

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State ex rel. Rickie Lee Yauger,	:	
Relator,	:	
	:	No. 25AP-291
v.	:	
	:	(REGULAR CALENDAR)
Mark C. Houk et al.,	:	
Respondents.	:	

D E C I S I O N

Rendered on August 27, 2026

On brief: *Tony Dalayanis*, for relator.

On brief: [*D. Andrew Wilson*], Attorney General, and
Andrew Gatti, for respondents.

IN MANDAMUS

BOGGS, P.J.

{¶ 1} Relator, Rickie Lee Yauger, filed a petition for a writ of mandamus requesting that this court issue a writ ordering respondents Mark C. Houk, in his official capacity as hearing officer for the Ohio Parole Board (“OPB”), and Julie Clark, in her official capacity as parole officer for the Ohio Adult Parole Authority (“OAPA”) to vacate the order of the OAPA that found Yauger violated the terms and conditions of his parole and terminate his parole supervision.

{¶ 2} Pursuant to Civ.R. 53 and Loc.R. 13(M) of the Tenth District Court of Appeals, this matter was referred to a magistrate. The magistrate considered the action on its merits and issued a decision, including findings of fact and conclusions of law, which is appended hereto. The magistrate concluded that Yauger’s arguments lacked merit and that he had failed to demonstrate that respondents had a clear legal duty to provide his requested relief. The magistrate recommends that this court deny the requested writ.

{¶ 3} Yauger has filed objections to the magistrate’s decision. We must therefore independently review the record and the decision to ascertain whether “the magistrate has properly determined the factual issues and appropriately applied the law.” Civ.R. 53(D)(4)(d).

I. FACTS AND PROCEDURAL HISTORY

{¶ 4} On April 14, 1982, Yauger pled guilty to two counts of aggravated burglary and was sentenced by the Summit County Court of Common Pleas to serve a prison term of 7 to 25 years for each count, to be served consecutively. On May 3, 1991, Yauger was released on parole.

{¶ 5} In December 1991, Yauger violated his parole and was sentenced in a Summit County case and a Tuscarawas County case to 15 to 150 years incarceration. On June 11, 2015, Yauger was placed on parole. In September of 2019, Yauger’s parole officer learned he had been arrested. On November 13, 2019, a parole board hearing officer held a hearing on the alleged violation of the terms of Yauger’s parole and found that he had violated the conditions of his release. OPB revoked Yauger’s release and sentenced him to 24 months in prison.

{¶ 6} On January 26, 2021, Yauger sent a letter to Ohio Department of Rehabilitation and Correction (“ODRC”) Director, Annette Chambers-Smith, alleging that he was being unlawfully restrained. ODRC’s Bureau of Sentence Computation responded to Yauger and stated that his sentences had been aggregated and the maximum expiration date was calculated as February 13, 2146.

{¶ 7} On March 24, 2025, Yauger filed a petition for a writ of mandamus with this court. Yauger argued that his due process rights were violated and that he “would have received his final release from his sentence in 2016, and therefore could not have violated the terms and conditions of his parole that have caused his unlawful, unconstitutional restraint of his liberty in this matter.” (Petition at 12.)

{¶ 8} On April 28, 2026, the magistrate recommended that this court deny Yauger’s petition for a writ of mandamus. The magistrate found that Yauger did not demonstrate that respondent had a clear legal duty to impose any different terms of parole or that Yauger established he had a clear legal right to relief.

{¶ 9} On May 11, 2026, Yauger filed objections to the magistrate’s decision which we now consider in turn.

II. DISCUSSION

{¶ 10} To be entitled to a writ of mandamus, a relator must demonstrate by clear and convincing evidence that he has a clear legal right to the relief sought, that the commission has a clear legal duty to provide that relief, and that he lacks an adequate remedy in the ordinary course of the law. *See State ex rel. Poneris v. Indus. Comm.*, 2005-Ohio-6208, ¶ 11 (10th Dist.), citing *State ex rel. Berger v. McMonagle*, 6 Ohio St.3d 28 (1983). A relator bears the burden of persuasion to show entitlement to a writ of mandamus by clear and convincing evidence. *Welsh-Huggins v. Jefferson Cty. Prosecutor’s Office*, 2020-Ohio-5371, ¶ 26. “Clear and convincing evidence” is a measure or degree of proof that is more than a preponderance of evidence, but it does not extend to the degree of certainty beyond a reasonable doubt as required in a criminal case; clear and convincing evidence produces in the trier of fact’s mind a firm belief of the fact sought to be established. *State ex rel. Miller v. Ohio State Hwy. Patrol*, 2013-Ohio-3720, ¶ 14.

{¶ 11} In his first objection, Yauger argues that the magistrate erred in granting leave for respondents to file an answer without a showing of excusable neglect. Respondents state that a “court has supervisory power and control over its docket” and that the magistrate was within his discretionary authority to grant leave for the respondents to answer after a responsive pleading was filed. *State ex rel. Buck v. McCabe*, 140 Ohio St. 535, 537 (1942). We agree and also recognize that Yauger’s objection does not identify an error in the magistrate’s findings of facts or conclusions of law. Nor does it address the magistrate’s finding that Yauger has not established he has a clear legal right to relief. We therefore overrule Yauger’s first objection to the magistrate’s decision.

{¶ 12} In Yauger’s second objection, he contends that respondents lack authority to extend parole beyond his maximum term. However, as the magistrate noted, the expiration of Yauger’s aggregated maximum sentences is February 13, 2146.

{¶ 13} Nor do the regulations that Yauger points this court to indicate that his parole terms were contrary to law. For example, Yauger cites Adm.Code 5120:1-1-13 which states:

(A) A parolee who has faithfully performed all the conditions of his parole and who has obeyed the rules of parole established by the adult parole authority shall be granted a final release by

the authority upon the written recommendation of the superintendent of parole supervision.

(B) No parolee shall be granted a final release from parole earlier than one year after the parolee has been released from the institution on parole unless his maximum sentence has expired prior to the expiration of one year.

(C) No parolee whose minimum sentence is life shall be released from parole earlier than five years after the parolee has been released from the institution.

Yauger argues that Adm.Code 5120:1-1-13(B) indicates he should have been released from parole after one year. However, Yauger misreads the regulation. While parole may not be terminated prior to one year after it begins, Adm.Code 5120:1-1-13(B) does not state that parole *must* be terminated after one year. Yauger similarly misreads Adm.Code 5120:1-1-13(C). He argues that he should not have been sentenced to five years parole, as his minimum sentence was not life. However, the regulation does not bar offenders with non-life sentences from being ordered to serve five years of parole. We also recognize that the Supreme Court of Ohio has stated that “[t]he Parole Board has significant discretion to impose conditions of release designed to protect the public and to promote the releasee’s successful reintegration into the community.” *Woods v. Telb*, 89 Ohio St.3d 504, 508 (2000), citing Adm.Code 5120:1-1-17(A). We overrule this objection to the magistrate’s decision.

{¶ 14} Yauger’s final objection repeats that he is entitled to relief under an equal protection constitutional argument. Yauger points to others, including his co-defendant, who were released from parole after one year. However, as the magistrate notes in his decision, Yauger does not identify that he is a member of a particular class that would trigger equal protection analysis, and we therefore overrule this objection.

{¶ 15} Following our independent review of the record, we find the magistrate has properly discerned the relevant facts and appropriately applied the controlling law. As such, we overrule Yauger’s objections to the magistrate’s decision and adopt the magistrate’s decision as our own, including the findings of facts and conclusions of law

contained therein. In accordance with the magistrate's decision, we deny Yauger's pending motions as moot and deny the requested writ of mandamus.

*Petition for writ of mandamus denied;
motions denied as moot.*

MENTEL and EDELSTEIN, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Rickie Lee Yauger,	:	
Relator,	:	
v.	:	No. 25AP-291
Mark C. Houk et al.,	:	(REGULAR CALENDAR)
Respondents.	:	

MAGISTRATE'S DECISION

Rendered on April 28, 2026

Tony Dalayanis, for relator.

Dave Yost, Attorney General, and *Andrew Gatti*, for respondents.

IN MANDAMUS

{¶ 16} Relator, Rickie Lee Yauger, has filed this original action requesting that this court issue a writ of mandamus ordering respondent Mark C. Houk, in his official capacity as hearing officer for the Ohio Parole Board (“OPB”), and Julie Clark, in her official capacity as parole officer for the Ohio Adult Parole Authority (“OAPA”) to vacate the order of the OAPA finding he violated the conditions of his parole and terminate his parole supervision.

Findings of Fact:

{¶ 17} 1. Relator was formerly incarcerated.

{¶ 18} 2. Respondent Houk is a hearing officer for the OPB.

{¶ 19} 3. Respondent Clark is a parole officer for the OAPA.

{¶ 20} 4. In 1982, in Summit County case No. CR822149, relator pled guilty to two counts of aggravated robbery and was sentenced to 14 to 50 years of incarceration (“1982 offenses”). He was sentenced before the enactment of S.B. 2 on July 1, 1996. Relator alleges that he was not subject to post-release control at this time because post-release control was not enacted until S.B. 2. Relator served his term of incarceration under inmate number A167-411

{¶ 21} 5. Relator was released on parole in CR822149, inmate number A167-411 on May 3, 1991.

{¶ 22} 6. Approximately six months after release, relator violated his parole when he committed new offenses. Relator was sentenced in Summit County case No. CR92030803 and Tuscarawas case No. 92CR050094 (“1992 offenses”) to 15 to 105 years of incarceration, to be served consecutively and aggregated with case No. CR822149 for a total max of 155 years, with a max expiration of February 13, 2146. Relator served the sentences for the 1992 offenses under inmate number A270-664.

{¶ 23} 7. Relator was released on parole for his 1992 offenses on June 11, 2015, with five years of supervision. Relator claims he should not have been subject to five years of supervision, as the five-year-parole justification found in Adm.Code 5120:1-1-13(C) at the time of his original sentence applied only to offenders with a minimum sentence of life imprisonment. He also claims that after completing 12 consecutive months of supervision with no violations or bad behavior, he should have received a final release under the pre-S.B. 2 laws, which provided that final release should be granted in one year unless the maximum sentence is expired.

{¶ 24} 8. On March 7, 2017, after successfully completing 22 consecutive months of parole, respondent Clark, relator’s parole officer, filed a parole violation, alleging that relator failed to report a change of address, and he received a sanction.

{¶ 25} 9. In September 2019, his parole officer learned relator had been arrested and charged with breaking and entering, aggravated trafficking in drugs, and aggravated possession of drugs, and the OAPA placed a hold on relator. Based upon this arrest, relator was also charged with violating the terms of his supervision.

{¶ 26} 10. On November 13, 2019, a parole-violation hearing was held based upon his arrest, and respondent Houk found relator guilty of violating the terms of his supervision. The OPB approved a sentence of 24 months of incarceration for the parole violation.

{¶ 27} 11. On August 25, 2020, relator plead guilty to breaking and entering, a fifth-degree felony. Relator was sentenced to 12 months of incarceration. He served this sentence under inmate number A773-727.

{¶ 28} 12. On January 26, 2021, relator wrote a letter to ODRC Director, Annette Chambers-Smith, claiming he was being held illegally. Scott Hopkins, from ODRC's Bureau of Sentence Computation, responded to relator, explaining the following: (1) the sentence imposed in CR822149 of 14 to 50 years, served under A167-411, had a max expiration of March 24, 2032; parole effective date of May 3, 1991; and a return violator date of December 19, 1992; (2) the sentence imposed in CR92030803 and 92CR050094 of 15 to 105 years, served under A270-664, consecutive and aggregated with CR822149 for a total max of 155 years; had a max expiration of February 13, 2146; had a parole effective date of June 11, 2015, and had a violation date of November 13, 2019; (3) the sentence imposed in CR2019093348, served under A773-727, had one year ordered concurrent to the above cases, and expired December 3, 2020; as the above-mentioned cases have not expired, any new conviction will be aggregated with prior imposed indefinite terms in accordance with Ohio Revised Code and Ohio Administrative Code; (4) the aggregation process is the merging of two or more active files to ensure that all required time is served and does not involve any kind of "retroactive" actions; (5) at this time, the parole violation effective November 13, 2019, is under the jurisdiction of OAPA, and any question regarding future parole hearings should be directed to OAPA; (6) it is the opinion of this office that no illegal action has been executed regarding the aggregation of numbers with an outstanding max expiration date; and (7) any concerns regarding an "illegal sentence" will have to be addressed by the sentencing court, as ODRC can only execute the sentence as imposed by court order.

{¶ 29} 13. On March 24, 2025, relator filed this petition for writ of mandamus, in which he requested that this court vacate the order of the OAPA finding he violated the conditions of his parole.

Conclusions of Law:

{¶ 30} The magistrate recommends that this court deny relator's petition for a writ of mandamus.

{¶ 31} In order for this court to issue a writ of mandamus, a relator must ordinarily show a clear legal right to the relief sought, a clear legal duty on the part of the respondent to provide such relief, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Pressley v. Indus. Comm.*, 11 Ohio St.2d 141 (1967). A relator bears the burden of persuasion to show entitlement to a writ of mandamus by clear and convincing evidence. *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office*, 2020-Ohio-5371, ¶ 26. "Clear and convincing evidence" is a measure or degree of proof that is more than a preponderance of evidence, but it does not extend the degree of certainty beyond a reasonable doubt as required in a criminal case; clear and convincing evidence produces in the trier of fact's mind a firm belief of the fact sought to be established. *State ex rel. Miller v. Ohio State Hwy. Patrol*, 2013-Ohio-3720, ¶ 14.

{¶ 32} In the present case, relator argues that respondents violated his constitutional rights to due process in the following ways: (1) the OAPA's authority derives from statute, not the trial court; (2) relator's sentence is controlled by the law in effect at the time of sentencing; (3) the OAPA lacks authority to extend parole beyond the maximum term; and (4) relator has no plain and adequate remedy at law.

{¶ 33} Relator's first "argument" contains no actual argument but makes two basic legal assertions without reference to the present case. In the first assertion, relator states that parole is an executive function, citing *Morrissey v. Brewer*, 408 U.S. 471 (1972). However, more specifically, the court in *Morrissey* found "[s]upervision is not directly by the court but by an administrative agency, which is sometimes an arm of the court and sometimes of the executive." *Id.* at 480. Relator's assertion does not precisely capture the language in *Morrissey*. In the second assertion, relator states the OAPA's powers must conform strictly to statutes in effect at the time of sentencing, citing *State ex rel. Bray v. Russell*, 89 Ohio St.3d 132 (2000). Nothing in *Bray* seems to stand for the claimed proposition. Regardless, because relator's first argument contains no specific arguments, it is without merit.

{¶ 34} In his second argument, relator again asserts that his sentences must be executed according to the sentencing laws in force at the time of each sentence. However, relator does not make any clear substantive argument under this subsection of his brief as to how his sentences were contrary to sentencing statutes in effect at the time of any of his sentences. Relator does make the statement that subsequent statutory amendments cannot retroactively expand parole terms of conditions, but he does not further expound upon this argument or apply it clearly to the present case. Viewing his petition, statement of the facts, and arguments in other parts of the brief as a whole, relator may be asserting that no statute existed at the time of his 1982 and 1992 offenses requiring five years of post-release control because post-release control was not enacted until S.B. 2 in July 1996. It is true and well-established that the provisions of S.B. 2 do not apply to persons who were sentenced prior to July 1, 1996. *State ex rel. Maynard v. Corrigan*, 1998- Ohio-430. However, relator simply does not explain under this argument subsection how his parole or post-release control conflicted with his sentences. Therefore, the magistrate finds this argument without merit.

{¶ 35} Relator contends in his third argument that the OAPA lacks authority to extend parole beyond the maximum term. This subsection does not contain any substantive argument regarding the specific circumstances in the present case. Insofar as relator makes a vague suggestion that the OAPA extended his supervision beyond his maximum term, he does not specifically explain his contention. Furthermore, “[t]here is no constitutional or inherent right . . . to be conditionally released before the expiration of a valid sentence.” *State ex rel. Hattie v. Goldhardt*, 1994-Ohio-81, quoting *Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 7 (1979). Here, for the 1982 offense, relator was sentenced to 14 to 50 years of incarceration. For the 1992 offenses, according to the affidavit of Hopkins, relator was sentenced to 15 to 105 years of incarceration, to be served consecutively and aggregated with the 1982 case for a total max expiration of February 13, 2146. Therefore, relator had no inherent or constitutional right to be granted supervision before the expiration of his sentence. Notwithstanding, given relator’s argument lacks substance and specificity, the magistrate finds it without merit.

{¶ 36} Relator asserts in his fourth argument that he has no plain and adequate remedy at law. In this subsection, relator first contends that he was released from prison

prior to the July 1, 1996, enactment of S.B. 2, and the law in effect at that time required only a five-year imposition of parole when there existed a minimum sentence of life, which did not apply to relator; thus, the imposition of the five years of post-release control altered the sentence of the trial court. Relator also contends that Adm.Code 5120:1-1-13(A) and (B) require that a parolee who has faithfully performed all of the conditions of his parole must be granted a final release within one year, unless the maximum sentence was expired. Relator points out that he completed 22 consecutive months of parole before he was sanctioned on March 7, 2017, and he should have been paroled after 12 months, citing example of other offenders who were granted final release after successfully completing one year of parole.

{¶ 37} Notwithstanding that relator's argument does not seem to address the adequate-remedy-at-law requirement, the arguments raised are not persuasive. Adm.Code 5120:1-1-13(B), as well as its statutory equivalent R.C. 2967.16, does not mandate release after one year, providing only that "[n]o parolee shall be granted a final release from parole earlier than one year after the parolee has been released from the institution on parole unless his maximum sentence has expired prior to the expiration of one year." Adm.Code 5120:1-1-13(B). Subsection (A) grants authority to the Superintendent of Parole Supervision to recommend that a parolee be granted final release to a parolee who has faithfully performed all the conditions of his parole and who has obeyed the rules of parole, but it does not require the Superintendent to grant a final release after one year. Thus, even if the requirements in Adm.Code 5120:1-1-13 and R.C. 2967.16 are met, OAPA's decision whether to grant final release is still discretionary. *See State ex rel. Duganitz v. Ohio Adult Parole Auth.*, 1996-Ohio-326, citing *Bates v. Ohio Adult Parole Auth.*, 1987 Ohio App. LEXIS 8867 (10th Dist. Sept. 22, 1987) (finding that although the OAPA had the discretion to terminate that parole after one year, it is not obligated to do so). These provisions do not confer a legal right to unconditional release of a parolee whose maximum sentence has not expired. *Id.*, citing *Porter v. Ohio Parole Bd.*, 1995 Ohio App. LEXIS 703 (9th Dist. Mar. 8, 1995) (finding R.C. 2967.16 does not mandate a parole release; thus, it does not create a protected statutory entitlement to release from parole).

{¶ 38} Furthermore, relator's equal protection argument, in which cites two other persons who were granted final release after one year of parole, must fail. The two other

cited persons were his co-defendant and another person, and relator claims they were all convicted of aggravated burglary, paroled out of the Akron branch of the OAPA, and subject to the same policies and regulations as each other. “Generally, a valid claim under Ohio’s Equal Protection Clause alleges treatment different than that afforded similarly situated individuals Given the myriad factors the parole board considers in reaching its determination, plaintiff cannot maintain an equal protection claim concerning a parole decision when the argument is premised on an allegation that inmates are similarly situated by the crime committed or the sentence imposed.” *Hill v. Croft*, 2005-Ohio-6885, ¶ 15 (10th Dist.). Instead, “ ‘[a] person bringing an action under the Equal Protection Clause must show intentional discrimination against him because of his membership in a particular class, not merely that he was treated unfairly as an individual.’ ” *Id.*, at ¶ 16, quoting *Huebschen v. Dept. of Health & Social Serv.*, 716 F.2d 1167, 1171 (7th Cir. 1983). In his petition, relator makes no claim that respondents have discriminated against him because of his membership in a particular class. Therefore, this equal protection claim is without merit.

{¶ 39} Insofar as relator also argues that he was released from prison prior to the July 1, 1996, enactment of S.B. 2, and respondents were not permitted to impose a five-year term of parole after his release on June 11, 2015, for his 1992 offenses, relator has simply failed to provide an adequate explanation or persuasive argument as to why or how the imposition of his post-release control at any time was improper, much less that respondents had a clear legal duty to act in any other manner with regard to his parole.

{¶ 40} For the above reasons, the magistrate finds that relator has failed to demonstrate that respondents had the clear legal duty to impose any different terms of parole or supervision at any certain time since his 1982 offenses or that he had a clear legal right to a final release at any time since his 1982 offenses.

{¶ 41} Accordingly, it is the magistrate’s decision that this court deny relator’s request for a writ of mandamus. Any outstanding motions are denied as moot.

/S/ MAGISTRATE
THOMAS W. SCHOLL III

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). A party may file written objections to the magistrate's decision within fourteen days of the filing of the decision.