

DA 18-0310

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 240N

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JOHN O. MILLER,

Plaintiff and Appellant,

v.

STATE OF MONTANA, MONTANA  
BOARD OF PARDONS AND PAROLE,

Defendants and Appellees.

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APPEAL FROM: District Court of the Third Judicial District,  
In and For the County of Powell, Cause No. DV-17-110  
Honorable Ray J. Dayton, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

John O. Miller, self-represented, Deer Lodge, Montana

For Appellees:

Timothy C. Fox, Montana Attorney General, Kyle P. Chenoweth, Assistant  
Attorney General, Helena, Montana

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Submitted on Briefs: September 5, 2018

Decided: September 25, 2018

Filed:



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Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 John O. Miller (Miller) appeals from the Order Granting Defendants' Motion to Dismiss of the Third Judicial District Court, Powell County, dismissing his Civil Complaint and Jury Trial Demand [§25-1-101 MCA]. We affirm.

¶3 Miller brought this action in the District Court because he alleged the Montana Board of Pardons and Parole (Board) breached its statutory duties by negligently committing errors during his parole hearing and then unnecessarily delaying reconsideration of parole. Briefly stated, Miller participated in a parole hearing on October 29, 2015. After his parole was denied, he alleged procedural errors and on September 18, 2017, he requested reconsideration. On November 16, 2017, the Board granted him a rehearing, which was set for February 2018. Miller alleges that the Board's grant of reconsideration was untimely, and that it had no authority to grant rehearing. In addition to naming the State of Montana and the Board as defendants, Miller also named each Board member both individually and in their official capacity (Board Members, and all Appellees collectively "Defendants").

¶4 Defendants then moved to dismiss, arguing that: the Board has quasi-judicial immunity as all the actions of which Miller complained are set forth in §§ 2-15-102(10) and -2305, MCA; the State is immune from Miller's negligence claims pursuant to § 2-9-108(2), MCA; and the individual defendants should be dismissed as they are immune from suit under § 2-9-305, MCA. The District Court concluded that Miller had established no grounds on which relief could be granted because Defendants have quasi-judicial immunity from his claims and it therefore dismissed his complaint.

¶5 On appeal, Miller argues the District Court erred because he contends his complaint sufficiently alleged facts that: the Board members were acting outside the course and scope of their procedural jurisdiction and office; the Board violated Mont. Admin. R. 20.25.501 by issuing multiple written case dispositions; and Defendants violated § 46-23-201(5), MCA, by failing to adopt an administrative rule which would have allowed Miller to request an earlier rehearing.

¶6 Defendants disagree, arguing that: all the relevant actions of the Board Members fell within the course and scope of their duties pursuant to § 2-9-305(2), MCA; Defendants did not violate Mont. Admin. R. 20.25.501 because the Rule sets no time limit on how long the Board may take to consider an offender's request for reconsideration; and the Board did not violate § 46-23-201(5), MCA, because it provides that the Board *may* order that a prisoner confined for a sexual or violent offense serve *up to six years* before conducting a new hearing or review, but does not require the Board to do so. (Emphasis added.)

¶7 Having reviewed the record on appeal, we find no error in the District Court's rulings. Miller has presented no evidence that the Board members exceeded the course and scope of their duties, the Board did not violate Mont. Admin. R. 20.25.501 when it ruled upon Miller's request for reconsideration, and providing Miller with a rehearing did not violate § 46-23-201(5), MCA.

¶8 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶9 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ LAURIE McKINNON  
/S/ JAMES JEREMIAH SHEA  
/S/ DIRK M. SANDEFUR  
/S/ JIM RICE