

IN THE UTAH COURT OF APPEALS

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Christian Halterman,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20100113-CA
v.)	
)	F I L E D
Utah Board of Pardons and)	(June 4, 2010)
Parole,)	
)	2010 UT App 148
Respondent and Appellee.)	

Third District, Salt Lake Department, 090909193
The Honorable Joseph C. Fratto Jr.

Attorneys: Christian Halterman, Draper, Appellant Pro Se
Mark L. Shurtleff and Nancy L. Kemp, Salt Lake City,
for Appellee

Before Judges Davis, Orme, and Roth.

PER CURIAM:

Christian Halterman appeals the district court's order dismissing his petition for extraordinary relief. This matter is before the court on the Utah Board of Pardons and Parole's (the Board) motion for summary disposition on the basis that the grounds for review are so insubstantial as not to merit further proceedings and consideration by this court.

Halterman raises several arguments related to the district court's failure to conduct an evidentiary hearing and its failure to require the Board to respond to the factual allegations alleged in Halterman's petition for extraordinary relief. In response to Halterman's petition, the Board filed a motion to dismiss. Such a response is proper under the Utah Rules of Civil Procedure. See Utah R. Civ. P. 12. Therefore, the Board was not required to respond to each factual allegation set forth by Halterman. Further, because the district court determined that Halterman was not entitled to the relief he requested as a matter of law, there was no need for the district court to conduct an evidentiary hearing to review certain questions raised by Halterman or review a transcript of the parole hearing in dispute. See St. Benedict's Dev. Co. v. St. Benedict's Hosp.,

811 P.2d 194, 196 (Utah 1991) ("A rule 12(b)(6) motion to dismiss admits the facts alleged in the complaint [for purposes of the motion] but challenges the plaintiff's right to relief based on those facts."). Accordingly, the district court did not err in dismissing the petition without first conducting an evidentiary hearing.

Halterman next makes several arguments concerning the constitutionality of Utah's indeterminate sentencing structure. Utah's indeterminate sentencing structure has repeatedly been upheld by the courts as constitutional. See, e.g., Padilla v. Board of Pardons, 947 P.2d 664, 669 (Utah 1997) (rejecting arguments that sentencing scheme violates due process and separation of powers clauses); Monson v. Carver, 928 P.2d 1017, 1023 (Utah 1996) (rejecting claim that Utah's sentencing scheme violates the constitution because it is mentally cruel to prisoners); Walker v. Department of Corr., 902 P.2d 148, 150 (Utah Ct. App. 1995) (approving the limitations on judicial review of decisions by the Board). Halterman acknowledges that such cases have found the structure to be constitutional. However, he asserts that the sentencing structure, as applied to him, is unconstitutional. In so doing, he bases his argument primarily on the fact that his sentence has exceeded the sentencing matrix for the crime of which he was convicted. However, the sentencing guidelines do not create a liberty interest. See Monson, 928 P.2d at 1023 (determining that sentencing guidelines do not create a liberty interest of any kind and to hold otherwise would transform Utah's indeterminate sentencing structure into a determinate sentencing structure). Accordingly, the district court properly dismissed Halterman's claims concerning the constitutionality of Utah's indeterminate sentencing structure and all claims related to Halterman's sentence having exceeded the sentencing matrix for his crime.

Halterman asserts several issues alleging improprieties on the part of the Board during his probation hearing. "Decisions of the board in cases involving paroles, pardons, commutations or terminations of sentence, restitution, or remission of fines or forfeitures are final and are not subject to judicial review." Utah Code Ann. § 77-27-5(3) (2008). As such, this court cannot review any issue concerning the merits of the Board's decision. However, a narrow exception exists to address questions of procedural due process. See Walker, 902 P.2d at 150.

Halterman raises several arguments concerning whether there were violations of his procedural due process rights at his parole hearing. Such issues are moot because the Board agreed to hold a new parole hearing to remedy certain issues that arose in the first hearing. This new hearing, which granted Halterman the opportunity to respond anew to the evidence the Board intended to

rely upon, mooted any potential due process arguments Halterman had concerning the first hearing.¹ Cf. Preece v. House, 886 P.2d 508, 512 (Utah 1994) (concluding that the proper remedy for violation of procedural due process rights was a new parole hearing).

As for the remaining issues raised by Halterman, we determine that they are wholly without merit and do not warrant further discussion. See State v. Carter, 776 P.2d 886, 889 (Utah 1989).

James Z. Davis,
Presiding Judge

Gregory K. Orme, Judge

Stephen L. Roth, Judge

¹Halterman also argues that the Board erred because it provided him with a new parole hearing without formally rescinding his next parole hearing date, which was set at the original hearing. However, this issue was not raised in his petition for extraordinary relief. Therefore, it is not properly preserved for review.