[Cite as *State ex rel. Wallace v. Mausser*, 2015-Ohio-1227.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Ronald Lee Wallace,	:	
Relator,	:	
v.	:	No. 14AP-274
Chairman Cynthia B. Mausser, et al.,	:	(REGULAR CALENDAR)
Respondents.	:	

D E C I S I O N

Rendered on March 31, 2015

Ronald Lee Wallace, pro se.

Michael DeWine, Attorney General, and *Caitlyn A. Nestleroth*, for respondents.

IN MANDAMUS
ON OBJECTIONS TO MAGISTRATE'S DECISION

DORRIAN, J.

{¶ 1} Relator, Ronald Lee Wallace, commenced this action in mandamus seeking an order compelling respondents, Cynthia B. Mausser, Chair of the Ohio Parole Board ("board"), board members Ellen Venters, R. F. Rauschenberg, Richard Cholar, Jr., Trayce Thalhelmer, and Alicia Handwerk, a board hearing officer, Marc Houk, and an officer of the Ohio Adult Parole Authority ("OAPA"), Erica Powers, to grant him a new parole hearing. Respondents have filed a motion to dismiss relator's complaint.

{¶ 2} Pursuant to Civ.R. 53(C) and Loc.R. 13(M) of the Tenth District Court of Appeals, we referred this matter to a magistrate who issued a decision, including findings of fact and conclusions of law, which is appended hereto. The magistrate found that relator failed to state a claim upon which relief can be granted and, therefore,

recommends the complaint be dismissed. Specifically, the magistrate found that relator failed to establish that he is entitled to a writ of mandamus ordering a new parole hearing because (1) relator timely received the written notice required by Ohio Adm.Code 5120:1-1-11(G); (2) Ohio Adm.Code 5120:1-1-11(H) and the administrative rules are primarily designed to guide correctional officers in prison administration, rather than to confer rights on inmates; and (3) the OAPA, pursuant to Ohio Adm.Code 5120:1-1-07(A)(2) and R.C. 2967.03, may consider the serious nature of his crime in determining not to release him.

{¶ 3} Relator has filed an objection to the magistrate's decision. Relator asserts (1) that he has an issue with the OAPA giving him "62 months in total continuance," rather than "60 months' continuance" they allegedly told him on March 11, 2014; and (2) that the OAPA should have notified Judge Ira Turpin and former prosecutor James Unger of the hearing because they both would have supported relator only serving 12 years, not 39 years.

{¶ 4} Following an independent review of this matter, we find that the magistrate has properly determined the facts and applied the appropriate law. Therefore, relator's objection is overruled, and we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained therein. In accordance with the magistrate's decision, we grant respondents' motion to dismiss, and relator's action in mandamus is dismissed.

Objection overruled; motion to dismiss granted; case dismissed.

LUPER SCHUSTER and BROGAN, JJ., concur.

BROGAN, J., retired, of the Second Appellate District, assigned to active duty under the authority of the Ohio Constitution, Article IV, Section 6(C).

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Ronald Lee Wallace,	:	
Relator,	:	
v.	:	No. 14AP-274
Chairman Cynthia B. Mausser, et al.,	:	(REGULAR CALENDAR)
Respondents.	:	

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

Rendered on August 7, 2014

Ronald Lee Wallace, pro se.

Michael DeWine, Attorney General, and *Caitlyn A. Nestleroth*, for respondents.

IN MANDAMUS
ON RESPONDENTS' MOTION TO DISMISS

{¶ 5} In this original action, relator, Ronald Lee Wallace, an inmate of the Grafton Correctional Institution ("GCI") requests a writ of mandamus ordering respondents Cynthia B. Mausser, the chair of the Ohio Parole Board ("board") and other board members to grant him a new parole hearing.

Findings of Fact:

{¶ 6} 1. On April 3, 2014, relator, a GCI inmate, filed this original action against respondents.

{¶ 7} 2. At the filing of this action, relator deposited with the clerk of this court the sum required by Loc.R. 13(B) as security for the payment of costs.

{¶ 8} 3. According to his complaint, on March 11, 2014, relator had a parole hearing before the board.

{¶ 9} 4. According to paragraph two of his complaint, as of March 25, 2014, relator had not received the written notice stating the grounds upon which the board denied release and stating the factors considered significant to the decision as provided by Ohio Adm.Code 5120:1-1-11(G), which also requires that the written notice be furnished to the inmate and warden within 14 working days after completion of the hearing.

{¶ 10} 5. The magistrate observes that relator's complaint is a three-page typewritten document followed by a three-page handwritten document. The handwritten document of the complaint is dated March 28, 2014.

{¶ 11} 6. In the handwritten portion of the complaint, relator concedes that on March 28, 2014 he received the written notice that Ohio Adm.Code 5120:1-1-11(G) requires that he be furnished within 14 working days after completion of the hearing. However, relator asserts that he received the written notice 17 days after the hearing.

{¶ 12} 7. Pointing to Ohio Adm.Code 5120:1-1-11(H), which requires that, prior to any release consideration hearing, notice of such hearing shall be provided to the judge and prosecutor, relator asserts that such notice regarding the March 11, 2014 parole hearing was not sent to the prosecutor and the remaining living judge of the alleged three-judge panel involved in relator's criminal case.

{¶ 13} 8. According to the typewritten portion of the complaint, at the March 11, 2014 parole hearing "they used Nature of Crime against me again; they are only suppose[d] to use this once." In the handwritten portion of the complaint, relator wrote:

> The board has determined that the inmate is not suitable for release at this time. The inmate has completed some relevant programming and is making an effort to improve his conduct, however, the nature of the offense violent crimes against an elderly person does not warrant a release at this time. Using nature of crime basically they are only suppose[d] to use this once.
>
> There is substantial reason to believe that due to the serious nature of the crime, the release of the inmate would not

> further the interest of justice to be consistent with the welfare and security of society.

{¶ 14} 9. On May 5, 2014, respondents moved for dismissal of this original action for the alleged failure to state a claim upon which relief in mandamus can be granted. Respondents also asserted mootness.

{¶ 15} 10. On May 15, 2014, relator filed a one-page document captioned: "Motion Not To Dismiss Mandamus."

{¶ 16} 11. On May 19, 2014, respondents filed their reply to relator's May 15, 2014 document.

{¶ 17} 12. On June 5, 2014, relator filed another one-page document captioned: "Motion Not To Dismiss Mandamus."

{¶ 18} 13. The matter is now before the magistrate on respondents' motion to dismiss.

Conclusions of Law:

{¶ 19} It is the magistrate's decision that this court grant respondents' motion to dismiss, as more fully explained below.

{¶ 20} A Civ.R. 12(B)(6) motion to dismiss tests the sufficiency of the complaint. *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn.*, 72 Ohio St.3d 94 (1995), citing *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548 (1992). In reviewing the complaint, the court must take all of the material allegations as admitted and construe all reasonable inferences in favor of the non-moving party. *Id.*

{¶ 21} In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery. *O'Brien v. University Community Tenants Union*, 42 Ohio St.2d 242 (1975), syllabus.

{¶ 22} It is well-settled that for a writ of mandamus to issue the relator must demonstrate: (1) that he has a clear legal right to the relief prayed for, (2) that respondents are under a clear legal duty to perform the acts, and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle*, 6 Ohio St.3d 28, 29 (1983).

{¶ 23} Relator endeavors here to present three claims which he contends entitle him to a new parole hearing: (1) the alleged failure to timely send to relator the written notice required by Ohio Adm.Code 5120:1-1-11(G), (2) the alleged failure to notify the prosecutor and judge of the March 11, 2014 parole hearing as required by Ohio Adm.Code 5120:1-1-11(H), and (3) the board's stated reason for denial of parole.

First Claim

{¶ 24} Ohio Adm.Code 5120:1-1-11(G) provides:

> In the event the decision of the parole board is to deny release of an inmate, the inmate and warden shall be furnished within fourteen working days after the decision is finalized:
>
> (1) A written notice stating the grounds under rule 5120:1-1-07 of the Administrative Code upon which such determination was based, indicating which of the factors specified in rule 5120:1-1-07 of the Administrative Code were considered as significant to its decision;

{¶ 25} By relator's own admission in the handwritten portion of his complaint, he received the written notice required by Ohio Adm.Code 5120:1-1-11(G) on March 28, 2014 following his alleged March 11, 2014 parole hearing. While relator allegedly received the notice on the 17th day following his parole hearing, he did receive the notice within 14 working days of his March 11, 2014 parole hearing. Thus, by his own admission, relator was timely furnished the notice required by Ohio Adm.Code 5120:1-1-11(G). As respondents correctly assert in their motion to dismiss, this claim is now moot. *In re: Brown*, 10th Dist. No. 03AP-1205, 2005-Ohio-2425.

Second Claim

{¶ 26} Ohio Adm.Code 5120:1-1-11(H) provides:

> Prior to any release consideration hearing, notice of the hearing shall be provided to the judge, the prosecutor, any victim or victim's representative who is required to be given notice under section 2930.16 of the Revised Code; the law enforcement agency that arrested the inmate if any officer of that agency was a victim of the offense and is required to be given notice * * *.

{¶ 27} As respondents correctly point out, the administrative rules are primarily designed to guide correctional officers in prison administration rather than to confer rights on inmates. *State ex rel. Wickensimer v. Croft*, 10th Dist. No. 09AP-415, 2010-Ohio-1320, ¶ 4. Thus, as to relator, he had no clear legal right to have the prosecutor and judge notified of his parole hearing.

Third Claim

{¶ 28} As earlier noted, relator claims that his parole hearing and decision violated law because, allegedly, the board has repeatedly used the serious nature of his crime of conviction (which relator has not specified in his complaint) to deny him parole. This claim lacks merit.

{¶ 29} As respondents point out, R.C. 2967.03 provides:

> The [Adult Parole Authority] may investigate and examine, or cause the investigation and examination of, prisoners confined in state correctional institutions concerning their conduct in the institutions, their mental and moral qualities and characteristics, their knowledge of a trade or profession, their former means of livelihood, their family relationships, and any other matters affecting their fitness to be at liberty without being a threat to society.

{¶ 30} This statute has been broadly construed as "allow[ing] the board to consider any evidence it feels is pertinent to the question of whether the prisoner is fit to be at liberty without harming others." *State ex rel. Thompson v. Clark*, 7 Ohio App.3d 191, 192 (10th Dist. 1982).

{¶ 31} Moreover, Ohio Adm.Code 5120:1-1-07 provides:

> (A) An inmate may be released on or about the date of his eligibility for release, unless the parole board, acting pursuant to rule 5120:1-1-10 of the Administrative Code, determines that he should not be released on such date for one or more of the following reasons:
>
> (1) There is substantial reason to believe that the inmate will engage in further criminal conduct, or that the inmate will not conform to such conditions of release as may be established under rule 5120:1-1-12 of the Administrative Code;

> (2) There is substantial reason to believe that due to the serious nature of the crime, the release of the inmate into society would create undue risk to public safety, or that due to the serious nature of the crime, the release of the inmate would not further the interest of justice nor be consistent with the welfare and security of society[.]

{¶ 32} Clearly, in this action, relator cannot show a clear legal right to have the board refrain from considering the serious nature of his crime.

{¶ 33} Thus, it is clear that the complaint fails to state a claim upon which relief in mandamus can be granted.

{¶ 34} Accordingly, it is the magistrate's decision that this court grant respondents' motion to dismiss.

/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).