FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-2156

JOEL ESTREMERA,

Appellant,

v.

FLORIDA COMMISSION ON
OFFENDER REVIEW,

Appellee.

On appeal from the Circuit Court for Leon County.
Angela C. Dempsey, Judge.

February 22, 2023

LONG, J.

Appellant seeks review from a circuit court order dismissing some claims and denying the rest. Below, Appellant sought to compel Appellee to change his Presumptive Parole Release Date based on alleged errors. We affirm because none of the claims raised in Appellant's petition were properly presented at the administrative level. *Riddell v. Fla. Dept. of Corr.*, 538 So. 2d 132, 133 (Fla. 1st DCA 1989) ("Since Riddell failed to seek administrative review on the argument raised in his petition for writ of mandamus, the trial court correctly denied the petition.").

AFFIRMED.

LEWIS, J., concurs; TANENBAUM, J., concurs in result with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

TANENBAUM, J., concurring in result.

The trial court's disposition on the complaint for mandamus—effectively, denial of the relief sought—is legally correct. On its face, the complaint fails to state a legal basis for mandamus and should simply have been dismissed. I concur only in the result here because I take issue with the majority's use of an "administrative exhaustion" rationale to support affirmance. The mandamus complaint did not effectively seek judicial review of a quasi-judicial administrative proceeding, so the majority's reliance on *Riddell* is misplaced.

The complaint basically challenges the appellant's presumptive parole release date ("PPRD"). His initial PPRD was finalized in 2008. *See* § 947.172, Fla. Stat.; *see also* § 947.16, Fla. Stat. In 1985, the appellant had been sentenced to life in prison on a first-degree murder conviction, and his initial PPRD was set at June 2080. The appellant was entitled to one administrative review of this PPRD if he made a written administrative challenge within sixty days of his being notified of the initial PPRD. § 947.173, Fla. Stat. He took advantage of that review process, and the commission adjusted his scoring and reduced his PPRD to June 2075 as a result. The appellant also was entitled to periodic interviews (on a statutorily set schedule) "limited to determining whether or not information has been gathered which might affect the presumptive parole release date." § 947.172(1)(b), (c), Fla. Stat. Those interviews occurred. As a result of an interview that occurred in February 2013, the appellant's PPRD was reduced by twelve months. His last interview occurred in December 2019, and

despite a recommendation from the interviewer that the PPRD be reduced, the commission decided against any change.

The complaint purports to make several legal challenges to the scoring related to the appellant's PPRD. To be sure, there is only one administrative review opportunity available to the appellant regarding his PPRD: the one provided by section 947.173, Florida Statutes. That review process is ostensibly the only quasi-judicial proceeding the commission conducts with respect to a PPRD challenge. Any challenge to that process, which occurred in 2008, is time-barred. *See* § 95.11(5)(f), Fla. Stat. There being no other quasi-judicial proceeding available in connection with the PPRD, the trial court could not have entertained the present mandamus complaint in a review capacity. *Cf. Fla. Dep't of Corr. v. Gould*, 344 So. 3d 496, 504 (Fla. 1st DCA 2022), *rev. granted,* SC22-1207, 2022 WL 17347630 (Fla. Dec. 1, 2022) ("When a trial court considers a mandamus complaint that challenges the constitutional sufficiency of a quasi-judicial prison or parole commission proceeding, it necessarily will engage in judicial review of that proceeding.");

For this reason, the majority's citation to *Riddell* misses the mark. That "opinion"—all four sentences' worth—suggests (without any analysis) that a party must raise an argument before an agency in an administrative proceeding if he wants that argument considered by the trial court in a mandamus proceeding. *See Riddell v. Fla. Dep't of Corr.*, 538 So. 2d 132, 133 (Fla. 1st DCA 1989) (affirming trial court's dismissal of mandamus complaint for "failure to exhaust administrative remedies"). This suggestion fails to appreciate the extraordinary nature of mandamus when it is used as a tool of administrative review, given that the writ effectively circumvents the constitutional limit on the authority of courts to review administrative action in the first place. *See* Art. V, §§ 4(b)(2), 5(b), Fla. Const. (limiting judicial review of administrative action to the process expressly provided by statute); *cf. Gould*, 344 So. 3d at 503 (noting the supreme court's use of "mandamus to correct what it perceived to be a constitutional infirmity in a quasi-judicial proceeding conducted by the parole commission" (citing *Moore v. Fla. Parole & Prob. Comm'n*, 289 So. 2d 719 (Fla. 1974))).

At all events, when a prisoner seeks "review" in mandamus before the trial court and raises a "claim" that he did not raise before the agency in a quasi-judicial proceeding, the characterization of that failure properly is as an *unpreserved* claim, not as a failure to exhaust the administrative process.

Preservation, an appellate review principle, naturally would not even be in question, though, if the agency was not acting in a quasi-judicial capacity when it took the action (including refusal to act) under review. If the prisoner files a traditional, common-law mandamus complaint, he instead must show that he has a clear legal right to performance of a ministerial act by the agency. *See Gould*, 344 So. 3d at 502 (explaining that historically, mandamus was used "to enforce a ministerial act" and distinguishing a ministerial act from a judicial act (quoting and citing *City of Miami Beach v. State ex rel. Epicure, Inc.*, 4 So. 2d 116, 117 (Fla. 1941))). The duty being enforced, however, must not require the exercise of judgment or discretion; otherwise, the act is not ministerial and there is no basis for mandamus. *Id.*

This gets to my point and why I concur only in the result: There was no quasi-judicial proceeding (that is, no "administrative review") to be had for Estremera. The problem with the complaint, then, was *not*—as the majority states—that the appellant failed to present his claims at the "administrative level" first. Rather, it was subject to dismissal because the appellant failed to identify a ministerial act that the commission was obligated, but failed, to perform. The commission gave the appellant his statutorily mandated interview, and the commission considered (and rejected) the recommendation to reduce his PPRD. The law did not entitle the appellant to a particular decision on that recommendation, so mandamus could not lie to change the commission's decision.

Having stated this, I note that the commission nevertheless had requested a remand from the trial court so that it could reduce the appellant's PPRD by another five years based on one of the appellant's legal arguments in his complaint. After the matter returned to the trial court, though, there was no legal basis for the relief that the appellant sought. He certainly cannot use mandamus to reach back and challenge the initial PPRD that was finalized in 2008 and revised as result of his administrative review

under section 947.173, Florida Statutes. At bottom, the appellant's mandamus claims were time-barred, moot, or not legally cognizable. Regardless of how we look at the claims, then, the trial court's disposition is free from error. I concur in the decision to affirm.

Joel Estremera, pro se, Appellant.

Rana Wallace, General Counsel, and Mark Hiers, Deputy General Counsel, Florida Commission on Offender Review, Tallahassee, and Lance Eric Neff, General Counsel, Department of Corrections, Tallahassee, for Appellee.