

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Herman Harris, Jr.,	:	
Plaintiff-Appellant,	:	
v.	:	No. 16AP-99 (C.P.C. No. 15CV-9942)
Ohio State Legislature et al.,	:	(ACCELERATED CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on September 22, 2016

On brief: *Herman Harris, Jr.*, pro se.

On brief: *Michael DeWine*, Attorney General, and *Mindy Worly*, for appellees.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Plaintiff-appellant, Herman Harris, Jr., appeals from a judgment of the Franklin County Court of Common Pleas that dismissed his complaint against various state agencies. For the following reasons, we affirm that judgment.

I. Factual and Procedural Background

{¶ 2} In 1992, Harris was convicted of murder and theft in the Montgomery County Court of Common Pleas and received a life sentence with parole eligibility after 19 years. He has been denied parole in 2005 and again in 2015 and is scheduled to come before the parole board again in 2025. Several months after his 2015 denial, Harris filed the present action, in which he sought declarations concerning his life sentence as well as

his parole eligibility.¹ His complaint named as defendants the Ohio General Assembly, the Director of Ohio Administrative Services, Gary Mohr in his official capacity as the director of the Ohio Department of Rehabilitation and Corrections, as well as the chairperson and board members of the Ohio Adult Parole Board. Mohr and the Ohio Adult Parole Board chairperson and members filed a motion to dismiss the complaint pursuant to Civ.R. (B)(1) and/or Civ.R. (B)(6).² They argued that Harris's action was a petition for postconviction relief and that the trial court lacked jurisdiction to consider the petition. They also argued that his complaint did not set forth any viable claims because Harris is not entitled to be released on parole before the end of his sentence. Harris did not respond to the motion to dismiss.

{¶ 3} The trial court dismissed Harris's claims against Mohr and the Ohio Adult Parole Board after concluding that it could not grant him any relief from his sentence. The trial court noted that the validity of his sentence was an issue for the sentencing court to resolve. The trial court also noted that Harris has no right to parole and has not alleged that he was denied parole for a constitutionally impermissible reason which could invoke judicial review. The trial court also dismissed Harris's claims against the other defendants sua sponte. The trial court concluded that Harris's complaint did not invoke the trial court's jurisdiction because the General Assembly delegated authority for parole determinations to the Ohio Adult Parole Board and that it did not appear that the Ohio Administrative Services had any authority over parole determinations. Thus, the trial court dismissed Harris's complaint in its entirety.

II. The Appeal

{¶ 4} Harris appeals the trial court's dismissal and assigns the following errors:

[1.] The Plaintiff/Appellant/Petitioner was denied the right to sue and/or seek judgment by redress against the State Legislatures/The Ohio General Assembly, and the Director of the Ohio Administrative Services for the wrongs suffered by Plaintiff/Appellant/Petitioner the Constitutional Guarantee Clauses of the First and Fourteenth Amendments of the

¹ The trial court, while noting how difficult it was to follow Harris's complaint, construed his complaint as seeking declarations that his life sentence is unconstitutional and that the Ohio Adult Parole Authority violated his constitutional rights by denying him parole. Appellant does not dispute the trial court's characterizations of his claims.

² Harris never obtained service on the other defendants.

United States Constitution, Ohio Bill of Rights, Article I §§ 2 and 16 Ohio Constitution.

[2.] The Plaintiff/Appellant/Petitioner was denied the Equal Protection of laws by the State Legislatures/The Ohio General Assembly, the Director of the Ohio Administrative Services, The Director of Ohio Dept., of Rehab. [and] Corrections, The Ohio Dept. Of Rehab., & Corrections, The Adult Parole Authority Parole Authority Parole Board Former and Present Parole Board Members. The State Legislatures/The Ohio General Assembly can not transform its legislative duties to the Ohio Dept. Rehab & Correction and/or the Adult Parole Authority Parole Board to determine when the appellant has served his maximum sentence 'to life' imprisonment when the operational effect of Ohio Revised Codes § 2967.16 for an offender convicted of either aggravated murder, murder, and murder as a lesser included offense, in direct violation of the Fourteenth Amendment of the United States Constitution "equal protection" of laws, Ohio Bill of Rights, Article I, § 2 An unconstitutional delegation of legislative authority and powers.

(Sic passim.)

{¶ 5} We address Harris's assignments of error together.

A. Standard of Review

{¶ 6} The trial court dismissed Harris's complaint pursuant to Civ.R. 12(B)(1) and (6). While these are distinct grounds to move for dismissal, an appellate court reviews rulings on both types of motions under a de novo standard of review. *Cardi v. State*, 12AP-15, 2012-Ohio-6157, ¶ 9, citing *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶ 5 (reviewing a Civ.R. 12(B)(6) motion under a de novo standard) and *Modern Office Methods, Inc. v. Ohio State Univ.*, 10th Dist. No. 11AP-1012, 2012-Ohio-3587, ¶ 8 (review of a Civ.R. 12(B)(1) motion is de novo). In order for a court to dismiss a complaint under Civ.R. 12(B)(6), it must appear beyond a doubt from the complaint that the plaintiff can prove no set of facts entitling him or her to recovery. *Volbers-Klarich v. Middletown Mgt., Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, ¶ 12. A similar standard applies to Civ.R. 12(B)(1) motions: the court must dismiss if the complaint fails to allege any cause of action cognizable in the forum. *Blankenship v. Cincinnati Milacron Chems.*,

Inc., 69 Ohio St.2d 608, 611 (1982); *Rodefer v. McCarthy*, 2d Dist. No. 2015-CA-1, 2015-Ohio-3052, ¶ 20-21.

B. Legal Analysis

{¶ 7} To the extent that Harris asserted claims challenging the constitutionality of his prison sentence imposed by the Montgomery County Court of Common Pleas, those claims were not properly before the trial court. Those claims are properly asserted in a direct appeal from the sentence or, if appropriate, in a petition for postconviction relief filed in the sentencing court pursuant to R.C. 2953.21(A)(1)(a). The Franklin County Court of Common Pleas does not have the jurisdiction to hear those claims in this case.³

{¶ 8} His claims regarding parole fare no better. There is no constitutional or inherent right to be released before the expiration of a valid sentence. *Spencer v. Ohio State Adult Parole Auth.*, 10th Dist. No. 09AP-143, 2009-Ohio-4656, ¶ 20, citing *State ex rel. Miller v. Leonard*, 88 Ohio St.3d 46, 47 (2000); *Robertson v. Ohio Adult Parole Auth.*, 10th Dist. No. 01AP-1111, 2002-Ohio-4303, ¶ 33. Therefore, an inmate that is denied parole is deprived of no protected liberty interest. *State ex rel. Hattie v. Goldhardt*, 69 Ohio St.3d 123, 125-26 (1994); *Curtis v. Ohio Adult Parole Auth.*, 10th Dist. No. 04AP-1214, 2006-Ohio-15, ¶ 27 (inmate cannot claim a violation of due process rights with respect to parole determination). Harris also did not allege purposeful discrimination in order to support an equal protection claim, nor did he allege that parole was denied for a constitutionally impermissible reason, which would subject the parole decision to judicial review. *Id.* at ¶ 26-30. Last, " 'the OAPA's decision to grant or deny parole is an executive function involving a high degree of official judgment or discretion [and] [t]he discretionary authority in relation to parole eligibility and release given the OAPA, pursuant to R.C. 2967.01 et seq., has been properly delegated by the legislature.' " *Weatherspoon v. Mack*, 10th Dist. No. 07AP-1083, 2008-Ohio-2288, ¶ 13, quoting *Wright v. Ghee*, 10th Dist. No. 01AP-1459, 2002-Ohio-5487, ¶ 42.

{¶ 9} It appears beyond doubt that Harris can prove no set of facts entitling him to relief for his parole-related claims. And, in regard to his sentencing claims, Harris has

³ Appellant's filing is also untimely if considered as a petition for postconviction relief. R.C. 2953.21(A)(2).

not set forth a cause of action cognizable in the trial court. Accordingly, the trial court did not err by dismissing Harris's complaint in its entirety.

III. Conclusion

{¶ 10} For these reasons, we overrule Harris's two assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and BRUNNER, JJ., concur.
