

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-001357-MR

SHANE BRIGHT

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 18-CI-00509

KENTUCKY PAROLE BOARD

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, GOODWINE, AND KRAMER, JUDGES.

ACREE, JUDGE: Shane Bright brings this *pro se* appeal from the Franklin Circuit Court order dismissing his petition for a declaration of rights for failure to state a claim upon which relief could be granted. Bright alleges the Parole Board denied him due process by deferring his parole and thereby violating his constitutional protections. We disagree and affirm.

BACKGROUND

Shane Bright is currently incarcerated at Bell County Forestry Camp. He is serving a 28-year sentence for assault, wanton endangerment, criminal mischief, and assault on a corrections officer. The Parole Board reviewed Bright's case on four separate occasions: April 27, 2012, April 23, 2014, April 20, 2016, and April 10, 2018. At each of those reviews, Bright received a 24-month deferment. And, after each of the reviews he requested reconsideration. All requests were denied.

Bright believes his deferment is because of a victim impact statement scanned into his file. This prompted him to file a petition in Franklin Circuit Court for a declaration of rights. He claimed that "substantial questions exist as to the legality and/or constitutionality of the legal position adopted by the Board, vindictively placing these sham entries into Bright's respective file to hurt his chances at making parole, which would preclude redress past the agency level." (Trial Record (R.) at 46). The Parole Board filed a motion to dismiss for failure to state a claim upon which relief can be granted. The circuit court granted the motion and dismissed Bright's case. It concluded Bright did not have a right to, nor a liberty interest in, parole; therefore, the denial of parole raised no

constitutional concern. Furthermore, the circuit court found, pursuant to KRS¹ 439.330(3), the Parole Board's decision was not reviewable. This appeal followed.

STANDARD OF REVIEW

Kentucky's Supreme Court has thoroughly and concisely stated the standard of review to which we are bound in this case:

A motion to dismiss for failure to state a claim upon which relief may be granted admits as true such a material facts of the complaint. So a court should not grant such a motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved. Accordingly, the pleadings should be liberally construed in the light most favorable to the plaintiff, all allegations being taken as true. This exacting standard of review eliminates any need by the trial court to make findings of fact; rather, the question is purely a matter of law. Stated another way, the court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief? Since a motion to dismiss for failure to state a claim upon which relief may be granted is a pure question of law, a reviewing court owes no deference to a trial court's determination; instead an appellate court reviews the issue de novo.

Fox v. Grayson, 317 S.W.3d 1, 7 (Ky. 2010) (citations and internal quotation marks omitted). We consider Bright's claims with this standard in mind.

ANALYSIS

Bright takes issue with the Parole Board's deferment of his parole for 24 months on four separate occasions. He believes KRS 439.340(2) includes clear,

¹ Kentucky Revised Statutes.

concise, mandatory language requiring the Parole Board to hold an open hearing to review *all information* available in deciding to defer parole, not just a single victim statement. He argues the Parole Board denied him due process by failing to consider new, pertinent information favorable to him and, thus, deferred his parole the maximum time. Bright's alleged new, pertinent information he wished the Parole Board to consider consisted of program participation and completion certificates. Because of his completion in programs, he insists his constitutional rights secured by the United States and Kentucky Constitutions were violated because he was not granted parole.

This Court, in *Belcher v. Kentucky Parole Board*, thoroughly analyzed claims of inmate due process rights under Kentucky's parole statutes. 917 S.W.2d 584 (Ky. App. 1996). We held "[t]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence. . . . [T]he conviction, with all its procedural safeguards, has extinguished that liberty right." *Id.* at 586 (quoting *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1, 7, 99 S. Ct. 2100, 2104, 60 L. Ed. 2d 668 (1979)). We also noted state laws or regulations could create liberty interests when they placed "substantive limitations on official discretion." *Id.* (quoting *Kentucky Department of Corrections v. Thompson*, 490 U.S. 454, 462, 109 S. Ct. 1904, 1909, 104 L. Ed. 2d 506 (1989)). The Court held, however, that "Kentucky's

statute and the regulations . . . have not elevated parole to a liberty interest in which inmates have a legitimate claim of entitlement. In Kentucky, parole is a matter of legislative grace.” *Id.* at 587.

On the other hand, an inmate “has a legitimate interest in a decision rendered in conformity with the established procedures and policies; one which is based upon consideration of relevant criteria.” *Id.* As for following procedures, *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex* held, “[i]t is axiomatic that due process ‘is flexible and calls for such procedural protections as the particular situation demands.’” 442 U.S. at 12, 99 S. Ct. at 2106 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 2600, 33 L. Ed. 2d 484 (1972)). Flexibility is necessary to tailor the process to the particular need; the quantum and quality of the process due in a particular situation depends upon the need to serve the purpose of minimizing the risk of error. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18 (1976); *Belcher*, 917 S.W.2d at 587.

In this case, Bright complains that the Parole Board did not consider all the evidence, only the victim statement. Bright cannot demonstrate that the Parole Board failed to consider all the evidence or documents, including what he wanted them to consider. His desire is simply that the Parole Board give more weight to his completed program certification. But, Bright also fails to identify

what different manner of presentation of his “evidence” would have changed the Parole Board’s decision.

In fact, after each reconsideration the Parole Board stated its reasoning for denying parole. After the first reconsideration, the Parole Board stated, “[w]e are encouraged by your recent revelations and understanding of what you need to do to change. Even a brief review of your record shows a propensity to violent outburst and disregard for others that cries out for change. We look forward to reviewing your progress in 24 months.” (R. at 55). After the second reconsideration, the Parole Board stated, “no significant new evidence.” (R. at 60). Then, after the third reconsideration, the Parole Board said, “Mr. Bright, the Board is encouraged by completion of programs but very discouraged by disciplinary reports. I would suggest that maintaining clear conduct during your deferment will go a long way toward possible parole in the future.”² (R. at 67). In *Belcher*, we held that an inmate is entitled to an opportunity to be heard, and a decision which states the reason for denial. 917 S.W.2d at 588. These requirements were met.

Bright failed to show that the Parole Board improperly deferred his parole, as permitted by 501 KAR³ 1:030. Parole is not a right. *Lynch v. Wingo*, 425 S.W.2d 573, 574 (Ky. 1968). It is a privilege and its denial has no

² We do not have the Review for Reconsideration for Bright’s last deferment.

³ Kentucky Administrative Regulations.

constitutional implication. *Stewart v. Commonwealth*, 153 S.W.3d 789, 793 (Ky. 2005). Based on the foregoing, we cannot find the Franklin Circuit Court erred in granting the Parole Board's motion to dismiss.

Bright failed to offer any facts supporting a claim that the Parole Board violated KRS 439.250-560; thus, he failed to state a claim upon which relief can be granted. Because of this, it is improper to undergo further judicial review. Parole Board decisions "shall not be reviewable except as to compliance with the terms of KRS 439.250 to 439.560." KRS 439.330(3).

Based on the holding in *Belcher*, it is clear that the procedure followed by the Parole Board did not violate Bright's due process rights.

We affirm.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Shane Bright, *pro se*
Burgin, Kentucky

BRIEF FOR APPELLEE:

Kristin Wehking
Frankfort, Kentucky