

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Dwayne Harris,	:	
Relator,	:	
v.	:	No. 10AP-979
Harry Hageman, Director of Ohio Adult Parole Authority et al.,	:	(REGULAR CALENDAR)
Respondents.	:	
	:	

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D E C I S I O N

Rendered on February 26, 2013

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*Dwayne Harris, pro se.*

*Michael DeWine, Attorney General, and Peter L. Jamison, for respondents.*

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IN MANDAMUS

BROWN, J.

{¶1} Relator, Dwayne Harris, has filed an original action requesting that this court issue a writ of mandamus ordering respondents, Harry Hageman, Director of Ohio Adult Parole Authority ("OAPA"), and Cynthia Mousser, Chief of OAPA, to hold another parole hearing based upon relator's claim that a decision rendered after his August 21, 2009 parole hearing is void.

{¶2} This matter was referred to a magistrate of this court pursuant to Civ.R. 53(C) and Loc.R. 13(M) of the Tenth District Court of Appeals. The magistrate issued the

appended decision, including findings of fact and conclusions of law, recommending that this court deny relator's request for a writ of mandamus. No objections have been filed to that decision.

{¶3} Finding no error of law or other defect on the face of the magistrate's decision, this court adopts the magistrate's decision as our own, including the findings of fact and conclusions of law. In accordance with the magistrate's recommendation, relator's requested writ of mandamus is denied.

*Writ of mandamus denied.*

TYACK and CONNOR, JJ., concur.

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APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Dwayne Harris,	:	
Relator,	:	
v.	:	No. 10AP-979
Harry Hageman, Director of Ohio Adult Parole Authority et al.,	:	(REGULAR CALENDAR)
Respondents.	:	
	:	

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MAGISTRATE'S DECISION

Rendered on December 6, 2011

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*Dwayne Harris, pro se.*

*Michael DeWine, Attorney General, and Peter L. Jamison, for respondents.*

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IN MANDAMUS

{¶4} Relator, Dwayne Harris, has filed this original action requesting that this court enter a writ of mandamus ordering respondent Harry Hageman, Director, and Cynthia Mousser, Chief, of the Ohio Adult Parole Authority ("OAPA"), to hold another parole hearing for him based on his opinion that a decision rendered after his August 21, 2009 parole hearing is void.

Findings of Fact:

{¶5} 1. Relator is an inmate currently incarcerated at Richland Correctional Institution.

{¶6} 2. According to his complaint, relator's last parole hearing was held on August 21, 2009, at which time he was not granted parole.

{¶7} 3. According to the document relator attached to his complaint as Exhibit C, relator sought reconsideration of the decision to deny him parole because the 2007 guidelines used in his last parole hearing were subsequently rescinded.

{¶8} 4. Rick Baker, the hearing officer for the Ohio Parole Board ("board"), responded in a letter dated September 23, 2010, as follows:

Thank you for your letter received August 11, 2010 addressed to Ms. Mausser, Chair of the Ohio Parole Board requesting release reconsideration. Your letter has been forwarded to me for review and response.

I have reviewed your letter, along with other relevant file material concerning this matter including your previous correspondence to Parole Board.

The fact that the Parole Board rescinded its use of the Ohio Parole Board Guideline Manual does not make the decision reached by the Central Office Board Review in August, 2009 void.

In order for a case to be reconsidered, there must be relevant and significant information submitted that was either not available or not considered at the time of your most recent Parole Board Hearing. Your correspondence does not meet this standard; therefore, your request for reconsideration is denied.

At your next hearing in 8/2014, the Parole Board will continue to give you meaningful parole consideration, and exercise its discretionary release authority utilizing the Ohio statutes and Administrative Code provisions.

{¶9} 5. Thereafter, relator filed the instant action in this court, arguing that, because the 2007 parole guidelines, which had been applied at his August 21, 2009 hearing, were rescinded, he is entitled to a new hearing and that the board should either utilize the factors in the new 2010 parole handbook or the 1972 guidelines that were in effect at the time that he was convicted and sentenced to prison.

{¶10} 6. The matter is currently before the magistrate upon relator's evidence and briefs from the parties.

Conclusions of Law:

{¶11} For the reasons that follow, it is this magistrate's decision that this court should deny relator's request for a writ of mandamus.

{¶12} The Supreme Court of Ohio has set forth three requirements which must be met in establishing a right to a writ of mandamus: (1) that relator has a clear legal right to the relief prayed for; (2) that respondent is under a clear legal duty to perform the act requested; and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28.

{¶13} Relator contends that, because the 2007 guidelines have been rescinded, the decision denying him parole referencing those guidelines is void and entitles him to a new parole hearing. However, relator cites no legal authority to support his contention that his prior parole hearing is void.

{¶14} The Supreme Court of Ohio has held that there is no constitutional or inherent right for an inmate to be released prior to the expiration of a valid sentence; therefore, an inmate who has been denied parole has not been deprived of a protected liberty interest. *State ex rel. Hattie v. Goldhardt*, 69 Ohio St.3d 123, 1994-Ohio-81, and this court's decision in *Arnold v. Ohio Adult Parole Auth.*, 10th Dist. No. 11AP-120, 2011-Ohio-4928. Generally, OAPA has wide-ranging discretion in matters of parole. *Lane v. Ohio Adult Parole Auth.*, 97 Ohio St.3d 456, 2002-Ohio-6719. As the court in *Lane* stated:

\* \* \* R.C. 2967.03 vests discretion in the APA to "grant a parole to any prisoner for whom parole is authorized, if in its judgment there is reasonable ground to believe that \* \* \* paroling the prisoner would further the interests of justice and be consistent with the welfare and security of society." However, that discretion must yield when it runs afoul of statutorily based parole eligibility standards \* \* \*.

{¶15} In *Budd v. Kinkela*, 10th Dist. No. 01AP-1478, 2002-Ohio-4311, this court rejected an inmate's argument that he was deprived of due process when the OAPA used different guidelines than those which were in effect at the time he was convicted. Specifically, this court stated:

Further, the United States District Court for the Southern District of Ohio has held that parole guidelines are not violative of ex post facto prohibition, stating:

"\* \* \* [C]hanges in the parole matrix or parole guidelines may constitutionally be applied to inmates even though the changes occur after the inmates entered the state prison system. As the Court noted in its previous opinion and order, parole is a discretionary decision, and a state may constitutionally add or delete factors which guide the Parole Boards' exercise of its discretion without running afoul of the Constitution. Simply put, an inmate has no vested interest in any particular set of parole guidelines, regulations, or matrices which assist the Parole Board in exercising its discretion, and changes in those matters do not impair any rights enjoyed by state prisoners pursuant to the United States Constitution. \* \* \*

(Internal citations omitted.)

{¶16} As indicated above, relator has no vested right to have any particular set of parole guidelines utilized by the OAPA. However, relator is entitled to receive meaningful consideration for parole at this parole hearing. *Lane* at ¶27. As part of that consideration, relator is entitled to have the OAPA properly apply the applicable law. Relator has not alleged that the OAPA has failed to follow the law.

{¶17} Further, a review of the board decision indicates that the proper factors were considered. First, the board noted that relator had been convicted of two counts of rape, kidnapping, felonious assault, and aggravated assault. Next, the board noted that relator's institutional conduct had been poor, and his institutional programming had been fair. Specifically, the board noted: "I/m has rescission behavior noted in file 2/09 positive urine-I/m completed Mandatory SOP-not a good % rate noted, Criminal Thinking, Anger Mgmt." Ultimately, the board concluded that relator was not suitable for release because of the nature of the offense, his criminal history, and his negative institutional conduct. The board concluded that there was substantial reason to believe that, due to the serious nature of the crime, relator's release into society would create undue risk to public safety and would not further the interest of justice or be consistent with the welfare and security of society.

{¶18} The magistrate finds that there are no improper references in the board's decision and, although relator argues that he had new evidence to present, relator has failed to include that evidence with the record before the court in mandamus. As such, there is no reason to doubt the statement contained in the September 23, 2010 letter responding to relator's request for reconsideration that relator's correspondence did not provide relevant and significant information that was either not available or not considered at the time of his most recent board hearing.

{¶19} Based on the foregoing, it is this magistrate's decision that relator has not demonstrated that respondents abused their discretion by denying his request that the board reconsider him for parole. Further, relator has not demonstrated that respondents abused their discretion by applying the 2007 guidelines which were applicable at the time of his hearing. As such, relator is unable to establish that he has a clear right to a new parole hearing, and this court should deny his request for a writ of mandamus.

*/S/ MAGISTRATE*

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STEPHANIE BISCA BROOKS  
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).