

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Scott M. Snyder,
Petitioner Below, Petitioner**

vs.) No. 11-1004 (Pleasants County 10-P-28)

**William M. Fox, Warden, St. Mary's
Correctional Center, Respondent Below,
Respondent**

FILED
September 4, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Scott M. Snyder appeals, pro se, the March 24, 2011, order of the Circuit Court of Pleasants County denying his petition for a writ of habeas corpus, in which he requested a prompt hearing before the West Virginia Parole Board. The respondent warden, by Charles Houdyschell Jr., his attorney, filed a summary response.

The Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds that a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Petitioner was convicted of one count of aggravated robbery, and sentenced to a definite sentence of forty years in prison, and of one count of destruction of property, and sentenced to one year in jail, with the sentences to run concurrently. Petitioner was also convicted of one count of burglary and sentenced to one to fifteen years in prison with the sentence to run consecutive to his sentences for aggravated robbery and destruction of property. Petitioner was also convicted of one count of petit larceny and sentenced to one year in jail with the sentence to run concurrently with his sentence for burglary and consecutive to his sentences for aggravated robbery and destruction of property. Finally, petitioner was convicted of a second count of destruction of property and sentenced to one year in jail with the sentence to run concurrently with his sentences for burglary and petit larceny and consecutive to his sentences for aggravated robbery and the first count of destruction of property. Petitioner was given credit for time served.

The West Virginia Parole Board ("the Parole Board") twice denied petitioner parole. Following the second denial of parole, petitioner filed a petition for a writ of habeas corpus. The circuit court reviewed and denied the petition. The circuit court noted the ten grounds upon which petitioner contended his rights were violated. The circuit court concluded that the Parole Board

provided petitioner with the basic elements of due process, strictly complied with West Virginia Code § 62-12-13 which enumerates specific factors to be considered in parole hearings, and did not abuse its discretion by acting in an arbitrary and capricious manner.

Petitioner appealed, and filed an appendix and a brief. The respondent warden filed a summary response and a motion to file a supplemental appendix. The motion was granted. On April 3, 2012, the respondent warden filed a motion to dismiss and a motion to file a second supplemental appendix, asserting that the case has been rendered moot by the fact that petitioner has now been released on parole.

RESPONDENT WARDEN'S MOTION TO FILE A SECOND SUPPLEMENTAL APPENDIX

The respondent warden's proffered second supplemental appendix includes the Order of Release on Parole, the Parole Agreement signed by petitioner and the parole officer, the Rules and Regulations Governing Parole Supervision also signed by petitioner and the parole officer, petitioner's Parole Reporting Instructions, and Inmate Management Information System records showing that petitioner has been paroled to another state.¹ After careful consideration, this Court concludes that the respondent warden's motion to file a second supplemental appendix should be and is hereby granted.

RESPONDENT WARDEN'S MOTION TO DISMISS

In his habeas petition, petitioner requested relief in the form of "a prompt hearing" before the Parole Board. "Moot questions or abstract propositions, the decision of which would avail nothing in the determination of controverted rights of persons or of property, are not properly cognizable by a court." Syl. pt. 1, *State ex rel. Lilly v. Carter*, 63 W.Va. 684, 60 S.E. 873 (1908)." Syl. Pt. 1, *State ex rel. McCabe v. Seifert*, 220 W.Va. 79, 640 S.E.2d 142 (2006). The respondent warden argues that a habeas corpus proceeding regarding the denial of an inmate's parole is rendered moot when he is released on parole. *See McCabe*, 220 W.Va. at 85, 640 S.E.2d at 148 (finding a habeas petition moot because of, in part, "[the petitioner's] release from incarceration"). The respondent warden is correct. Even assuming *arguendo* that petitioner's appeal has merit, a decision in his favor would avail him nothing when he has already been paroled to another state. Therefore, after careful consideration, this Court dismisses petitioner's appeal as moot.

Dismissed as Moot.

¹ According to his Parole Reporting Instructions, petitioner has gone to live with a relative.

ISSUED: September 4, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh