[Cite as *State ex rel. Keith v. Mausser*, 2013-Ohio-2514.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Bernard R. Keith,	:	
Relator,	:	
v.	:	No. 12AP-408
Ohio Adult Parole Authority, Cynthia Mausser, Chair of the Ohio [Adult] Parole Board,	:	(REGULAR CALENDAR)
Respondents.	:	

D E C I S I O N

Rendered on June 18, 2013

Bernard R. Keith, pro se.

Michael DeWine, Attorney General, and *David A. Lockshaw, Jr.*, for respondents.

IN MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

SADLER, J.

{¶ 1} Relator, Bernard R. Keith, pro se, an inmate incarcerated at Richland Correctional Institution, commenced this original action requesting this court to issue a writ of mandamus ordering respondents, Ohio Adult Parole Authority ("OAPA") and Cynthia Mausser ("Mausser"), Chair of the Ohio Parole Board, to correct erroneous information regarding the number of times he has been paroled, which was noted in the

written decision of the Ohio Parole Board ("parole board") following a February 17, 2012 hearing,[1] and to order another hearing to consider the corrected information.

{¶ 2} Pursuant to Civ.R. 53(C) and Loc.R. 13(M) of the Tenth District Court of Appeals, the matter was referred to a magistrate of this court to conduct appropriate proceedings. The magistrate converted respondents' Civ.R. 12(B)(6) motion to a motion for summary judgment pursuant to Civ.R. 56. The magistrate concluded that relator's request for relief is moot due to the finding that OAPA's records have been corrected to indicate that relator was paroled six times and that, after the correction, the matter was submitted to the parole board for a vote on whether it would modify its previous decision. The board, by majority vote, decided not to modify the decision. The magistrate issued a written decision, which is appended hereto, recommending that the court enter summary judgment in favor of respondents and deny relator's motion for summary judgment.

{¶ 3} On January 24, 2013, recognizing that the magistrate's decision only disposed of relator's complaint in mandamus, this court stated in a journal entry that "[r]elator's May 8, 2012 motion to waive payment of deposit; and relator's May 8, 2012 application for peremptory writ shall be submitted to the court for determination at such time as the court addresses the merits of this action." (Jan. 24, 2013 Journal Entry.)

{¶ 4} On January 24, 2013, relator filed a motion for extension of time to file objections to the magistrate's decision. This court granted the motion, and relator objected to the magistrate's decision as follows:

1. Magistrate did not/does not address the gravamen [sic] of the complaint.

2. Magistrate has not properly determined the factual issues and applied the law to those issues.

3. Magistrate failed to dispose of all claims, fewer than all claims presented were addressed.

[1] Relator's complaint and the magistrate's decision refer to the hearing as a parole revocation hearing. We note the hearing was to determine whether to release relator from prison and place him on parole.

4. Magistrate[']s decision does not set forth sufficient facts upon which the Court can make an independent analysis of the issues presented.

5. Plain error in regards to the rationale as reflected in the legal conclusion of the Magistrate[']s decision.

6. Magistrate[']s decision can not and should not be accepted with a clear conscience.

7. Magistrate[']s decision reflects possible bias in the evaluation of the credibility of affidavits of Relator and the Respondents.

8. Magistrate[']s decision suggests that exhibits and the documentation attached to the filings of Relator were not examined or reviewed.

{¶ 5} The matter is now before this court for a full, independent review. *State ex rel. Bell v. Pfeiffer*, 10th Dist. No. 10AP-490, 2011-Ohio-2539, ¶ 3. For ease of analysis, we address together relator's objections, which challenge the magistrate's recommendation that this court grant respondents' motion for summary judgment and deny relator's motion for summary judgment. Pursuant to Civ.R. 56(C), summary judgment may be granted only when there remains no genuine issue of material fact, the moving party is entitled to judgment as a matter of law, and reasonable minds can come to but one conclusion, that conclusion being adverse to the party opposing the motion. *Tokles & Son, Inc. v. Midwestern Indemn. Co.*, 65 Ohio St.3d 621, 629 (1992), citing *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64 (1978). Under summary judgment motion practice, the moving party bears an initial burden to inform the trial court of the basis for its motion and to point to portions of the record that indicate that there are no genuine issues of material fact on a material element of the nonmoving party's claim. *Dresher v. Burt*, 75 Ohio St.3d 280 (1996). Once the moving party has met its initial burden, the nonmoving party must produce competent evidence establishing the existence of a genuine issue for trial. *Id*. Additionally, a moving party cannot discharge its burden under Civ.R. 56 simply by making conclusory assertions

that the nonmoving party has no evidence to prove its case. *Id*. Rather, the moving party must point to some evidence that affirmatively demonstrates that the nonmoving party has no evidence to support his or her claims. *Id*.

{¶ 6} Relator first argues that the magistrate's decision does not set forth sufficient facts upon which this court can make an independent analysis of the issues presented. After a review of the magistrate's decision, we disagree and proceed to address the issues presented herein.

{¶ 7} Relator contends that the magistrate's decision is factually incorrect in that the magistrate improperly referred to the February 17, 2012 hearing as a revocation hearing. Although relator also referred to that hearing as a revocation hearing in his complaint, the record indicates that the hearing was not a parole revocation hearing, but it was a parole release hearing. We sustain relator's objections to the extent that they challenge this factual discrepancy and amend the magistrate's decision to refer to the hearing as a parole release hearing.

{¶ 8} In his remaining objections, relator asserts that it was improper for the magistrate to conclude that his claim for mandamus relief is moot. He contends that, by doing so, the magistrate showed bias against him and did not consider all the issues and evidence presented. Relator claims that, although Mausser stated in an affidavit that the parole board reconvened on the matter of his parole after receiving corrected information on the number of times he had been paroled, it also had before it a June 5, 2012 letter from Trayce Thalheimer which indicated erroneously that he was sanctioned on two occasions. Relator objects to the letter's content and denies he was before the board and sanctioned on July 17, 1992.[2]

{¶ 9} In her affidavit, Mausser provided, in relevant part:

> 5. At [relator's] last parole hearing on February 17, 2012, the [parole board] decided to continue the hearing for sixty-two (62) months. At that time, the [parole board's] records indicated that [relator] had been paroled eight (8) times.

2 Contrary to relator's assertion, the magistrate addressed the challenge pertaining to the letter from Thalheimer at page ten of the January 16, 2013 magistrate's decision.

> 6. Since that hearing, the [parole board] has identified and corrected an error in its records regarding [relator]. The records have now been corrected to indicate that [relator] has been paroled six (6) times.
>
> 7. After making that correction, I submitted this matter to the [parole board] for a vote on whether, considering the correction, the [parole board] would modify its previous decision or grant [relator] another hearing.
> 8. By a majority vote, the [parole board] decided not to modify its previous decision or grant [relator] another hearing before the expiration of the sixty-two (62) month continuance.

(Respondents' Exhibit No. 1.)

{¶ 10} Thus, Mausser's affidavit establishes that the board considered the corrected information about relator's parole history and that it concluded that the corrected information had no impact on its original decision to deny him parole. Although Thalheimer's letter mentions relator being sanctioned by the parole board on other matters, there is nothing in the record to indicate that the board relied on that information when it reconvened on the issue of relator's parole. Thalheimer's letter may have been an attempt to explain why the parole board originally determined that relator had been paroled more than six times. Nonetheless, we agree with the magistrate that relator cannot litigate in this action the accuracy of any statements made by Thalheimer in his June 22, 2012 letter. Importantly, Thalheimer acknowledges in the letter that relator had actually been paroled six times.

{¶ 11} Accordingly, we conclude that the parole board has performed the relief sought by relator. Therefore, the magistrate correctly determined that relator's request for mandamus relief is moot because mandamus will not lie to compel an act that has already been performed. *State ex rel. Chapnick v. E. Cleveland City School Dist. Bd. of Edn.*, 93 Ohio St.3d 449, 451 (2001). We overrule the balance of relator's objections.

{¶ 12} We turn now to relator's application for a peremptory writ. Pursuant to R.C. 2731.06, "[w]hen the right to require the performance of an act is clear and it is apparent that no valid excuse can be given for not doing it, a court, in the first instance,

may allow a peremptory mandamus." A peremptory writ is granted when the pertinent facts are uncontroverted and it appears beyond doubt that the relator is entitled to the requested relief. *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, ¶ 14. Given our previous analysis, we find relator has not satisfied the requirements for a peremptory writ.

{¶ 13} Consequently, we adopt the magistrate's decision, including the findings of fact and conclusions of law, as amended, and, in accordance with that decision, grant respondents' motion for summary judgment and deny relator's motion for summary judgment. Relator's application for a peremptory writ is denied and relator's motion to waive payment of deposit is rendered moot due to the instant matter being resolved.

Respondent's motion for summary judgment granted;
relator's motion for summary judgment denied;
relator's application for peremptory writ denied.

KLATT, P.J., and VUKOVICH, J., concur.

VUKOVICH, J., of the Seventh Appellate District, sitting by assignment in the Tenth Appellate District.

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A P P E N D I X

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Respondents.	:	

M A G I S T R A T E ' S D E C I S I O N

Rendered on January 16, 2013

Bernard R. Keith, pro se.

Michael DeWine, Attorney General, and *David A. Lockshaw, Jr.*, for respondents.

IN MANDAMUS
ON MOTIONS FOR SUMMARY JUDGMENT

{¶ 14} In this original action, relator, Bernard R. Keith, an inmate of the Richland Correctional Institution ("RCI") requests a writ of mandamus ordering respondents Ohio Adult Parole Authority ("OAPA") and Cynthia Mausser, the Chair of the Ohio Parole Board, to correct information contained on the written decision of the Ohio Parole Board ("parole board") following a February 17, 2012 parole revocation hearing, and to order another parole board hearing to consider the corrected OAPA record.

Findings of Fact:

{¶ 15} 1. On May 8, 2012, relator, an RCI inmate, filed this original action. In his complaint, relator alleges that on November 16, 2011, he was conveyed to the Lorrain Correctional Reception Center to begin serving a six-month prison sentence. In December 2011, an OAPA hearing officer recommended parole revocation.

{¶ 16} 2. According to the complaint, on February 17, 2012, a parole revocation hearing was held by the parole board.

{¶ 17} 3. According to the complaint, in February 2012, relator received the written decision of the parole board. It was the parole board's decision to revoke parole and to continue the next parole hearing for a 62-month period.

{¶ 18} 4. According to the complaint, the parole board decision sheet that relator received contains incorrect information when it states "[h]as been paroled 8 times on his murder conviction from 1971."

{¶ 19} 5. According to the complaint, by letter dated March 5, 2012, relator informed OAPA that he has been paroled only six times rather than the eight times as indicated on the parole board decision sheet. In his March 5, 2012 letter, relator requested that OAPA correct its records and grant him a rehearing on the parole revocation matter.

{¶ 20} 6. According to the complaint, by letter dated April 2, 2012, parole board member Kathleen Kovach informed relator that no action would be taken on his request for parole board reconsideration.

{¶ 21} 7. In his complaint, relator requests a writ of mandamus ordering respondents to correct the record regarding relator's prior parole releases and provide a rehearing regarding the parole revocation matter.

{¶ 22} 8. On June 7, 2012, respondents moved to dismiss this original action.

{¶ 23} 9. On June 22, 2012, relator filed a document captioned "Relator's Response To Respondents' Motion To Dismiss Relator's Complaint For Writ Of Mandamus and Relator's Motion For Summary Judgment." With this document, relator also submitted his affidavit executed June 11, 2012. Relator's affidavit endeavors to authenticate and explain eight exhibits attached to the affidavit. Among the exhibits

is another affidavit from relator executed June 11, 2012 in which relator lists the six dates of his parole releases. Exhibit number four is the February 17, 2012 parole board decision referred to in relator's complaint. The exhibit does state "[h]as been paroled eight times on his murder conviction from 1971." The parole board decision indicates that parole was revoked because relator had recently been convicted for the offense of "illegal proc[essing] of drug doc[uments]," a violation of R.C. 2925.23. The parole board decision indicates that relator's next hearing will occur in April 2017, which is 62 months from the February 17, 2012 revocation hearing.

{¶ 24} 10. On July 5, 2012, relator filed a document captioned "Motion for leave to Supplement Complaint/Pleadings with Affidavits, exhibits and Memorandum in Support Pursuant to Civ. R. 15(E)."

{¶ 25} With his July 5, 2012 motion, relator submitted an affidavit executed June 25, 2012. The affidavit endeavors to authenticate and explain four exhibits to the affidavit. The four exhibits can be briefly described as follows:

{¶ 26} Exhibit A: A June 5, 2012 letter from parole board member Trayce Thalheimer that is addressed to relator at the London Correctional Institution. The June 5, 2012 Thalheimer letter states:

> Thank you for your letter requesting reconsideration of your Parole Board hearing that was conducted on February 17, 2012 at the London Correctional Institution. In response to your letter I have completed some additional research into your history and I am responding to your concerns. During our discussion at your hearing I stated that you had been incarcerated on six occasions and paroled eight times throughout your criminal history. You stated that the information I provided was incorrect and that you had only been paroled six times. In reviewing your file you are correct, technically you have been paroled six times by a panel of the Ohio Parole Board. However, as with all offenders, I considered your entire history including your behavior while on supervision. As such, I considered the fact that on three occasions you appeared before a Parole Board Hearing Officer at a violation hearing. During two of those hearings, on 7/17/92 and 10/3/05, you were found guilty of violations but were sanctioned and permitted to remain on supervision.

> While these two occasions were not new parole releases, I did consider them release opportunities that were afforded to you by the Ohio Parole Board.
>
> In order to present a more complete history, I have requested the Chairman of the Parole Board, Cynthia Mausser, to submit a reconsideration request to the entire Parole Board that includes the information you provided as well as this letter regarding what I have reviewed and presented to you.
>
> Upon the review by the Parole Board you will be notified of the final decision.

{¶ 27} Exhibit B: A June 11, 2012 letter from parole board member Trayce Thalheimer addressed to relator at "RICI Lock H4/B/0039." The June 11, 2012 Thalheimer letter states:

> Your request, received on 3/6/2012, for reconsideration of a previous Parole Board decision was received and processed. DRC Policy No. 105-PBD-04 *Requests for Reconsideration and Amendments to Parole Board Actions*, outlines circumstances under which rescission and reconsideration of the outcome of a parole hearing is permitted. Requests for reconsideration must be based on, and specifically refer to, relevant and significant new information that was either not available or not considered at the time of the hearing. In addition, any new information that forms the basis of a reconsideration request must be submitted without unreasonable delay.
>
> Your request and all other relevant information were reviewed. It has been determined that your request does not meet the standard for reconsideration as set forth in policy. Therefore, no modification will be made to the last action of the Parole Board. Please be further advised that any subsequent correspondence received regarding this same issue that does not address any substantially different issues will not result in a subsequent response from this office.
> Thank you for your correspondence and interest in this matter. Your letter and this response will be made part of your permanent record and will be available to the Board at all future hearings.

(Emphasis sic.)

{¶ 28} Exhibit C: A three-page typewritten letter dated June 22, 2012 from relator to Thalheimer. Relator's letter states:

> Please accept this letter as a formal inquiry, request for clarification, notification of errors and request for correction.
>
> My inquiry regards a letter of June 5, 2012 and June 11, 2012, that I received on 6/19/12 from your office. These letters were received via regular institutional mail and were attached as are the copies that are included with this letter. The letter of June 11th, was stapled to the rear of the letter of June 5th.
>
> The clarification sought is, is the letter of June 11th, to indicate a cancellation of the letter of June 5th? I seek this clarification because I am confused as to the message that these two pieces of correspondence taken together, are meant to convey.
>
> This letter is also to notify you of multiple errors regarding my past criminal history as reflected in your letter of June 5th. The errors and inaccuracies contained in your letter are listed and enumerated below:
>
> 1.) I **am not** at London Correctional Institution[.] I **was not** at the London Correctional Inst. at the time of my hearing on 2/17/12, nor have I been housed at that institution since 1978 - 1980 (Inst. No. 134-981)[.]
>
> 2.) I **do not** recall ever having a discussion with you. Nor do I recall you being present via video conference at my hearing. At my hearing via video of 2/17/12 at the Richland Corr. Inst. Medical area - only 4 Parole Board members were present...3 males and 1 female. It is/was my recollection that the female was Ms. Kovach.
>
> 3.) As can be further determined by the affidavit of Melissa Adams, Chief of the Bureau of Sentence Computation, and the Bureau of [S]entence Computation, I was returned to the Dept. of Rehab. & Corr. on 6/24/91 as a Technical Parole violator and was not paroled again until 5/1/2000. I was

incarcerated at the Madision [sic] Corr. Inst. on 7/17/92, the date of the erroneous and non-exist[e]nt hearing and release as related in your letter of June 5, 2012.

4.) I also beg to differ with your facts of my having appeared before a Parole Board Hearing Officer on 3 occasions. As previously, indicated in the above error no. 3. On 7/17/92, I was at the Madison Corr. Inst. in London Ohio and remained at that institution until I was transferred to Mansfield Correctional Camp in Oct/Nov. of 1996. Thus, I could not have been both on parole at a hearing, and a prisoner at the same time.

Thank you, for your acknowledgement of my being correct in my determination of having been paroled six (6) times, rather than the eight (8) times as was previously declared. Your assessment that the distinction is technical in nature and that Sanction Hearings constitutes Parole Hearings is to me, both disturbly [sic] inaccurate and erroneous as determined by definition, function and requirements of Parole Hearings. In addition, paroles are easily identified and counted by specific documents, named "Certificates of Parole." Should a release on Parole not be documented by a "Certificate of Parole," then that release does not constitute a "Parole."

While I appreciate your attention and claimed thoroughness in your review and examination for what your letter has termed as my criminal history. These inaccuracies taken as a whole suggest to me the possiability [sic] of perhaps my record as having gotten mixed up with that of another prisoner. Of much concern and which marginally validates my suspicion of possibly my record having been mixed up with the record of another prisoner, is that during my hearing on 2/17/12[,] I was repeatedly asked about an arrest and Court appearance for an alleged violation of a protection order that never occurred with me. I was also asked about an [alleged] arrest that involved me having to be thrown to the ground and physically restrained. Neither the Court appearance nor arrest, ever occurred with me.

As a suggestion, perhaps a cross-checking analysis of details contained in my file will reveal additional errors and inaccuracies that require addressing and correction.

> Lastly, be it noted that I protest the submission of your letter of June 5, 2012 to the entire Parole Board because of inaccuracies, and erroneous information. I respectfully request that a correction and re-submission of your letter be performed.
> Thank you, for your time and attention. Please make this letter part of the record.

(Emphasis sic.)

{¶ 29} Exhibit D: A June 25, 2012 one page letter from relator to respondent Cynthia Mausser. The letter states:

> Attached please find copies of correspondence received from Parole Board member, Ms. Trayce Thalheimer and my answering letter to her of June 22, 2012.
>
> The purpose of this letter is to make you aware of my protest to Ms. Thalheimer of the submission of her letter of June 5, 2012 (as part of a reconsideration request) as a more complete history and review of my record because of the numerous errors and inaccuracies that it contains. The issue that required the Request for Reconsideration was that the Rationale in Section 3b on the Parole Decision Sheet of 2/17/12 was erroneous. Additional errors are now being declared with the submission of the letter of June 5th by Ms. Thalheimer, which is repletive [sic] with erroneous information.
>
> In my responding correspondence to Ms. Thalheimer, I have requested that a correction and resubmission of the letter of June 5, 2012 be performed, because of the errors.

{¶ 30} 11. On July 10, 2012, respondents filed a motion for leave to file a reply in support of the motion to dismiss. With the motion and the reply, respondents submitted the affidavit of Cynthia Mausser executed July 10, 2012. The Mausser affidavit states:

> [One] I have personal knowledge of the facts contained in this Affidavit and I am competent to testify about these facts.

> [Two] I am currently employed by the Ohio Department of Rehabilitation and Correction, specifically the Ohio Parole Board ("Board"). I am currently the Chair of the Board, and I have worked for the Board for approximately seventeen (17) years.
>
> [Three] As part of my duties as Chair, I review parole records for accuracy from time to time.
>
> [Four] I have reviewed the parole records of Bernard R. Keith ("Keith"), the Relator in this action.
>
> [Five] At Keith's last parole hearing on February 17, 2012, the Board decided to continue the hearing for sixty-two (62) months. At that time, the Board's records indicated that Keith had been paroled eight (8) times.
>
> [Six] Since that hearing, the Board has identified and corrected an error in its records regarding Keith. The records have now been corrected to indicate that Keith has been paroled six (6) times.
>
> [Seven] After making the correction, I submitted this matter to the Board for a vote on whether, considering the correction, the Board would modify its previous decision or grant Keith another hearing.
>
> [Eight] By a majority vote, the Board decided not to modify its previous decision or grant Keith another hearing before the expiration of the sixty-two (62) month continuance.

{¶ 31} 12. On July 12, 2012, the magistrate issued an order that grants relator's July 5, 2012 motion pursuant to Civ.R. 15(E) and that grants respondents' July 10, 2012 motion. The magistrate's order also converts respondents' June 7, 2010 motion to dismiss to one for summary judgment. Further, the magistrate's order gave notice to the parties that relator's June 22, 2012 motion for summary judgment and respondents' June 7, 2012 motion for summary judgment are set for a non-oral hearing on August 2, 2012.

{¶ 32} 13. On July 27, 2012, relator filed a document captioned "Relator's Response To Respondents' Motion For Summary Judgment." In support, relator submitted his affidavit executed July 19, 2012. Relator's affidavit states:

> [One] I **have not** received a response to correspondence sent on June 22nd and June 25th, 2012 to Respondent detailing additional errors contained in correspondence received from Parole Board Member, Trayce Thalheimer, and protesting the submission of that letter of June 5th, 2012 as part of a reconsideration request because of the numerous errors it contained.
>
> [Two] I **have not** received any notification from Respondent of a date or time for a hearing for reconsideration.
>
> [Three] I **have not** appeared at a hearing for re-consideration.
>
> [Four] I **have not** received any notification as to any determination or decision of a re-consideration hearing, that was reported in the affidavit of Cynthia Mausser, as having been held.
>
> [Five] The first that I learned of a hearing and the results of said hearing was via the affidavit of Cynthia Mausser that was attached to Respondents' Reply In Support of Respondents' Motion To Dismiss that was sent via reg. U.S. mail on July 10, 2012.

(Emphasis sic.)

Conclusions of Law:

{¶ 33} It is the magistrate's decision that this court grant respondents' motion for summary judgment. It is also the magistrate's decision that this court deny relator's motion for summary judgment.

{¶ 34} Summary judgment is appropriate when the movant demonstrates that: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, said party being entitled to have the evidence construed most

strongly in his favor. *Turner v. Turner*, 67 Ohio St.3d 337, 339-40 (1993); *Bostic v. Connor*, 37 Ohio St.3d 144, 146 (1988); *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66 (1978). The moving party bears the burden of proving no genuine issue of material fact exists. *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115 (1988).

{¶ 35} Civ.R. 56(E) states:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

{¶ 36} Relator has no due process right to have errors expunged from records used by the OAPA in its parole determination. State ex rel. Bray v. Brigano, 93 Ohio St.3d 458, 459, (2001), citing Fain v. Summit Cty. Adult Probation Dept., 71 Ohio St.3d 658 (1995).

{¶ 37} Relator has no constitutional, statutory or inherent right to parole. *State ex rel. Miller v. Leonard*, 88 Ohio St.3d 46 (2000); *State ex rel. Hattie v. Goldhardt*, 69 Ohio St.3d 123, 125 (1994). Moreover, a prisoner has no constitutional or inherent right to be released from prison before the expiration of a valid sentence. *Greenholz v. Inmates of Nebraska Penal and Corr. Complex*, 442 U.S. 1, 7, (1979).

{¶ 38} Even if it can be argued that relator has a right to correction of an error on the face of the OAPA's February 17, 2012 written decision, his request for relief is now moot given the affidavit of Cynthia Mausser executed July 10, 2012. As earlier noted, in her affidavit, Mausser avers that the OAPA records have now been corrected to indicate that relator has been paroled six times. Furthermore, after making the correction, the matter was submitted to the parole board for a vote on whether, considering the correction, the parole board would modify its previous decision or grant another hearing. By majority vote, the parole board decided not to modify its previous decision or grant relator another hearing before the expiration of the 62-month continuance.

{¶ 39} It can be observed that the June 5, 2012 and June 11, 2012 Thalheimer letters that relator complains of in his June 22, 2012 letter to Thalheimer and his June 25, 2012 letter to Mausser post-date the February 17, 2012 parole revocation hearing at issue. Clearly, relator has no right to litigate in this action the accuracy of any statements contained in the Thalheimer letters.

{¶ 40} Accordingly, it is the magistrate's decision that this court grant respondents' motion for summary judgment. It is also the magistrate's decision that this court deny relator's motion for summary judgment.

/S/ MAGISTRATE
KENNETH W. MACKE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).