

IN THE UTAH COURT OF APPEALS

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Henry J. Suarez,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20050449-CA
v.)	
)	F I L E D
Clint Friel and Board of)	(September 22, 2005)
Pardons,)	
)	2005 UT App 396
Respondents and Appellees.)	

Third District, Salt Lake Department, 040916161
The Honorable Glenn K. Iwasaki

Attorneys: Henry J. Suarez, Draper, Appellant Pro Se
Mark L. Shurtleff and Natalie A. Wintch, Salt Lake
City, for Appellees

Before Judges Bench, Greenwood, and Thorne.

PER CURIAM:

Henry J. Suarez appeals the district court's dismissal of his petition for extraordinary relief. This case is before this court on its own motion for summary disposition on the basis that the grounds for review are so insubstantial as not to merit further consideration.

Suarez argues that his due process rights were violated by the Board of Pardons (Board) when it scheduled Suarez's original parole grant hearing. However, as we recently held in Burleigh v. Friel, 2005 UT App 358 (per curiam), due process requirements do not apply to every parole hearing, but only to "those parole hearings at which an inmate's release date is fixed or extended." Id. at ¶3 (quoting Neel v. Holden, 886 P.2d 1097, 1101 (Utah 1994)). Thus, while original parole grant hearings are subject to due process requirements, they "are the first hearings at which the Board could establish a tentative release or rehearing date." Id.

Consistent with our holding in Burleigh, the Board's scheduling of Suarez's original parole hearing was not a hearing at which his release date was fixed or extended. See id. at ¶4.

Rather, it was the notification of a parole hearing date required by Utah Code section 77-27-7(1). See Utah Code Ann. § 77-27-7(1) (2003); see also Burleigh, 2005 UT App 358 at ¶4. The scheduling of a parole hearing did not fix or extend a release date, "but rather notified [Suarez] of the first opportunity for the Board to establish a parole or rehearing date." Burleigh, 2005 UT App 358 at ¶4.

Suarez argues that, because his original parole hearing is to take place after his minimum commitment, his release date was "extended." However, Suarez "had no protected liberty interest after serving his minimum commitment time absent action by the [Board] setting a release or rehearing date." Id. at ¶2. To the contrary, absent action by the Board, the presumption is that an offender will serve the maximum sentence term. See Utah Code Ann. § 77-18-4(3) (2003); Burleigh, 2005 UT App 358 at ¶5.

Thus, because the scheduling of Suarez's original parole hearing "was not an original parole hearing subject to due process concerns," Burleigh, 2005 UT App 358 at ¶5, Suarez's arguments regarding the denial of due process are without merit and the district court properly dismissed Suarez's petition.

Moreover, because Suarez provided no new evidence in support of his petition, let alone evidence "substantial enough that with the evidence there is a reasonable likelihood of a different result," the district court did not abuse its discretion when it denied Suarez's various motions for rehearing. ProMax Dev. Corp. v. Mattson, 943 P.2d 247, 253 (Utah Ct. App. 1997).¹

Finally, to the extent Suarez raises arguments and issues that were not raised below, we decline to consider those issues on appeal.² See Monson v. Carver, 928 P.2d 1017, 1022 (Utah 1996) (declining to address additional claims because of general

¹In addition, the district court properly denied Suarez's postjudgment motion to amend his petition. See Nichols v. State, 554 P.2d 231, 232 (Utah 1976) (holding that "an order of dismissal is a final adjudication, and thereafter, a plaintiff may not file an amended complaint," but instead, "the plaintiff must move under Rules 59(e) or 60(b) to reopen the judgment").

²The State filed a motion to strike portions of Suarez's response that raised new issues. By this decision, the motion to strike is denied.

rule that "issues not raised at trial cannot be argued for the first time on appeal").

Therefore, we affirm the district court's order dismissing Suarez's petition.

Russell W. Bench,
Associate Presiding Judge

Pamela T. Greenwood, Judge

William A. Thorne Jr., Judge