

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio ex rel. Robert E. Carpenter, :
Relator, :
v. : No. 12AP-426
Cynthia Mausser and : (REGULAR CALENDAR)
Ohio Adult Parole Authority/Board, :
Respondents. :
:

D E C I S I O N

Rendered on April 16, 2013

Robert E. Carpenter, pro se.

Michael DeWine, Attorney General, and Stephen C. Gray, for respondents.

IN MANDAMUS
ON RESPONDENTS' MOTION TO DISMISS AND
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

KLATT, P.J.

{¶ 1} Relator, Robert E. Carpenter, commenced this action in mandamus seeking an order compelling respondents, the Ohio Adult Parole Authority ("OAPA"), the Ohio Parole Board and Cynthia Mausser, Chair of the Ohio Parole Board, to grant him a new parole hearing and to delete from his record all references to a subsequently vacated 2006 Wood County conviction for failure to register as a sex offender as well as two vacated rule violations from 1998. Respondents have moved to dismiss this action.

{¶ 2} Pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals, we referred this matter to a magistrate who issued a decision, including findings of fact and conclusions of law, which is appended hereto. The magistrate found that relator failed to state a claim upon which relief can be granted because relator has no protected liberty interest upon which he can base a due process claim. The magistrate also found that relator has no due process right to have alleged errors expunged from records used by the OAPA in its parole determination.

{¶ 3} Relator has filed an objection to the magistrate's decision. Relator asserts that his complaint is not based upon a constitutional right to parole. Rather, relator contends that he is entitled to another parole hearing because his previous hearings were not meaningful due to the OAPA's improper reliance on a subsequently vacated Wood County conviction and two rule violations that were subsequently expunged by the director of the Ohio Department of Rehabilitation and Corrections ("ODRC").

{¶ 4} First, we note that contrary to relator's contention, his amended complaint does allege that the OAPA violated his constitutional right to due process. Therefore, relator is incorrect when he now asserts that he did not assert a constitutional violation.

{¶ 5} Second, relator had two parole hearings after his Wood County conviction was vacated and long after the two rule violations were vacated by the director of ODRC. Therefore, all of this information was available to the OAPA at the time of these parole hearings. In essence, relator concludes that he did not get a meaningful hearing because his parole was denied even though the one conviction and two rule violations were vacated. As note by the magistrate, the decision to grant or deny parole is discretionary with the OAPA, and the OAPA's denial of parole does not deprive an inmate of any protected liberty interest upon which he can base a due process claim. *Festi v. Ohio Adult Parole Auth.*, 10th Dist. No. 04AP-1372, 2005-Ohio-3622 at ¶ 15-16. Nor does relator have a due process right to have alleged errors expunged from records used by the OAPA in its parole determination. *State ex rel. Bray v. Brigano*, 93 Ohio St.3d 458, 459 (2001), citing *State ex rel. Fain v. Summit Cty. Adult Probation Dept.*, 71 Ohio St.3d 658 (1995). Moreover, there is no indication that the OAPA was unaware of the points relator now emphasizes. For these reasons, we overrule relator's objections.

{¶ 6} Following an independent review of this matter, we find that the magistrate has properly determined the facts and applied the appropriate law. Therefore, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained therein. In accordance with the magistrate's decision, we grant respondents' motion to dismiss and deny relator's request for a writ of mandamus.

Motion to dismiss granted; writ of mandamus denied.

SADLER and VUKOVICH, JJ., concur.

VUKOVICH, J., of the Seventh Appellate District, sitting by
assignment in the Tenth Appellate District.

APPENDIX

**IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT**

State of Ohio ex rel. Robert E. Carpenter,	:	
	:	
Relator,	:	
	:	
v.	:	No. 12AP-426
	:	
Cynthia Mausser and	:	(REGULAR CALENDAR)
Ohio Adult Parole Authority/Board,	:	
	:	
Respondents.	:	
	:	

MAGISTRATE'S DECISION

Rendered on January 18, 2013

Robert E. Carpenter, pro se.

Michael DeWine, Attorney General, and Stephen C. Gray, for respondents.

**IN MANDAMUS
ON RESPONDENTS' MOTION TO DISMISS**

{¶ 7} In this original action, relator, an inmate of the Chillicothe Correctional Institution ("CCI"), requests a writ of mandamus ordering respondents the Ohio Adult Parole Authority, the Ohio Parole Board ("parole board"), and Cynthia Mausser, the chair of the Ohio Parole Board, to grant him a new parole hearing at which all references to a subsequently vacated 2006 Wood County conviction are deleted from his record.

Findings of Fact:

{¶ 8} 1. On May 16, 2012, relator, a CCI inmate, filed this mandamus action.

{¶ 9} 2. According to the complaint, in October 2006, in the Wood County Court of Common Pleas ("Wood County Court"), relator pleaded guilty to one count to failure to register as a sexual predator.

{¶ 10} 3. According to the complaint, at the time of his Wood County conviction, relator was on parole. Consequently, his parole was revoked.

{¶ 11} 4. According to the complaint, in December 2009, the Lucas County Court of Common Pleas ("Lucas County Court"), modified its prior adjudication such that relator was held to not be subject to the registration requirements for sexual predators.

{¶ 12} 5. According to the complaint, in November 2010, the Wood County Court vacated relator's October 2006 conviction for failure to register as a sexual predator.

{¶ 13} 6. According to the complaint, subsequent to the vacating of his October 2006 conviction, relator has had two parole board hearings and decisions. Following a February 7, 2011 parole board hearing, parole was denied and the hearing continued to February 2012.

{¶ 14} 7. According to the complaint, following a December 6, 2011 parole board hearing, parole was denied and the hearing was continued to December 1, 2013.

{¶ 15} 8. On June 7, 2012, relator moved to amend his complaint pursuant to Civ.R. 15. On June 11, 2012, the magistrate granted relator's motion to amend the complaint.

{¶ 16} 9. By amending his complaint, relator includes an additional issue supported by additional alleged facts.

{¶ 17} 10. According to the amended complaint, on November 16, 1998, the Rules Infraction Board ("RIB") found relator guilty of violating two institutional rules. The first rule prohibits consensual physical contact for purposes of sexually arousing or gratifying either person. The second rule prohibits an act that is a felony or misdemeanor as defined by Ohio or Federal law.

{¶ 18} 11. According to the amended complaint, relator appealed the RIB decision to the warden and then to the director of the Ohio Department of Rehabilitation and Correction ("ODRC").

{¶ 19} 12. According to the amended complaint, the ODRC director reversed the guilty findings and remanded without bar to further proceedings. The ODRC director further held that, if relator is not recharged, the record regarding the matter shall be expunged.

{¶ 20} 13. According to the amended complaint:

At relator's December 6, 2011 parole hearing the Adult parole board outright accused relator of sexually assaulting the inmate who made these false accusations, and continued relator for 24 more months based upon the 1998 incident, and recommended that relator take the "comprehensive sex offender program" because he (relator), "refuse to take responsibility for his sex offending behavior."

* * *

Relator prays that this Honorable Court will command the APA to grant relator a new hearing, minus the erroneous information used at relator's December 6, 2011 parole hearing.

{¶ 21} 14. On June 25, 2012, respondents moved to dismiss this action.

{¶ 22} 15. On July 16, 2012, relator filed his brief in opposition to respondents' motion to dismiss.

{¶ 23} 16. On July 20, 2012, respondents filed a reply memorandum in support of their motion to dismiss.

{¶ 24} 17. On August 3, 2012, relator filed a memorandum in opposition.

Conclusions of Law:

{¶ 25} It is the magistrate's decision that this court grant respondents' June 25, 2012 motion to dismiss.

{¶ 26} In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery. *O'Brien v. Univ. Community Tenants Union*, 42 Ohio St.2d 242 (1975), syllabus.

{¶ 27} In *Festi v. Ohio Adult Parole Auth.*, 10th Dist. No. 04AP-1372, 2005-Ohio-3622, this court had occasion to succinctly summarize the law applicable to this action:

Appellant has no inherent or constitutional right to release on parole before the expiration of his valid sentence. *State ex rel. Miller v. Leonard* (2000), 88 Ohio St.3d 46, 47, 723 N.E.2d 114, certiorari denied, 530 U.S. 1223, 120 S.Ct. 2236, 147 L.Ed.2d 264, citing *Greenholtz v. Inmates of Nebraska Penal & Correctional Complex* (1979), 442 U.S. 1, 7, 99 S.Ct. 2100, 60 L.Ed.2d 668. OAPA has wide-ranging discretion in parole matters. [*Layne v. Ohio Adult Parole Auth.*, 97 Ohio St.3d 456, 780 N.E.2d 548, 2002-Ohio-6719.] *Layne* at ¶ 28. Because the decision to grant or deny parole is discretionary with OAPA, OAPA's denial of parole does not deprive an inmate of any protected liberty interest upon which he can base a due process claim. *State ex rel. Hattie v. Goldhardt* (1994), 69 Ohio St.3d 123, 125-126, 630 N.E.2d 696; *State ex rel. Ferguson v. Ohio Adult Parole Auth.*(1989), 45 Ohio St.3d 355, 544 N.E.2d 674.

Just as OAPA's denial of parole deprives an inmate of no protected liberty interest, OAPA's continuance of appellant's next parole hearing deprived appellant of no protected liberty interest. Because an Ohio inmate has no constitutional or statutory right to parole, he similarly has no right to earlier consideration for parole. *State ex rel. Vaughn v. Ohio Adult Parole Auth.* (1999), 85 Ohio St.3d 378, 379, 708 N.E.2d 720. R.C. 2967.03 does not require OAPA to provide an inmate a parole hearing. Instead, the decision whether to hold a parole hearing is within OAPA's discretion. *Dozier v. Ohio Adult Parole Auth.* (Mar. 30, 2000), Franklin App. No. 99AP-893, citing *State ex rel. Thompson v. Clark* (1982), 7 Ohio App.3d 191, 455 N.E.2d 6. With appellant having no right to earlier consideration for parole, and the decision whether to grant a parole hearing within OAPA's discretion, appellant can claim no due process rights with respect to the continuance of his next parole hearing.

Id. at ¶ 15-16.

{¶ 28} Here, relator contends that he has a clear legal right to have all references to the Wood County conviction removed from his ODRC record and a clear legal right to another parole hearing at which the ODRC record is expunged of all references to the Wood County conviction.

{¶ 29} Here, as indicated in his amended complaint, relator contends that he has a clear legal right to have all references to the alleged 1998 RIB finding and subsequent

ODRC director's finding expunged from his ODRC record and that he has a clear legal right to another parole hearing.

{¶ 30} Relator has no due process right to have alleged errors expunged from records used by the OAPA in its parole determination. *State ex rel. Bray v. Brigano*, 93 Ohio St.3d 458, 459 (2001), citing *Fain v. Summit Cty. Adult Probation Dept.*, 71 Ohio St.3d 658 (1995).

{¶ 31} Based upon the above authorities, it is clear that relator has no right to litigate in this action the claims that he has endeavored to present.

{¶ 32} Accordingly, it is the magistrate's decision that this court grant respondents' June 25, 2012 motion to dismiss.

/S/ MAGISTRATE
KENNETH W. MACKE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).