

IN THE UTAH COURT OF APPEALS

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Troy Gordon Harris,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20060034-CA
v.)	
)	F I L E D
Clint Friel,)	(April 20, 2006)
)	
Respondent and Appellee.)	2006 UT App 161

Third District, Salt Lake Department, 050916608
The Honorable Deno Himonas

Attorneys: Troy G. Harris, Draper, Appellant Pro Se
Mark L. Shurtleff and Nancy L. Kemp, Salt Lake City,
for Appellee

Before Judges Bench, Billings, and Thorne.

PER CURIAM:

Troy Gordon Harris appeals the denial of his petition for post-conviction relief challenging prison conditions.

Harris's core claim is that he has been denied access to the Sex Offender Treatment Program (SOTP) because he is a level 2 inmate housed in Uinta Four, which is a maximum security housing unit. He is housed there due to his safety concerns with a number of other inmates. Harris concedes that he has no constitutional right to particular housing, classification, or programming.

Following a September 2001 hearing, the Utah State Board of Pardons denied Harris early release, but stated that it would "consider an earlier parole with a strong recommendation from D.O.C. Sex Offender Therapy Program on successful completion." Accordingly, Harris contends that completion of SOTP is a condition of his sentence and, as a result, he has a liberty interest in treatment. The district court ruled that Harris has no protected liberty interest in SOTP. We agree.

Harris relies upon case law pertaining to sentencing schemes from other states that specifically require treatment as a condition of the sex offender's sentence. Leamer v. Fauver, 288 F.3d 532 (3rd Cir. 2002), arose under a New Jersey statute requiring commitment of sexual offenders "to either a mental or correctional institution for treatment." Id. at 539. The Third Circuit concluded that New Jersey had "created a scheme in which therapy is both mandated and promised, and the Department of Corrections is without discretion to decline the obligation." Id. at 544. Accordingly, Leamer had a "liberty interest in treatment [that was] fundamental and cognizable for purposes of both the procedural and substantive due process analyses." Id. Harris also cites Beebe v. Heil, No. 02-CV-01993-WYD-BNB, 2006 U.S. Dist. LEXIS 7227 (D.Colo. Feb. 14, 2006). Beebe involved a Colorado statute making participation in sex offender treatment mandatory. In an earlier decision in that case, the federal district court considered "[w]hether a prisoner has a liberty interest in participation in a statutorily mandated sex offender treatment program" and "whether due process must be provided to a convicted sex offender before he can be excluded from such a program." Beebe v. Heil, 333 F. Supp. 2d 1011, 1014 (D. Colo. 2004). The district court concluded that Colorado's statutory language created a right subject to due process protection because it went beyond a mere suggestion "that a prisoner who wants to seek parole might enhance his chances of being granted early release if he participates in a sex offender treatment program." Id. at 1016. Accordingly, the court determined that the "claim of a liberty interest is predicated on the mandatory language of the statute which requires the state to provide convicted sex offenders with treatment during their imprisonment." Id.

Utah's sentencing statutes do not mandate treatment as a condition of parole for sex offenders. The Board of Pardons indicated that having been denied parole, Harris still might be considered for early release if he successfully completed treatment. The facts of this case do not give rise to a particular liberty interest in SOTP that would implicate a due process analysis, and we affirm the district court's ruling on that claim. Our resolution makes it unnecessary to consider Appellee's additional arguments that Harris has refused the opportunity to advance to level 3, which would allow him to participate in SOTP.

Harris's claim that he has been denied adequate out-of-cell recreation is without merit and was properly rejected. His contention that he was housed in maximum security without due process does not have merit, given his concession that he has no

liberty interest in particular housing. Finally, his claims regarding failure to comply with the sentencing matrix must be pursued in an appropriate action directed to the Board of Pardons.

We affirm the denial of the petition.

Russell W. Bench,
Presiding Judge

Judith M. Billings, Judge

William A. Thorne Jr., Judge