attorneys general, for the appellee (defendant).

*Conrad Ost Seifert* and *Richard Emanuel* filed a brief  
for the Connecticut Criminal Defense Lawyers Associa-  
tion as amicus curiae.

*Opinion*

SULLIVAN, C. J. The plaintiff, Missionary Society of  
Connecticut, appeals from the judgment of the trial  
court dismissing its application for an order requiring  
the defendant, the state board of pardons and paroles  
(board), to hold a commutation hearing regarding the  
death sentences scheduled to be imposed on Michael  
B. Ross on January 26, 2005; see *State v. Ross*, 272  
Conn. 577, 581, A.2d (2005); and its application  
for an order to show cause why the court should not  
order the board to hold a hearing and for a temporary  
injunction staying Ross' execution. We affirm the judg-  
ment of the trial court.

The record reveals the following facts and procedural  
history. Ross was sentenced to death on six counts of  
capital murder and this court affirmed the sentences  
of death. Id., 579–80. On October 6, 2004, the Superior  
Court set an execution date of January 26, 2005. Id.,  
581. On January 4, 2005, the plaintiff sent a letter to the  
board requesting that it conduct an immediate hearing  
regarding the commutation of Ross' death sentences.  
In the letter, the plaintiff claimed that the board violated

due process by failing to adopt a policy setting forth the procedure for considering a request for commutation as required by statute. See General Statutes § 54-124a (d) (chairperson of board “shall have the authority and responsibility for . . . (2) adopting policies in all areas of pardons and paroles including . . . commutations from the penalty of death”). It also claimed that § 54-124a (f) violated Ross’ equal protection rights by granting the board “independent decision-making authority to . . . grant . . . commutations from the penalty of death in accordance with section 18-26 [now § 54-130a].”<sup>1</sup> It argued that, because Connecticut is one of only three states that vest the power to commute death sentences solely in an administrative agency, Ross was deprived of the opportunity to have his death sentences commuted by the governor that he would have had if sentenced elsewhere.

The chairperson of the board denied the plaintiff’s request. In his letter of denial, he stated that “[t]he [board] will consider written applications for clemency from eligible prisoners or from their authorized legal representatives. However, correspondence from others does not constitute an application for clemency and will not move the [b]oard to action. . . . Although your letter purports to make arguments on behalf of . . . Ross, in fact, the [plaintiff] does not represent . . . Ross and has no standing to make such arguments on his behalf. While we . . . appreciate the [plaintiff’s] self-described ‘long-standing opposition to the death penalty,’ that stance alone does not provide legal standing to advocate on behalf of . . . Ross.”

The plaintiff then filed in the trial court (1) an application pursuant to General Statutes § 4-183 (a)<sup>2</sup> for an order requiring a commutation hearing and (2) an application pursuant to General Statutes § 52-471 et seq. for an order to show cause why an order should not issue requiring the board to conduct an immediate commutation hearing and for a temporary injunction staying Ross’ execution. The board thereafter filed a motion to dismiss the action on the ground that the plaintiff lacked standing. After a hearing, the trial court granted the motion. Citing *Bongiorno Supermarket, Inc. v. Zoning Board of Appeals*, 266 Conn. 531, 539, 833 A.2d 883 (2003), the trial court concluded that the plaintiff was not aggrieved by the board’s decision because it had no “specific personal and legal interest in the controversy, as distinguished from a general interest which is shared by the community as a whole.” On January 20, 2005, the Chief Justice granted the plaintiff’s application for an immediate and expedited appeal to this court pursuant to General Statutes § 52-265a. On appeal, the plaintiff claims that it is aggrieved by the board’s decision because: (1) it has a long-standing history of challenging the legitimacy of the death penalty and, therefore, had a specific interest in ensuring that the death penalty not be imposed unlawfully; and (2) that

interest has been injured by the board's decision. It further claims that the board's ad hoc ruling precluding third parties from requesting a commutation hearing is arbitrary and capricious in light of its failure to adopt any policies or regulations defining who may request such a hearing. The board argues that the trial court properly dismissed the applications for lack of standing. It also raises several alternate grounds for affirmance, including, inter alia, that the trial court had no jurisdiction over this administrative appeal because there was no final decision within the meaning of § 4-183 (a). We agree with the board that the trial court lacked jurisdiction because the plaintiff had no statutory right to appeal from the board's refusal to hold a commutation hearing.

Whether the plaintiff has a statutory right to appeal from the board's action under § 4-183 (a) is a question of statutory interpretation over which our review is plenary. See *Carmel Hollow Associates Ltd. Partnership v. Bethlehem*, 269 Conn. 120, 129, 848 A.2d 451 (2004). We begin our analysis with the language of the statute. Section 4-183 (a) provides in relevant part that “[a] person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section. . . .” General Statutes § 4-166 (3) (A) defines “[f]inal decision” as “the agency determination in a contested case . . . .” Subdivision (2) of § 4-166 defines “[c]ontested case” as “a proceeding . . . in which the legal rights, duties or privileges of a party are required by state statute or regulation to be determined by an agency after an opportunity for hearing or in which a hearing is in fact held, but does not include . . . hearings conducted by the . . . Board of Pardons and Paroles . . . .” Because there is no statutory or regulatory requirement that the board determine the eligibility of any particular prisoner for commutation, a proceeding before the board regarding the commutation of a death sentence is not a “contested case.”<sup>3</sup> Cf. *Taylor v. Robinson*, 171 Conn. 691, 697, 372 A.2d 102 (1976) (parole release hearing is not contested case because there is no statutory requirement that parole board determine eligibility for parole of any particular prisoner). Moreover, it is not a contested case because a hearing on the matter is not required either by statute or by regulation and no hearing was, in fact, held. Cf. *id.* Finally, even if there were a right to an eligibility determination and a hearing, the legislature has expressly excluded proceedings before the board from the class of “contested cases.” Therefore, decisions in such proceedings are not “final decisions” for purposes of § 4-183 (a). Accordingly, there is no right to appeal from the board's decisions. See *Nine State Street, LLC v. Planning & Zoning Commission*, 270 Conn. 42, 46, 850 A.2d 1032 (2004) (in absence of statutory authority, there is no right to

appeal from agency decision). This is consistent with the long-standing rule that “[t]here exists no right to judicial review of denial of commutation.” *McLaughlin v. Bronson*, 206 Conn. 267, 271, 537 A.2d 1004 (1988); see also *Connecticut Board of Pardons v. Dumschat*, 452 U.S. 458, 464, 101 S. Ct. 2460, 69 L. Ed. 2d 158 (1981) (“pardon and commutation decisions have not traditionally been the business of courts; as such, they are rarely, if ever, appropriate subjects for judicial review”).

The judgment is affirmed.

In this opinion VERTEFEUILLE, ZARELLA, LAVERY, FOTI and DRANGINIS, Js., concurred.

NORCOTT, J. I concur in the result.

\* January 24, 2005, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

<sup>1</sup> General Statutes § 18-26 has been transferred to § 54-130a. General Statutes § 54-130a (a) provides in relevant part: “Jurisdiction over the granting of, and the authority to grant . . . commutations from the penalty of death shall be vested in the Board of Pardons and Paroles.”

<sup>2</sup> General Statutes § 4-183 (a) provides in relevant part: “A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section. . . .”

<sup>3</sup> Nor is there any constitutional requirement that the board determine the eligibility of any particular prisoner for commutation. It is well established that § 54-130a, formerly § 18-26, confers unfettered discretion on the board. See *Connecticut Board of Pardons v. Dumschat*, 452 U.S. 458, 466, 101 S. Ct. 2460, 69 L. Ed. 2d 158 (1981); *McLaughlin v. Bronson*, 206 Conn. 267, 271, 537 A.2d 1004 (1988). Thus, the statute creates no right, entitlement or protected liberty or life interest “beyond the [prisoner’s] right to seek commutation.” *Connecticut Board of Pardons v. Dumschat*, supra, 467; *McLaughlin v. Bronson*, supra, 271; see also *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272, 118 S. Ct. 1244, 140 L. Ed. 2d 387 (1998) (discretionary clemency provisions do not create life interest in prisoner in death penalty case entitling prisoner to procedural protections). “A death row inmate’s petition for clemency is [simply] a ‘unilateral hope,’” and is a matter of grace. *Ohio Adult Parole Authority v. Woodard*, supra, 282.

---