UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO	
	:
GERALD ROBINSON,	:
	:
Petitioner,	:
	:
V.	:
SHERRI DUFFEY,	•
SHERRI DOTTET,	•
Description	•
Respondent.	:

CASE NO. 3:14-CV-1012

OPINION & ORDER [Resolving Docs. <u>8, 9, & 10]</u>

## JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On May 8, 2014, Petitioner Gerald Robinson filed a petition for a writ of habeas corpus under 28 U.S. C. § 2254.<sup>1/</sup> On June 20, 2014, after he suffered a heart attack, Petitioner Robinson filed a motion for equitable relief requesting that he be released to the care of his brother and sister-in-law during his final days.<sup>2/</sup> He is expected to die in 30 to 60 days.<sup>3/</sup> He is currently serving a sentence of 15 years to life for the 1980 murder of Sister Margaret Ann Pahl. For the following reasons, the Court **DENIES** Petitioner's motion for equitable relief.

The Court concludes that it does not have jurisdiction to grant the requested relief. "There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence."<sup>4/</sup> Further, "neither § 2241 nor § 2254 vest this Court with habeas corpus jurisdiction to order a compassionate release."<sup>5/</sup> Under state law, Ohio Revised Code § 2967.05(B) "vests only Ohio's governor—not this Court—with discretion to

 $\frac{3}{I}$ Id.

<sup>4/</sup>Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 7 (1979). <sup>5/</sup>Fox v. Warden Ross Correctional Inst., No. 2:12–cv–476, 2012 WL 3878143, at \*2 (S.D. Ohio Sept. 6, 2012), adopted, 2012 WL 5198362 (S.D. Ohio Oct. 19, 2012); see also Tucker v. Dep't of Corr., 2:13-CV-0293 GGH P, 2013 WL 1091282 (E.D. Cal. Mar. 15, 2013).

<sup>&</sup>lt;u><sup>1/</sup></u>Doc. <u>1</u>.

 $<sup>\</sup>frac{2}{\text{Doc.}}$  <u>10</u>.

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order an inmate's release" on compassionate grounds.<sup>6/</sup> The statute says ""[u]pon the recommendation of the director of rehabilitation and correction, accompanied by a certificate of the attending physician that an inmate is terminally ill, . . . the governor may order the inmate's release."<sup>7/</sup> Thus, the governor, not the courts, can grant compassionate release for state prisoners. However, Petitioner Robinson may not be eligible under this statute because it excludes prisoners serving time for murder.<sup>8/</sup>

Further, Petitioner Robinson is ineligible for relief under the comparable federal statute. Under 18 U.S.C. § 3582(c)(1) (A)(i), the Director of the Bureau of Prisons has discretion to file a motion for compassionate release with the district court.<sup>9/</sup> Courts cannot *sua sponte* grant compassionate release.<sup>10/</sup>

Additionally, "neither § 2241 nor § 2254 empower[s] this Court with habeas corpus jurisdiction to review any denial of a compassionate release request under Ohio Revised Code § 2967.05."<sup>11/</sup> Since the language of the Ohio statute is permissive, not mandatory, it fails to create a liberty interest in compassionate release and any denial of a compassionate release request is therefore unreviewable.<sup>12/</sup>

 $\frac{10'}{Id.}$   $\frac{11'}{Fox, 2012 \text{ WL } 3878143, \text{ at *2.}}{12'}$   $\frac{12'}{Id.}$ 

<sup>&</sup>lt;sup>6</sup>/*Fox*, 2012 WL 3878143, at \*2.

<sup>&</sup>lt;sup>7/</sup>Ohio Rev. Code § 2967.05(B).

 $<sup>\</sup>frac{8}{Id}$ . at §2967.05(C).

<sup>&</sup>lt;sup>9/</sup>18 U.S.C. § 3582(c)(1) (A)(I).; see also <u>Engle v. United States</u>, 26 F. App'x 394, 397 (6th Cir. 2001) ("[D]istrict court[s] lack[] jurisdiction to sua sponte grant compassionate release. A district court may not modify a defendant's federal sentence based on the defendant's ill health, except upon a motion from the Director of the Bureau of Prisons.").

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For the foregoing reasons, the Court **DENIES** Petitioner's motion for equitable relief.

IT IS SO ORDERED

Dated: July 3, 2014

s/ James S. Gwin

JAMES S. GWIN UNITED STATES DISTRICT JUDGE