

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

|   |   |                    |
|---|---|--------------------|
| The State of Ohio ex rel.<br>Randall J. Nelson, | : |                    |
|   | : |                    |
| Relator,  | : |                    |
|   | : |                    |
| v.  | : | No. 09AP-940       |
|   | : |                    |
| Ohio Adult Parole Authority,                    | : | (REGULAR CALENDAR) |
|   | : |                    |
| Respondent.                                     | : |                    |
|   | : |                    |

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D E C I S I O N

Rendered on October 14, 2010

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*Randall J. Nelson, pro se.*

*Richard Cordray, Attorney General, and Ashley D. Rutherford, for respondent.*

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IN MANDAMUS  
ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

TYACK, P.J.

{¶1} Randall J. Nelson filed this action in mandamus, seeking a writ to compel the Ohio Adult Parole Authority ("OAPA") to modify its records with respect to the post-release control ("PRC") to which he is subject.

{¶2} In accord with Loc.R. 12, the case was referred to a magistrate to conduct appropriate proceedings. Counsel for the OAPA then filed a motion for summary judgment. The magistrate then issued a magistrate's decision which contains detailed findings of fact and conclusions of law, and is appended to this decision. The magistrate's decision includes a recommendation that we sustain the motion for summary judgment.

{¶3} No party has filed objections to the magistrate's decision. The case is now before the court for review.

{¶4} The magistrate's decision reflects the filing of an affidavit by Brigid Slaton, the Chief Hearing Officer of the OAPA. In the affidavit, Ms. Slaton acknowledges that mistakes were made with respect to Nelson's PRC. Ms. Slaton states that those mistakes have now been corrected and Nelson has been notified of the changes.

{¶5} The record indicates that Nelson has received the relief he sought without a writ being issued. Therefore, summary judgment for the OAPA is appropriate.

{¶6} We adopt the findings of fact and conclusions of law contained in the magistrate's decision. We therefore grant summary judgment for the OAPA and deny the request for a writ of mandamus.

*Summary judgment granted; writ denied.*

KLATT and SADLER, JJ., concur.

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|   | : |                    |
| Respondent.                                     | : |                    |
|   | : |                    |

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

Rendered on August 12, 2010

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*Randall J. Nelson, pro se.*

*Richard Cordray, Attorney General, and Ashley D. Rutherford, for respondent.*

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IN MANDAMUS  
 ON RESPONDENT'S MOTION  
 FOR SUMMARY JUDGMENT

{¶7} In this original action, relator, Randall J. Nelson, requests a writ of mandamus ordering respondent, Ohio Adult Parole Authority ("OAPA" or "respondent"), to correct on its records the assessment of sanction time available during a period of post release control.

Findings of Fact:

{¶8} 1. On October 5, 2009, relator filed this mandamus action against the OAPA.

{¶9} 2. According to the complaint, on February 11, 2008, relator was released from prison on a sentence he was serving for a conviction out of Seneca County, Ohio. Upon his release from prison, relator faced a period of post release control.

{¶10} 3. According to the complaint, on March 18, 2009, relator was sentenced at Lorain County on a new felony conviction. The court sentenced relator to an eight-month prison term, but terminated post release control on the Seneca County conviction.

{¶11} 4. According to the complaint, relator was released from prison on September 7, 2009 and was required to report to the OAPA office in Toledo, Ohio, the next day. When he reported, his unit supervisor informed him of the sanction days available to the OAPA if he were to violate any condition of the terms of his post release control.

{¶12} 5. According to the complaint, the sanction time available to the OAPA should he violate the terms of his post release control is incorrectly calculated.

{¶13} 6. In this action, relator requests that this court issue a writ of mandamus ordering respondent to correctly assess upon its records the available sanction time.

{¶14} 7. On November 4, 2009, respondent filed an answer to the complaint.

{¶15} 8. On November 12, 2009, the magistrate issued a schedule for the filing of evidence and briefs.

{¶16} 9. During the briefing schedule, respondent filed, on January 25, 2010, a motion for summary judgment.

{¶17} 10. On January 27, 2010, the magistrate issued notice that respondent's motion for summary judgment would be submitted to the magistrate on February 16, 2010 for his decision.

{¶18} 11. In support of its motion for summary judgment, respondent submitted an affidavit from Brigid Slaton executed January 25, 2010. The Slaton affidavit avers:

[One] I am Brigid Slaton, and I have personal knowledge of the facts contained in this affidavit. I am competent to testify as to these facts.

[Two] I am currently employed by the Ohio Department of Rehabilitation and Correction (ODRC), specifically the Ohio Parole Board. I am currently the Chief Hearing Officer.

[Three] I am familiar with inmate Randall Nelson's (Inmate #563281) parole proceedings and post release control file.

[Four] Randall J. Nelson A563281 was originally assessed 3 years mandatory Post Release Control supervision for the felony receiving stolen property.

[Five] After further review, it has been determined that Nelson should have received one year of discretionary post release control.

[Six] A new assessment was completed on January 22, 2010 reflecting a one year discretionary Post Release Control with eligibility for a reduction after 90 days.

[Seven] Because the judge terminated Nelson's post release control on his previous number (#483624), Nelson should not have his previous sanction time stacked to his new number.

[Eight] As such, Nelson should have one-hundred twenty-two (122) days of available sanction time for his current case under inmate A563281.

[Nine] The Ohio Adult Parole Authority has been notified of his change in PRC status as well as available sanction time and will provide Nelson with a copy of the new assessment.

{¶19} 12. Relator has not responded to respondent's motion for summary judgment.

Conclusions of Law:

{¶20} It is the magistrate's decision that this court grant respondent's motion for summary judgment.

{¶21} 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* (1993), 67 Ohio St.3d 337, 339-340; *Bostic v. Connor* (1988), 37 Ohio St.3d 144, 146; *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. The moving party bears the burden of proving no genuine issue of material fact exists. *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, 115.

{¶22} 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.

{¶23} Relator's failure to respond to the motion for summary judgment indicates that summary judgment is appropriate here. It is undisputed that relator has received from respondent the relief relator has requested in this action.

{¶24} Accordingly, it is the magistrate's decision that this court grant respondent's motion for summary judgment.

/s/Kenneth W. Macke  
KENNETH W. MACKE  
MAGISTRATE

#### **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).