

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

EDWARD WRIGHT,	:	
Petitioner	:	No. 1:16-cv-2371
	:	
v.	:	(Judge Kane)
	:	
PENNSYLVANIA BOARD OF	:	
PROBATION AND PAROLE, <u>et al.</u>,	:	
Respondents	:	
	:	

MEMORANDUM

On November 29, 2016, Petitioner Edward Wright, an inmate at the State Correctional Institution at Coal Township, Pennsylvania, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the decision of the Pennsylvania Board of Probation and Parole (“Parole Board”), to deny him parole. (Doc. No. 1.) Wright claims in his petition that the Parole Board’s parole-release decisions denying him parole violate his substantive due process rights. Id. In their response to the petition, Respondents maintain that denial of Wright’s petition is appropriate, as his substantive due process challenge is meritless. (Doc. No. 6.) Upon consideration of the fully briefed petition, for the reasons provided herein, the Court will deny Wright’s petition for a writ of habeas corpus.

I. BACKGROUND

Wright is currently serving a three-to-ten-year sentence to be followed by a five-year probationary sentence after pleading guilty to charges of statutory sexual assault, child endangerment, and indecent exposure. (Doc. No. 6 at 3.)

Wright has been denied parole on four occasions beginning in 2013. (Doc. No. 6-1 at 9, 11, 13, 14, 16.) A combination of factors was invoked by the Parole Board to deny Wright parole. Specifically, the Parole Board listed the following reasons for Wright's first denial of parole on April 30, 2013: (1) the need to participate in and complete additional institutional programs; (2) a negative recommendation made by the Department of Corrections; and (3) minimization/denial of the nature and circumstances of the offenses committed. (Id. at 9.) The factors the Parole Board relied upon in denying Wright parole for a second time following his November 15, 2013 parole hearing included: (1) the need to participate in and complete additional institutional programs; (2) negative recommendation made by the Department of Corrections; and (3) need to develop further insight into offender behavior. (Id. at 8.) Wright was denied parole again following a parole hearing on May 19, 2014 for the following stated reasons: (1) refusal to accept full responsibility for the offense(s) committed; (2) lack of remorse for the offense(s) committed; and (3) failure to display insight into offending behavior. (Id. at 13.) Wright was denied parole for a third time after a scheduled hearing before the Parole Board on April 29, 2015 on the grounds of: (1) failure to demonstrate motivation for success; (2) minimization/denial of the nature and circumstances of the offense(s) committed; (3) refusal to accept responsibility for the offense(s) committed; and (4) lack of remorse for the offense(s) committed. (Id.)

Wright was most recently denied parole following his parole hearing held on April 25, 2016. (Id. at 16.) The reasons provided for this denial were: (1) failure to demonstrate

motivation for success; (2) minimization/denial of the nature and circumstances of the offense(s) committed; (3) refusal to accept responsibility for the offense(s) committed; and (4) lack of remorse for the offense(s) committed. (Id.) Wright is scheduled to be reviewed for parole again in April of 2018. (Id.) To date, his maximum incarceration date remains August 22, 2020. (Id.)

II. DISCUSSION

Wright advances only one ground for relief in his petition: that the Parole Board's repeated parole denials amount to a violation of his right to substantive due process under the Fourteenth Amendment. (Doc No. 1.) Respondents argue that the petition should be denied because there is no indication that the Parole Board abused its discretion by acting arbitrarily or capriciously in denying Wright parole. (Doc. No. 6.)

The Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV § 1. It is well settled that "there is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence," nor has the Commonwealth of Pennsylvania created such a right. Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S. 1, 7 (1979); see also Burkett v. Love, 89 F.3d 135, 139 (3d Cir. 1996) (recognizing the general principle that the Pennsylvania parole statute does not create a liberty interest in the right to be paroled); Coady v. Vaughn, 770 A.2d 287, 289 (Pa. 2001) ("It is undisputed that [an inmate] does not have a clear legal right to the grant of parole, nor does the board have a corresponding duty to grant the same.").

"Since a discretionary decision of the Parole Board denying an inmate early parole does not implicate any constitutionally [or state] protected liberty interest, the scope of federal judicial

review of these decisions is necessarily quite limited.” Diehl-Armstrong v. Pa. Bd. of Prob. & Parole, No. 13-2302, 2014 WL 1871509, at *5 (M.D. Pa. May 7, 2014). The role of a federal court is confined to reviewing the substance of the state parole decision to determine whether the Parole Board exercised its authority in an arbitrary and capricious, or constitutionally impermissible manner. Block v. Potter, 631 F.2d 233, 236 (3d Cir. 1980). Stated simply, the court must evaluate whether the Parole Board abused its discretion. In order to show a violation substantive due process, the petitioner must demonstrate that: (1) he was arbitrarily denied parole on the basis of impermissible reasons such as race, religion, or political beliefs, and/or (2) the Parole Board failed to apply appropriate, rational criteria in reaching its determination. Id. at 236; Bonsall v. Gillis, 372 F. Supp. 2d 805, 807 (M.D. Pa. 2005). “However, federal courts are not authorized by the due process clause to second-guess parole boards and the requirements of substantive due process are met if there is some basis for the challenged decision.” Coady v. Vaughn, 251 F.3d 480, 487 (3d Cir. 2001). The “relevant level of arbitrariness required to find a substantive due process violation involves not merely action that is unreasonable, but, rather, something more egregious, which we have termed at times ‘conscience shocking’ or ‘deliberately indifferent.’” Hunterson v. DiSabato, 308 F.3d 236, 247 (3d Cir. 2002) (citation omitted).

Here, Wright has not established that his denial of parole amounted to an unreasonable exercise of the Parole Board’s discretion. No argument is made by Wright that the Parole Board based its decisions to deny him parole on arbitrary or impermissible criteria in violation of his substantive due process rights. Rather, it is apparent from the arguments raised in Wright’s petition that he merely disagrees with the criteria the Parole Board relied upon to deny him

parole. However, this challenge to the Parole Board's administrative decisions to deny Wright parole release is unavailing. See 61 Pa. C.S. § 6137 (granting the Parole Board vast discretion to refuse or deny parole). The record clearly reflects that the Parole Board based its parole determinations from 2013 through 2016 on factors that it is statutorily required to consider in accordance with 61 Pa. C.S. § 6135; see McGinnis v. Royster, 410 U.S. 263, 277 (1973) (holding that there is a "legitimate desire of the state legislature to afford state prison officials an adequate opportunity to evaluate both an inmate's conduct and his rehabilitative progress before he is eligible for parole"). Under 61 Pa. C.S. § 6135, the Parole Board must evaluate, among other factors: (1) the nature and circumstances of the offense, (2) any recommendations made by the trial judge and prosecuting attorney, (3) the general character and background of the inmate, (4) the notes of testimony of the sentencing hearing, if any, together with such additional information regarding the nature and circumstances of the offense committed for which sentence was imposed, and (5) the conduct of the person while in prison and his physical, mental and behavioral condition and history and his complete criminal record.

Wright has not directed the Court to any factor relied upon by the Parole Board that could be described as conscience shocking or deliberately indifferent. The fact that the Parole Board consistently relied on a combination of factors to deny Wright parole, alone, does not rise to the level of conscience shocking behavior that could give rise to a substantive due process claim. Ralston v. Dep't of Parole & Prob., No. 12-1844, 2015 WL 1542480, at *5 (W.D. Pa. Apr. 7, 2015) (citing Gordon v. Wenerowicz, No. 10-1257, 2011 WL 5509538, at *4 (M.D. Pa. Nov. 10, 2011)). Therefore, because Wright has failed to meet his burden of demonstrating that the Parole

Board abused its discretion, the Court will deny the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

III. CERTIFICATE OF APPEALABILITY

Pursuant to 28 U.S.C. § 2253(c)(1)(A), unless a circuit justice or judge issues a certificate of appealability (“COA”), an appeal may not be taken from a final order in a proceeding under 28 U.S.C. § 2254. A COA may issue only if the applicant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” Miller-El v. Cockrell, 537 U.S. 322 (2003). Because reasonable jurists could not disagree with the resolution of this petition, there is no basis for the issuance of a COA. Thus, the Court will decline to issue a certificate of appealability, as Wright has failed to demonstrate “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); see also Slack v. McDaniel, 529 U.S. 473, 484 (2000).

IV. CONCLUSION

In accordance with the foregoing, Petitioner Edward Wright’s petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 (Doc. No. 1), will be denied. An appropriate Order follows.