

DA 19-0290

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 2982N

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JOHN O. MILLER,

Plaintiff and Appellant,

v.

STATE OF MONTANA; MONTANA BOARD  
OF PARDONS AND PAROLE; TIMOTHY ALLRED;  
MARK STAPLES; MEAGHAN MULCAHY;  
CHRISTINE SLAUGHTER; EDWARD FOLEY,  
Individually and in their Official Capacity,

Defendants and Appellees.

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APPEAL FROM: District Court of the First Judicial District,  
In and For the County of Lewis and Clark, Cause No. BDV 2017-619  
Honorable Michael F. McMahon, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

John O. Miller, Self-Represented, Deer Lodge, Montana

For Appellees:

Kyle P. Chenoweth, Assistant Attorney General, Agency Legal Services  
Bureau, Helena, Montana

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Submitted on Briefs: October 9, 2019

Decided: December 3, 2019

Filed:

  
Clerk

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Justice Beth Baker 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 This is the second appeal John O. Miller has brought involving an October 30, 2015 hearing before the Montana Board of Pardons and Parole (Board).<sup>1</sup> Miller filed two civil complaints, one in the First Judicial District on August 8, 2017—the case before us now—and another in the Third Judicial District, Powell County, on November 28, 2017. He alleged before the Powell County District Court that the Board “breached its statutory duties by negligently committing errors during his parole hearing and by then unnecessarily delaying reconsideration of parole.” *Miller v. State*, No. DA 18-0310, 2018 MT 240N, ¶ 3, 2018 Mont. LEXIS 324. We affirmed the court’s May 22, 2018 dismissal of Miller’s complaint, concluding that “Miller had 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.” *Miller*, ¶ 7.

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<sup>1</sup> The record shows that the date of Miller’s initial parole hearing was October 30, 2015. We use that date throughout this Opinion instead of the October 29, 2015 date referenced in other orders and briefs regarding Miller’s case.

¶3 Miller’s complaint in the First Judicial District alleged that the Board, its members, and staff violated his rights under the Montana Constitution to due process and to examine public agency records and documents when the Board allegedly failed to provide Miller a copy of his parole packet prior to the October 30, 2015 hearing. Miller also claimed that the Board violated a newly enacted law that required it to video-record parole hearings. Section 46-23-110(1)(b), MCA (2015). Miller alleged that the Defendants’ actions were taken willfully and in wanton disregard of Miller’s constitutional and statutory rights.

¶4 On February 4, 2019, the District Court granted the Defendants’ motion for summary judgment and dismissed Miller’s complaint with prejudice, noting that this Court affirmed the Powell County District Court’s holding that “Defendants have quasi-judicial immunity from Plaintiff’s claims for damages” and ruling that “Miller has already litigated the alleged October [30], 2015 parole hearing failures.”

¶5 Miller argues on appeal that the District Court improperly barred his complaint. He contends that his claims were not raised or decided in the Powell County case, which involved only whether the new Board chair could set another re-appearance date for Miller earlier than an October 2019 date set by his original hearing panel and after the administrative appeals process had been fully exhausted. The State agrees that principles of res judicata and claim preclusion do not bar Miller’s claims but argues that all Defendants are protected by quasi-judicial and statutory immunity and that Miller has failed to raise a viable claim regarding access to his parole file.

¶6 Miller’s appeal presents one dispositive issue: can he state a civil claim for damages or declaratory relief for the Board’s alleged failures to timely provide him with his parole file or video-record his hearing, when the Board granted him a video-recorded rehearing, provided his parole file in advance, and denied his request for parole? We conclude that the answer is no and affirm the dismissal of Miller’s complaint.

¶7 Miller was convicted in 1991 on his plea of guilty to two counts of deliberate homicide. He was sentenced to concurrent life terms and declared ineligible for parole for twenty-four years. The sentencing court directed that Miller undergo a further psychological evaluation before being released on parole to determine whether, “in the professional opinion of a qualified person, [Miller] is safe to be released into the general society and the protection of society does not require [Miller’s] further incarceration.” In July 2015, prior to his first parole consideration, Miller spent about half an hour reviewing his parole file, except for documents determined to have privilege, privacy, or penological interests that precluded their release. Miller’s first hearing before the Board was October 30, 2015. He had sent the Board a request for his parole file several days before the hearing but did not receive the file prior to the hearing. The Board was unable to secure staff to conduct audio-video recording but made a complete audio recording of the hearing. It denied Miller parole, citing the seriousness of his offenses and Miller’s failure to obtain the required psychological evaluation.

¶8 Though he raised no concerns during the October 2015 hearing, Miller sent a “kite” (inmate correspondence) to the Board in early December requesting reconsideration of his hearing. Among other reasons, Miller objected that his October 30,

2015 hearing was not video-recorded and that he had not been afforded an opportunity to view his “Parole Book/Packet” prior to the hearing. The Board’s executive director, Timothy Allred, advised the Board of Miller’s request, explaining that staff had worked diligently but unsuccessfully to secure video capability before the hearing and that it had been unable to process Miller’s request for his parole file prior to the hearing due to the need for Board staff to review the parole packet in advance and redact any information protected from disclosure. The Board denied Miller’s request for reconsideration on December 29, 2015.

¶9 Miller again contacted the Board on September 18, 2017, requesting a rehearing. On November 16, 2017, the Board granted Miller a rehearing and scheduled it for February 2018. Board staff supplied Miller with his parole packet in January 2018, and Miller appeared before the Board on February 28 for the hearing. The hearing was video-recorded. The Board again denied Miller’s request for parole, citing the same reasons.

¶10 Miller’s claim that the Board denied him due process and violated his statutory rights when it failed to provide him a copy of his parole packet prior to the October 2015 hearing and when it did not video-record the hearing affords no avenue for the recovery of damages against the Board or its staff. As a preliminary matter, the staff of both the Board and the Department of Corrections (against the latter of whom Miller makes no specific allegations) are protected from individual liability for damages by § 2-9-305(2), MCA, as the State acknowledges they were acting within the course and scope of their

employment during all times alleged in Miller's Complaint. His claim against the Board advances no further.

¶11 The Board sets forth a litany of arguments and reasons that Miller's claims against it are invalid. We find it unnecessary to address each of these arguments. "[A] district court's decision is presumed correct[,] and it is the appellant who bears the burden of establishing error by that court." *In re Marriage of McMahon*, 2002 MT 198, ¶ 7, 311 Mont. 175, 53 P.3d 1266. At the end of the day, Miller cannot meet his burden to demonstrate an error or defect in the District Court's ruling that affected his substantial rights. *See* M. R. Civ. P. 61. Miller asked the Board to give him a rehearing, and the Board granted Miller the relief he claims he was due: the opportunity to review his parole packet in advance of the hearing and a video recording of the hearing.

¶12 Miller's response that the Board violated his rights by delaying the rehearing for two years fails to persuade. The Board afforded Miller a full hearing and again refused to parole him. "Parole . . . is a discretionary grant of freedom from incarceration." *McDermott v. McDonald*, 2001 MT 89, ¶ 24, 305 Mont. 166, 24 P.3d 200. Though governed by statute prescribing the standards for release on parole, "the Board retains extremely broad discretion to determine when the statutory criteria for early release have been met." *McDermott*, ¶ 25. The Board had discretion to deny Miller's request for parole; its decision is not subject to his collateral attacks against the process used in his case. Miller's request for declaratory relief is mooted by the Board's grant of the process he requested, and Miller cannot state a claim for damages against the Board or its staff on the facts presented in the summary judgment record.

¶13 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent. The District Court's February 4, 2019 Order on Summary Judgment is affirmed.

/S/ BETH BAKER

We Concur:

/S/ JAMES JEREMIAH SHEA

/S/ JIM RICE

/S/ INGRID GUSTAFSON

/S/ DIRK M. SANDEFUR