

Miranda rights violation in the interview with the Parole Board they interrogated me about a[n] assault that I didn't do. I never hit the victim...²

Appended to the response (ECF No.7) are the statements of the Board following various parole hearings. Following a hearing on December 19, 2014, the Board recommitted the petitioner as a technical and convicted parole violator with a parole maximum date of May 15, 2026 (Ex.D). On May 20, 2015 another hearing was held at which time release was denied and it was concluded that Fields had to participate and complete additional institutional programs, was not recommended for release by the D.O.C., his prior unsatisfactory parole history, the risk to the community and his denial and lack of remorse for the offenses (Ex.E). Following a hearing conducted on May 18, 2017 parole was again denied on the bases of risk to the community, unsatisfactory parole history and minimization/denial and lack of remorse for the offenses. (Ex. E).

Fields now comes before this Court and contends that he continues to remain incarcerated in violation of the due process and equal protection clauses.³ These claims have not been presented to the Commonwealth courts but in Defoy v. McCullough, 393 F.3d 439, 445 (3d Cir.2005), cert. denied 545 U.S. 1149 (2005) it was held that "we conclude that claims of constitutional violations in the denial of parole in Pennsylvania need not be presented to the state courts via a petition for writ of mandamus in order to satisfy the requirement of exhaustion" (footnote omitted).

The relevant Pennsylvania statute, 61 Pa.C.S.A. § 6137 does not create a mandatory expectation of parole which has been determined to be a matter of grace. Rogers v. Pennsylvania Board of Probation and Parole, 555 Pa. 285 (1999). In the absence of a state mandated right of parole, parole is a matter of mere possibility and does not invoke a federally protected liberty interest. Kentucky Department of Corrections v. Thompson, 490 U.S. 455 (1989). In Connecticut v. Dumschat, 452 U.S. 458 (1981), the Court recognized that where there is no liberty interest created, there is no constitutional basis for relief. Since federal habeas corpus relief is premised on violations of constitutional proportion, no such factors exist here since the reasons for denying parole were based on the plaintiff's conduct both inside and outside the

² See: Petition at ¶ 12.

³ Id.

institution and not on some arbitrary basis such race, religion, political beliefs, or ... frivolous criteria with no rational relationship to the purpose of parole such as the color of one's eyes, the school one attended, or the style of one's clothing. Block v. Potter, 631 F.2d 233, 235 (3d Cir.1980).

In Coady v. Vaughn, 251 F.3d 480,487 (3d Cir.2001), the Court observed that "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."

The applicable Pennsylvania law is set forth in 61 Pa.C.S.A. §6138(a):

- (1) A parolee under the jurisdiction of the board released from a correctional facility, who, during the period on parole or while delinquent on parole, commits a crime punishable by imprisonment, for which the parolee is convicted or found guilty ... or to which the parolee pleads guilty or nolo contendere at any time, thereafter in a court of record, may at the discretion of the board be recommitted as a parole violator.
- (2) If the parolee's recommitment is so ordered, the parolee shall be reentered to serve the remainder of the term which the parolee would have been compelled to serve had the parole not been granted, and *shall be given no credit for the time at liberty on parole.* (emphasis added).

Thus, the record clearly demonstrates that Field's continued incarceration is not the result of a violation of any federally protected rights. The calculation of his sentence is fully supported by the record here based on his conduct within and without the prison,

Because the petitioner has failed to demonstrate that any action of the Board was contrary to federal law as determined by the Supreme Court nor involved an unreasonable application of those determinations he is not entitled to relief here. For this reason, the petition of Damion Fields for a writ of habeas corpus will be dismissed, and because reasonable jurists could not conclude that a basis for appeal exists, a certificate of appealability will be denied.

An appropriate Order will be entered.

Filed: June 21, 2018

s/ Robert C. Mitchell
United States Magistrate Judge

ORDER

AND NOW, this 21st day of June 2018, for the reasons set forth in the foregoing Memorandum, the petition of Damion Fields for a writ of habeas corpus (ECF No.1) is DISMISSED, and because reasonable jurists could not conclude that a basis for appeal exists, a certificate of appealability is DENIED.

If any party desires to appeal this determination, a notice of appeal must be filed within thirty (30) days of this Order as required by Rule 4(a)F.R.App.P.

s/ Robert C. Mitchell
United States Magistrate Judge