[Cite as *Tran v. State*, 2009-Ohio-6784.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Quang Ly Tran,	:	
Relator-Appellant,	:	
		No. 09AP-587
v.	:	(C.P.C. No. 09CV-03-4307)
State of Ohio et al.,	:	(REGULAR CALENDAR)
Respondents-Appellees.	:	

D E C I S I O N

Rendered on December 22, 2009

Quang Ly Tran, pro se.

Richard Cordray, Attorney General, and *Lawrence H. Babich*, for appellees Terry J. Collins and Cynthia Mausser.

Ron O'Brien, Prosecuting Attorney, and *Patrick J. Piccininni*, for appellees Ron O'Brien, Michael Miller, and Cinda Holthouse.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, P.J.

{¶1} Relator-appellant, Quang Ly Tran ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which granted motions to dismiss filed by respondents-appellees, Franklin County Prosecuting Attorney Ron O'Brien, Former

Franklin County Prosecuting Attorney Michael Miller, and Assistant Prosecuting Attorney Cinda Holthouse (collectively, "county appellees"), and Ohio Department of Rehabilitation and Correction Director Terry J. Collins and Ohio Adult Parole Authority Chair Cynthia Mausser (collectively, "state appellees").

{¶2} On March 23, 2009, appellant filed a "Petition For an Action In Declaratory Judgment, Injunctive Relief and Writ for Mandamus." The petition claimed that appellant had entered into a plea agreement, which led to his conviction in 1988 for aggravated murder and aggravated robbery. In his view, the plea agreement provided that he would be eligible for parole after serving 20 years in prison, and he had since been denied parole wrongfully.

{¶3} On March 23, 2009, appellant also filed a "Motion to Amend Petition for an Action In Declaratory Judgment, Injunctive Relief and Writ for Mandamus." Attached to his motion was a "SWORN AFFIDAVIT OF STATEMENT OF CLAIMS."

{¶4} The state appellees filed an answer and thereafter filed a motion for judgment on the pleadings pursuant to Civ.R. 12(C). The state appellees argued that appellant had been given a parole hearing shortly after he had served 20 years, but he had been denied parole due to the serious nature of the crimes. They also argued that his affidavit was insufficient to meet the requirements of R.C. 2969.25(A), he had failed to file his application for a writ of mandamus in the name of the State, and he was not entitled to declaratory relief.

{¶5} The county appellees moved to dismiss appellant's complaint under Civ.R. 12(B)(6) for his failure to state a claim upon which relief could be granted. The county appellees stated that the complaint did not include any claims against them.

{¶6} On May 6, 2009, appellant moved for leave to amend his original petition. He attached an amended affidavit.

{¶7} On May 21, 2009, the trial court issued a decision and entry dismissing appellant's petition. Appellant appealed, and he raises the following assignments of error:

> Assignment of Error I:
>
> THE TRIAL COURT ERRED IN DISMISSING APPELLANT'S COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, AND FOR WRIT OF MANDAMUS ACTION UNDER R.C. 2969.25(A).
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> Assignment of Error II:
>
> THE TRIAL COURT ERRONEOUSLY DISMISSED APPELLANT'S CO[M]PLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, AND WRIT FOR MANDAMUS UNDER CIVIL RULE 12(B)(6) FOR FAILURE TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED, AND CIVIL RULE 12(C) M[O]TION FOR JUDGMENT ON THE PLEADINGS.
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> Assignment of Error III:
>
> THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITS PLAIN ERROR WHEN IT GRANTED [APPELLEES'] MOTION ON THE JUDGMENT ON THE PLEADINGS UNDER CIV.R. 12(C).
>
> Assignment of Error IV:
>
> THE TRIAL COURT ERRED AS A MATTER OF LAW IN DISMISSING THE DECLARATORY JUDGMENT ACTION

WHERE THE MOVING PARTY WAS NOT ENTITLED TO DISMISSAL AS A MATTER OF LAW BECAUSE THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITS PLAIN ERROR.

Assignment of Error V:

THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITS PLAIN ERROR WHEN IT GRANTED [APPELLEES'] MOTION FOR JUDGMENT ON THE PLEADINGS UNDER CIV.R. 12(C).

Assignment of Error VI:

THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITTED PLAIN ERROR WHEN IT GRANTED THE FRANKLIN COUNTY [APPELLEES'] MOTION TO DISMISS UNDER CIVIL RULE 12(B)(6) IN MANDAMUS ACTION.

Assignment of Error VII:

THE TRIAL COURT ERRED AND DID NOT EFFECTIVELY MAKE FINDINGS OF FACTS AND CONCLUSION OF LAW, AND THE TRIAL COURT FAILED TO PROVIDE ITS RATIONAL[E] FOR DENYING APPELLANT'S CLAIMS IN THE COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, AND WRIT FOR MANDAMUS.

Assignment of Error VIII:

THE TRIAL COURT ERRED[,] ABUSED ITS DISCRETION AND COMMITS PLAIN ERROR RENDERING ERRONEOUS FINDINGS OF FACT AND CONCLUSIONS OF LAW WHEN IT GRANTED [APPELLEES'] LEGAL REPRESENTATIVE, OHIO ATTORNEY GENERAL, RICHARD CORDRAY'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM PURSUANT TO CIVIL RULE 12(B)(6).

Assignment of Error IX:

THE TRIAL COURT ERRED WHEN IT SUSTAINED [APPELLEES'] CIV.R. 12(B)(6) MOTION TO DISMISS. APPELLANT WAS ENTITLED TO RELIEF UNDER WRIT OF MANDAMUS ACTION.

{¶8} We begin our analysis with the legal standards applicable to appellant's appeal.

{¶9} A motion to dismiss for failure to state a claim is procedural and tests whether the complaint is sufficient. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 1992-Ohio-73. In considering a Civ.R. 12(B)(6) motion to dismiss, a trial court may not rely on allegations or evidence outside the complaint. *State ex rel. Fuqua v. Alexander*, 79 Ohio St.3d 206, 207, 1997-Ohio-169. Rather, the trial court may only review the complaint and may dismiss the case only if it appears beyond a doubt that the plaintiff can prove no set of facts entitling the plaintiff to recover. *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, syllabus. Moreover, the court must presume that all factual allegations in the complaint are true and draw all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192. We review de novo a judgment on a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶5.

{¶10} Civ.R. 12(C) provides that, after the pleadings are closed but within such time as not to delay, any party may move for judgment on the pleadings. A Civ.R. 12(C) motion for judgment on the pleadings has been characterized as a belated Civ.R. 12(B)(6) motion for failure to state a claim upon which relief can be granted. *Whaley v. Franklin Cty. Bd. of Commrs.*, 92 Ohio St.3d 574, 2001-Ohio-1287. A trial court may grant a motion for judgment on the pleadings when, after viewing the allegations and reasonable inferences therefrom in the light most favorable to the non-moving party, the moving party is entitled to judgment as a matter of law. *Brown v. Wood Cty. Bd. of Elections* (1992), 79 Ohio App.3d 474, citing *Peterson v. Teodosio* (1973), 34 Ohio

St.2d 161. A motion for judgment on the pleadings is specifically intended for resolving questions of law. *Friends of Ferguson v. Ohio Elections Comm.* (1997), 117 Ohio App.3d 332.

{¶11} With these principles in mind, we turn to appellant's assignments of error. We address them out of order.

{¶12} In his second assignment of error, appellant first contends that he did not receive proper notice that the trial court might dismiss his complaint and that the court dismissed his complaint sua sponte. Our review of the file suggests otherwise. Not only did appellant receive notice of the motions filed by appellees, he responded to them. Therefore, we reject appellant's contention.

{¶13} In the remainder of his second assignment of error, and in his third, fourth, fifth, and ninth assignments of error, appellant contends that the trial court erred by granting judgment in favor of the state appellees pursuant to Civ.R. 12(B)(6) and 12(C). Appellant's only argument is that the state appellees have failed to abide by the 1988 plea agreement. We disagree.

{¶14} Appellant's complaint seeks to enforce a plea agreement he made in 1988, following a jury trial in which he was found guilty of aggravated murder and aggravated robbery. According to appellant, he agreed to plead guilty in exchange for a " 'sentence of life imprisonment with parole eligibility after twenty (20) full years.' "

{¶15} In his complaint, appellant acknowledges that a parole hearing was held after he had served 20 full years. He also acknowledges that a parole determination is discretionary with state officials. Nevertheless, he complains that state appellees have

applied parole guidelines in such a way as to violate his plea agreement and deny him meaningful review.

{¶16} The state appellees admit that the plea agreement granted appellant parole eligibility after he had served 20 years. They state, however, that he was denied parole because of the serious nature of the offenses at issue.

{¶17} To the extent that appellant seeks to enforce the plea agreement, whether as a contract or otherwise, we may only conclude that the agreement has not been violated. As appellant concedes, he became eligible for parole after serving 20 years, and he did, in fact, have a parole hearing. The fact that he was denied parole at the first opportunity does not equate to a violation of the agreement, which only guaranteed his eligibility for parole, not his release.

{¶18} Additionally, we cannot conclude from the complaint that the parole board failed to provide appellant meaningful consideration. To support this contention, appellant relies on *Ankrom v. Hageman*, 10th Dist. No. 04AP-984, 2005-Ohio-1546. In *Ankrom*, this court held that a parole board denies an inmate meaningful consideration by adhering to guidelines that do not allow for parole consideration until long after an inmate is legally eligible. Id. at ¶15, 34. Appellant incorporated into his complaint attachments that established that he was provided meaningful consideration for parole upon becoming eligible, however. On Civ.R. 12(B)(6) and 12(C) motions, a court may consider material incorporated into a complaint. *Victory Academy of Toledo v. Zelman*, 10th Dist. No. 07AP-1067, 2008-Ohio-3561, ¶7 (discussing Civ.R. 12(B)(6) motions); *Amzee Corp. v. Comerica Bank-Midwest*, 10th Dist. No. 01AP-465, 2002-Ohio-3084,

¶34 (discussing Civ.R. 12(C) motions). Appellant's attachments show that he was given a full board hearing. The board considered mitigating factors, including appellant's progress in rehabilitation, but the board concluded that this mitigation does not outweigh the need for appellant's further incarceration due to the seriousness of his offenses. Appellant also relies on *Layne v. Ohio Adult Parole Auth.*, 97 Ohio St.3d 456, 2002-Ohio-6719, where the Supreme Court of Ohio concluded that defendants were not given meaningful consideration for parole when the parole board treated them as having committed offenses other than those for which they were convicted. Id. at ¶24-28. This circumstance did not exist with appellant's parole hearing; the board considered the offenses for which appellant was convicted.

{¶19} In order to be entitled to a writ of mandamus, appellant must establish (1) that he has a clear legal right to the relief requested, (2) that the state appellees are under a clear legal duty to perform the requested acts, and (3) that he has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Johnson v. Ohio Adult Parole Auth.*, 104 Ohio St.3d 421, 2004-Ohio-6590, ¶9. As appellant concedes, he has no absolute right to parole, and we have concluded that the parole board provided appellant meaningful consideration. Therefore, he is not entitled to mandamus relief.

{¶20} Nor is appellant entitled to a declaratory judgment as to the validity of the parole guidelines. R.C. 2721.03 provides for declaratory judgment to determine a legal relation affected by a constitutional provision, statute or rule. This court has held that parole guidelines are not subject to the declaratory judgment statute because they are

not constitutional provisions, rules or statutes. *Harris v. Ohio Adult Parole Auth.*, 10th Dist. No. 06AP-374, 2007-Ohio-142, ¶12, and cases cited therein.

{¶21} Nor is appellant entitled to relief on his claim that application of the parole guidelines violates due process. Appellant's sole claim in this respect is that application of the parole guidelines violates the plea agreement. We conclude, however, that the plea agreement has been met.

{¶22} For all these reasons, we overrule appellant's second, third, fourth, fifth, and ninth assignments of error.

{¶23} In his sixth assignment of error, appellant contends that the trial court erred by dismissing the county appellees. Appellant's complaint does not state a claim against the county appellees. Therefore, the trial court did not err by dismissing the claims against them, and we overrule appellant's sixth assignment of error.

{¶24} In his seventh assignment of error, appellant contends that the trial court failed to support its decision with findings of fact and conclusions of law. As the state appellees note, when ruling on a motion for judgment on the pleadings or a motion to dismiss, the trial court must assume the truth of all factual allegations. We conclude that the trial court explained its ruling sufficiently. Therefore, we overrule appellant's seventh assignment of error.

{¶25} In his eighth assignment of error, appellant contends that the trial court erred by dismissing Ohio Attorney General Richard Cordray as a party in the action. Appellant's complaint does not state a claim against Attorney General Cordray.

Therefore, the trial court did not err by dismissing him as a party, and we overrule appellant's eighth assignment of error.

{¶26} In his first assignment of error, appellant contends that the trial court erred by not allowing him to amend his complaint in order to meet the requirements of R.C. 2969.25. Our resolution of appellant's other assignments of error, however, renders his first assignment of error moot.

{¶27} In conclusion, we overrule appellant's second, third, fourth, fifth, sixth, seventh, eighth, and ninth assignments of error and render appellant's first assignment of error moot. Accordingly, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and CONNOR, JJ., concur.