

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FRANKLIN C. HARVEY,	§	
	§	No. 97, 2005
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware, in and
v.	§	for Kent County in IK82-08-
	§	0001.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 0004014566

Submitted: May 26, 2005  
Decided: August 22, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

**ORDER**

This 22<sup>nd</sup> day of August 2005, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Franklin C. Harvey, filed an appeal from the Superior Court's order dated February 25, 2005 that denied his motion for declaratory judgment. We find no merit to the appeal. Accordingly, we **AFFIRM**.

(2) In 1983, Harvey pleaded guilty to Manslaughter and Possession of a Deadly Weapon During the Commission of a Felony and was sentenced to

a total of fifty years at Level V. It appears that Harvey has filed four applications for parole, all of which have been denied.

(3) On October 5, 1993, the Board of Parole (“the Board”) denied Harvey’s first parole application.<sup>1</sup> The Board based its decision upon four factors, *i.e.*, (a) violent/senseless nature of offense; (b) insufficient participation in appropriate treatment program; (c) inability to accept responsibility for offense; and (d) brief time served in relation to seriousness of offense. The Board informed Harvey that he would be eligible to apply again for parole consideration after the expiration of thirty-six months.<sup>2</sup>

(4) On March 11, 1997, the Board denied Harvey’s second parole application based this time upon three factors, *i.e.*, (a) violent nature of offense; (b) insufficient participation in appropriate treatment; and (d) brief time served in relation to seriousness of offense. The Board informed Harvey that he would be eligible to apply again for parole consideration after the expiration of thirty months.<sup>3</sup>

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<sup>1</sup>Under Delaware law, the Board determines whether a person confined to a correctional facility should be paroled. *See* Del. Code Ann. tit. 11, ch. 43, subchapter IV (governing parole).

<sup>2</sup>Letter from Marlene Lichtenstadter, Chairperson, Board of Parole, to Franklin C. Harvey (Oct. 7, 1993).

<sup>3</sup>Letter from Marlene Lichtenstadter, Chairperson, Board of Parole, to Franklin C. Harvey (Mar. 12, 1997).

(5) On October 26, 1999, the Board denied Harvey's third parole application based upon two factors, *i.e.*, (a) violent nature of offense and (b) insufficient participation in appropriate treatment. The Board advised Harvey that he would be eligible to apply again for parole consideration after the expiration of twenty-four months.<sup>4</sup>

(6) On April 13, 2004, the Board denied Harvey's fourth parole application based upon one factor, *i.e.*, violent nature of offense. The Board advised Harvey that he would be eligible to apply again for parole consideration after the expiration of twelve months.<sup>5</sup>

(7) On October 1, 2004, Harvey filed a document entitled "Motion for Emergency Court Order and/or Declaratory Judgment" in the Superior Court. Harvey sought an order directing the Board "to stop using illegal reasons to deny parole."<sup>6</sup> By order dated February 25, 2005, the Superior Court denied Harvey's motion. This appeal followed.

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<sup>4</sup>Letter from Marlene Lichtenstadter, Chairperson, Board of Parole, to Franklin C. Harvey (Oct. 27, 1999).

<sup>5</sup>Letter from Dwight F. Holden, Chairperson, Board of Parole, to Franklin C. Harvey (April 15, 2004).

<sup>6</sup>Harvey also sought "immediate/retroactive parole [and compensation] for his illegal incarceration."

(8) On appeal, Harvey argues that the Board erred<sup>7</sup> when it denied his parole applications based on “violent nature of offense.” According to Harvey, the Superior Court already factored in the violent nature of the offense when the court over twenty years ago decided to impose the maximum sentence of thirty years for Manslaughter and two-thirds of the maximum sentence, or twenty years, for Possession of a Deadly Weapon During the Commission of a Felony. Thus, Harvey contends, when the Board denied parole based upon the violent nature of the offense, the Board illegally intruded into a function within the “traditional province of the judiciary” and “in effect pass[ed] sentence upon him for [a] second time.” Nonetheless, Harvey’s claim is unavailing.

(9) The Superior Court did not abuse its discretion or otherwise err when denying Harvey’s motion for declaratory judgment that sought to prevent the Board from denying his application for parole on the basis of “violent nature of offense.” In Delaware, a prisoner has no legally enforceable right to be paroled and no due process claim if parole is denied.<sup>8</sup> The Board has

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<sup>7</sup>Harvey contends that the Board’s error “is a violation of the separation of powers, an abuse of discretion, is arbitrary and violates [his] right to due process.”

<sup>8</sup>*Beebe v. Carroll*, 2004 WL 1195449 (Del. Supr.) (citing *Eskridge v. Casson*, 471 F. Supp. 98, 101 (D. Del. 1979)).

“virtually unfettered discretion” to consider a wide variety of factors when determining whether an inmate is entitled to early release from prison.<sup>9</sup>

(10) It is manifest on the face of Harvey’s opening brief that this appeal is without merit. The issues presented on law are controlled by settled Delaware law. To the extent judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the appellee’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>9</sup>*Eskridge v. Casson*, 471 F.Supp. 98, 101 (D. Del. 1979). See Del. Code Ann. tit. 11, § 4347(c) (providing in part that “[a] person shall be placed on parole only when the Board believes that the person is able and willing to fulfill the obligations of a law-abiding citizen.”). See also Delaware Board of Parole, Factors Considered by the Delaware Board of Parole at Parole, Sentence Modification and Sentence Commutation Hearings, available at <http://www.state.de.us/parole/factors.htm> (last updated 11/17/1999) (listing factors used in parole decisions).