

IN THE UTAH COURT OF APPEALS

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Michael J. Joseph,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner and Appellant,)		
)	Case No. 20090578-CA	
v.)		
)	F I L E D	
Board of Pardons,)	(April 15, 2010)	
)		
Respondent and Appellee.)	<table border="1"><tr><td>2010 UT App 90</td></tr></table>	2010 UT App 90
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Sixth District, Manti Department, 080600332
The Honorable Marvin D. Bagley

Attorneys: Michael J. Joseph, Gunnison, Appellant Pro Se

Before Judges Davis, Thorne, and Roth.

PER CURIAM:

Michael J. Joseph appeals the district court's dismissal of his petition for extraordinary relief. We affirm.

Rule 65B of the Utah Rules of Civil Procedure requires a court to dismiss claims in a petition for extraordinary relief when "the legality of the restraint has already been adjudicated in a prior proceeding" or the claims appear frivolous on their face. Utah R. Civ. P. 65B(b)(5). Utah Code section 77-27-5(3) provides that the Board of Pardons' (the Board) decisions involving parole or terminations of sentence are final and are not subject to judicial review. See Utah Code Ann. § 77-27-5(3) (Supp. 2009).

However, judicial review is allowed to ensure that procedural due process was not denied. See Labrum v. Utah State Bd. of Pardons, 870 P.2d 902, 909 (Utah 1993). Procedural due process requires that the Board provide an inmate with adequate notice to prepare for a parole hearing, an opportunity to be heard, and a summary of the information that the Board will rely upon in deciding whether to grant parole. See Peterson v. Utah Bd. of Pardons, 931 P.2d 147, 150 (Utah Ct. App. 1997).

The Utah Supreme Court has clarified that if a petitioner demonstrates an abuse of discretion in the Board's process, a

court may "weigh the various interests implicated by the proceeding and the possible consequences of judicial action or inaction before deciding whether to exercise its discretion by granting extraordinary relief." State v. Barrett, 2005 UT 88, ¶ 25, 127 P.3d 682. Even if a petitioner demonstrates an abuse of discretion, a petitioner is not automatically entitled to judicial intervention. See id. ¶ 24.

On appeal, Joseph's challenges relate to the Board's substantive decision. For example, Joseph asserts that the Board considered factors other than his formally adjudicated crimes. However, the Board is not limited to consideration of formally adjudicated crimes and it may rely on any factors known or later adduced for parole or sentencing considerations. See Walker v. State, 902 P.2d 148, 150 (Utah Ct. App. 1995). The Board's right to rely on factors known to the Board, such as prison behavior and rehabilitation progress are factors within the Board's discretion and are not subject to judicial review. See id.

Joseph fails to demonstrate that he was deprived procedural due process. Rather, he focuses on the Board's substantive decision, which is not subject to judicial review. See Utah Code Ann. § 77-27-5(3). Thus, the district court did not err by dismissing Joseph's petition for extraordinary relief.

Affirmed.¹

James Z. Davis,
Presiding Judge

William A. Thorne Jr., Judge

Stephen L. Roth, Judge

¹To the extent that Joseph raises other issues not addressed above, we determine that such issues lack merit, and we decline to address them further. See State v. Carter, 888 P.2d 629, 648 (Utah 1994).