IN THE UTAH COURT OF APPEALS

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Tyler Dee Anderson, Petitioner and Appellant, v. Alfred Bigelow, et al., Respondents and Appellees.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20090697-CA F I L E D (November 5, 2009) 2009 UT App 322

Third District, Salt Lake Department, 090905580
The Honorable Robert P. Faust

Attorneys: Tyler Dee Anderson, Draper, Appellant Pro Se
Mark L. Shurtleff and Brent A. Burnett, Salt Lake City, for Appellees

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Before Judges Orme, Thorne, and McHugh.

PER CURIAM:

Tyler Dee Anderson appeals the trial court's dismissal of his petition for extraordinary relief. This is before the court on its own motion for summary disposition based on the lack of a substantial question for review.

Anderson asserts that the Utah indeterminate sentencing and parole system is unconstitutional because it violates due process and the separation of powers. His claims are without merit. The Utah Supreme Court has held that the Board of Pardons's parole functions do not violate the separation of powers. See Padilla v. Board of Pardons, 947 P.2d 664, 669 (Utah 1997). In setting the actual time a defendant must serve under Utah's indeterminate sentencing scheme, the Board "merely exercises its constitutional authority to commute or terminate an indeterminate sentence that, but for the Board's discretion, would run until the maximum period is reached." Id.

Anderson also asserts that the sentencing statutes violate due process requirements. He has not, however, identified any legitimate liberty interest under due process principles. There is no constitutional right to release prior to the expiration of a valid sentence. See Foote v. Board of Pardons, 808 P.2d 734,

734 (Utah 1991) (citing Greenholtz v. Inmates of the Neb. Penal & Corr. Complex, 442 U.S. 1 (1979)). A defendant who has been validly convicted has been constitutionally deprived of his liberty, and a desire for parole is not a protected interest. See Greenholtz, 442 U.S. at 7.

Affirmed.

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Gregory K. Orme, Judge

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William A. Thorne Jr., Judge

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Carolyn B. McHugh, Judge