

IN THE UTAH COURT OF APPEALS

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Austin B. Sumner,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20090901-CA
v.)	
)	
Board of Pardons,)	F I L E D
)	(October 7, 2010)
)	
Respondent and Appellee.)	2010 UT App 273

Third District, Salt Lake Department, 090916244
The Honorable Robert K. Hilder

Attorneys: Austin B. Sumner, Draper, Appellant Pro Se

Before Judges Orme, Thorne, and Christiansen.

PER CURIAM:

Austin B. Sumner appeals the district court's dismissal of his petition for extraordinary relief. This matter is before the court on a sua sponte motion for summary disposition. 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. See Utah R. Civ. P. 65B(b)(5). Utah Code section 77-27-5(3) provides that the Board of Pardon's 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. 2010).

However, judicial review is allowed to assure 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 "copies or a summary of the information in the Board's file upon which the Board will rely in deciding whether to grant parole." 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, Sumner asserts that the Board abused its sentencing discretion by improperly considering aggravating factors at his parole hearing, and that the Board improperly considered hearsay statements and evidence. However, Sumner challenges the Board's substantive decision, not whether he was afforded procedural due process. Sumner does not assert that he was deprived of proper notice or an opportunity to be heard, or that he was not provided with a summary of the information upon which the Board's decision was based. Because Sumner seeks to challenge the Board's substantive decision, the matter is not subject to judicial review. See Utah Code Ann. § 77-27-5(3). Thus, the district court ruled correctly in dismissing Sumner's petition for extraordinary relief.¹

Affirmed.

Gregory K. Orme, Judge

William A. Thorne Jr., Judge

Michele M. Christiansen, Judge

¹Sumner raised additional issues in his docketing statement. However, Sumner failed to file a memorandum opposing the sua sponte motion for summary disposition. Because Sumner failed to provide any legal argument, analysis, or discussion of these additional issues, we decline to address them further. See State v. Green, 2005 UT 9, ¶ 11, 108 P.3d 710.